



TO: Mayor and City Council

FROM: City Administrator

DATE: July 20, 2023

RE: Repeal and Replacement of CCEC Franchise Agreement Ordinance

ISSUE:

An Ordinance granting a 10 year franchise to Coos Curry Electric Cooperative (CCEC) to operate electric utility on city rights of way. Automatically renews for 10 years if not amended.

BACKGROUND:

The Council has heard from staff and CCEC on various options for a franchise agreement to replace the existing Ordinance 2004-10, which expires August 2023.

The proposed ordinance is a new option, based on feedback received from Council after considering prior options. To wit: this ordinance proposes a 3.5% franchise fee, which by its terms will not be passed through to City rate-payers. However, it is only for 10 years, which will allow the Council to re-visit the franchise at that time. If the city takes no action, the franchise will automatically renew for another ten years.

Because this establishes a new fee, it requires a public hearing.

RECOMMENDATION:

Open Public Hearing and Take comments. Close Public Hearing. Adopt Ordinance repealing and replacing Franchise Agreement Ordinance with CCEC.

ORDINANCE 2023 –

AN ORDINANCE GRANTING A 10-YEAR FRANCHISE TO COOS-CURRY ELECTRIC GRANTEE, INC., FOR THE OPERATION OF AN ELECTRIC POWER TRANSMISSION AND DISTRIBUTION SYSTEM WITHIN THE CITY OF PORT ORFORD; PRESCRIBING THE TERMS, CONDITIONS AND MANNER OF THE ACCEPTANCE OF SUCH FRANCHISE; REPEALING ORDINANCE NO. 2004-01.

WHEREAS, The Common Council for the City of Port Orford (Council) Ordinance Number 2004-01, establishing the past franchise agreement with Coos Curry Electric Cooperative (CCEC), will expire in August 2023; and

WHEREAS, the Council finds it is in the best interest of the City to repeal and replace Ordinance 2004-01 in its entirety and replace it with a new ordinance codified franchise agreement; and

WHEREAS, the Council has had a workshop on the new terms and conditions of the franchise agreement and find them acceptable as set forth on Exhibit 1 incorporated by reference herein;

NOW THEREFORE, the Common Council for the City of Port Orford ORDAINS:

Franchise Agreement Ordinance with Coos Curry Electric Cooperative is approved and adopted; Exhibit 1 code sections 3.20.010 et seq., with Exhibit A incorporated herein.

Ordinance 2004-01 is repealed and replaced in its entirety.

Dated this _____th day of _____, 2023

Pat Cox, Mayor, City of Port Orford

Attest: Joseph Harrison, Recorder

First Reading _____/_____/_____
Second Reading _____/_____/_____

Chapter 3.20
Granting a 10-year Franchise to Coos-Curry Electric Cooperative, Inc.,
Automatically renewing for a subsequent 10 years if not renegotiated.**IN**
AND FOR THE CITY OF PORT ORFORD
STATE OF OREGON
ORDINANCE (# OF THE NEW ORDINANCE)

~~IN THE MATTER OF ORDINANCE (# OF THE NEW ORDINANCE), GRANTING A 20-YEAR FRANCHISE TO COOS-CURRY ELECTRIC GRANTEE, INC., FOR THE OPERATION OF AN ELECTRIC POWER TRANSMISSION AND DISTRIBUTION SYSTEM WITHIN THE CITY OF PORT ORFORD; PRESCRIBING THE TERMS, CONDITIONS AND MANNER OF THE ACCEPTANCE OF SUCH FRANCHISE; REPEALING ORDINANCE NO. 2004-01.~~

- ~~Section 13.20.010.~~ Repeal of Ordinance
- ~~Section 23.20.020.~~ Grant of Franchise
- ~~Section 3.20.030.~~ Emergency Repair
- ~~Section 3.20.040.~~ Installation of Facilities
- ~~Section 53.20.050.~~ Restoration of Facilities
- ~~Section 3.20.060.~~ Construction Conflicts to be Avoided
- ~~Section 3.20.070.~~ Adjustments to Facilities
- ~~Section 3.20.080.~~ Conditions on Sale, Transfer, or Assignment
- ~~Section 3.20.0909.~~ Indemnification
- ~~Section 3.20.010.~~ Terms and Conditions of Franchise
- ~~Section 3.20.011.~~ Grantee Use of Poles
- ~~Section 3.20.012.~~ Term and Renewal
- ~~Section 3.20.013.~~ Acceptance

The City of Port Orford Ordains as Follows:

~~3.20.0Section-10. Repeal of Ordinance No. 2004-01.~~ Ordinance No. 2004-01 of the City of Port Orford (hereinafter referred to as "City") is hereby repealed; said repeal effective on the date of this ordinance's passage. The respective claims of the City of Port Orford and Coos-Curry Electric Cooperative, Inc. (hereinafter referred to as "Grantee"), under said Ordinance No. 2004-01 shall be settled between said parties as of the date that the Grantee shall have accepted the franchise herein provided in this ordinance, said acceptance being in written form provided the City by a duly authorized resolution of the Grantee's governing board.

~~3.20.0Section-20. Grant of Franchise.~~ There is hereby granted by the City of Port Orford ("City") to the Coos Curry Electric Cooperative, Inc. ("Grantee"), the non-exclusive right, privilege and franchise of installing, owning, operating, and maintaining an electric power service transmission and distribution system by means of poles, conduits, wires, cables, and other equipment or appliances in, upon, over, under and along the streets, alleys or other public places within the corporate limits of the City of Port Orford.

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3.20.030 Section 3. Emergency Repair and Maintenance of Existing Facilities. In case of an emergency, it shall be lawful for Grantee to make all needful excavations and erections in any Public Right of Way in the City for the purpose of repairing and maintaining Grantee's electric service facilities, including existing poles or other supports or conduits for wires, whether copper, fiber optic or other technology, and appliances and auxiliary equipment without a Public Works permit. All emergency maintenance and repair work, erections of poles and appliances and laying of wires shall be done in compliance with such applicable rules, regulations, ordinances, or orders in effect at the time of the work.

Grantee shall notify the City Public Works and Development Services Department ("Public Works Department") of any emergency repair and maintenance work as soon as reasonably practicable, and in any event within 48 hours. Any act done by any contractor or subcontractor contracting with Grantee shall, for the purpose of this franchise, be deemed to be the act of Grantee. All work shall be maintained against defects in material and workmanship and depending on the extent of the work, may require additional sureties as defined in Section 3 herein.

3.20.0 Section 40. Installation of New Facilities and Expansion of Services. Except as expressly set forth in this Section, prior to commencing ordinary construction, extension, or installation of electric services by means of poles, conduits, wires, cables, and other equipment or appliances, or relocation of any of the Grantee's electric services facilities in the Public Rights of Way within the City, the Grantee shall obtain a Public Works Permit by submitting to the City's Public Works Department representatives a plan showing the location of the proposed construction, extension or relocation for purposes of utility location. Construction shall be in accordance with the City ordinances, rules, and requirements and Call Before You Dig requirements of the Oregon Revised Statutes. Grantee shall obtain approval from the City Public Works Department via a Public Works Permit, and meet with the Public Works Department representative, if requested prior to commencement of such construction. Permit applications shall be signed by an authorized representative of Grantee and include a map or blueprint showing the location of all proposed excavations, pipes, conduits, or other apparatus. Any act done by any contractor or subcontractor contracting with Grantee shall, for the purpose of this franchise, be deemed to be the act of Grantee. All work shall be maintained against defects in materials and workmanship.

When the City reasonably determines that the nature and performance of Grantee's work in the City requires separate assurance that the work will be complete or that the work shall be maintained against defects in material or workmanship, the City may require Grantee to furnish to the City a performance or maintenance bond for the estimated value of all the work for the stated interval to insure compliance by Grantee with rules, regulations, ordinances, and orders of the Council relating to its operations within the City as provided for under this section, after the receipt of notice and an opportunity for Grantee to cure any defect.

Grantee must comply with applicable City ordinances, resolutions, rules, and orders that

generally apply to the reasonable management of the safety and use of Public Rights of Way within the City as such requirements exist at the time of Grantee's work. However, by entering this agreement, Grantee is not waiving its right to challenge or otherwise dispute the legality, validity, or enforceability of any changes to City ordinances, resolutions, rules, or orders enacted after the Effective Date. In addition, to the extent permitted by law, this Franchise does not require Grantee to comply with existing or future ordinances, resolutions, rules, or orders that conflict with any specific provision of this Franchise.

The word "applicable", as used in this paragraph shall mean such rules, regulations, ordinances or orders as the City Council may deem necessary to manage the safety of the Public Right of Way and to protect the public and any member of the public residing within the City, who might be affected by any excavation work or installation of the Grantee.

Grantee shall furnish to the City, and maintain a current copy on file, a certificate of insurance insuring against the risks of personal injury, bodily injury and property damage in the minimum amounts and coverage provided for by City ordinances as of the Effective Date, naming the City as additional insured against those risks for any act or omission that is not a negligent or intentional wrongful act of the City and including the following statement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 30 days after receipt by the City, by registered mail, of a written notice addressed to the City of such intent to cancel or not to renew."

Grantee shall not be required to obtain prior approval or provide notice of construction, permit applications or maps/ blueprints for 1) Customer service connections/drops, repairs or maintenance that do not require installation of facilities in the Public Right of Way, altering, cutting or breaking of the roadway, curb or sidewalk, or 2) Routine maintenance or repair of above ground Equipment, and the installation of new replacement cables or wires on existing aerial facilities, when the installation, maintenance or repair will not impact vehicular traffic by closing or blocking a lane of vehicular travel for more than two (2) hours.

If requested by the City, Grantee shall furnish the City with record drawings as maintained in the ordinary course of business showing Grantee's facilities within the Public Right of Way in a format (electronic or hard copy) acceptable to City and Grantee within 60 days after such work is complete. Drawings shall be certified by an authorized representative of Grantee and Grantee shall not be required to have the drawings signed or stamped by a registered or professional engineer. While it is not anticipated that the furnishing of record drawings would require disclosure of sensitive proprietary information of Grantee, in the event that such sensitive proprietary information is nevertheless included and Grantee requests confidentiality of such information the City will maintain confidentiality of such sensitive proprietary information to the extent permitted under Oregon Public Records Law including, without limitation, ORS 192.355(4).

3.20.0Section 50. Restoration of Facilities. Whenever Grantee shall disturb any Public Right of Way, it shall restore the same to a condition as specified in the current

version of the City of Port Orford Engineering Requirements and Standard Specification for Public Works Infrastructure equal to the condition which existed prior to construction, unless the City allows Grantee to restore such area to a lesser standard, as soon as practical without unnecessary delay, and failing to do so in a timely manner, the City shall have the right to set a reasonable time within which such repairs and restoration of streets and other public places shall be completed, and to notify Grantee in writing of its time requirement for repair and restoration, and upon failure of such repairs being made by Grantee, within the time so reasonably prescribed, the City may cause such repairs to be made at the expense of Grantee, after having provided Grantee with written notice and a reasonable opportunity to cure.

The City may cause the Grantee to remove or relocate any pole, underground conduit or equipment belonging to the Grantee, including relocating aerial facilities to an underground location, whenever the relocation is for public necessity, and the cost shall be borne proportionately by the Grantee and other utilities being concurrently relocated as coordinated and adjudicated by the City unless such cost is chargeable by law or tariff to another party, or necessitated for the benefit of a third party other than the City.

Whenever it is a public necessity to remove a pole, underground conduit, or equipment belonging to the Grantee or on which a wire or circuit of the Grantee is stretched or fastened, the Grantee shall, upon 60 days written notice from the City, meet with City representatives and agree in writing to a plan and date certain to remove such poles, underground conduit, equipment, wire, or circuit at Grantee's expense. If Grantee fails, neglects, or refuses to do so, the City may remove it at Grantee's expense.

"Relocation for public necessity" shall mean removal or relocation to accommodate the construction or reconstruction of transportation roadways and the construction or reconstruction of public improvements and infrastructure, including but not limited to water and sewer facilities. It shall not include the relocation to accommodate private or third-party construction of public infrastructure that is required as a condition of approval of private property development or redevelopment. When facilities are relocated for the benefit of a third party as described in the previous sentence, the cost shall be borne by the party requesting relocation. Nothing herein shall be deemed to preclude the City from agreeing in writing, in its sole discretion, to contribute to utility operators' costs for such relocation.

3.20.0Section 60. Construction Conflicts to be Avoided. Nothing in this Franchise shall be construed in any way to prevent the proper authorities of the City from putting in a water or sewer system, grading, rocking, paving, repairing, altering or improving any of the Public Right of Way within the City in or upon which the poles, wires, or other conductors of Grantee shall be placed, but all such work or improvements shall be done, if possible, so as not to obstruct or prevent the Grantee's use of said poles, wires, conductors, conduits, pipes or other apparatus.

3.20.0Section 70. Adjustments to Facilities. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the wires, cables, or other plant of Grantee for the passage of buildings, machinery or other objects, Grantee shall temporarily rearrange, remove, lower or raise its wires, cables or other plant as the

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necessities of the case require; provided, however, that the City shall not require any such action of Grantee until the person or persons desiring to move any such buildings, machinery or other objects, agrees to pay the entire actual cost to Grantee of changing, altering, moving, removing or replacing its wires, cables or other plant so as to permit such passage, and agrees to deposit in advance with Grantee a sum equal to such cost as estimated by Grantee and agrees to pay all damages and claims of any kind whatsoever, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of said wires, cables or other plant, except as may be incurred through the sole negligence of Grantee. Grantee shall be given not less than thirty (30) days written notice by the party desiring to move such building or other objects. Said notice shall detail the route of movement of such building or other objects over and along the streets, alleys, avenues, thoroughfares and public highways and shall bear the approval of the City. Such moving shall be with as much haste as possible and shall not be unnecessarily delayed or cause Grantee unnecessary expense or waste of time. Neither the City nor any of its employees shall be held liable for the consequences of any act done in connection with the moving of a non-City owned building or non-City owned other object or rearrangement of wires or for the cost of rearranging the wires.

3.20.0Section 80. Conditions on Sale, Transfer or Assignment. The franchise granted shall be binding upon the successors, legal representatives and assigns of the Grantee. Grantee may sell, transfer or otherwise assign this Franchise without City's consent upon approval from appropriate regulatory authority (Public Utility Commission of Oregon or Federal Communications Commission), if applicable, provided that no such transfer, sale or assignment of this franchise shall be binding on City unless and until City has notice of same in writing, until the transferee in writing has accepted the terms and conditions of this Franchise and until the transferee has submitted satisfactory proof to City of the liability insurance coverage required by this Franchise and has submitted bonds or other guarantees that any work begun by Company and then in progress under the terms of a City permit shall be performed by the transferee to City's standards.

3.20.0Section 90. Indemnification. Grantee shall indemnify, defend and hold harmless the City and its officers, agents and employees from any and all claims, damages, cost and expenses to which it or they may be subjected by reason of any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise granted by this Franchise. If both the Grantee and the City are found to be partially liable for damages, the Grantee's liability under this section shall not exceed its proportion of negligence or fault. The City shall give Grantee prompt notice of any claim (or advance notice of claim) received by the City as to which the City seeks indemnity from Grantee and shall tender the defense of any such claim to Grantee. The aforementioned indemnity is not applicable to that which is attributable to or arises from the negligence or willful misconduct of the City and its officers, agents and employees. Neither party may bind the other to a settlement of any such claim or to payment of any of the costs of such claim without the written consent of the party to be bound.

3.20.0Section 10. Terms and conditions of franchise.

A. In consideration of the rights, privileges and franchise hereby granted in Section 2 of this ordinance, ~~during the first five (5) year period of the franchise granted by this ordinance,~~ grantee shall pay to the City a fee equivalent to 3.5% **per annum** of the Grantee's gross operating revenues less uncollectible amounts ("Franchise Fee"), earned within the City limits commencing effective ~~(Date to be effective), August September 1~~The Franchise Fee shall increase by 0.5% for each subsequent five-year period until the Franchise Fee reaches 5.0% where it will remain for the duration of the franchise term-, 2023. Notwithstanding statutory or other legal ability to pass franchise fees on to customers by placing it as a line item on the monthly utility bill, in exchange for City agreeing to 3.5% fee, Franchisee agrees to socialize the costs of its franchise fee payments to City.

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B. Payment of said fee shall be made monthly by the fifteenth (15th) of the following month. The City reserves the right to audit the payments made by Grantee to assure they comply with the requirements of this franchise. All costs and charges associated with a review or audit of the Franchise Fee payments as specified in this agreement shall be the responsibility of the City. Any audit finding(s) that are mutually agreed to by the parties shall be corrected within 180 days after mutual agreement. Written notice for any audit review or other claim shall be provided within three years after the payment has been remitted by Grantee to the City.

CB. Grantee shall furnish the City all street lighting service pursuant to Grantee's Schedule 51 - Area Lighting & Public Street Lighting Service, attached as Exhibit A to the franchise agreement, as such may be amended or renumbered from time to time by Grantee's Board of Directors. It is understood that as existing bulbs or fixtures fail, Grantee shall replace existing light fixtures with LED light fixtures.

3.20.0Section-11. Grantee Use of Poles. In further consideration of the rights and privileges herein granted, the Grantee hereby grants to the City the right and privilege free of charge to suspend and maintain on poles placed by the Grantee in the Public Rights of Way, such wires as are necessary for the exclusive use of the City for non-commercial fire alarm and police purposes in accordance with the terms and conditions of Grantee's pole attachment or conduit joint use agreement and applicable law. Any such wiring installations made and to be made by the City shall be made in conformity to the requirements of all applicable Federal, State and City electrical codes and in conformity with standard practices. City agrees to transfer their facilities, at the City's cost, to new poles placed by the Grantee within 30 days of notification.

3.20.0Section-12. Term.

A. The rights, privileges and franchise herein granted shall continue and be in force the period of ~~twenty (20)~~ **ten (10)** years from and after the date this Franchise takes effect, provided that Grantee accepts the franchise as required in Section 132 ("Effective Date").

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B. This franchise shall automatically renew for another ten (10) year period if City does not notify Franchisee of its option to re-open for negotiations of different terms. Such notice shall be in writing and delivered not fewer than six months prior to the renewal date.

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3.20.0Section 13. Acceptance. The Grantee shall file with the City Recorder its written acceptance of the rights and franchise hereby granted and the regulations hereby imposed, within sixty (60) days from and after the date when this Franchise shall become effective; and this Franchise shall become null and void unless such acceptance is so filed. The Grantee shall at all times, fully and faithfully, perform all of the terms, provisions and conditions of this Franchise and all other ordinances and orders of the City Council as specified herein.

Passed by the City Council on **Month/Day** 2023; effective **Month/Day**, 2023.

Signed by me in the authentication of its passage ____ day of _____, 2023.

ATTEST:

Mayor

City Recorder

First Reading / /

Second Reading / /

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Accepted by the Franchisee:

The amendment to the Franchise granted to Coos Curry Electric Cooperative, Inc. as set forth in this Ordinance is hereby accepted by the Franchisee on the ____ day of _____, 2023.

Signature: _____

Printed Name: _____

Title: _____



COOS-CURRY ELECTRIC COOPERATIVE, INC.
PO BOX 1268
PORT ORFORD OR 97465

AREA LIGHTING & PUBLIC STREET LIGHTING SERVICE

Schedules
 (Parent Account) Area Lighting 51 Public Street Lighting

AVAILABILITY

Available for controlled and dusk-to-dawn lighting systems for public street lighting and for yard or security lighting, subject to the established rules and regulations of the Cooperative.

MONTHLY RATE

Public Street Lighting

- 1 - 100 watt High Pressure Sodium Fixture \$18.21
- 2 - 175 watt Mercury Vapor \$18.21
- 3 - 200 watt High Pressure Sodium Fixture \$24.28
- 4 - 250 watt High Pressure Sodium Fixture \$24.28
- 5 - 400 watt Mercury Vapor \$24.28

Yard or Security Lighting

- 11- 100 watt High Pressure Sodium Fixture \$18.21
- 12- 175 watt Mercury Vapor \$18.21
- 13- 200 watt High Pressure Sodium Fixture \$24.28
- 14- 250 watt High Pressure Sodium Fixture \$24.28
- 15- 400 watt Mercury Vapor \$24.28

CONDITIONS OF SERVICE

Area lighting equipment, including lamps, fixtures, necessary circuits, transformers, and additional guys and fittings, will be furnished and installed on poles by the Cooperative. The annual minimum charge will be twelve (12) times the appropriate monthly charge.

TERMS OF PAYMENT

All bills become due and payable at time of receipt of bill.

Payment for primary high voltage line to serve security lighting only will be determined by the Cooperative.

Effective with bills rendered on and after July 1, 2020.

Rate Approved 02/20/2020 Schedule Approved 03/26/2020 Effective 07/01/2020