

**CITY OF PRINEVILLE
ORDINANCE NO. 1192**

AN ORDINANCE GRANTING TO PRINETIME INTERNET SOLUTIONS, LLC, AN OREGON LIMITED LIABILITY COMPANY , A NON-EXCLUSIVE FRANCHISE AND RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN A DATA COMMUNICATIONS SERVICE FACILITY AND PROVIDE TELECOMMUNICATION SERVICES IN THE CITY OF PRINEVILLE, OREGON.

BE IT ORDAINED BY THE CITY OF PRINEVILLE:

Section 1. Definitions - as used in this ordinance:

"City" means City of Prineville, Oregon.

"Company" means Prinetime Internet Solutions, LLC, the grantee of rights under this franchise, including its successors or assigns.

"Council" means the City Council of the City of Prineville, Oregon.

"Person" means any person, firm, partnership, association, corporation, limited liability company or organization of any kind.

"Telecommunications service providers" means any entity that pays a franchise or permit fee to City for the use of Company's facilities.

Section 2. Grant of Authority. City grants to Company the right and privilege to construct, install, maintain and operate over, in, on and under the present and future City rights of way of the City of Prineville, conduits, cables and other technical facilities necessary for the purpose of providing fiber optic data transport services. This franchise is not exclusive, and City reserves the right to grant a similar privilege to any other Person at any time during the period of this franchise.

Section 3. Compliance with Laws, Rules and Regulations. At all times during the term of this franchise, Company shall comply with all applicable laws, rules and regulations of the United States of America, the State of Oregon, and the City of Prineville; including all agencies and subdivisions thereof. Company shall be subject to the lawful exercise of the police power of City and to such reasonable regulations as City may from time to time hereafter by resolution or ordinance provide. Company shall submit necessary building applications and permits to City prior to constructing, installing, or maintaining Company's conduits, cables, and other facilities on City's rights of way and shall comply with all conditions of approval of such applications.

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

(1) Company shall at all times conduct its operations under this franchise, including installation, construction or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or City.

(2) Company shall pay, save harmless and indemnify City from any loss or claim against City on account of or in connection with any activity of Company in the construction, operation or maintenance of its Fiber Optic Facilities and System Services.

(3) This franchise shall not be effective until Company secures, and shall at all times be conditioned upon Company maintaining, a comprehensive liability insurance policy which shall contain the following provisions:

- (a) Bodily injury policy limits of \$500,000 for each person and \$500,000 for each occurrence.
- (b) Property damage policy limits of \$500,000.
- (c) An endorsement for completed operations coverage.
- (d) A designation of City, its officers, and employees, as additional insurance insured for liability arising from or in connection with this franchise.
- (e) A certificate evidencing insurance as described in this ordinance shall be deposited with City.
- (f) In the event that the City's tort liability limits are raised by the Oregon Legislature to exceed the limits described in this section, Company shall obtain and maintain insurance in the amount of the City's tort liability limits.

Section 5. Conditions on Right of Way Occupancy.

Routing and Plan Approval. Routing maps and construction plans must be approved by City's department of Public Works, before any work is started.

Use. Company shall construct, install, maintain and operate its fiber optic cable facilities in designated City rights of way to the industry standard and City's satisfaction; and in a manner so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights of reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways or places.

Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Company, Company shall, at its own cost and expense and in a manner approved by City, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed. If Company fails to make restoration as required, City shall cause the repairs to be made at the expense of Company. All work within City rights of way shall be in accordance with the City of Prineville's Standards and Specifications in effect at the time.

Relocation. Except as provided below, if the removal or relocation of facilities is caused directly by an identifiable development of property and the removal or relocation of facilities occurs within the area to be developed, or is made for the convenience of a customer, Company may charge the expense of removal or relocation to the developer or customer. If the removal or relocation of facilities results from City required over sizing of public facilities, is a City project, or is otherwise requested by City and is made for the purpose of improving a street to City standards or other improvement for the benefit of the public, Company will remove or relocate its facilities at Company's expense within a reasonable timeframe after notification by City. In cases of capital improvement projects undertaken by City, Company shall convert existing overhead distribution facilities to underground at Company's expense. City agrees to utilize the provisions of ORS 758.210-270 when requiring such conversion.

Placement of Fixtures. Company shall not place its facilities where they will interfere with any existing or future City utility, gas, electric or telephone fixture, power, sanitary sewer, storm sewer or water facility. All facilities placed in City rights of way shall be placed as City directs.

Temporary Rearrangement of Facilities. Company shall upon receipt of seven days written notice from anyone desiring to move a building or other object according to City ordinances regulating the moving of buildings, arrange to temporarily raise, lower, or otherwise move its facilities to permit the moving of buildings or other objects if the Person wishing to move the building or other object makes a reasonable arrangement to reimburse Company for its expenses in rearranging its facilities. Nothing contained in this

section shall preclude City from requiring Company to move its facilities at its own expense when public convenience requires the move, as described in subsection 4 of this section.

Section 6. Transfer of Franchise. Company shall not sell, assign, dispose of, or transfer in any manner whatsoever any interest in this franchise or in the facilities authorized by this franchise, without prior written approval of Council, which consent shall not be unreasonably withheld.

Section 7. City Rights in Franchise.

City Supervision and Inspection. City shall have the right but not the obligation, to supervise all construction or installation of Company's facilities subject to the provisions of this franchise such inspections as it shall find necessary to insure compliance with governing laws, rules and regulations.

Termination or Abandonment of Franchise. Upon any termination of this franchise, all facilities installed or used by Company shall be removed by Company at Company's expense and the property upon which the facilities were used restored by Company to the existing condition before installation except that City or its designee shall have the following options after termination of this franchise for any reason other than default:

- a. City or its designee may elect to acquire the facilities at their fair market value as provided by law; and
- b. Value shall be determined by an appraiser who is mutually acceptable to City and Company. If City and Company cannot agree on an appraiser, Company shall select three appraisers within 15 days after request from City. City shall select one of the three appraisers who shall then determine the value of the facilities. If Company does not provide to City the name of three appraisers within 15 days after City's request, City may select the appraiser who shall determine the value.
- c. City agrees to provide Company with written notice of its intention to acquire Company's facilities pursuant to this section within 120 days after termination of this franchise by city for other than default, or City's declaration of facilities abandonment by Company, with the closing of the acquisition to occur as soon thereafter as is practicable.

Section 8. Compensation. As compensation for the franchise granted by this ordinance and use of right-of-way, company shall provide at no cost to the City of Prineville, services set forth in exhibit A of this agreement. Delivery of agreed upon services shall be continued throughout the term of this agreement.

Section 9. Permit, Licensing and Inspection Fees. Nothing in this ordinance shall be construed to limit the right of City to require Company to pay 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 Company or its facilities, whether pursuant to this ordinance or any other ordinance or regulation now in effect hereafter adopted by City. The City reserves the right to implement a right of way use license, and charge fees associated with right of way use pursuant to that ordinance. Fees associated with any such ordinance would apply to the Company as well as all other telecommunications franchise holders.

Section 10. Enforcement and Termination of Franchise for Violation.

1. Default: Time of payment and performance are of the essence in the franchise. The following shall be events of default:

- a. Default of Covenants. The failure of Company to perform any of the covenants and conditions required herein, to be kept and performed by Company, and such failure continues for a period of 90 days after notice from City of such failure--

2. Termination. Upon the occurrence of an event of default, this franchise may be terminated at the option of City by notice in writing to Company given within 30 days of the date of default Company's default.

Section 11. Remedies not Exclusive; Waiver. All remedies under this ordinance, including termination of franchise, are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this ordinance, including termination of the franchise, are not exclusive and City reserves the right to enforce penal provisions of any ordinance and also use any remedy available to City at law or in equity. 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 12. Franchise Term. The franchise shall be for five (5) years beginning on the date 30 days after the City passes this ordinance. As long as Company is not then in default of this Ordinance, Company will have the option to extend the term for two additional periods of five years each commencing at midnight on the date which the initial term or the first option term expires. Company will exercise each option, if at all, by giving City written notice at least 180 days before the expiration of the initial term or the option term then in effect. Nothing in this section restricts the City from terminating the franchise for cause pursuant to Section 10 of this franchise ordinance.

Section 13. Acceptance of Franchise. Within 30 days from the effective date of this ordinance, Company shall file with the City Recorder a written unconditional acceptance of this franchise and all of its terms and conditions, and if they fail to do so, this ordinance shall be void and of no effect.

Section 14. Constitutionality. 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, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect constitutionality of the remaining portion thereof. If for any reason, the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by such court or other governmental agency shall be the franchise fee charged by this ordinance.

Section 15. Notices. Any notice required or permitted under this franchise shall be deemed given when received or when deposited with postage prepaid in the United States Mail as registered or certified mail addressed as follows:

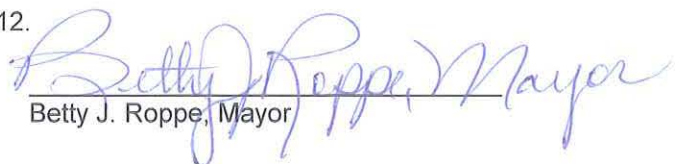
TO CITY: City Recorder
City of Prineville
387 NE Third Street
Prineville, OR 97754

TO COMPANY: Prinetime Internet Solutions, LLC
756 NW Third Street
Prineville, OR 97754

or to such other address as may be specified from time to time by either parties in writing.

Section 16. Interpretation/Jurisdiction. This franchise shall be deemed to have been entered into in Crook County, Oregon. Jurisdiction of any dispute shall be in the circuit court of the State of Oregon, and venue shall be in Crook County, Oregon.

PASSED by the City Council this 26th day of June, 2012.


Betty J. Roppe, Mayor

ATTEST:



Lisa Morgan
City Recorder

Accepted by:

 Date: 07/10/12

Prinetime Internet Solutions, LLC

Exhibit A

- 1) During the period of this ordinance, the Company will provide a co-location site for emergency services communications equipment to be installed on Barnes Butte. Such installation shall include adequate space for a ground cabinet, VHF antenna system and UHF antenna system.
- 2) City currently places and removes a pair of event advertising banners, one located on East Third Street and one located on West Third Street in Prineville. Within seven days of City's request, the Company will place and remove a maximum of ten pair of event advertising banners per year as needed on the event banner poles after the banners have been reviewed and approved by the City's public works department and the Oregon Department of Transportation.
- 3) During the period of this ordinance and so long as City's facilities are within company's coverage area, the Company shall provide wireless internet service at the City's wells, water tanks, lift stations, and other City owned facilities, as needed, to support data collection, SCADA, and premises monitoring. Equipment necessary for any such locations shall be purchased by the City of Prineville at fair market value.