

**CITY OF GARIBALDI**  
**ORDINANCE NO. 296**  
(ENACTED 12/18/2006, EFFECTIVE 2/1/2007)

**AN ORDINANCE GRANTING TO THE TILLAMOOK PEOPLE'S  
UTILITY DISTRICT A NON-EXCLUSIVE FRANCHISE TO  
CONDUCT ELECTRICAL UTILITY BUSINESS WITHIN THE CITY  
OF GARIBALDI.**

*SECTIONS*

- 1      *Grant of Non-Exclusive Franchise*
- 2      *Term and Termination*
- 3      *Construction of District Facilities*
- 4      *District Excavations of City Rights-Of-Way*
- 5      *Work By City In City Rights-Of-Way*
- 6      *New Development Within The City*
- 7      *Relocation of District Facilities*
- 8      *Franchise Fee*
- 9      *Pole Attachments*
- 10     *District Property Values*
- 11     *Dispute Resolution*
- 12     *Miscellaneous*
- 13     *Effective Date*

**WHEREAS**, the District is an electric utility formed and operating within the City pursuant to ORS Ch. 261; and

**WHEREAS**, the City provides general governmental services to its residents; and as provided by ORS 221.410 to 221.475 and ORS 758.470, has the legal authority to regulate publicly owned rights-of-way under its control and grant franchises and/or impose charges upon publicly and privately owned suppliers of electrical energy, as well as take any other action or activity specified therein and/or any other State or Federal law; and

**WHEREAS**, the Franchise Fee payable pursuant to this Ordinance is intended to generate revenues used by the City for the provision of general governmental services to its residents; **NOW THEREFORE**,

**THE CITY OF GARIBALDI ORDAINS AS FOLLOWS:**

***Section 1: GRANT OF NON-EXCLUSIVE FRANCHISE.***

A. The District is hereby granted a non-exclusive franchise to conduct its electric distribution business within the corporate limits of the City as the same now exist, or may be hereafter constituted.

B. The District is hereby granted the right and privilege to construct, maintain, repair, replace, upgrade, and operate poles, wires, fixtures, transformers, substations, other equipment, underground ducts and circuits and any other facilities ("Facilities") necessary or convenient to provide services and products upon, over, along, under and across the streets, alleys, roads and other public places and rights-of-way within the corporate limits or under the control of the City ("City Rights-Of-Way") as the same now exist, or may be hereafter constituted.

C. All Facilities located within the corporate limits of the City as of the effective date of this Franchise shall be deemed covered by the terms of this Franchise, and the location and placement of such Facilities is hereby approved, unless such facilities become subject to requirements of Section 7 hereto.

***Section 2: TERM AND TERMINATION.***

A. All rights and privileges hereby granted shall be effective as of February 1, 2007 and shall expire five (5) years from said date unless otherwise provided in this Franchise. No later than ninety (90) days prior to the expiration of this Franchise, the Parties shall begin to discuss a successor Franchise. Upon expiration, this Franchise shall continue to be in effect for six (6) months until a successor Franchise is adopted by each Party or this Franchise will be considered terminated. Either Party may terminate the Franchise via resolution, effective on or after the expiration of the then-current term, by providing six (6) months advanced written notice to the other Party.

B. Notwithstanding any other term set forth in this Franchise, it is expressly agreed by the parties hereto that either party to this Franchise may at any time after giving sixty (60) days written notice to the other party requesting the opening of negotiations to amend or change any term of this Franchise, meet with the other party's representatives to review, negotiate and reach a Franchise on the issues set forth in the aforesaid notice.

***Section 3: CONSTRUCTION OF DISTRICT FACILITIES.***

A. The District will complete all construction or repair work in a reasonable and safe manner in compliance with the requirements of applicable state laws and City ordinances. The District will submit an approved Four Year Work Plan for the City's review commencing January 2007. Subsequent four-year work plans will be submitted to the City as approved by the District.

B. New District poles or other “ground-mounted” facilities installed in the City during any term of this Franchise shall be located, where applicable, behind the sidewalk toward the property owner's side, unless otherwise directed by the City; provided, however, that such facility location shall be in accordance with prudent utility practice and not in violation of any applicable law, rule, code or ordinance. This paragraph shall not apply to the replacement or upgrading of any pole or ground-mounted facility existing as of the effective date of this Franchise. After the District completes any such construction work, the District will, upon written request by the City, provide the City with any “as built” drawings and maps and/or sketches. The District should notify the City prior to the installation of any new or replacement pole or other “ground-mounted” facility to ensure that such installation(s) will not interfere with any planned or probable City infrastructure project, as contained in Section 7 herein.

C. Upon written request by the City, current utility maps incorporating construction completed by the District within the City shall be provided to the City for the City’s use, at no expense. The District and the City shall use map information for their exclusive use only and will not disclose that information to the public. Public requests of said maps shall be made directly to either the District or the City.

D. Upon written request by the District, current city maps regarding tax lots, roads, streets, alleys, and zoning shall be provided to the District for the District’s use at no expense.

E. The District may perform emergency construction or repair work on any Facilities located within the City without providing prior notice to, or obtaining prior approval from, the City. The District shall notify the City of necessary changes to electrical facilities resulting from emergency work any time that the City’s infrastructure is materially affected, not including detours of less than four (4) hours.

F. The District shall have the right to cut, trim, and control the growth by chemical means, machinery or otherwise remove and dispose of trees, shrubbery, vegetation and undergrowth in any City Rights-Of-Ways that interfere with the District's permitted use.

G. The District shall obtain prior written permission from the City before cutting, trimming or otherwise controlling in any way any tree, shrubbery, vegetation or undergrowth within the City’s rights-of-way for reasons other than those specifically listed in subsection (E) above.

H. Any vegetation waste shall be disposed of by District consistent with local, state and federal laws.

#### ***Section 4: DISTRICT EXCAVATIONS OF CITY RIGHTS-OF-WAY.***

A. The District may make all necessary excavations in the City Rights-

Of-Way for the purpose of constructing, repairing, maintaining, removing and/or relocating any District Facilities. All excavation work shall be done at the District's sole expense and in compliance with applicable state laws, District, and City rules and regulations.

B. Whenever the District performs an excavation pursuant to this Franchise, the District shall restore the affected portion of the City Rights-Of-Way to the same or better condition that it was in prior to the excavation.

***Section 5: WORK BY CITY IN CITY RIGHTS-OF-WAY.***

A. The City will provide advance notice to the District, as early as possible, of any City plans to widen streets, relocate public ways, or other major public improvements within the City that could require relocation of Facilities.

B. The City will give notice of any plans to vacate any City Rights-Of-Way. The City will cooperate with the District to avoid unnecessary relocation of such Facilities. In the event of such vacation by the City, the City shall provide the District with the first right of refusal to convert a portion of the vacated City Rights-Of-Way to a utility easement.

C. Nothing in this Franchise shall be construed as preventing the City from sewerage, grading, paving, planking, repairing, widening, altering, or doing any work that may be reasonably necessary within any City Rights-Of-Way.

D. All work by the City within the City Rights-Of-Way shall be done, to the extent possible, in such a manner so as not to obstruct or prevent the District from freely using and operating its Facilities.

***Section 6: NEW DEVELOPMENT WITHIN THE CITY.***

A. The City will provide the District with the opportunity to review all new street and subdivision designs prior to plat approval by the City.

B. The City and the District will work together to determine the best non-exclusive utility corridor in all new street layouts, whenever reasonably possible.

C. The City shall advise building permit applicants to notify the District of building permit applications at the time of such permit application, if such permit is to construct a new structure.

D. The City will provide notice, as early as possible, of any new construction or any expansion of existing commercial or industrial properties that may significantly increase the need for electrical power within the City.

***Section 7: RELOCATION OF DISTRICT FACILITIES.*** Notwithstanding Section 5(d) above, the City may cause the District to relocate any Facility within the City Rights-Of-Way or on City property to the same or another Right-Of-Way or City-owned property, whenever the relocation is necessary as part of a City-related infrastructure project. Infrastructure projects are defined as: Widening or

otherwise modifying or constructing streets; Installing or modifying sidewalks; Installing or relocating water lines, fire hydrants, valves, blow-offs, storm drains or sewers. The expense of relocating such Facilities will be paid solely by the District. The District will respond with a plan to relocate within 60 days and complete construction within 180 days from the date of notification by the City, unless otherwise agreed to in writing by the District and the City.

### ***Section 8: FRANCHISE FEE***

A. In consideration of the rights and privileges granted in this Franchise, the District shall pay to the City, for each month during the life of this Franchise beginning February 1, 2007, a Franchise Fee equal to five percent (5%) of the District's gross revenues, as defined below, less adjustments described below, collected during the previous month from customers whose meters are located within the City ("Franchise Fee").

B. The term "Gross Revenues" includes any amount billed to customers within the corporate limits of the City for the sale of electric energy by the District. Gross Revenues do not include sales of electric energy by the District to the City or any other municipal corporation or public taxing body within the corporate limits of the City. Gross Revenues do not include sales of electric energy by the District to any electric utility that is not the ultimate consumer. An electric utility, as used in this Franchise, is any individual, partnership, cooperative, corporation or government agency buying electric energy from the District for purposes of distributing such electric energy to retail customers outside of the City or for purposes of transferring such electric energy in wholesale electric markets. Gross Revenues also do not include proceeds received by the District from the sale of bonds, mortgages, securities or other evidences of indebtedness. Additionally, gross revenues earned in interstate commerce by the District or on the business of the United States Government, as specified in ORS 221.450, shall not be included. This subsection shall be in accordance with ORS 221.655.

C. The District will withhold 2.5% of the Franchise Fee as compensation for the administrative costs incurred by the District in calculating, billing, collecting and paying the Franchise Fee.

D. The City agrees that no other license, tax or charge on the business, occupation or franchise of the District shall be imposed upon, exacted from or required of the District by the City during the term of this Franchise, except that nothing in this Franchise shall exempt the property of the District from lawful *ad valorem* taxes. This provision does not apply, however, to District contractors working within the City who are required to have City licenses and permits, building permits issued directly to the District, or any utility charge (i.e., water, sewer, etc.) due to the City by the District as a utility customer of the City or any other fee owed to the City that is not directly attributable to the provisions

contained within this Franchise.

E. The District shall, by policy and in its sole discretion, determine the method of allocating, billing and collecting from its customers the Monthly Franchise Fee imposed under this Franchise. The District may at any time as determined by its Board of Directors, alter its policy for allocating or billing customers for the purpose of collecting the Monthly Franchise Fee. The City expressly acknowledges and agrees that all or part of the Monthly Franchise Fee may be allocated to and collected solely from District customers within the City as a separately identified item on the District's bills to such customers. The City agrees not to challenge, in a court of law, arbitration, mediation or otherwise, the District's method of allocating, billing or collecting the Monthly Franchise Fee from District customers as long as the District complies with State and/or Federal Law regarding such matters. The District shall notify the City no less than 45 days prior to changing its method of allocating, billing or collecting the Franchise Fee before any such changes take effect.

F. At the City's request, the District shall file a report showing District's gross revenues as defined herein for the previous calendar year and the amount of Franchise Fees due to the City. The District shall have an obligation to maintain financial records of its gross revenues and franchise fee payments for audit purposes for a period of the life of the Franchise, and the District will keep its books according to generally accepted accounting principles. The City, at its own expense, may, with five (5) business days notice, audit those books that are maintained in the ordinary course of business at the District's Offices as often as it wishes.

### ***Section 9: POLE ATTACHMENTS***

A. If the City wishes to make any attachment of any type to the poles or other Facilities of the District, the City must execute the District's pole attachment agreement.

B. The City will notify the District of any request for new cable television or telecommunications franchises or expansion or renewal of existing cable television or telecommunications franchises with the City insofar as attachment of cable or wires to the District's poles is concerned.

***Section 10: DISTRICT PROPERTY VALUES.*** The franchise and privilege to operate in the City Rights-Of-Way shall not be an enhancement of the District's properties or values or qualify as an asset or item of ownership in any appraisal thereof.

***Section 11: DISPUTE RESOLUTION.*** Unless otherwise provided herein, in the event a dispute arises relative to any aspect of this Franchise, the parties shall make a good faith effort to resolve the same as follows:

A. *First Step:* Informal meetings between the Managers of the parties, at which a simple statement of the issue or dispute is reduced to writing and an attempt made to resolve the same. If agreement is reached and approved by the respective governing bodies of the parties, then no further action is required.

B. *Second Step:* If a resolution is not reached at "First Step," then the statement of the dispute shall be referred to the respective governing bodies of the parties. A Dispute Resolution Committee of four shall be appointed from the governing bodies of each party, with two being appointed by the Mayor of the City from its Council and two being appointed by the President of the District from its Board, at the next ensuing regular meetings of the District and the City. The Dispute Resolution Committee shall meet as soon as practicable following the completion of the process, but in no event not later than forty-five (45) days after the last appointment is made. Said Committee shall attempt to reach a resolution of the issues and/or dispute.

C. *Third Step:* In the event a resolution is not reached at "Second Step," then either party hereto may institute such legal action as may be deemed appropriate, whether in law, in equity or in both.

D. *Litigation Costs:* In the event suit, action or proceedings are instituted or had to collect any sums payable under the terms of this Franchise, or to enforce any provision of this Franchise, or to protect, assert or determine in any way, either party's rights, the prevailing party shall be entitled to collect as part of the costs in such suit, action or proceedings, the costs of collection in addition to such sum as the judge of the court may adjudge reasonable as attorneys' fees; and in the event of any appeal to an appellate court, the prevailing party shall be entitled to collect such sums as such court shall adjudge reasonable as attorneys' fees on said appeal.

## ***Section 12: MISCELLANEOUS PROVISIONS***

A. *Amendment:* This Franchise may only be modified by written consent of both parties. This Franchise supersedes any existing or future ordinance or resolution enacted by either party that is inconsistent or conflicts with the provisions contained herein.

B. *Complete Integration:* This Franchise reflects the complete Franchise of the parties with respect to the subject matter contained herein. This Franchise fully replaces any prior writing or representation made by either party with respect to the subject matter contained herein.

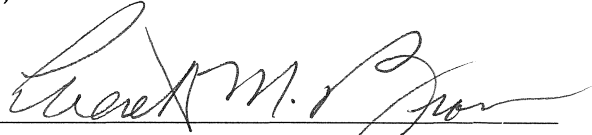
C. *Choice of Law:* The terms of this Franchise and the authority of each party hereto to execute and perform this Franchise shall be governed by the laws of the State of Oregon.

D. *Rights and Power:* The District and the City reserves all rights and powers granted it under State and/or Federal Law.

E *Severability:* If any of provision in this Franchise is determined by a court of law to be illegal or unenforceable then the remainder of the Franchise shall remain fully effective and enforceable.

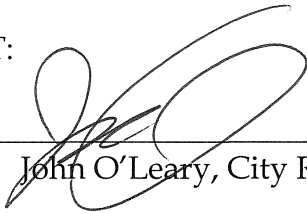
**Section 13: EFFECTIVE DATE.** All rights and privileges hereby granted shall be effective as of February 1, 2007.

**Passed by the Common Council and approved by the Mayor of the City of Garibaldi,** this 18th day of December, 2006.



Hon. Everett M. Brown, Mayor

ATTEST:



John O'Leary, City Recorder