

City of Wheeler

Chapter 8

FRANCHISES AND AGREEMENTS

ORDINANCE NO. 2003-03

AN ORDINANCE GRANTING TO WESTERN OREGON WASTE – TILLAMOOK COUNTY, INC. A NONEXCLUSIVE FRANCHISE TO COLLECT AND DISPOSE OF SOLID WASTE WITHIN THE CITY OF WHEELER, OREGON

THE CITY OF WHEELER ORDAINS AS FOLLOWS:

**FRANCHISE AGREEMENT
BETWEEN CITY OF WHEELER
AND
WESTERN OREGON WASTE – TILLAMOOK COUNTY**

*expires
6/30/2010
(sec. 3)*

This Franchise Agreement (“Franchise Agreement” or “Agreement”) is entered into as of the Effective Date, as defined below, by and between City (“Franchisor”) and Western Oregon Waste-Tillamook, Inc.; for the collection, transportation, and disposal of solid waste. Franchisor and Franchisee may be referred to herein collectively as the “Parties” or individually as a “Party.”

SECTION 1: DEFINITIONS

For purposes of this Ordinance, and the administration thereof, the following list of terms shall have the designated meanings as set forth herein:

“Bulky Goods” means discarded large items of Solid Waste such as appliances, furniture, large auto parts, and other similar waste materials with weights and volumes greater than those allowed in waste collection bins, carts or other containers.

“City” shall mean the City of Wheeler, its City Council or other authorized or designated representative.

“City Council” shall mean the City Council of the City of Wheeler in which the City’s legislative powers are vested.

“Collection” or “Collection Service” shall mean all or any part of the activities involved in the collection of solid waste, or other material specified in this Agreement and its transportation to an appropriate Solid Waste Management Facility.

“Disposal” shall mean the final disposition of solid waste collected by the Franchisee at a permitted Solid Waste Management Facility selected by the Franchisee and approved by Franchisor.

“Effective Date” means the latest date on which this Agreement is executed, set forth on the signature page hereto.

“Force Majeure” means acts of God including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, or public riots.

"Franchise" shall mean the rights granted to the Franchisee under the terms and conditions of this Agreement.

"Franchise area" shall mean: (i) the entire territory included within the City limits as of the Effective Date of this Agreement; and (ii) such additional area as may thereafter become included with the City limits from time to time due to annexation, incorporation or other means but only from and after the time as the Franchisee is able to provide collection, services in such additional area.

"Green Waste" means grass clippings, leaves, hedge trimmings, small branches and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials.

"Gross Revenue" shall mean the gross receipts derived by the Franchisee from fees collected from customers for services provided under this Agreement

"Hazardous Waste" means (i) all waste defined or characterized as hazardous by the federal Solid Waste Disposal Act (42 U.S.C. § 3251 et seq.), as amended, including the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.) and all future amendments thereto, or regulations promulgated thereunder and (ii) all waste defined or characterized as hazardous by the principal agencies of the State of Oregon having jurisdiction. Hazardous Waste shall not include incidental Household Hazardous Waste or Small Quantity Generator Waste which is commingled with Solid Waste.

"Recycling" means any process by which Solid Waste materials are transformed into new products of commercial value in such manner that the original products may lose their identity. This process includes collection, transportation, storage and transfer of Solid Waste and placing the Solid Waste in the stream of commerce for resource recovery.

"Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereto, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386 "Solid Waste" does not include: (a) Hazardous waste as defined in this section. (b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals. If the Parties agree, the term Solid Waste may include waste or other materials which may require special handling at a Solid Waste Management Facility, including but not be limited to clean soil, non-hazardous contaminated soil, construction, demolition and land clearing debris, and non-friable asbestos provided that Franchisee, either itself or through a subcontractor, has the capability of handling such special waste or materials.

"Solid Waste Management Facility" shall mean any permitted facility designed to manage Solid Waste including but not limited to a solid waste transfer station, recyclable materials recovery or processing facility, composting facility, waste-to-energy facility, and landfill facilities.

The definitions set forth in ORS Chapter 459 are incorporated into this Agreement.

SECTION 2: GRANT OF FRANCHISE

Pursuant to the authority of ORS 459A.085 and any related City Ordinance, the City grants to Western Oregon Waste-Tillamook, Inc., this non-exclusive Franchise for the right and privilege to collect and dispose or otherwise handle all Solid Waste, Bulky Goods and Green Waste generated, deposited, accumulated or otherwise coming to exist in the Franchise Area, provided hereunder. This franchise shall not apply to recycling activities. It is expressly understood that all Solid waste set out for collection and disposal shall become the property of the Franchisee at the point of collection.

SECTION 3: TERMS OF AGREEMENT

The initial term of this Agreement shall be ten (10) years, commencing on July 1, 2000 and unless sooner terminated in accordance with the provisions of this Agreement, expiring on June 30, 2010. Franchisee shall give the City one hundred twenty (120) days notice at the end of the franchise term. The Agreement will stay in effect until a new Agreement is negotiated or City provides notice to Franchisee that it does not intend to negotiate a new Agreement. In the event Franchisee fails to notify City, the Agreement shall remain in effect until either party gives notice to the other of their intention not to negotiate a new Agreement.

SECTION 4: FRANCHISE FEES

As consideration for the granting of this Franchise and to reimburse the City of the administration thereof, the Franchisee shall pay to the City during the term of this agreement a franchise fee of five (5) percent of the gross revenue received for services. Payments shall be made for three (3) month periods ending March 31, June 30, September 30 and December 31 of each calendar year. The payment for a quarter shall be due within forty-five (45) days of the end of the quarter.

SECTION 5: FRANCHISE SERVICES

The Franchisee shall provide for the collection and transportation of *Solid Waste* from customers to a Solid Waste Management Facility approved by the Franchisor. In providing these services, the Franchisee agrees to the following:

1. **Collection Equipment:** The Franchisee shall provide, maintain and use adequate equipment and personnel to timely handle, collect, and transport Solid Waste. The equipment shall meet the following standards:
 - a. Collection equipment shall be constructed, loaded and operated so as to prevent dripping, leaking, blowing, sifting or escaping of Solid Waste from the vehicle while in service. Franchisee shall be responsible cleaning up any spillage from vehicles.
 - b. All open body collection vehicles shall have a cover which shall be used while in transit, except when making collection stops and when transporting bulky items, such as brush, metals, tires, or appliances, where spillage is not likely to occur.

2. Collection Exclusions: It is understood that the Franchisee is not authorized and is not required hereunder to collect and transport Hazardous Waste or restricted or other waste that is not acceptable or permitted for disposal at a Solid Waste Management Facility. In addition, Franchisee shall not be required to collect containers that are not set out or filled in accordance with, or do not meet the requirements as set forth in Exhibit A hereto. Regardless of the reason, when any Solid Waste or other material is not collected by Franchisee, Franchisee shall leave, to the extent practicable, a tag on the Solid Waste or other material stating the reasons for Franchisee's refusal to collect the same. Adequate records of the tags shall be maintained by Franchisee and Waste set out for collection and disposal shall be available to the Franchisor for inspection upon reasonable notice during business hours.

3. Level of Service: Franchisee shall maintain a regular schedule of pickup -within the service area at the frequency specified in the Schedule of Services and Rates/Charges, Exhibit A (attached) and extend service to all persons in the area who order and pay for such services and comply with Franchisee's reasonable requirements concerning adequacy and location of containers.

a. The level of services are contained in *Exhibit A* and shall be amended from time to time as required by the City or as requested by the Franchisee and approved by the City.

b. The Franchisee shall work in cooperation with Tillamook County and/or the City of Wheeler to plan and implement special events or other services deemed necessary in order to collect and properly dispose of Solid Waste, small quantities of Household Hazardous Waste, bulky goods, or other waste materials.

4. Service Requirements: The Franchisee shall be required to provide services to all customers who set waste containers at locations identified in the Schedule of Services and Rates/Charges, Exhibit A. Door service shall not be provided to any customer whose driveway does not provide safe and adequate access.

a. The Franchisee may refuse service if such service poses a risk of injury to personnel, damage to equipment, or the location has limited access that is steep or excessive slope, or the access road is impaired or insufficient space to make turns, or where backing the vehicle in excess of 75 feet.

b. The Franchisee shall respond to customer service complaints where pickup of garbage or clean up is required within 24 hours or the next business day.

c. The Franchisee shall not terminate service without fourteen (14) days written notice to the customer. If termination is based on other than failure to pay for service, notice must also be made to the City Manager stating reason for the termination. Where service has been refused due to refusal of a customer to pay for service, the Franchisee may require a deposit equal to two billing periods to guarantee payment for future service before reinstating such service.

5. Office: The Franchisee shall maintain an office and telephone where service may be applied for and complaints may be made. The telephone number shall be toll free from Wheeler for customers. The office shall have a responsible person in charge during collection hours and shall

be open during normal business hours. A message service shall be available during lunch periods and after normal business hours.

6. **Permits and Licenses:** The Franchisee shall obtain at the Franchisee's expense permits and licenses required by law or ordinance and maintain same in full force and effect during the term of this agreement.

SECTION 6: RATES & SERVICE CHARGES

All charges made by the Franchisee shall conform to the schedule of rates and charges included in Exhibit A (attached). The City Council is hereby authorized and empowered to hereafter modify this schedule of rates and charges by Ordinance. However, except with regard to pass through costs such as tip fees at the transfer station, not more than one rate adjustment may be imposed in any twelve (12) month period.

1. **No Rate Preferences:** The Franchisee shall not give any rate preference to any person, locality or type of Solid Waste stored, collected, transported, disposed of or resource-recovered; provided, however, that Franchisee will provide free service for pickup and disposal of Solid Waste generated in the ordinary course of the City's business. This section shall not prohibit uniform classes of rates based upon type or quality of Solid Waste handled and location of customers so long as such rates are reasonably based upon cost of the particular service and are approved by the City Council, nor shall this section prevent the Franchisee from volunteering service at reduced cost for a charitable, Community, civic or benevolent purpose.

2. **Basis of Rates:** Rates for residential and multifamily service shall be based on the cost of providing once per week single can service, then adjusted for services other than once per week pickup. Rates for container service shall be based on the cost of providing once per week pickup of a one yard container containing 300 pounds of loose, uncompacted material, then adjusted for other than once per week pickup and or container size.

3. **Criteria for Rate Adjustment:** In determining the appropriate rate or rate adjustment to be charged by the Franchisee, the Council may consider any or all of the following:

- a. The cost of performing the service provided by the Franchisee.
- b. The anticipated increase in the cost of providing this service.
- c. The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state, local law, ordinances and regulations or technical change.
- d. The investment of the Franchisee to have a reasonable rate of return of no more than twelve (12) percent.
- e. The rates charged in other cities of similar size for similar service.
- f. The public interest in assuring reasonable rates to enable the Franchisee to provide efficient and beneficial service to the residents and other users of the service.

g. The local wage scale, cost of management facilities and disposal fee or charges.

h. Other factors which may, in the opinion of the City Council, necessarily affect the rates to be charged.

4. **Billing Cycles:** The Franchisee may establish billing cycles that provide, one month in advance and one month in arrears according to the Franchisee's billing cycle.

SECTION 7: RECORDS & REPORTS

1. The Franchisee shall maintain books and records disclosing the number and type of customers served and the gross receipts collected in the Franchise area. These books and records shall be open at reasonable times and places for audit by authorized personnel of the City of Wheeler.
2. The Franchisee shall submit an annual report to the City which contains sufficient business information to show revenue and operating costs, franchise fees paid, general vehicle inventory, customer count, and amount of material in tons collected, transferred and/or disposed.
3. **Confidentiality.** Franchisor shall treat all information disclosed or made available for inspection by Franchisee hereunder (including pursuant to any rate review) that affects the competitive position of Franchisee as confidential information to the extent permitted by law. By way of example but not in limitation, the following types of information shall be confidential to the extent permitted by law: (1) how Franchisee routes its vehicles in order to provide collection services within the Franchise Area; (2) the provisions of contacts with customer for collection services; (3) the Franchisee's consolidated audited financial statements or the audited financial statements of Franchisee's affiliates; and (4) individual wages, salaries, bonuses and benefits. Franchisor shall not use such confidential information for any reason or in any manner other than as contemplated under the rate review provisions of this Agreement. Franchisor shall not disclose such confidential information to any third party except on a "need-to-know" basis and then only after receiving the prior written approval of the Franchisee and a confidentiality agreement from the third party similar hereto. Notwithstanding the foregoing, in the event Franchisor receives any requests for disclosure of Franchisee's information under Oregon Public Records Law, Oregon Revised Statutes 192.410 to 192.505, Franchisor shall notify Franchisee in writing of such request after consideration of the public interest in disclosure of the requested information. The Franchisee shall respond in writing within ten (10) days of the Franchisor's notice whether the requested information should be released or defended as exempt from disclosure under such law. If Franchisee elects to defend the exemption of the requested information from public disclosure, Franchisor shall not, release or disclose such information and Franchisee shall assume all responsibilities and costs for such defense.

[SECTION: PUBLIC RESPONSIBILITY Note: This Section now included in Solid Waste Control Ordinance]

SECTION 8: LIABILITY INSURANCE

Franchisee shall provide and maintain during the life of this Agreement Public Liability Insurance in the combined single limit amount of \$1,000,000 to protect the Franchisee, its agents, and its employees from claims for damages for personal injury, including wrongful and accidental death and property damage which may arise from operations under this Agreement, whether such operations be performed by the Franchisee or its employees. The policy or policies shall contain a clause showing the City of Wheeler, its elected officials, officers and employees as additional insured and with an endorsement that such insurance may not be cancelled or the coverage reduced without first giving the City thirty (30) days notice in writing.

SECTION 9: WORKERS' COMPENSATION INSURANCE

The Franchisee shall provide and maintain during the life of this Agreement Workers Compensation Insurance in accordance with the laws of the State of Oregon for all of its employees. A certificate shall be filed with the City by the insurance carrier showing such insurance to be in force at all times.

SECTION 10: INDEMNITY

1. Franchisee Indemnity: Franchisee shall defend, indemnify and hold harmless Franchisor and its employees, agents, appointed and elected officials (collectively, "Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys' fees, (collectively "Damages") which any or all of the Indemnitees may hereafter suffer, incur, be responsible for or pay out with respect to claims by third parties for personal injury, property damage or other loss to the extent caused by or arising from or in connection with a violation of this Agreement or the negligent actions or omissions or willful misconduct of Franchisee, its employees or subcontractors, in the performance of this Agreement. Such indemnity shall be limited to exclude Damages to extent that they are caused by, arise from or in connection with any negligent actions or omissions or willful misconduct of Franchisor or its employees, agents, subcontractors, or appointed or elected officials, including in connection with the use of Franchisee's property or equipment during an emergency as provided in Section 13. The extent of Franchisee's liability under this Section shall not exceed the amount of Franchisee's proportionate share of fault.

2. Procedure: Franchisee shall have no obligation to indemnify or defend hereunder unless the Indemnitees provide written notice to Franchisee of the occurrence of events giving rise to Franchisee's obligation to indemnify hereunder within thirty (30) days after the Indemnitees know or should have known of such events. The Indemnitees shall cooperate in the defense of suit if requested by Franchisee and shall have the right to approve counsel chosen by Franchisee to litigate such suit, which approval shall not be unreasonably withheld. Franchisee shall have the sole right to contest, defend, litigate and settle claims tendered by the Indemnitees hereunder provided that at least ten (10) business days prior to any such settlement, written notice of Franchisee's intention to settle is given to the Indemnitees. In the event a dispute exists over whether Indemnitee is entitled to indemnification, the Indemnitee shall defend itself until the dispute is resolved. Upon

resolution of the indemnification dispute, the prevailing party shall be entitled to indemnification for its defense costs incurred prior to resolution.

3. Insurance: If any claims indemnified against under this Section have the potential for coverage under any insurance, then the indemnity set forth in this Section shall be limited as provided in this Section 10(c). Before pursuing recovery under this indemnity, the Indemnitees shall exhaust all recovery available for such claim from insurance. Once the Indemnitees have exhausted all recovery under all available insurance, the Franchisee shall pay only the amount of the loss, if any, that exceeds the total amount that all insurance has paid for the loss. Nothing in this Agreement shall constitute a waiver or relinquishment of any claims which the parties may have against insurers, nor shall any provision of this Agreement waive or relinquish any subrogation or contribution rights that the parties or their insurers may have against another insurer or other potentially liable party. Notwithstanding anything in this Agreement to the contrary, the Franchisee shall not be obligated to pay for the defense of any claim or suit that any insurer has a duty to defend. If no insurer defends, however, then the Franchisee shall, to the extent obligated to do so by this Agreement, pay for the defense, but shall be entitled to the insured's rights against all insurers with a potential for coverage of such claim.

SECTION 11: TRANSFER OF FRANCHISE

1. The Franchisee shall provide ninety (90) days written notice of any proposed sale, transfer or assignment. Sale of an amount of stock sufficient to change the majority ownership of Franchisee shall constitute a transfer for purposes of this Section. Except as provided in this Section, the Franchisee shall not assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person or corporate entity without prior written consent of the City Council, which consent shall not be unreasonably withheld. Any such assignment without the Consent of the City Council shall be void and the attempted assignment shall constitute a default of this Agreement.

2. If the Franchisee requests the City's consideration of and consent to a transfer or assignment, the City shall act on such request within sixty (60) days of the receipt of the Franchisee's notice and shall not unreasonably refuse to approve an assignment of this franchise to an assignee with sufficient knowledge, experience and financial resources so as to be able to meet the obligations of the Franchisee hereunder.

SECTION 12: DEFAULT TERMINATION

1. **Default:** In the event of any material failure or refusal of Franchisee to comply with any obligation or duty imposed on Franchisee under this Agreement, the Franchisor and Franchisee shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the Parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, the Franchisor shall have the right to terminate this Agreement if:

- a. Following the ten-day meeting period above, the Franchisor shall have given written notice to Franchisee specifying that a particular default or defaults

exist which will, unless corrected, constitute a material breach of this Agreement on the part of Franchisee, and

- b. Franchisee fails to correct such default or fails to take reasonable steps to commence to correct the same within thirty (30) days from the date of the notice given by Franchisor under Section 1(a) and/or Franchisee thereafter fails to diligently continue to take reasonable steps to correct such default.

2. Termination: Upon the occurrence of a material breach, failure to cure and the declaration of termination of this Agreement by the Franchisor as provided above, this Agreement shall be of no further force and effect unless the Franchisor elects to terminate only a portion of the services set forth herein and maintain the remainder of the Agreement.

3. Force Majeure: The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. Franchisee shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Franchisee's performance is prevented or delayed by Force Majeure.

SECTION 13: EMERGENCY SERVICES

In the event that Franchisee, for any reason whatsoever except the occurrence or existence of a Force Majeure event, fails, refuses or is unable to perform the collection, transportation and disposal requirements of this Agreement for a period of more than three (3) consecutive business days, and if as a result thereof, Solid Waste accumulates in the Franchise Area to such an extent, in such a manner, or for such a time that Franchisor reasonably finds that such accumulation endangers or menaces the public health, safety or welfare, then Franchisor shall have the right to take any means necessary to ensure the public safety and welfare, including but not limited to picking up Solid Waste utilizing City equipment and personnel and/or contracting out to a third party. If Franchisor must carry out those services and duties performed by the Franchisee as contained herein, then Franchisee shall reimburse Franchisor for all expenses directly related to the Franchisor's carrying out the duties and services of Franchisee under this Franchise.

SECTION 14: NOTICE

Whenever required for any purpose in this Agreement, notice by either party shall be deemed sufficient if it is in the form of a letter sent by certified mail, return receipt requested, to the business address specified below:

Franchisee

Western Oregon Waste -
Tillamook County, Inc.
P.O. Box 509
McMinnville, OR 97128

Franchisor

City of Wheeler
775 Nehalem Blvd.
P.O. Box 177
Wheeler, OR 97147

SECTION 15: CHANGE IN LAW

In the event that new or amended local, state or federal laws, rulings or regulations are enacted after the Effective Date of this Agreement and have the effect of preventing or precluding compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such new or amended local, state or federal laws or regulations, and the Franchisor and the Franchisee shall enter into an amendment of this Agreement that reflects the extent to which the provisions hereof have been so modified or suspended. Notwithstanding the foregoing, should Franchisee, by force of any such law, ruling or regulation, at any time during the term hereof, be ordered or required to do any act relative to this Agreement which substantially impairs or materially changes the Franchisee's ability to perform under this Agreement, then the Franchisee may notify the Franchisor in writing of this condition and may terminate this Agreement upon providing at least sixty (60) days' advance written notice of termination to the Franchisor. Nothing in this Agreement shall prohibit Franchisee from obtaining or seeking to obtain modification, reversal or repeal of such law, ruling or regulation or restrict Franchisee's right to legally contest the validity of such law, ruling or regulation. Franchisee shall not be considered in breach of this Agreement during such time as Franchisee is contesting or appealing any notice of violation, ordinance, rule, regulation, ruling or law.

SECTION 16: INDEPENDENT CONTRACTOR

Franchisee is an independent contractor and shall not be deemed an employee of the Franchisor.

SECTION 17: CAPTIONS

Titles or captions of articles and sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision of it.

SECTION 19: WAIVER

No waiver of any right or obligation of either Party hereto shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

SECTION 20: COUNTERPARTS

This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute the same instrument.

SECTION 30: GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Oregon.

SECTION 31: AMENDMENT

This Agreement may be amended, altered or modified only by writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the Parties hereto.

SECTION 32: COMPLETE AGREEMENT

This writing constitutes the full and complete Agreement and understanding between the Franchisee and the Franchisor. All previous agreements are hereby superseded.

SECTION 33: SEVERABILITY

If any of the provisions of this Agreement are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the remainder of this Agreement to be invalid or unenforceable, unless this Agreement without the severed provision would frustrate a material purpose of either Party in entering into this Agreement.

IN WITNESS WHEREOF, this Agreement is effective as of the latest date set forth below.

FRANCHISEE:

Western Oregon Waste Tillamook, Inc.

By: Robert H. Gunda

Its: President

Date: 12/23/03

ATTEST:

[Signature]

FRANCHISOR:

By: Sandra Johnson

Its: Manager

Date: 11/18/03

ATTEST:

[Signature]

ADOPTED by the City Council this 18th day of November, 2003 by the following vote:

CITY COUNCIL
WHEELER, OREGON

Aye Nay Absent/Abstain

Jana Del Handy, Councilor

_____ _____ X / _____

Charles McLaughlin, Councilor

X _____ _____ / _____

Bill Mullen, Councilor

X _____ _____ / _____

Merle Spencer, Councilor

X _____ _____ / _____

Elizabeth Stine, Councilor

X _____ _____ / _____

ATTEST:

Larry Cole
Larry Cole, City Manager pro-tem

CITY OF WHEELER
ORDINANCE NO. 2004-05

AN AMENDMENT TO ORDINANCE NO 2003-03, FRANCHISE AGREEMENT
BETWEEN THE CITY AND WESTERN OREGON WASTE

WHEREAS, Western Oregon Waste had proposed a new rate schedule, and

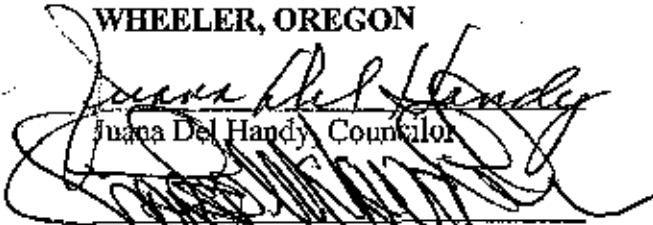
WHEREAS, Section 5.3 of the Franchise Agreement allows amendment to the Schedule of Services and Rates/Charges;

THE CITY OF WHEELER ORDAINS AS FOLLOWS:

Section 1. The three page "Attachment A" "Western Oregon Waste – Wheeler Rate Schedule, proposed April 2004" is adopted by the City Council.

ADOPTED by the City Council this 20th day of July, 2004, by the following vote:


CITY COUNCIL WHEELER, OREGON	Aye	Nay	Absent/Abstain
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Juana Del Handy, Councilor

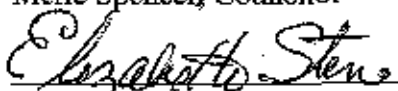
X — — / —


Charles McLaughlin, Councilor

X — — / —


Merle Spencer, Councilor

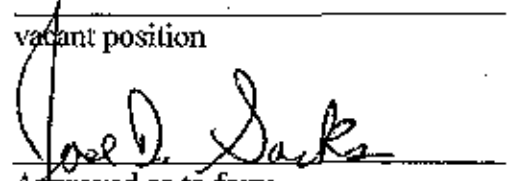
X — — / —


Elizabeth Stine, Councilor

✓ — — / —

vacant position

— — — / —


Approved as to form,
Joel Sacks, Attorney

ATTEST:


Eugene A. Norris, City Manager

WESTERN OREGON WASTE - WHEELER			
RATE SCHEDULE			
Proposed April 2004			
	Current Rates	Adjustment 0.00%	Current Rates
Residential Services			
1 Can Weekly - Curbside	\$20.56	\$0.00	\$20.56
1 Can Weekly - Sideyard	\$21.89	\$0.00	\$21.89
1 Can Every Other Week - Curbside	\$13.62	\$0.00	\$13.62
1 Can Every Other Week - Sideyard	\$14.95	\$0.00	\$14.95
1 Can Monthly - Curbside	\$9.54	\$0.00	\$9.54
1 Can Monthly - Sideyard	\$10.87	\$0.00	\$10.87
2 Cans Weekly - Curbside	\$36.99	\$0.00	\$36.99
2 Cans Weekly - Sideyard	\$39.64	\$0.00	\$39.64
2 Cans Every Other Week - Curbside			\$24.04
2 Cans Every Other Week - Sideyard			\$25.77
2 Cans Monthly - Curbside			\$12.95
2 Cans Monthly - Sideyard			\$13.87
3 Cans Weekly - Curbside			\$52.10
3 Cans Weekly - Sideyard			\$56.08
3 Cans Every Other Week - Curbside			\$33.87
3 Cans Every Other Week - Sideyard			\$36.45
3 Cans Monthly - Curbside			\$18.24
3 Cans Monthly - Sideyard			\$19.63
Each Additional Can - Weekly Curbside	\$15.11	\$0.00	\$15.11
Each Additional Can - Weekly Sideyard	\$16.44	\$0.00	\$16.44
32 Gallon Cart Weekly			\$20.56
32 Gallon Cart Every Other Week			\$13.62
32 Gallon Cart Monthly			\$9.54
90 Gallon Cart Weekly			\$30.65
90 Gallon Cart Weekly - Owns Cart			\$28.15
90 Gallon Cart Every Other Week			\$20.05
90 Gallon Cart Monthly			\$10.80
Special Call Rates - Residential			
Regular Customer - Add'l Can, Bag, Misc - curbside	\$5.25	\$0.00	\$5.25
Regular Customer - Add'l Can, Bag, Misc - sideyard	\$5.88	\$0.00	\$5.88
Will Call - 32 gal can cash - curbside	\$9.86	\$0.00	\$9.86
Will Call - 32 gal can billed - curbside	\$11.18	\$0.00	\$11.18
Will Call - 32 gal can cash - sideyard	\$11.18	\$0.00	\$11.18
Will Call - 32 gal can billed - sideyard	\$12.51	\$0.00	\$12.51
Will Call - 90 gal cart cash - curbside			\$12.80
Will Call - 90 gal cart billed - curbside			\$12.80
Extra Cart pick up (90 Gallon Cart)			\$12.80
Service Charge (Outside Route)	\$10.49	\$0.00	\$10.49
Multiple Residential Units and Mobile Parks			
First Location			
Each Additional Location			
Each Additional Can / 32 gal cart at each location			
Commercial Services			
1 Can Weekly	\$21.89	\$0.00	\$21.89
1 Can Every Other Week	\$14.95	\$0.00	\$14.95
1 Can Monthly	\$10.87	\$0.00	\$10.87
2 Cans Weekly	\$39.64	\$0.00	\$39.64
2 Cans Every Other Week			\$25.77
2 Cans Monthly			\$13.87
3 Cans Weekly			\$56.08
3 Cans Every Other Week			\$36.45
3 Cans Monthly			\$19.63
Each Additional Can - Weekly	\$16.44	\$0.00	\$16.44
Each Additional Pick Up - Weekly			
32 Gallon Cart Weekly			\$21.89
32 Gallon Cart Every Other Week			\$14.95
32 Gallon Cart Monthly			\$10.87
90 Gallon Cart Weekly	\$37.37	\$0.00	\$37.37
90 Gallon Cart Every Other Week			\$24.29
90 Gallon Cart Monthly			\$13.08
Special Call Rates (In Route) - Commercial			
Regular Customer - Additional Can, Bag, Misc.	\$5.88	\$0.00	\$5.88

"Attachment A" to Ordinance No. 2004-05"

Will Call - per can/cart (32 Gallon)	\$12.51	\$0.00	\$12.51
Will Call - per cart (90 Gallon Cart)			\$15.08
Extra Cart Pick Up (90 Gallon Cart)			\$15.08
Special Call Rates (Outside Route) - Comm			
Service Charge	\$8.90	\$0.00	\$8.90
Miscellaneous Rates - All Customers			
Appliances (not stripped)			\$66.02
Appliances (stripped)			\$19.71
Furniture - All Types			\$23.23
Hasp Installation			\$26.00
One truck - One employee (Per Hour)			\$85.00
One truck - Two employees (Per Hour)			\$115.00
Passenger Tires - on rim			\$11.91
Passenger Tires - off rim			\$8.61
Truck Tires - on rim			\$35.10
Truck Tires - off rim			\$20.47
Ad Can Purchase - New Can			\$10.40
Ad Can Purchase - Used Can			\$8.32
Ad Can Rental			\$3.64
Ad Can Liner each			\$0.36
Ad Can Liner - Box 100 count			\$36.40
Recycling Bags			\$3.47
Recycling Rack - Single Bag Rack			\$17.91
Recycling Rack - Double Bag Rack			\$18.95
Tarp Fee			\$23.06
Container Cleaning Fee - see note on next line			\$25.00
32 gal Cart Purchase - NOT FOR SALE			\$56.40
60 gal Cart Purchase - NOT FOR SALE	\$85.00	\$0.00	\$85.00
90 gal Cart Purchase - NOT FOR SALE	\$95.00	\$0.00	\$95.00
Off No Pay Reinstatement Charge			\$15.00
NSF Check Charge			\$25.00
Cart Change in Service Redelivery Charge			\$25.00
Commercial Customer Redelivery Charge			\$30.00
ROLL OFF - Transport + Disposal			
Delivery Charge - Per Mile			\$1.50
Box Transport (+ disposal)			\$196.10
Daily Rent - N/C for 1st 48 hrs or weekends :			
Daily Rent - All box sizes			\$10.60
Rent (per month) - 1 Year or longer			\$95.00
Drop Box Lid Rent (per month)			\$20.00
Minimum Transport Charge			
Temporary Rental Containers			
3 Yd Container (Delivery Charge & Final Pickup)	\$97.37	\$0.00	\$97.37
Additional Dumping Charge - 3 Yd Container	\$69.17	\$0.00	\$69.17
Weekly Rental Charge			\$6.52
Permanent Container Rates - Weekly Service			
One yard	\$96.73	\$0.00	\$96.73
One and 1/2 yd	\$126.25	\$0.00	\$126.25
Two yard	\$177.55	\$0.00	\$177.55
Three yard	\$263.68	\$0.00	\$263.68
Four yard			
Five yard			
Six yard			
Eight yard			
Add'l Container Rates-Each add'l stop/week			
One yard	\$85.60	\$0.00	\$85.60
One and 1/2 yd	\$111.83	\$0.00	\$111.83
Two yard	\$155.29	\$0.00	\$155.29
Three yard	\$230.28	\$0.00	\$230.28
Four yard			
Five yard			
Six yard			
Eight yard			
Additional Container Service Rates			
Will Call Customers (In Route)			

"Attachment A" to Ordinance No. 2004-05"

One yard	\$23.06	\$0.00	\$23.06
One and 1/2 yd	\$34.58	\$0.00	\$34.58
Two yard	\$46.11	\$0.00	\$46.11
Three yard	\$69.16	\$0.00	\$69.16
Four yard			
Five yard			
Six yard			
Eight yard			
Garbage Container Rent			
One yard	\$11.13	\$0.00	\$11.13
One and 1/2 yd	\$11.13	\$0.00	\$11.13
Two yard	\$11.13	\$0.00	\$11.13
Three yard	\$11.13	\$0.00	\$11.13
Four yard			
Five yard			
Six yard			
Eight yard			
MEDICAL WASTE RATES			
Residential & Commercial Services			
Sharps Container and Disposal			
4.7 Qt - Per Container			\$13.64
10 Qt - Per Container			\$17.10
23 Qt - Per Container			\$32.63
Steri-Tub Rental and Disposal			
21 Gallons - Per Tub			\$29.40
48 Gallons - Per Tub			\$34.39
Confidential Document Destruction			
9 Gallon Box			\$29.50
Storage Cabinet per Month			\$22.51
Miscellaneous Rates - All Customers			
Sharps Container Purchase			
4.7 Qt - Per Container			\$6.13
10 Qt - Per Container			\$7.41
23 Qt - Per Container			\$13.70
Special Service Fee & Re-packaging Fee (per hour) (Supplies billed separately)			\$69.92
Emergency Spill Remediation - per person (per hour) (Supplies billed separately)			\$116.59
Spill Kit			\$13.05

"Attachment A" to Ordinance No. 2004-05"

next renewal

11/16/2013

Rec 3 (44)

Wheeler, Oregon

Cable Television Franchise Ordinance

An Ordinance Setting Forth Regulations, Terms and Conditions Under Which Cable Television Systems Shall Operate in Wheeler, Oregon; and Granting to Falcon Cable Systems Company, Its Successors and Assigns, A Franchise to Construct, Operate and Maintain a Cable Television System.

Ordinance No. 93-3

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1
2
3 **Wheeler, Oregon**
4

5 **Cable Television Franchise Ordinance**
6
7

8 **An Ordinance Setting Forth the Regulations, Terms and**
9 **Conditions Under Which Cable Television Systems Shall**
10 **Operate in Wheeler, Oregon and Granting A Franchise to**
11 **Falcon Cable Systems Company, Its Successors and Assigns to**
12 **Construct, Operate and Maintain a Cable Television System in**
13 **the City.**
14
15
16

17 **The City of Wheeler, Oregon ordains as follows:**
18

19 **Section 1. Title and Purposes of Ordinance**

20 **1.1 Title**

21 This Ordinance shall be known as the Wheeler, Oregon Cable Television Franchise
22 Ordinance.

23 **1.2 Purposes**

24 The purposes of this Ordinance are: a) to establish the terms and conditions under which
25 a cable television system must operate within Wheeler, Oregon (hereafter referred to as the "City",
26 "Franchising Authority" or "Grantor"; b) to provide for the payment of a franchise fee to the
27 City for the use of City streets and other public rights of way and to compensate the City for
28 costs associated with administering and regulating the system; and; c) to grant a cable television
29 franchise to Falcon Cable Systems Company (hereafter referred to as "Falcon" or "Grantee").
30

1 **Section 2. Franchises; Applications and Criteria for Grant**

2 **2.1 Franchise to Operate Required**

3 It shall be unlawful to operate a cable television system within the City unless a valid
4 franchise has first been obtained from the Franchising Authority pursuant to the terms of this
5 ordinance. A franchise granted pursuant to this Ordinance shall authorize the Grantee to provide
6 cable television services within the City and to charge subscribers for such services. It shall also
7 authorize and permit the Grantee to traverse any portion of the City in order to provide service
8 outside the City. Unless otherwise specified, the Franchise Area shall be the legal boundaries of
9 the City.

10 **2.2 Application Procedures and Criteria**

11 An application for a new cable television franchise shall be submitted to the Franchising
12 Authority in a form specified by or acceptable to the City, and in accordance with procedures and
13 schedules established by the Franchising Authority. The Franchising Authority may request such
14 facts and information as it deems appropriate.

15 **2.2(a)** Any applicant shall furnish to the Franchising Authority a map of suitable
16 scale, showing all roads and public buildings, which indicates the areas to be served and the
17 proposed dates of commencement of service for each area. The proposed service area shall be
18 subject to approval by the Franchising Authority. If approved, the service area shall be
19 incorporated into any franchise granted pursuant to this Ordinance. If no service area is
20 specifically delineated in a franchise, it shall be considered to be coterminous with the boundaries
21 of the City.

22 **2.2(b)** After receiving an application for a franchise, the Franchising Authority
23 shall examine the legal, financial, technical and character qualifications of the applicant. The
24 Franchising Authority may grant one or more non-exclusive franchises creating a right to
25 construct and operate a cable television system within the public ways of the City, subject to the
26 provisions of this Section.

27 **2.2(c)** In the event an application is filed proposing to serve a franchise area
28 which overlaps, in whole or in part, an existing Grantee's franchise area, a copy of such
29 application shall be served by the applicant, by registered or certified mail, upon the existing
30 Grantee. Such notice shall be considered a condition precedent to consideration of the

1 application by the Franchising Authority.
2

3 **Section 3. Grant of Franchise to Falcon**

4 Pursuant to the terms of this Ordinance, a franchise is hereby granted to Falcon Cable
5 Systems Company (which may be referred to herein as "Falcon" or "Grantee") to operate and
6 maintain a cable television system in the City for a period of twenty (20) years commencing on
7 the date of adoption of this ordinance.
8

9 **Section 4. Renewal of Franchise**

10 At the expiration of the initial or renewal term of this franchise, the Grantee shall have
11 the right to renew the franchise for an additional term of five (5) years, provided that the
12 Grantee shall then be in substantial compliance with the material terms of this ordinance and with
13 applicable law. The Grantee shall provide the Franchising Authority with notice of its intent to
14 renew the franchise at least ninety (90) days prior to the expiration date of the then current term.
15

16 **Section 5. Franchise Fee**

17 **5.1 Payment of Annual Fee**

18 The Grantee shall pay a franchise fee for the use the City's rights of way and to
19 compensate the City for all costs associated with administering and regulating the cable system.
20 The amount of the franchise fee shall be five percent (5%) of the Grantee's annual Gross
21 Subscriber Receipts, as defined herein, and such fee shall be paid on an annual basis. Grantee
22 shall be entitled to list the franchise fee as a separate line item on monthly bills.
23

24 **Section 6. Subscriber Rates**

25 **6.1** All charges to subscribers shall be consistent with a schedule of fees for services
26 offered and established by the Grantee. Rates shall be nondiscriminatory in nature and uniform
27 to persons of like classes, under similar circumstances and conditions, except where necessary to
28 meet competition.

29 **6.1(a)** Grantee may offer different or discounted rates at its discretion in order to
30 meet competition or for promotional purposes. Grantee may establish different rates for different

1 classes of subscribers where appropriate, such as offering discounted rates to low income
2 individuals or groups.

3 **6.1(b)** Grantee shall inform each new subscriber of all applicable fees and charges
4 for providing cable television service.

5 **6.1(c)** Grantee may, at its own discretion and in a non-discriminatory manner,
6 waive, reduce or suspend connection fees, monthly service fees or other charges on a one time or
7 monthly basis for promotional purposes.

8 **6.1(d)** This section shall not prevent a Grantee from refusing service to any
9 person because the Grantee's prior accounts with that person remain due and owing.

10 **6.1(e)** A Grantee may offer service which requires advance payment of periodic
11 service charges. A customer shall have the right, at any time, to have service disconnected with
12 a refund of any pre-paid but unused service charges within sixty (60) days from the date service
13 is disconnected.

14 **6.1(f)** The Grantee will provide the City with thirty (30) days advance written
15 notice of any change in rates and charges whenever possible. The City retains the right to apply
16 for certification to the Federal Communication Commission in order to regulate basic service
17 rates of the Grantee pursuant to the Cable Act of 1992.

18 **6.1(g)** The Grantee shall provide refunds to subscribers in the following cases:

19 **6.1(g)(1)** If the Grantee fails within a reasonable time to commence service
20 requested by a subscriber, it will refund all deposits or advance charges that the subscriber has
21 paid in connection with the request for such service at the request of the subscriber.

22 **6.1(g)(2)** If a subscriber terminates any service at any time and has a credit
23 balance, the Grantee will, upon notice from the subscriber and upon return of all of Grantee's
24 equipment, refund the appropriate credit balance to the subscriber. The subscriber will be
25 responsible for furnishing the Grantee a proper address to which to mail the refund.

26 **6.1(g)(3)** If any subscriber's cable service is out of order for more than 48
27 consecutive hours during the month due to technical failure, damage, or circumstances within the
28 control of the Grantee, the Grantee will credit the account of that subscriber on a pro rata basis
29 upon the subscriber's written request.

1 **Section 7. Customer Service and Consumer Protection**

2 **7.1 Office Location and Telephone Service**

3 Grantee shall maintain an office in sufficient proximity to the City to permit Grantee's
4 customer service and technical personnel to promptly respond to all customer service requests or
5 technical problems which may arise, as further described below. Grantee shall maintain
6 telephone answering service or an answering machine to receive service calls twenty-four (24)
7 hours per day. A listed local telephone number or toll free (800) number shall be made available
8 to subscribers for service calls. Corrective action shall be completed as promptly as practicable.

9 **7.2 Customer Service Response Time**

10 **7.2(a)** Calls requesting repair service shall be responded to the same day they are
11 received, whenever it is physically possible to do so. In the event this is not possible, repair calls
12 notifying the Grantee of a service outage shall be responded to no later than forty-eight (48)
13 hours after receipt. If a service call is received after 3 p.m. on Friday, every attempt shall be
14 made to respond within 48 hours.

15 **7.2(b)** In establishing response time to service or repair calls, the Grantee may
16 differentiate between service problems unique to a single household as compared to problems
17 caused by a service outage which affects a large number of subscribers ("area outage"). An "area
18 outage" is defined as an outage of all cable channels in four (4) or more residences in the same
19 neighborhood or area which is caused by a problem with the cable system, rather than being
20 caused by the subscriber or by a cause beyond the Grantee's control, such as a loss of power
21 from the local electric company.

22 **7.2(c)** All area outages shall be responded to as soon as possible after notification
23 on a 24 hours a day, 7 day a week basis. Designated technicians shall be on call 24 hours a day
24 to respond when notified by phone or paged by Grantee or an answering service employee.
25 Technicians are expected to repair the problem found and have the system operational as soon as
26 possible. Except for circumstances beyond the Grantee's control such as acts of God, weather,
27 wars, riots and civil disturbances, the Grantee shall be capable of locating and correcting system
28 malfunctions promptly.

29 **7.3 Consumer Protection**

30 The Grantee shall not, without good cause, fail to make available cable service to

1 prospective subscribers nor shall the Grantee terminate service without good cause. Service shall
2 be provided to all interested customers where economically feasible and consistent with the line
3 extension provisions contained in this Ordinance.

4 7.3(a) Unless a written contract exists between the Grantee and a subscriber,
5 service shall be on a month-to-month basis.

6 7 **Section 8. Extension of Cable Service**

8 **8.1 Extension of Service**

9 8.1(a) A Grantee which is not already serving the entire franchise area shall
10 provide service to all portions of the franchise area reaching a minimum density of thirty (30)
11 dwelling units per linear street mile as measured from the nearest system trunk line within one
12 (1) year after the grant of a franchise .

13 8.1(b) Grantee shall provide aerial or buried drop lines to new subdivisions within
14 the franchise area at the request of the developer provided that the developer contracts and agrees
15 with the Grantee to pay the cost of the extension of the service.

16 8.1(c) Grantee shall extend and make cable television service available to any
17 resident within the franchise area who requests connection at the standard connection charge if
18 the connection to the resident would require no more than a standard one hundred and fifty (150)
19 foot aerial or seventy-five (75) foot buried drop line. With respect to requests for connection
20 requiring an aerial or buried drop line in excess of one hundred and fifty (150) and seventy-five
21 (75) feet respectively, Grantee shall extend and make available cable television service to such
22 residents at a connection charge not to exceed the actual cost incurred by the Grantee for the
23 distance exceeding that distance.

24 25 **8.2 Free Basic Cable Service to Public Buildings**

26 Grantee shall provide, without charge, one service outlet activated for basic subscriber
27 service to each police station, fire station, public school, public library and the City office. If it

1 is necessary to extend Grantee's trunk or feeder lines more than two hundred (200) feet solely to
2 provide service to any such school or public building, the City or the building owner or
3 occupants shall have the option of either paying Grantee's direct costs for line extensions in
4 excess of two hundred (200) feet or releasing the Grantee from the obligation to provide service
5 to such building.

6 **Section 9. Insurance and Indemnification**

7 **9.1 Insurance**

8 Within ninety (90) days following the grant of a franchise the Grantee shall obtain, pay all
9 premiums for and make available to the Franchising Authority at its request copies of the
10 following insurance policies:

11 **9.1(a)** A general comprehensive liability policy indemnifying, defending and
12 saving harmless the City, its officers, boards, commissions, agents or employees from any and all
13 claims by any person whatsoever on account of injury to or death of a person or persons
14 occasioned by the operations of the Grantee under the franchise herein granted, or alleged to have
15 been so caused or occurred, with a minimum liability of Five Hundred thousand Dollars
16 (\$500,000) per personal injury or death of any one person, and One Million Dollars (\$1,000,000)
17 for personal injury or death of any two or more persons in any one occurrence.

18 **9.1(b)** Property damage insurance for property damage occasioned by the
19 operation of Grantee under the franchise herein granted, or alleged to have been so caused or
20 occurred, with a minimum liability of Five Hundred thousand Dollars (\$500,000) for property
21 damage to the property of any one person and One Million Dollars (\$1,000,000) for property
22 damage to the property of two or more persons in any one occurrence.

23 **9.1(c)** All insurance policies called for herein shall be in a form satisfactory to the
24 Franchising Authority and shall require thirty (30) days written notice of any cancellation to both
25 the Franchising Authority and the Grantee. The Grantee shall, in the event of any such
26 cancellation notice, obtain, pay all premiums for, and file with the Franchising Authority, written
27 evidence of the issuance of replacement policies within thirty (30) days following receipt by the
28 Franchising Authority or the Grantee of any notice of cancellation.

29 **9.2 Indemnification**

30 The Grantee, by its acceptance of a franchise granted pursuant to this Ordinance, shall

1 indemnify and hold harmless the City, its officials, boards, commissions and employees against
2 any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of
3 the award of a franchise to the Grantee and its operation of the cable television system under the
4 franchise. These damages shall include, but not be limited to, penalties arising out of copyright
5 infringements and damages arising out of any failure by Grantee to secure consents from the
6 owners, authorized distributors or licensees of programs to be delivered by the Grantee's cable
7 television system whether or not any act or omission complained of is authorized, allowed, or
8 prohibited by the franchise.

10 **Section 10. Transfer or Assignment of Franchise**

11 **10.1 Transfer or Assignment to an Unrelated Entity**

12 A Grantee may transfer or assign its franchise to another entity (the "Assignee") upon
13 thirty (30) days notice to the Franchising Authority. The consent of the Franchising Authority
14 shall not be required for such an assignment, provided that; a) the Franchising Authority is
15 provided with a reasonable showing that the proposed Assignee possesses the technical and
16 financial qualifications to operate the cable TV system and, b) that the Assignee agrees to comply
17 with the material terms of this Ordinance. In no event shall the Franchising Authority
18 unreasonably delay or deny the assignment or transfer of a franchise. The reasonableness of the
19 Franchising Authority's actions shall be subject to judicial review by a court of appropriate
20 jurisdiction.

21 **10.2 Procedures**

22 **10.2(a)** If no action is taken by the Franchising Authority within thirty (30) days
23 following receipt of the notice of a proposed assignment by the Grantee, the assignment of the
24 franchise shall be deemed approved.

25 **10.2(b)** If, following a review of the information provided to it, the Franchising
26 Authority determines that the proposed Assignee may not be technically and financially qualified
27 to operate the cable system, the procedures below shall be followed:

28 **10.2(b)(1)** Within thirty (30) days following receipt of the notice of
29 proposed assignment from the Grantee, the Franchising Authority shall inform the Grantee in
30 writing by certified mail of its intent to hold a hearing, providing due process to the Grantee and

1 the Assignee, for the purpose of receiving evidence as to the Assignee's technical and financial
2 qualifications. Such hearing shall be held by the City within forty-five (45) days following
3 receipt of the notice of assignment.

4 **10.2(b)(2)** Within fourteen (14) days following the date of the hearing, the
5 Franchising Authority shall make a formal determination regarding the proposed assignment and
6 if it determines that the proposed Assignee is not qualified to operate the cable system or it
7 determines for any other reason not to assign the franchise, it shall send a written explanation of
8 its decision to the Grantee by certified mail no later than fourteen (14) days after the public
9 hearing has been held.

10 **10.3 Pledge For Security Purposes or Assignment to A Related Entity**

11 The Grantee may secure financing or an indebtedness by trust, mortgage, or other
12 instrument of hypothecation of the franchise, in whole or in part, without requiring the consent of
13 the Franchising Authority. Consent shall not be required to assign a franchise from one business
14 entity to another which is operated or managed by the present Grantee or manager of the system.
15 In addition, so long as the manager and or general partner of the Grantee remains the same,
16 consent shall not be required to transfer interests of any limited partners of the Grantee, who
17 have no day to day operational control of the Grantee or the City system.

18 19 **Section 11. General Provisions**

20 **11.1 Compliance With State and Federal Law**

21 The Grantee and the City shall at all times comply with all applicable State and Federal
22 laws and the applicable rules and regulations of administrative agencies. If the Federal
23 Communications Commission (FCC) or any other federal or state governmental body or agency
24 enacts any law or regulation or exercises any paramount jurisdiction over the subject matter of
25 this Ordinance or any franchise granted hereunder, the jurisdiction of the City shall cease and no
26 longer exist to the extent such superseding jurisdiction shall preempt or preclude the exercise of
27 like jurisdiction by the City.

28 **11.2 Street Occupancy**

29 Grantee shall utilize existing poles, conduits and other facilities whenever possible, but
30 may construct or install new, different, or additional poles, conduits, or other facilities whether on

1 the public way or on privately-owned property with the written approval of the appropriate
2 government authority, and, if necessary the property owner. Such approval shall not be
3 unreasonably withheld by the governmental agency.

4 **11.2(a)** All transmission lines, equipment and structures shall be so installed and
5 located as to cause minimum interference with the rights and appearance and reasonable
6 convenience of property owners who adjoin on any public way and at all times shall be kept and
7 maintained in a safe condition and in good order and repair. The Grantee shall at all times
8 employ reasonable care and shall use commonly accepted methods and devices for preventing
9 failures and accidents which are likely to cause damage, injuries or nuisances to the public.

10 **11.2(b)** Grantee shall have the authority to trim trees on public property at its own
11 expense as may be necessary to protect its wires and facilities, subject to the direction of the
12 Franchising Authority or other appropriate governmental authority.

13 **11.3 Access to Public and Private Property**

14 **11.3(a)** Grantee shall have the right to enter and have access to the property and
15 premises of the City or that of any subscriber for purposes of installing cable TV service or
16 recovering and removing Grantee's property and equipment when a subscriber's service is
17 terminated and a subscriber refuses to return such equipment to the Grantee.

18 **11.3(b)** The City shall not permit any person who owns or controls a residential
19 multiple unit dwelling, trailer park, condominium, apartment complex, subdivision or other
20 property to interfere with the right of any tenant, resident or lawful occupant thereof to receive
21 cable installation, service or maintenance from Grantee, except as federal or state law shall
22 otherwise require.

23 **11.3(c)** Upon request by Grantee, the City shall promptly exercise any rights it
24 may have to permit or enable Grantee to obtain or utilize easements with respect to any
25 residential multiple unit dwelling, trailer park, condominium, apartment complex, subdivision or
26 other property as required to facilitate Grantee's use thereof for purposes of providing system
27 service to the tenants, residents or lawful occupants thereof. In any such proceeding, the
28 restitution to the Owner for the amount of space utilized by the system, considering the enhanced
29 value to the premises resulting from the installation of cable television facilities, shall be a one-
30 time charge of \$1.00 per dwelling unit.

1 **11.4 Nondiscrimination in Employment**

2 The Grantee shall neither refuse to hire nor discharge from employment nor discriminate
3 against any person in compensation, terms, conditions, or privileges of employment because of
4 age, sex, race, color, creed, or national origin. The Grantee shall insure that employees are
5 treated without regard to their age, sex, race, color, creed or national origin.

6 **11.5 Grantee May Issue Rules**

7 The Grantee shall have the authority to issue such rules, regulations, terms and conditions
8 of its business as shall be reasonably necessary to enable it to exercise its rights and perform its
9 services under this Ordinance and the Rules of the FCC, and to assure uninterrupted service to
10 each and all of its subscribers. Such rules and regulations shall not be deemed to have the force
11 of law.


12 **Section 12. Effective Date of Ordinance**

13 This ordinance shall become effective on the thirtieth day after enactment by the
14 Franchising Authority. Any failure by the Franchising Authority to follow proper procedures
15 under state or local law in adopting this Ordinance or granting a franchise shall not abrogate the
16 rights or obligations of either the Grantee or the Franchising Authority under this Ordinance. If,
17 following adoption of this Ordinance it is subsequently determined that proper legal procedures
18 have not been followed by the Franchising Authority, it shall be the responsibility of the
19 Franchising Authority to rectify any procedural defects and ratify the terms of this Ordinance.


20 **Section 13. Repeal of Ordinance No. 81-2**

21 This Ordinance repeals Ordinance No. 81-2.

22 PASSED AND APPROVED by the City Council of Wheeler, Oregon this 16th day
23 of November, 1993.

24 BY: 

25 Title: Mayor

26
27 ATTEST: 

29 City Recorder

30 h:\ar\2\wheelerford



FEB 29 2000

February 23, 2000

FILE

Mr. Randy Ealy
City Recorder
City of Wheeler
775 Nehalem Blvd.
P.O. Box 177
Wheeler, OR 97147

Dear Mr. Ealy:

We are pleased to announce that the acquisition of the controlling interest in Falcon Communications, L.P., ("Falcon") and its related entities, by Charter Communications, Holding Company, LLC ("Charter") was closed on November 12, 1999.

This letter will constitute the required Notice of Closing of the sale and confirms that Charter agrees to be bound by the terms and conditions of the Franchise Agreement with the City of Wheeler. The Falcon entity that has entered into the Franchise Agreement with the City of Wheeler will retain its legal name but will now do business under the name of "Charter Communications."

Charter is committed to investing the time, talent and resources to provide cable and telecommunications services in the years ahead. We appreciate the opportunity to serve your community and look forward to a positive relationship as a member of your community.

Sincerely,

M. Celeste Vossmeier
Vice President – Government Relations

MCV:smf

j:\falcon\Closing\ln.doc

ORDINANCE NO. 81-1

AN ORDINANCE REPEALING ORDINANCE NO. 155 AND GRANTING TO NEHALEM TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONDUCT A GENERAL TELEPHONE AND TELEGRAPH BUSINESS WITHIN THE CITY OF WHEELER.

The CITY OF WHEELER ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 155 of the City of Wheeler is hereby repealed.

Section 2. There is hereby granted to Nehalem Telephone & Telegraph Company, a corporation, its successors and assigns, the right and privilege to conduct a general telephone and telegraph business within the City and to place, erect, lay, maintain and operate in, over and under the streets, alleys, avenues, thoroughfares, and public places and highways within the City such poles, wires and other appliances and conductors for or used in connection with the transmission of electricity for telephone and telegraph purposes. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground or, at the option of grantee, may be laid underground in pipes or conduits or otherwise protected; and grantee may install, maintain, use and operate, all usual or necessary fixtures and other apparatus to operate and maintain same.

Section 3. It shall be lawful for grantee to make all needful excavations in any of such streets, alleys, avenues, thoroughfares and public highways in City for the purpose of placing, erecting, laying, maintaining or operating such poles or other supports or conductors for wires and for repairing, renewing or replacing the same. All work shall be done in compliance with such reasonable rules; regulations and ordinances as may, during the continuance of this franchise, be adopted from time to time by City.

Section 4. Whenever the grantee, its successors and assigns, shall disturb any of the streets, alleys, avenues, thoroughfares or public highways in City for any of the purposes aforesaid, it shall restore the same to as good order and condition as existed prior to the commencement of such work, as soon as practicable after the completion of such work, and without unnecessary delay. Should grantee fail so to do, then the City upon giving to the grantee ten days' notice in writing of its intention so to do, may cause such repairs to be made and charge the cost thereof to and collect the same from grantee.

Section 5. Nothing in this ordinance shall be construed in any way to prevent the proper authorities of the City from sewerage, grading, planking, rocking, paving, repairing, altering or improving any of the streets, alleys, avenues, thoroughfares or public highways within the City in, upon or under which the poles, wires or other conductors of the grantee, may be placed; but any such work or improvements shall be so carried on as to avoid any unnecessary interference with the free use, operation, location or maintenance of the property of the grantee.

Section 6. In consideration of the rights and privileges herein granted, Nehalem Telephone & Telegraph Company shall pay to the City a franchise fee in the amount of 3 percent (3%) of its gross revenues from operations within the City. "Gross revenues" shall include only all local service revenues as presently defined in the Uniform System of Accounts adopted by the Federal Communications Commission, less net uncollectables. Within 60 days following the end of each calendar quarter, grantee shall furnish to City, in such form as the City shall require, a report covering all "gross revenues" received by it during the previous calendar quarter and at the same time shall pay the amount

8.30-7

of franchise fee due to the City pursuant to this paragraph. The City shall have the right to audit the books and records of grantee at reasonable times for the purpose of determining the accuracy of its reports.

Section 7. The grantee, for itself, its successors and assigns, agrees that during the life of this franchise it will provide good and efficient service and maintain its lines, poles, conduits and other physical properties in good order and repair throughout the entire term of the franchise, in accordance with established practices in the operation of telephone and telegraph services and in accordance with the rules and regulations governing installation and maintenance of telephone and telegraph equipment as promulgated by the Oregon State Public Utility Commissioner. In the event the grantee shall fail to keep its physical plant in repair or to furnish good and efficient service and shall for 30 days next following written notice thereof fail to comply or take adequate steps toward compliance with any lawful order of the Public Utility Commissioner of the State of Oregon relating to the furnishing of such service or the maintenance of such equipment, then, or at any time thereafter, while such default continues, the City may declare this franchise terminated, forfeited and at an end, and may require the removal of all properties of the grantee from the streets, alleys, avenues, thoroughfares and public highways in the City.

Section 8. Inasmuch as the grantee is now operating its telephone system upon the streets, alleys, avenues, thoroughfares and public highways of the City, no time is necessary to be fixed hereby for the beginning of construction of work thereon.

Section 9. The rates and charges for service to be made by the grantee for service to rendered by it under the terms of this ordinance and franchise shall be fixed and regulated by the Public Utility Commissioner of the State of Oregon.

Section 10. The rights, privileges and franchise herein granted shall continue and be in force for a period of 25 years from and after the effective date hereof.

Section 11. This ordinance shall become effective when it has been accepted by Nehalem Telephone & Telegraph Company and when Nehalem Telephone & Telegraph Company has surrendered the rights granted to it pursuant to Ordinance No. 81-1 of the City of Wheeler.

PASSED by the Council on the 17th day of March, 1981.

APPROVED:

Paul Steeb

Mayor

ATTEST:

Virginia L. Stahon
Recorder

8.30

8.30

I hereby certify that this Ordinance was adopted by the City Council of Wheeler, Tillamook County, Oregon, at a regular meeting of the City Council on the 17th day of *March*, 1981.

By: *Gregory L. Stetson*
City Recorder

(SEAL)

NEHALEM TELEPHONE & TELEGRAPH COMPANY hereby accepts the terms of the foregoing ordinance and does hereby surrender all rights granted by the City of Wheeler pursuant to Ordinance No. 81-1.

Dated this *15th* day of *April*, 1981.

NEHALEM TELEPHONE & TELEGRAPH COMPANY

By: *Wm. Lee Dillard*

CITY OF WHEELER

ORDINANCE NO. 90-7

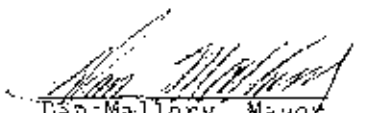
AN ORDINANCE AMENDING SECTION 6 OF ORDINANCE 81-1, AN ORDINANCE WHICH GRANTS TO NEHALEM TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONDUCT A GENERAL TELEPHONE AND TELGRAPH BUSINESS WITHIN THE CITY OF WHEELER.

THE CITY OF WHEELER ORDATNS AS FOLLOWS:

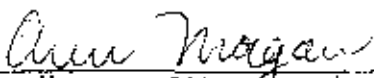
Section 1. Section 6 of Ordinance 81-1 shall be replaced with the following:

To the extent that Nehalem Telephone & Telegraph Co. operates within the City and uses the City's streets, alleys and highways for other than travel, the City may levy and collect and Nehalem Telephone & Telegraph Co. shall pay a privilege tax in the amount of Four Percent (4%) of the gross revenues currently earned by the Company within the City boundaries. "Gross Revenues" means those revenues derived from exchange access services as defined in ORS 401.710, less net uncollectibles from such revenues. Within 60 days following the end of each calendar quarter, grantee shall furnish to City, in such form as the City shall require, a report covering all "gross revenues" received by it during the previous calendar quarter and at the same time shall pay the amount of franchise fee due to the City pursuant to this paragraph. The City shall have the right to audit the books and records of grantee at reasonable times for the purpose of determining the accuracy of its reports.

PASSED and ADOPTED by the City Council this 20th day of November, 1990, and APPROVED by the Mayor this 20th day of November, 1990.


Dan Mallory, Mayor

ATTEST


Ann Morgan, City Recorder, pro-tem

CITY OF WHEELER
RESOLUTION NO. 2003-19

A RESOLUTION REGARDING THE CONSENT OF THE CITY OF WHEELER, OREGON TO THE TRANSFER OF THE FRANCHISE AGREEMENT FROM NEHALEM TELEPHONE & TELEGRAPH COMPANY TO NEHALEM TELECOMMUNICATIONS, INC.

WHEREAS, the CITY OF WHEELER, hereinafter referred to as "City", a municipality situated in Tillamook County, Oregon, acting by and through its Mayor and City Council, passed and enacted that certain Ordinance No. 81-1, dated March 17, 1891 and amended by Ordinance No. 90-7, dated November 20, 1990, hereinafter referred to as "Franchise", granting Nehalem Telephone & Telegraph Co., hereinafter referred to as "Nehalem" the authority to conduct general telephone and telegraph business within the City; and

WHEREAS, Nehalem intends to sell, transfer and convey all of its related assets, including all of its right, title and interest in the Franchise to Nehalem Telecommunications, Inc., hereinafter referred to as "Nehalem Telecommunications"; and

WHEREAS, it is in the best interests of the City and its citizens to consent to the assignment and transfer of the Franchise to Nehalem Telecommunications.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and the City Council, hereinafter referred to as "Council" of that City that:

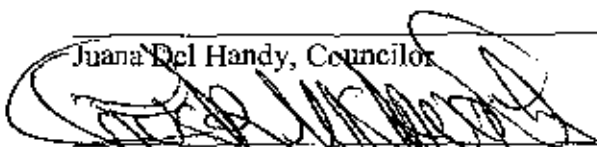
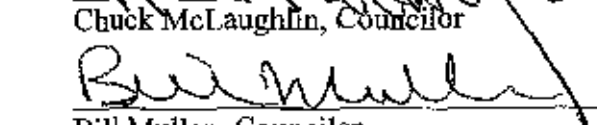
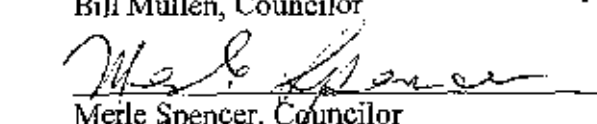
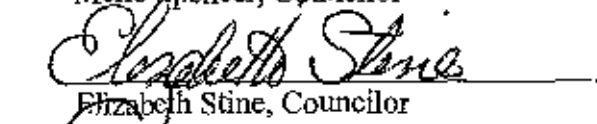

1. The Council hereby approves and consents to the transfer and assignment of the Franchise and all rights and obligations thereto from Nehalem, and the assumption of the Franchise by Nehalem Telecommunications.
2. Except as specifically set forth herein, this consent of the Council shall not alter, affect, or otherwise change any of the terms and conditions of the Franchise.
3. In connection with the assignment and transfer of the Franchise to Nehalem Telecommunications, the Council certifies that:
 - a. The Franchise was duly and validly issued by the City and Nehalem is currently the duly authorized franchisee;
 - b. The Franchise is in full force and effect as of the date hereof and is valid and enforceable in accordance with its terms with the Franchise having an expiration date of March 17, 2006.
 - c. No event of default under the Franchise, and no event which could become an event of default with the passage of time or the giving of notice, or both, has occurred and is continuing as of the date hereof.
 - d. All the fees owing to the City pursuant to the Franchise have been paid through September 30, 2003.
4. This Resolution shall take effect upon sale and transfer of ownership of Nehalem within the corporate limits of the City of Wheeler under Ordinance No. 81-1 which shall be memorialized by the execution and submittal of the Acknowledgement of

Transfer by authorized representatives of Nehalem and Nehalem Telecommunications in the form attached hereto as Exhibit "A".

ADOPTED by the City Council this 18th day of November, 2003, by the following vote:

CITY COUNCIL
WHEELER, OREGON

Aye Nay Absent/Abstain

 Juana Del Handy, Councilor	—	—	X / —
 Chuck McLaughlin, Councilor	X	—	— / —
 Bill Mullen, Councilor	X	—	— / —
 Merle Spencer, Councilor	X	—	— / —
 Elizabeth Stine, Councilor	X	—	— / —

ATTEST:


Larry Cole, City Manager, pro tem

CITY OF WHEELER

ORDINANCE NO. 2006-03

AN ORDINANCE AMENDING SECTION 10 OF ORDINANCE NO. 81-1 BY EXTENDING THE FRANCHISE AGREEMENT WITH NEHALEM TELECOMMUNICATIONS, INC. BY TEN (10) YEARS.

WHEREAS, the CITY OF WHEELER, hereinafter referred to as "City", a municipality situated in Tillamook County, Oregon, acting by and through its Mayor and City Council, passed and enacted that certain Resolution No. 2203-19 (November 18, 2003) acknowledging the transfer of ownership to Nehalem Telecommunications, Inc. as the new owner and the subsequent Exhibit A (January 2, 2004) showing Nehalem Telecommunications accepting the compliance with all terms and conditions of the franchise agreement (Ordinance No. 81-1, Ordinance No. 90-7, Resolution No. 2003-19 and Exhibit "A").

WHEREAS, the City wishes to accept Telecommunications offer to extend the Franchise Agreement by a total of ten (10) years from date of expiration of the original agreement, March 17, 2006;

THE CITY OF WHEELER ORDAINS AS FOLLOWS:

The 10-year extension of the franchise agreement will be reflected in Section 10, Wheeler Ordinance 81-1 as amended by Ordinance No. 90-7 as follows:

"The rights, privileges and franchise herein granted shall continue and be in force for a period of ten (10) years from and after March 17, 2006."

ADOPTED by the City Council this 18th day of April, 2006, by the following vote:

CITY COUNCIL

WHEELER, OREGON

Aye Nay Absent/Abstain

Juana Del Handy
Juana Del Handy, Councilor

X _____ 1

Virgil L. Staben, Councilor

_____ _____ X

Paul Russo
Paul Russo, Councilor

X _____ 1

James W. Neilson
James W. Neilson, Councilor

X _____ 1

Curt Lorenz
Curt Lorenz, Councilor

X _____ 1

ATTEST: Doug W. Hooper, City Manager

Doug W. Hooper

citymgrwheeler

From: Jim Tiger [jim@staytonlaw.com]
Sent: Friday, March 17, 2006 11:02 AM
To: Doug Cooper
Subject: Nehalem Telecommunications, Inc. franchise
Attachments: _AVG certification_.txt

Doug:

Copy of ORS 221.515 as follows:

221.515 Privilege tax on telecommunications carriers; maximum rate; deduction of additional fees. (1) The council of every municipality in this state may levy and collect from every telecommunications carrier operating within the municipality and actually using the streets, alleys or highways, or all of them, in such municipality for other than travel, a privilege tax for the use of those streets, alleys or highways, or all of them, in such municipality in an amount which may not exceed seven percent of the gross revenues of the telecommunications carrier currently earned within the boundaries of the municipality. The privilege tax authorized in this section shall be for each year, or part of each year, that such telecommunications carrier operates within the municipality.

(2) As used in this section, "gross revenues" means those revenues derived from exchange access services, as defined in ORS 401.710, less net uncollectibles from such revenues.

(3) A telecommunications carrier paying the privilege tax authorized by this section shall not be required to pay any additional fee, compensation or consideration, including the free use or construction of telecommunications facilities and equipment, to the municipality for its use of public streets, alleys, or highways, or all of them, and shall not be required to pay any additional tax or fee on the gross revenues that are the measure of the privilege tax. As used in this subsection, "use" includes, but is not limited to, street openings, construction and maintenance of fixtures or facilities by telecommunications carriers. As used in this subsection, "additional fee, compensation or consideration" does not include commissions paid for siting public telephones on municipal property. To the extent that separate fees are imposed by the municipality on telecommunications carriers for street openings, construction, inspection or maintenance of fixtures or facilities, such fees may be deducted from the privilege tax authorized by this section. However, telecommunications carriers shall not deduct charges and penalties imposed by the municipality for noncompliance with charter provisions, ordinances, resolutions or permit conditions from the privilege tax authorized by this section.

(4) For purposes of this section, "telecommunications carrier" has the meaning given that term in ORS 133.721. [1989 c.484 §5; 1999 c.1093 §10]

Jim Tiger
Duncan Tiger & Niegel, PC
Attorneys at Law
582 E. Washington St
PO Box 248
Stayton, Oregon 97383
(503) 769-7741 (telephone)
(503) 769-2461 (facsimile)
jim@staytonlaw.com (email)

3/17/2006

CITY OF WHEELER
ORDINANCE NO. 2007-01

next renewal
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AN ORDINANCE ADOPTING A FRANCHISE AGREEMENT
PEOPLE'S UTILITY DISTRICT AND THE CITY OF WHE

WHEREAS, the CITY OF WHEELER, hereinafter referred to as "City", a municipality situated in Tillamook County, Oregon, acting by and through its Mayor and City Council, formally passed and enacted that certain AGREEMENT (March 20, 1996) with the Tillamook People's Utility District, hereinafter referred to as "District"

WHEREAS, the City and the District wish to adopt a new Franchise Agreement;

WHEREAS, the City Council requests that the PUD pay to City a sum equal to four (4%) percent of District's gross net receipts as defined in the Agreement;

WHEREAS, the City has designated all franchise fees be receipted into the Street Fund because Utilities operate within the City right-of-ways;

NOW, THEREFORE, the City of Wheeler Ordains as Follows:

That Attachment "A", the Franchise Agreement with the Tillamook People's Utility District shall be the official agreement to regulate publicly owned rights-of way upon suppliers of electrical energy and shall be adopted by the Wheeler City Council.

Under the provisions of the City of Wheeler Charter, Chapter VIII, Section 32, this ordinance shall become effective on the thirtieth (30th) day after the adoption of this ordinance.

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement"), entered into and effective this 1st day of February, 2007, by and between the CITY OF WHEELER, a municipal corporation of the State of Oregon, hereinafter referred to as the "City," and the TILLAMOOK PEOPLE'S UTILITY DISTRICT, a people's utility district of the State of Oregon, hereinafter referred to as the "District."

WITNESSETH:

WHEREAS, the District is a people's utility district 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, ORS 758.210 to 758.270 and ORS 758.470, has the legal authority to regulate publicly owned rights-of-way under its control and issue 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 District is authorized by law to enter into this Agreement with the City; and

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

NOW, THEREFORE, the District and the City agree as follows:

Section 1: Grant of Franchise

A. The District is hereby granted an exclusive franchise right to conduct its electrical distribution business within the corporate limits of the City as the same now exist, or may hereafter be constituted. However, nothing herein contained shall in any way limit the City's ability to grant easement and/or franchise rights to other entities providing services other than electrical distribution services.

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 Agreement shall be deemed to be covered by the terms of this Agreement, 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. This Agreement shall be effective as of the Effective Date and shall terminate five (5) years from said date ("Initial Term"), unless otherwise provided in this Agreement. No later than ninety (90) days prior to the expiration of the Initial Term, the Parties shall begin to discuss a successor agreement. If the Parties have not entered into a successor agreement prior to the expiration of the Initial Term, then this Agreement shall continue to be in effect for an additional six (6) months or until a successor agreement is adopted by the Parties, whichever occurs first. Either Party may terminate the Agreement, 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 Agreement, it is expressly agreed by the parties hereto that either party to this Agreement 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 Agreement, meet with the other party's representatives to review, negotiate and reach an agreement 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. Commencing in January 2007, the District will submit to the City a four year work plan that has been approved by the District. Subsequent four year work plans will be submitted to the City as such work plans may be approved by the District.

B. New District poles or other "ground-mounted" facilities installed in the City during any term of this Agreement 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 Agreement. 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 City infrastructure project, as described 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 to the City. The District and the City shall use map information for their exclusive use only and to the extent allowed by law, will not disclose that information to the public.

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 to the District.

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 (F) above.

H. Any vegetation waste shall be disposed of by District consistent with applicable 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 Oregon laws and the applicable rules and regulations of the District and the City.

B. Whenever the District performs an excavation pursuant to this Agreement, 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, if the District's Facilities are located within such 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 Agreement 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 to the same or another City Rights-Of-Way, 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. The location, design and construction specifications of any facilities relocated pursuant to this Section shall be determined by the District in its sole discretion so long as such location, design and construction specifications otherwise comply with the provisions of this Agreement.

Section 8: Franchise Fee

A. In consideration of the rights and privileges granted in this Agreement, the District shall pay to the City, for each month during the life of this Agreement beginning ~~January 1, 2007~~, a Franchise Fee equal to ~~four~~ percent (4 %) 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 Agreement, 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 Agreement, except that nothing in this Agreement 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 Agreement.

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 Agreement. 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 applicable Oregon and/or federal law governing 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 the term of this Agreement, and the District will keep its books according to generally accepted accounting principles. The City may, at its own expense, and with five (5) business days notice, audit those books that are maintained in the ordinary course of business at the District's Offices.

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 Agreement, 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 Agreement, or to enforce any provision of this Agreement, 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 Agreement may only be modified by written consent of both parties. This Agreement 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 Agreement reflects the complete Agreement of the parties with respect to the subject matter contained herein. This Agreement 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 Agreement and the authority of each party hereto to execute and perform this Agreement shall be governed by the laws of the State of Oregon.

D. Except as otherwise expressly stated herein, the District and the City reserve all rights and powers granted them under state and/or federal law as the same may be amended from time to time.

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

Executed this 31st day of January, 2007

Executed this 1st day of February, 2007

Tillamook People's Utility District

Harry E. Hewitt
President, Board of Directors

Pete Kelly
General Manager

City of Wheeler

Richard Miller
Mayor

James W. Hooper
City Manager