

**RESOLUTION 2011-22**

**A RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH TILLAMOOK COUNTY RELATED TO BUILDING OFFICIAL SERVICES**

**WHEREAS**, this Agreement is made pursuant to ORS 190.010, which provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the Agreement, or its officers or agents, have the authority to perform; and

**WHEREAS**, the City of Garibaldi recognizes that Tillamook County has jurisdictional authority to regulate Oregon Building Code (including all specialty codes) within the municipal boundaries of the City through established the County's building program and as prescribed by Oregon law; and

**WHEREAS**, Tillamook County recognizes that the City of Garibaldi has jurisdictional authority to regulate the use and development of land within the municipal boundaries of the City through its established Municipal Code, Comprehensive Plan and Planning Department as prescribed by Oregon law;

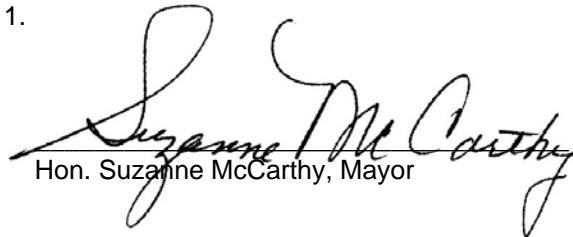
**NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:**

**Section 1.** The Mayor and City Manager/Recorder are hereby authorized to sign the Intergovernmental Agreement between the City of Garibaldi and Tillamook County Related to Building Official Services, which is attached as Exhibit A and incorporated by reference into this resolution, on behalf of the City of Garibaldi.

**Section 2.** The City Manager shall send a copy of this resolution (as adopted and signed) to Tillamook County along with an executed copy of the attached agreement to be approved and adopted by the Tillamook County Board of Commissioners.

**Section 3.** This resolution is effective on the date of adoption.

**THIS RESOLUTION IS ADOPTED BY THE COMMON COUNCIL AND APPROVED TO BE SIGNED BY THE MAYOR, this 19<sup>th</sup> day of September, 2011.**

  
Hon. Suzanne McCarthy, Mayor

ATTEST:

  
John O'Leary, City Manager

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF GARIBALDI AND TILLAMOOK COUNTY  
RELATED TO BUILDING OFFICIAL SERVICES**

The City of Garibaldi, an Oregon Municipal Corporation (“CITY”), and Tillamook County, a political subdivision of the State of Oregon (“COUNTY”), enter into this Agreement effective October 1, 2011 as follows:

**RECITALS**

- A. This Agreement is made pursuant to ORS 190.010, which provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the Agreement, or its officers or agents, have the authority to perform.
- B. CITY recognizes COUNTY has jurisdictional authority to regulate Oregon Building Code (including all specialty codes) within the municipal boundaries of CITY through COUNTY’s established building program as prescribed by Oregon law.
- C. COUNTY recognizes that CITY has jurisdictional authority to regulate the use and development of land within the municipal boundaries of CITY through its established Municipal Code, Comprehensive Plan, and Planning Department as prescribed by Oregon law.

**AGREEMENT**

**1. TERM**

This Agreement will commence October 1, 2011 and continue until one or both parties elect to terminate the Agreement. The parties may mutually agree to terminate this Agreement at any time. A party electing to terminate the Agreement will provide at least one hundred and eighty (180) days written notice of intent to terminate to the other party.

**2. BUILDING OFFICIAL SERVICES**

In recognition of payment by building permit applicants for services of the Building Official under this Agreement, COUNTY will regulate all structural building within CITY pursuant to CITY ordinance and as prescribed by ORS Chapter 455. To implement such services, COUNTY will designate one or more persons as the responsible Building Official under this Agreement and will provide CITY with the designated person’s contact information.

### **3. APPOINTMENT OF BUILDING OFFICIAL**

The Building Official, including any COUNTY personnel supporting the Building Official, will at all times be the employee of COUNTY which is solely responsible for all matters related to employment of the Building Official, including but not limited to responsibility for payment of all withholding required by law including but not limited to taxes, including payroll, income, and Social Security (FICA). Consultant shall pay to the Oregon Department of Revenue all sums withheld from employees under ORS 316.167. COUNTY will indemnify, defend, and hold CITY harmless from claims for payment of all such wages, benefits, and tax.

### **4. REVIEW PROTOCOL**

The parties agree to the following process for undertaking required reviews by the respective jurisdiction:

#### **A. City Land Use Review**

CITY will first review any building permit application for property within CITY for compliance with CITY ordinances under applicable provisions of ORS Chapter 197 and 227 (land use).

#### **B. City Approval Information**

CITY approval or permission will include site information, zoning, and a description of what CITY approved to be built. In addition, the CITY approval will indicate the specific height of structure from grade, distance of structure from property lines, the total square footage of all proposed structures, and special conditions of approval including but not limited to landscape requirements, driveway locations, riparian conditions, connection to public utilities, and similar conditions.

#### **C. County Building Program Review**

After CITY, through its City Manager or City Planner, issues a written approval of the application, COUNTY will be responsible for reviewing and issuing all permits for activities regulated by ORS Chapter 455 and requiring approval of a Building Official. COUNTY will ensure that all structures are built according to plans reviewed and approved by CITY and COUNTY.

#### **D. Alterations After City Approval**

If the application to COUNTY is altered, modified, or is any way different from the application as first approved by CITY, COUNTY will return the application to CITY for any required additional CITY review prior to COUNTY initiating its review of the application. "Alterations" to an approved application include changes to the

design or location of a structure affecting structure height, square footage, footprint, position of structure in relationship to property lines, property access to public utilities including but not limited to, water, sewer, storm water, transportation or power, or the size and/or location of any signs attached to the structure.

E. County Approval

COUNTY will issue a certificate of occupancy at the time the Building Official approves final occupancy of a structure in CITY. COUNTY will provide a copy of the certificate to CITY.

**5. ADDITIONAL STANDARDS FOR BUILDING PROGRAM**

A. Public Safety

In addition to reviewing and issuing building permits, COUNTY will regulate all buildings in CITY for public safety as defined by state law and Oregon Structural (building) Code. CITY recognizes that COUNTY has authority to condemn any structure that COUNTY determines is unsafe for occupancy. If after investigation COUNTY determines unsafe structural condition warrants abatement, including but not limited to repair or demolition, COUNTY will provide written notice of its determination to CITY. To the extent reasonable under the circumstances, COUNTY will either secure from public access any building it determines to be unsafe or notify CITY of the need for such security.

B. NFIP Compliance

COUNTY will ensure that all building construction regulated by COUNTY within CITY complies with the requirements of the federal National Flood Insurance Program (NFIP) as regulated by the COUNTY Building Program and the requirements of the CITY Flood Plain Manager as provided in the CITY approval.

C. Geologic Hazard Review

1. COUNTY is not responsible for evaluating the requirements of geological hazard or impact reports for adherence to engineering principles or methods intended to prevent land erosion or geologic hazards associated with development impacts.
2. COUNTY will ensure that all building construction regulated by COUNTY for property within the CITY complies with the specific requirements of geological hazard or impact reports included in the CITY approval and intended to prevent land erosion or other hazard.

#### D. Fee Schedule

As of the effective date of this Agreement, COUNTY will be responsible for providing CITY a copy of the fee schedule for all COUNTY Building Department services. At any time after COUNTY begins performing services under this Agreement, COUNTY will provide CITY a copy of any change in fees or charges to applicants for Building Department Services.

#### E. Inquiries

COUNTY will be responsible for responding to inquiries or complaints regarding public safety concerns of a structure located within CITY.

#### F. Public Records

COUNTY will keep and maintain all records related to COUNTY Building Department Program as required by law. COUNTY will be responsible for addressing a public records request related to Building Official services or other services. COUNTY will not charge CITY a fee for copies of records related to buildings or property owned or controlled by CITY. CITY will keep and maintain all records related to CITY land use program. CITY will be responsible for addressing a public records request related to land use review and approval by CITY.

#### G. Reports

1. At CITY's option, COUNTY will provide reports to CITY of building permit application reviews and approvals, in a regular format selected by COUNTY that includes a list of all permits issued including permit holder's last name, the situs address of the permit, the date the permit was issued, the date of the last inspection, whether the permit is still active, and the date the permit was finalized. CITY will request such reports no more frequently than once each calendar month. CITY agrees to compensate COUNTY for staff time and material costs of producing these reports. COUNTY agrees to establish a single, non-variable cost or "flat-fee" per report, and to provide sixty (60) days notice to CITY before changing this fee.
2. Within a reasonable period of time but no later than 60 days after a potential violation is reported, COUNTY will report to CITY any structural code violation in the CITY along with copies of any complaint received by COUNTY related to a building permit issued for construction within CITY, as well as any follow up action taken by COUNTY.

## **6. CITY OBLIGATIONS**

### **A. Development and Land Use**

CITY will at all times be responsible for regulating land use as prescribed by ORS Chapters 197 and 227, state wide planning goals, and city ordinance as they pertain to land use regulation within the CITY.

### **B. Flood Plain Manager; Review**

CITY shall be responsible to provide a Flood Plain Manager as defined by the Federal Emergency Management Agency's National Flood Insurance Program (NFIP) and as required by Oregon Statewide Planning Goal 7. CITY will review all land use applications within its municipal boundaries to ensure compliance with its municipal code and the NFIP.

### **C. Geologic Hazard**

CITY shall be responsible to ensure geological hazard and impact assessments are conducted as prescribed by CITY municipal code. CITY shall not be responsible to require engineering addressing structural aspects of a proposed land use. CITY staff will review for completeness any geological hazard or impact study submitted to CITY as a necessary part of a land use permit application. Land use approvals issued by CITY will include geological hazard and impact reports as attachments and will be included with CITY land use approval. CITY is not responsible to determine compliance of proposed engineering with structural building code regulated by COUNTY.

### **D. Complaints to CITY**

CITY will manage a complaint process that addresses land use responsibilities of CITY. Complaints reasonably determined by CITY staff as relevant to the authority or responsibilities of the COUNTY Building Program will be referred to the Building Official. CITY shall make its complaint process available to COUNTY.

### **E. City Procedures**

CITY shall make available to COUNTY a current copy of all policies and operational procedures associated with City of Garibaldi Land Use Program.

### **F. Notice of Authorized Personnel**

CITY will provide COUNTY written notice of CITY personnel with authority to make or sign land use determinations on behalf of the City of Garibaldi, including an original signature and contact

information for each such person. Within 30 days of any change, CITY will notify COUNTY of any changes in such authorized personnel.

## **7. CITY AND COUNTY SOLE AUTHORITIES**

CITY and COUNTY each has sole responsibility for applying, regulating, and enforcing its respective laws except as specified in this Agreement.

## **8. LEGAL RESPONSIBILITY**

A. Each party shall be responsible, to the extent allowed by law (including the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

B. To the extent allowed under the Oregon Constitution and the Oregon Tort Claims Act, each party shall indemnify and hold harmless the other party from all claims, damages, or expenses of any kind, including attorney's fees and other costs and expenses of litigation, for personal or property damage arising out of the indemnifying party's performance required by this Agreement.

C. City's performance is conditioned upon the County's compliance with applicable law, including Public Contracting Code ORS Chapters 279A and B which are incorporated into this Agreement by reference and made a part of this Agreement.

## **9. INTEGRATION**

This AGREEMENT supersedes all prior oral or written agreements between CITY and COUNTY. It represents the entire agreement between the parties.

## **10. SAVINGS**

Should any clause or section of this AGREEMENT be declared by a court to be void or voidable, the remainder of this AGREEMENT shall remain in full force and effect to the extent practicable under the circumstances.

## **11. WAIVER; MODIFICATION**

Failure to enforce any provision of this AGREEMENT does not constitute a continuing waiver of that provision, any other provision, or of the entire AGREEMENT. The rights and duties under this AGREEMENT shall not be modified, delegated, transferred or assigned, except with the written consent of both parties.

## **12. JURISDICTION; LAW**

This AGREEMENT is executed in the State of Oregon and is subject

to Oregon law and jurisdiction. Venue of any claim or suit shall be in Tillamook County, unless otherwise agreed by the parties.

### **13. NOTICES**

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto pertaining to this Agreement or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Recipient or Grantor at the address or number set forth below. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

To CITY:

JOHN O'LEARY, CITY MANAGER  
CITY OF GARIBALDI  
PO BOX 708  
GARIBALDI, OREGON 97118  
(503) 322-3327

To COUNTY:

CRAIG WAKEFIELD, BUILDING OFFICIAL  
TILLAMOOK COUNTY COMMUNITY DEVELOPMENT  
1510-B THIRD STREET  
TILLAMOOK, OR 97141  
(503) 842-3408

### **14. CONSTRUCTION**

The parties agree and acknowledge that the parties had the advice of counsel in the drafting of this Agreement, and that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not apply to interpretation of this Agreement.

### **15. NO THIRD PARTY BENEFICIARIES**

Grantor and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

**TILLAMOOK COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Charles J. Hurliman, Chair

\_\_\_\_\_  
Tim Josi, Vice Chair

\_\_\_\_\_  
Mark Labhart, Commissioner

Approved as to form:

\_\_\_\_\_  
William Sargent, County Counsel

**CITY OF GARIBALDI**

\_\_\_\_\_  
Suzanne McCarthy, Mayor

Attest: \_\_\_\_\_  
John O’Leary, City Recorder

Approved as to form:

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Joan S. Kelsey, City Attorney