

## ORDINANCE NO. 11, SERIES 2000

**AN ORDINANCE GRANTING TO CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT, A MUNICIPAL CORPORATION, ITS SUCCESSORS AND ASSIGNS (HEREINAFTER DISTRICT) AN EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN AN ELECTRIC UTILITY ALONG THE STREETS IN THE CITY OF FLORENCE (HEREINAFTER CITY); SETTING THE PRICE FOR SUCH FRANCHISE; AND REPEALING AND RESCINDING ORDINANCE NO. 636 AND AGREEMENT BETWEEN THE PARTIES, DATED DECEMBER 23, 1980.**

THE CITY OF FLORENCE DOES ORDAIN AS FOLLOWS:

SECTION 1. Grant of Right. The City of Florence does hereby grant to Central Lincoln People's Utility District, and to its successors and assigns, a right and franchise for the period of twenty (20) years from and after the effective date of this ordinance, to construct, maintain and operate in, on, and under the present and future streets, alleys and bridges of the City, hereinafter called "street(s)", electric light and power lines, with all the necessary appurtenances, for the purpose of supplying electricity and electric service to the City and to the inhabitants and businesses thereof, and to persons and corporations beyond the limits of the City, subject to the terms and conditions and to the making of the payments hereinafter specified. This grant does not include the right to operate telecommunications facilities for other than its internal purposes or for delivery of service to other public entities. Any use of facilities for any purpose other than the supply of electricity and electric service, and telecommunications facilities for internal use or delivery of service to other public entities, shall require a separate Franchise and Agreement.

This franchise and agreement shall be subject to review and renegotiation if "direct access" to new electricity service suppliers, utilizing District facilities, is offered to customers within the City, or if District wishes to transfer franchise rights to a successor or assign. District shall keep City apprised of any such possibility.

This franchise and agreement does not include any rights on City real property other than streets. Installation, operation and maintenance of District facilities on City real property, such as parks, airport, and facility grounds, shall be by separate contractual agreement or permit.

SECTION 2. Interference with Traffic. The locations and methods of installation and maintenance of all poles, wires, fixtures, underground lines and appurtenances thereto (hereinafter referred to as "facilities") shall be subject at all times to reasonable regulation by the City Council, and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. All of such facilities shall be installed and at all times' maintained by the District in accordance with good electrical practice.

SECTION 3. Trees. The District is granted the right to clear trees and brush from the streets, provided that no trees will be trimmed or cut back farther than may be necessary to prevent the branches or limbs from touching or interfering with the District's facilities, in accordance with Oregon Public Utility Commission regulations; and further provided that all trimmings and debris will be properly disposed of.

SECTION 4. Excavations. The District is granted the right and privilege to make all excavations in the streets necessary to exercise its rights granted by this franchise subject to the rules, regulations, and ordinances which may be in effect at the time of acceptance of this franchise and subject to such rules, regulations, and ordinances which may be adopted during the term of this ordinance.

SECTION 5. Repair of-Streets. Whenever the District disturbs a street it shall restore the street to the same condition of safety and utility it was prior to the excavation within a reasonable period of time.

The City shall notify the District of proposed street improvements with sufficient notice to allow the District time to install any improvements which may fall within the paved area (including sidewalks) of such street. The intent of this section is to provide coordination for the installation of any conduit, service, transformer or other facility or appurtenance prior to street paving or sidewalk or curb construction. Within fourteen (14) days of receipt of the notice of proposed improvement, the District shall respond to the City by stating the schedule for installation of facilities or equipment within the proposed street improvement area, or if no installation is projected, the District will so certify to the City. If, within twenty-four (24) months of the date of the certification by the District that no improvements will be installed, the District finds it necessary to excavate or disturb the street, the City may require an overlay of asphalt if a patch or repair will not restore the street to the City's satisfaction.

SECTION 6. Movement and Removal of Facilities for Public Convenience. District, at its expense, shall protect, support, temporarily disconnect, relocate along, under or over any street, or remove from any street, any equipment or facilities when required by City by reason of traffic conditions, public safety, street excavation, street construction, change or establishment of street grade, installations of sewers, drains, water pipes, power lines or tracks, or any other type of structures or improvements by City or other public agencies when acting in a governmental or in a proprietary capacity, or for any public improvement, not limited to the foregoing, of any character whatever. Should District fail to move or remove such facilities within such reasonable time as City may designate, City may move or remove the same at District's expense.

SECTION 7. Continuing Rights of City. Nothing in this ordinance shall be construed in such manner as to restrict City in installing, maintaining and operating any public improvements or facility in the City or in permitting any other person or public utility, whether publicly or privately owned, to use the streets, roads, alleys and other public ways. All such work done by City shall be performed in such a manner as to

insure a minimum of inconvenience or injury to the free use and operation of the facilities of the District.

City and District agree to cooperate in minimizing the space required for overhead utility facilities, used for power and communications, by encouraging joint use of such facilities through joint use agreements between the parties installing the facilities. District shall not unreasonably delay implementation of said joint use agreements .

City and District agree to cooperate in maximizing the placement of new or reconstructed facilities underground.

SECTION 8. City's Use of Facilities. District agrees to grant City the free right and privilege to string and maintain wires and associated equipment upon the poles owned by District for purposes of signal and/or control of City services, to the extent that space is available for same as determined by District. No such installation shall be made except upon written request from City, and any such installation shall be performed by licensed contractors approved by District, or be made by District at the expense of City.

SECTION 9. Repair Service and Collection Facilities. District shall maintain emergency repair service on a twenty-four (24) hour basis of at least the same standard as is maintained at the date of the passage of this ordinance and the grantee shall also maintain a facility in the City where its customers may pay their bills for electrical service during normal office hours.

SECTION 10. Indemnification. District shall indemnify and defend City, its boards, commissions, officers, agents and employees, and any and all other public agencies, and their members, officers, agents and employees, against any and all liabilities for injury or death of any person or any damage to any property caused by District, District's officers, agents, or employees, in the construction, operation or maintenance of its property, or arising out of the exercise of any right or privilege under the franchise to the extent allowed by law.

SECTION 11. Fees. Beginning thirty (30) days after the date of this ordinance, District shall pay to City monthly as a franchise fee and as compensation for the rights and privileges granted under this ordinance, a sum equal to three-quarters of one percent (3/4%) of the gross industrial revenue from electric service rendered within the corporate limits of City during each District billing month, and in addition, three and one-half percent (3½%) of all other revenues from electric service rendered within the corporate limits of City during each such billing month.

Except as provided otherwise in this franchise and agreement, no other license, privilege or occupation tax or fee shall be required of District during the term of this franchise; provided, however, that City shall have the right to review the fee annually, or in the event District agrees to pay another City a franchise fee greater than that provided herein, and increase either or both of the percentage rates stated in this section after the review, subject to limitations of law. City's first such review may occur

no earlier than one year after the City's adoption of this ordinance. City shall give District thirty (30) days notice prior to any such review.

District shall provide to City annually, upon request, such information as may reasonably be necessary to aid City in the review of franchise fees, and payments, and, if determined appropriate by City, allow City to audit District's books and records to verify fees have been correctly calculated and paid.

SECTION 12. Remedies. Nothing in this ordinance shall prevent the City from exercising any legal remedy available to enforce the provisions of this franchise.

SECTION 13. Acceptance. District shall, within thirty (30) days from the date hereof, file in the office of the Recorder of the City of Florence, its written acceptance of the franchise, rights and privileges by this ordinance granted, as well as obligations herein imposed on said District. The failure of District to file written acceptance within said period of time shall be held to be an abandonment and rejection of all franchise rights and privileges granted by this ordinance, and this ordinance shall thereupon be null and void.

SECTION 15. Exclusive Rights. The rights hereby granted to build, operate and maintain an electrical utility shall be exclusive, subject to the laws of the State of Oregon. The exclusive aspect of this permission may be revoked unilaterally by City upon one year's notice to District and shall not, in any event, limit the City's ability to form a municipal electric utility under ORS Chapter 225. If during the term hereof, the City shall decide to engage in the business of supplying electrical power or electrical service, and shall acquire the property of the District, no value or damage shall accrue to the remaining term of this franchise.

SECTION 16. Repeal of Ordinance 636. Ordinance 636 is hereby repealed.

SECTION 17. Separability Clause. This franchise is granted pursuant to the laws of the State of Oregon. If any sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional in a court of competent jurisdiction, the invalidity shall not affect the validity of the ordinance or any of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of District.


PASSED BY THE COMMON COUNCIL, this 18<sup>th</sup> day of December, 2000.

AYES: 5  
NAYS:  
ABSTAIN:  
ABSENT:

APPROVED BY THE MAYOR, this 19<sup>th</sup> day of December, 2000.

  
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Alan Burns, Mayor

ATTEST:

  
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Carol Werhan, Recorder

**ACCEPTANCE OF ORDINANCE**

The Central Lincoln People's Utility District, a municipal corporation, owning and operating an electric system in the City of Florence, Oregon, accepts the Franchise terms and conditions as set forth in Ordinance No. 11, Series 2000, adopted the 18<sup>th</sup> day of December, 2000, by the Common Council of the City of Florence, Oregon, entitled:

ORDINANCE NO. 11, SERIES 2000

AN ORDINANCE GRANTING TO CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT, A MUNICIPAL CORPORATION, ITS SUCCESSORS AND ASSIGNS (HEREINAFTER DISTRICT), AN EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRIC UTILITY ALONG THE STREETS IN THE CITY OF FLORENCE (HEREINAFTER CITY); SETTING THE PRICE FOR SUCH FRANCHISE; AND REPEALING AND RESCINDING ORDINANCE NO. 636 AND AGREEMENT BETWEEN THE PARTIES, DATED DECMEBER 23, 1980.

ACCEPTED this 10<sup>th</sup> day of January, 2001.



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President



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Secretary