

## **RESOLUTION NO. 2284**

### **A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE PORT OF PORTLAND ADDRESSING ENVIRONMENTAL LIABILITY OF ALL PHASES OF THE TROUTDALE REYNOLDS INDUSTRIAL PARK (TRIP), AND THE DEVELOPMENT OF RELATED INFRASTRUCTURE AND PUBLIC IMPROVEMENTS.**

#### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. Resolution No. 1996 on May 26, 2009, approved the Intergovernmental Agreement (IGA) with the Port of Portland (Port) relating to certain easements, rights of way and utilities (Public Improvements) proposed for dedication by the Port to the City within the Troutdale Reynolds Industrial Park (TRIP) property.
2. Resolution No. 2098 on April 12, 2011, approved an updated IGA with the Port for the TRIP Phase 1 development and dedication of Public Improvements, and the ongoing obligations.
3. Over the past few years the Port has been preparing the TRIP Phase 2 development plans and now wishes to enter into an IGA addressing the Infrastructure and Public Improvements for TRIP Phase 2, and all prior and anticipated future phases of TRIP.
4. The IGA is to limit the City's liabilities and costs associated with having to own and operate Public Improvements including underground utilities in an area of pre-existing residual contamination subject to agreements with environmental protection agencies, the Port and the City.
7. The Parties wish to enter into an IGA Addressing Environmental Liability of All Phases of the TRIP, and the Development of Related Infrastructure and Public Improvements.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:**

Section 1. Agrees now that the City enter into an IGA with the Port of Portland Addressing Environmental Liability of All Phases of the Troutdale Reynolds Industrial Park (TRIP), and the Development of Related Infrastructure and Public Improvements.

Section 2. Designates the City Manager or Finance Director (each a "City Official") or a designee of the City Official, to act on behalf of the City, and without further action by the City Council the City Official is hereby authorized, empowered and directed to sign the IGA on behalf of the City, and any and all other required and necessary documents to implement the intent of the agreement.

Section 3. The City Official is hereby authorized to execute, acknowledge and deliver the IGA in substantial conformity with Exhibit A of the Staff Report, including any other supporting and implementing documents, and to take any other action as may be advisable, convenient, necessary, or appropriate to give full force and effect to the terms and intent of the IGA, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 4. Further, consistent with intent of the IGA, and in the best interest of the City, the City Official is authorized to determine, execute, acknowledge and deliver any subsequent addendums, extension, revisions, modification, or successor documents of the IGA, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 5. The Finance Director is authorized to disburse funds, subject to annual appropriations, as necessary to fulfill the IGA obligations, and is further directed to implement all such actions necessary to ensure budgetary compliance.

Section 6. This Resolution shall be effective upon adoption.

**YEAS: 7**

**NAYS: 0**

**ABSTAINED:**



**Doug Daoust, Mayor**

Date 5/27/15



**Debbie Stickney, City Recorder**

**Adopted: May 26, 2015**

## TROUTDALE REYNOLDS INDUSTRIAL PARK INTERGOVERNMENTAL AGREEMENT

This INTERGOVERNMENTAL AGREEMENT ("Agreement") entered into as of the Effective Date as defined in this Agreement between the CITY OF TROUTDALE ("City"), a municipal corporation, and THE PORT OF PORTLAND ("Port"), a port district of the state of Oregon (individually a "Party" and collectively the "Parties"), in connection with the Port's proposed development and dedication of those portions of the "Troutdale Reynolds Industrial Park Property" or "TRIP Property," located in Troutdale, Oregon, as depicted in **Exhibit A** to this Agreement.

### RECITALS

- A. WHEREAS, the Port owns and is proposing redevelopment of the TRIP Property into industrial and commercial facilities as shown on the TRIP Master Plan attached as **Exhibit D**;
- B. WHEREAS, in connection with the redevelopment of the TRIP Property the Port has constructed and dedicated the TRIP Phase I Public Improvements, including the Swigert Way Corridor as illustrated in **Exhibit B** and the Swigert Way Infrastructure as illustrated in **Exhibit C**, and the Port is constructing the new TRIP Phase II Public Improvements as illustrated in **Exhibit B-1**;
- C. WHEREAS, in connection with such redevelopment the Port requested and received City annexation approval of a portion of the TRIP Property on February 28, 2007, and City preliminary approval of the first major partition plat on August 15, 2007;
- D. WHEREAS, the TRIP Property has been listed as the Reynolds Metals Superfund Site, Troutdale, on the United States Environmental Protection Agency ("EPA") National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA") and listed on the Oregon Department of Environmental Quality ("DEQ") Confirmed Release List and Inventory under ORS Chapter 465;
- E. WHEREAS, the TRIP Property has been and continues to be remediated under a Consent Decree, Case No. 3:08-cv-00108-KI, between the United States and Reynolds Metals Company, its successors and assigns ("Reynolds") and Alcoa, Inc., its successors and assigns ("Alcoa") entered in the United States District Court for the District of Oregon on September 10, 2008 ("United States Consent Decree" as defined in Section 25.31) and a Consent Judgment, Case No. 0810-14363, between the State of Oregon and Reynolds entered in the Multnomah County Circuit Court on October 10, 2008 ("State of Oregon Consent Judgment"), each requiring implementation of the Final Record of Decision issued by EPA with the concurrence of DEQ on September 29, 2006 ("ROD") and compliance with the Reynolds-DEQ Easement and Equitable Servitudes dated December 19, 2007, and the Reynolds-Oregon Department of Parks and Recreation Conservation Easement dated December 13, 2007 (collectively the "Reynolds Remedial Action Requirements," defined in Section 25.24);

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### RECITALS

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B. WHEREAS, in connection with the redevelopment of the TRIP Property the Port has constructed and dedicated the TRIP Phase I Public Improvements, including the Swigert Way Corridor as illustrated in **Exhibit B** and the Swigert Way Infrastructure as illustrated in **Exhibit C**, and the Port is constructing the new TRIP Phase II Public Improvements as illustrated in **Exhibit B-1**;

C. WHEREAS, in connection with such redevelopment the Port requested and received City annexation approval of a portion of the TRIP Property on February 28, 2007, and City preliminary approval of the first major partition plat on August 15, 2007;

D. WHEREAS, the TRIP Property has been listed as the Reynolds Metals Superfund Site, Troutdale, on the United States Environmental Protection Agency (“EPA”) National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (“CERCLA”) and listed on the Oregon Department of Environmental Quality (“DEQ”) Confirmed Release List and Inventory under ORS Chapter 465;

E. WHEREAS, the TRIP Property has been and continues to be remediated under a Consent Decree, Case No. 3:08-cv-00108-KI, between the United States and Reynolds Metals Company, its successors and assigns (“Reynolds”) and Alcoa, Inc., its successors and assigns (“Alcoa”) entered in the United States District Court for the District of Oregon on September 10, 2008 (“United States Consent Decree” as defined in Section 25.31) and a Consent Judgment, Case No. 0810-14363, between the State of Oregon and Reynolds entered in the Multnomah County Circuit Court on October 10, 2008 (“State of Oregon Consent Judgment”), each requiring implementation of the Final Record of Decision issued by EPA with the concurrence of DEQ on September 29, 2006 (“ROD”) and compliance with the Reynolds-DEQ Easement and Equitable Servitudes dated December 19, 2007, and the Reynolds-Oregon Department of Parks and Recreation Conservation Easement dated December 13, 2007 (collectively the “Reynolds Remedial Action Requirements,” defined in Section 25.24);

F. WHEREAS, known residual fluoride groundwater contamination and other residual contamination associated with the historical operation of an aluminum smelter remains on the TRIP Property as components of Removal (as defined in Section 25.21) and Remedial Action (as defined in Section 25.22) approved by EPA and DEQ under the terms and conditions of the Reynolds Remedial Action Requirements;

G. WHEREAS, the Port acquired the TRIP Property on December 21, 2007, free of liability for known and unknown existing hazardous materials releases on the Site as of that date ("Reynolds Contamination" defined in Section 25.23) pursuant to state and federal law, including a consent judgment entered into between the Port and the State of Oregon on December 18, 2007, in settlement of Multnomah County Circuit Court Case No. 0712-15146 ("Port Consent Judgment" defined in Section 25.17) and the Bona Fide Prospective Purchaser defense ("BFPP Defense" defined in Section 25.2) pursuant to CERCLA Section 107(r), 42 USC § 9607(r);

H. WHEREAS, Port and the City entered into the first Intergovernmental Agreement concerning the TRIP Property on June 1, 2009. A subsequent Intergovernmental Agreement was entered into by the Port and the City on April 18, 2011, to include an updated City Phase I Environmental Site Assessment for TRIP Phase I Public Improvements. The City approved the Final Plat for the TRIP Phase I Public Improvements on April 25, 2011. The Final Plat was recorded by the Port on May 3, 2011, transferring the TRIP Phase I Public Improvements to the City free of liability for known and unknown Existing Hazardous Materials Releases (as defined in Section 25.13) on the TRIP Property as of that date pursuant to a consent judgment entered into between the City and the State of Oregon on June 16, 2010, in settlement of Multnomah County Circuit Court Case No. 1006-08622 ("Troutdale Consent Judgment" defined in Section 25.30), and the Bona Fide Prospective Purchaser defense ("BFPP Defense" defined in Section 25.2) pursuant to CERCLA Section 107(r), 42 USC § 9607(r);

I. WHEREAS, the City accepted dedication of the TRIP Phase I Public Improvements on January 28, 2014 after the Port corrected certain deficiencies concerning those improvements;

J. WHEREAS, the Port has certain obligations under the Port Consent Judgment and certain continuing obligations under the BFPP Defense in order to maintain its non-liability for the Reynolds Contamination (collectively the "Port Continuing Obligations" defined in Section 25.18), and the City has certain obligations under the Troutdale Consent Judgment and certain continuing obligations under the BFPP Defense in order to maintain its non-liability for the Existing Hazardous Materials Releases);

K. WHEREAS, it is the intent of the Port and the City that, subject to the exceptions identified in this Agreement, any ownership or operational obligations related to the Public Improvements on the TRIP Property, once accepted by the City, are transferred to the City in a manner that protects the City from any and all costs and

expenses or liability associated with any “Existing Hazardous Materials Releases” (defined in Section 25.13) to, in, on, or from the Public Improvements;

L. WHEREAS, prior to finalizing, approving, and recording the TRIP Phase II Final Plat (defined in Section 25.9), the City may seek the necessary authorizations from City Council to exercise its eminent domain authority through purchase or condemnation of the proposed Public Improvements;

M. WHEREAS, in connection with the construction of the Public Improvements the Port has provided the City OSHA 24-Hour Hazardous Waste Operations and Emergency Response (“HAZWOPER”) training, shared the Port’s consultants’ project specific health and safety plans with the City, and made Port employees familiar with the health and safety requirements associated with the construction of the Public Improvements available to the City;

N. WHEREAS, the Port has proposed constructing new TRIP Phase II Public Improvements for dedication to the City, requiring the Port and the City to enter into this revised, modified Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and obligations of the Parties in constructing, dedicating, and operating the Public Improvements on the TRIP Property, the Parties agree as follows:

#### **TERMS AND CONDITIONS OF AGREEMENT**

1. Recitals incorporated.

The Recitals are incorporated into this Agreement by this reference.

2. Liability Related to Construction of Public Improvements.

The Port releases the City from any and all liability to the Port or any person acting by or through the Port arising from or related to work performed on or concerning the TRIP Property by the Port, its employees, agents, or contractors, including such work that was authorized by the City prior to, through and including dedication and acceptance of the Public Improvements by the City, including without limitation, authorization by building permits, construction, or land use approvals, lot line adjustments or other authorizations for development of, or construction at the TRIP Property.

3. Port Continuing Obligations

The Port shall continue to satisfy the Port Continuing Obligations arising from the TRIP Property, including, without limitation, the Public Improvements.

4. Port Obligation to Provide Environmental Information to the City

Upon request by the City, the Port shall promptly provide the City access to all environmental site assessments, analyses, data and information it possesses or obtains related to the TRIP Property that may affect or concern the Public Improvements.

5. Conditions Precedent to Final Plat Approval, Dedication and Acceptance of Public Improvements

Prior to the City's approval and recordation of any proposed Final Plat and the City's acquisition of any easement or operational interest in the Public Improvements, the following conditions shall be met:

5.1 Five Foot Limit to Easement Depth

The Final Plat shall note that the extent of the easement interest being dedicated to the City shall extend to a depth not exceeding five (5) feet below any utility systems installed beneath the ground surface of the Public Improvements.

5.2 Port Health and Safety Planning and Related Costs and Expenses

The Port shall, at the Port's sole cost and expense, have shared with the City its health and safety plans and health and safety compliance planning work for constructing the Public Improvements and shall have made the Port employees familiar with the health and safety requirements associated with construction activities relating to the Public Improvements available to the City.

5.3 Port to Address Hazardous Materials Releases Encountered During Construction

As between the Port and the City, the Port shall, at the Port's sole cost and expense, or shall arrange for another person to, contain, excavate, remove, or remediate as required by the Reynolds Remedial Action Requirements, the Contaminated Media Management Plan ("CMMP" as defined in Section 25.7) and all Applicable Law, any and all contaminated soils, groundwater, or other media encountered or generated during construction of the Public Improvements or in preparing a site for construction that abuts the Public Improvements.

5.4 Public Improvements Operation and Maintenance Plan; Health and Safety Plan Requirements

In cooperation with the City, the Port at the Port's sole cost and expense, shall prepare an updated Operations and Maintenance Plan for the Public Improvements ("O&M Plan") for use by the City. The Parties intend to obtain DEQ review and approval of the O&M Plan for use as nonbinding guidance for Operation and Maintenance of the Public Improvements; however, DEQ approval is not a condition of the Port's obligations regarding the O&M Plan under this Agreement. The O&M Plan shall be prepared in accordance with the CMMP and address, including without

limitation, corrections to unpermitted inflow or infiltration into the sanitary and stormwater systems within the Public Improvements, and management of existing engineering and institutional controls, for Existing Hazardous Materials Releases. The O&M Plan shall contain, at a minimum, the following components:

5.4.1 A Health and Safety Plan defining the health and safety compliance and training necessary, additive to standard municipal government health and safety compliance and training, that will enable any person that may encounter Existing Hazardous Materials Releases to safely perform operation and maintenance activities for the Public Improvements;

5.4.2 Modified contaminated media management procedures and requirements consistent with the procedures and requirements of the CMMP to address: (i) preventing infiltration into and inflow within the sanitary and stormwater systems of Existing Hazardous Materials Releases that are not otherwise permitted releases under the National Pollutant Discharge Elimination System ("NPDES") program and correcting any City of Troutdale NPDES MS4 or POTW permit violations or other issues resulting from the unpermitted infiltration or inflow of such Existing Hazardous Materials Releases; (ii) responding to any known Existing Hazardous Material Releases and future discovery of currently unknown Existing Hazardous Materials Releases to, on, in, or from the Public Improvements that are necessary to encounter, contain in place, work around, remove, remediate, dispose of, or otherwise manage in order to perform operation and maintenance of the Public Improvements;

5.4.3 Procedures for dealing with emergencies or other unanticipated situations involving the re-release of Existing Hazardous Materials Releases;

5.4.4 Procedures for the Port, the City and their representatives to access the Public Improvements to implement any of the provisions of the O&M Plan, including but not limited to party notification requirements and pre-approval, insurance, and indemnity requirements for contractors; and

5.4.5 Description of the components of the O&M Plan that will be implemented or funded by the Port and which components will be implemented or funded by the City.

## 6. Post Plat Approval and Recordation Reimbursement Obligations Regarding Hazardous Materials Releases

6.1 After dedication to and acceptance by the City of the Public Improvements, the Port shall reimburse the City for all costs and expenses not including City Operating Expenses incurred by the City related to or arising from Existing Hazardous Materials Releases to, in, on, or from the Public Improvements that the City in its reasonable discretion deems necessary to carry out its municipal duties, including without limitation, costs and expenses relating to or arising from Existing Hazardous Materials Releases to soil, groundwater, or other media encountered on, in or from the

area of the Public Improvements and the TRIP Property as well as dewatering or disposal costs; provided however, the Port shall not be liable to the City to the extent that such costs, expenses or damages relating to or arising from Existing Hazardous Material Releases are caused by the negligence or willful misconduct of the City or to the extent that such costs, expenses or damages result solely from the acts or omissions of a third party after dedication and acceptance of the Public Improvements by the City. For purposes of this Subsection, "third party" does not include the Port's agents, contractors or any Port lessee whose leasehold abuts the Public Improvements. In addition, the Port shall reimburse the City for the City's reasonable third party consulting costs in reviewing the updated O&M Plan and to prepare a Phase I Environmental Site Assessment for the Port's proposed TRIP Phase II Improvements in compliance with current ASTM standards as set forth at 40 C.F.R. Part 312 in the amount not to exceed \$20,000.00, and the Port shall reimburse the City for all costs associated with providing employee training as deemed necessary by the City and the Port, taking into account environmental conditions elsewhere in the City and Applicable Law, for the proper operation, maintenance, repair or replacement of the Public Improvements.

6.2 The City shall notify the Port as soon as practicable after the City has actual knowledge of any Hazardous Materials Releases detected in the area of the Public Improvements or any emergency relating to the Public Improvements that the City determines may require excavation or dewatering in response to such emergency. Except as set forth in this Subsection 6.2 for emergencies, in the event that the City does not receive a written response from the Port containing specific instructions for the prompt removal of any Hazardous Materials by the Port within two week(s) of the City's notice to the Port described in this Subsection 6.2, then the City may in its sole discretion elect to remove and dispose of any such Hazardous Materials in accordance with Applicable Law and seek reimbursement from the Port pursuant to the terms of this Agreement. In situations that the City, in its sole discretion, deems necessary to address any emergency, including without limitation, dewatering, disposal or other Removal actions, response from the Port shall not be required for purposes of reimbursement under this Agreement.

6.3 Costs or expenses incurred by the City under this Section 6 shall be reimbursed in full by the Port within thirty (30) days of delivery of the City's invoices with reasonable backup documentation to the Port. Reasonable backup documentation shall include: 1) invoices containing information describing the work performed, the employees or contractors who performed the work and their hourly rate, and 2) all laboratory or field analyses and waste disposal documentation available to the City concerning the invoiced matter, as applicable.

6.4 For the purposes of this Section 6, the Parties agree that "Passive Migration" (as defined in Section 25.16) of Existing Hazardous Materials Releases into or from the Public Improvements shall not constitute negligence or willful misconduct.

## 7. Indemnity

To the extent permitted by Oregon law and subject, whenever applicable, to the limitations of liability of the Oregon Tort Claims Act, *provided that* notwithstanding the

preceding condition, the Port shall fund the obligations to the City of this Section 7 up to and including the limits set forth in Section 7.3, the Port shall, at its sole cost and expense, defend (with attorneys, consultants and experts chosen by mutual agreement of the Parties), hold harmless, and indemnify the City from and against any and all claims (whether statutory or common law, administrative or judicial), demands or, notices of claim, notices of violation, causes of action, actions, and suits of every kind and character by a third party against the City, including, without limitation, claims for death, personal injury, property damage or any other damage, penalty, fines, fees, losses, expenses, costs, obligations, recoveries, liens, or costs of investigation, monitoring, removal, and remedial actions, or natural resources damages or restoration, that arise out of, or are related to the Existing Hazardous Materials Releases to, on, in, or from the Public Improvements, or the acts or omissions of the Port, its contractors, lessees of the Property abutting the Public Improvements that exacerbate or contribute to the Existing Hazardous Materials Releases to, on, in, or from the Public Improvements, including, without limitation, claims arising out of or relating to the following situations: (i) an Existing Hazardous Materials Release to, in, on or from the Public Improvements, regardless of whether or not caused by the Port or by acts or omissions within the control of the Port; (ii) negligence by the Port or its contractors in implementing the O&M or CMMP requirements relating to or affecting the Public Improvements; and (iii) the failure of the Port to comply with the terms and conditions of this Agreement. The Parties shall cooperate in carrying out the obligations of this Section 7. Although the Port acquired the TRIP Property free of liability for known and unknown Existing Hazardous Substance Releases by virtue of the Port Consent Judgment and the Port's BFPP Defense, to the extent any obligation to indemnify arises under this Agreement, due to the existence of a triggering indemnity situation listed in this Section 7, liability for performance of the tasks for which indemnity payments are required of the Port currently is an obligation of the Port under applicable environmental laws contingent on the Port's failure to continue to satisfy the terms and conditions of the Port Consent Judgment or the BFPP Defense. The indemnity obligations of this agreement are contractual, may be relied upon, and are intended by the parties to be enforceable under all circumstances as vested rights. In the event of any determination by a court of competent jurisdiction that the Port's indemnity obligations under this Agreement might, under some circumstance, become (or be) in violation of any law, debt limitation or constitutional limitation applicable to the Port, the Port and the City will jointly seek appropriate judicial relief, including but not limited to, a declaratory judgment, intervention, and/or an appeal, that this Agreement is valid and fully enforceable. In the event that the Port and the City are unsuccessful in their pursuit of such judicial relief, the Port agrees that it will negotiate in good faith with the City to agree upon and establish an alternative, legal mechanism to furnish the City protection substantially equivalent to the protection intended by the parties to be afforded by this Section 7.

7.1 The obligations of the Port under this Section 7 shall not apply to a Hazardous Materials Release to the extent such a release is caused by the negligence or willful misconduct of the City or to the extent such a release results solely from the acts or omissions of a third party occurring after the dedication and acceptance of the Public Improvements by the City. To the extent a Hazardous Materials Release results solely from the acts or omissions of a third party occurring after the dedication and acceptance

of the Public Improvements by the City, the Port releases the City from all claims, liability, costs or expenses arising from such Hazardous Materials Release. For purposes of this Subsection 7.1, "third party" does not include the Port's agents, contractors or any Port lessee whose leasehold abuts the Public Improvements.

7.2 For the purposes of this Section 7, the Parties agree that "Passive Migration" (as defined in Section 25.16) of Existing Hazardous Materials Releases into or from the Public Improvements shall not constitute negligence or willful misconduct.

7.3 The obligations of the Port under this Section 7 shall be satisfied from legally available Non-Tax Revenue funds (as defined in Section 25.11) available after dedication and acceptance of the Public Improvements for the period set forth in Section 7.5 at the dollar amounts set forth in this Section 7.3 from the Port's General Fund, provided that the Port shall not be obligated to indemnify the City for more than \$2,000,000.00 (two million) US DOLLARS in respect of all claims except claims in this Section 7 for damages to natural resources under state or federal law (in respect of which the indemnity obligation shall be no more than an additional \$3,500,000 (three and one-half million) US DOLLARS) for a total indemnity limit of all claims of \$5,500,000 (five and one-half million) US DOLLARS. Nothing contained in this Subsection 7.3 shall be construed as obligating the Port's current or future tax revenue funds paid into the Port's General Fund or as obligating any aviation revenues to meet the Port's indemnity requirements under this Agreement.

7.4 Nothing contained in this Section 7 shall be construed as relieving Reynolds Metals Company of any environmental and natural resources removal, remediation, restoration, or indemnity obligations in respect of Existing Hazardous Materials Releases to, on, in, or from the Public Improvements under the Reynolds Remedial Action Requirements and the Port - Reynolds Metals Purchase and Sale Agreement, as amended, dated September 8, 2004, with respect to the Port and its successors and assigns, and specifically with respect to any governmental agency.

7.5 With regard to current property owners and occupants adjacent to the Property who are notified in writing by the Port by certified mail return receipt requested substantially in the form attached as **Exhibit E** of the presence of the Existing Hazardous Materials Releases on or in the vicinity of their property, and all persons who become owners or occupants on the Property after the Effective Date of this Agreement, the Port's obligations to indemnify the City under this Section 7 will expire ten (10) years after the date EPA issues its Certification of Completion of the work required under the United States Consent Decree. .

7.5.1 In any other respect, the Port's obligations to the City under this Section 7 shall expire twenty (20) years from the Effective Date of this Agreement.

## 8. Final Plat Approval and Recordation

If after the completion of the activities in Section 5 the City decides to accept the Public Improvements, upon the City's determination that all conditions for dedication,

recording the Final Plat, and acceptance have been met by the Port, the City shall promptly process the Final Plat for approval and recordation.

9. Effective Date of Port's Sections 6 and 7 Obligations

The Port's obligations under Sections 6 and 7 became effective for TRIP Phase I Public Improvements upon recordation of the Final Plat for TRIP Phase I. The Port's obligations under Sections 6 and 7 for TRIP Phase II Public Improvements shall become effective upon the earlier of: (i) the City's acceptance of the Public Improvements or (ii) recordation of the Final Plat for TRIP Phase II Public Improvements.

10. City Reserves Right to Decline Dedication.

In the event that the City determines, in its sole discretion, that the condition of the TRIP Property poses an unacceptable risk to the City or the health and welfare of the citizens or environment of the City of Troutdale, the City may refuse to acquire an easement or operational interest in any or all of the Public Improvements.

11. Port Covenant Not To Sue Regarding Existing Hazardous Substance Release

The Port hereby covenants not to sue or assert or take any action against the City relating to or arising from Existing Hazardous Materials Releases. This covenant not to sue does not apply to the extent of an exacerbation of or contribution to an Existing Hazardous Substance Release that results from City negligence or willful misconduct.

12. Amendment and Modification.

This Agreement may be amended, modified, or supplemented only by a written agreement signed by the Parties.

13. Notices

All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following address:

To the City:

City of Troutdale  
Attn: City Manager  
219 E Historic Columbia River Highway  
Troutdale OR 97060-2089

With a copy to:

City of Troutdale  
Attn: City Attorney  
219 E Historic Columbia River Highway  
Troutdale, OR 97060-2089

Douglas C. MacCourt  
Ater Wynne LLP  
Suite 900  
1331 NW Lovejoy St.  
Portland, OR 97209

To the Port:

The Port of Portland  
Attn: General Manager of Industrial Development  
P.O. Box 3529  
Portland, OR 97208

With a copy to:

The Port of Portland  
Legal Department  
Attn: General Counsel  
P.O. Box 3529  
Portland, OR 97208

Any such notices may be sent by: (i) certified mail, return receipt requested, in which case notice shall be deemed delivered five (5) business days after deposit, postage prepaid in the U.S. mail; or (ii) a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier; or (iii) facsimile transmission with a same day copy by First Class Mail, in which case notice shall be deemed delivered upon electronic verification that transmission to recipient was completed.

14. Governing Law

All matters with respect to this Agreement, including but not limited to matters of validity, construction, effect, and performance applicable to contracts, will be governed by the laws of the State of Oregon.

15. Counterparts

This Agreement may be executed in two or more fully or partially executed counterparts, each of which will be deemed an original, binding the signer thereof against the other signing parties, but all counterparts together will constitute one and the same instrument.

16. Entire Agreement

This Agreement and any other document to be developed or furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in such documents. This Agreement and such documents supersede

all prior agreements and understandings among the parties with respect to the subject matter hereof.

17. Severability

Any term or provision of this Agreement that is determined by final action of a court to be invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms or provisions of this Agreement.

18. Port Representations and Waiver of Defenses

The Port represents and warrants that it has obtained, is currently in compliance with, and shall obtain all necessary permits, approvals, and authorizations, including environmental permits and approvals under Applicable Laws, and shall comply with all Applicable Law, governing construction of the Public Improvements. By entering this Agreement, the Port further warrants and represents that it is fully authorized to carry out all of the obligations of this Agreement and reimburse, release, hold harmless, and indemnify the City as set forth in this Agreement. By making this warranty and representation, the Port expressly waives any defense to the enforcement of this Agreement based upon common law principles of sovereign immunity, any provision of local, state or federal law, and any real or alleged lack of the Port's authority to carry out the terms and conditions of this Agreement, including without limitation any defense based upon procedural or substantive error in the execution or adoption of this Agreement, and will, as necessary, join the City to defend the validity and enforceability of this Agreement as provided for in Section 7.

19. Attorneys' Fees

The prevailing Party in any suit or proceeding, including arbitration proceedings, shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings, unless the decision-maker for good cause determines otherwise.

20. Dispute Resolution

Should the Parties dispute any matter under this Agreement, the disputing Party shall provide written notice of its dispute to the other Party and the Parties shall attempt in good faith to resolve the dispute through negotiation within fifteen (15) days of receipt of such notice. If the Parties are unable to resolve the dispute within fifteen (15) days, or longer if mutually agreed between the Parties, then the disputing Party may file an action in Multnomah County Circuit Court. The Parties may elect to mediate or arbitrate any dispute upon mutual written agreement of the Parties. For any matters that are not in dispute, the Parties are not relieved of any obligation to perform or conduct such activities and submit deliverables for which the Party has responsibility under this Agreement while a dispute is pending.

21. Rights and Obligations Run with the Land

The Parties agree that the rights and obligations set forth in this Agreement touch and concern the TRIP Property (as described in the Final Plat) and those rights and obligations shall run with the land. This Agreement, or upon mutual agreement of the Parties, a document summarizing the obligations of the Parties set forth in this Agreement relating to the Public Improvements and the Property in the vicinity of the Public Improvements, shall be recorded with the Final Plat and with the Easement Deeds in the Multnomah County Title Records.

22. Exhibits

All Exhibits referenced and attached to this Agreement are hereby incorporated herein.

23. Termination and Survival

This Agreement may only be terminated by mutual agreement of the Parties prior to the City's approval of the Final Plat and the City's acquisition of any easement or operational interest in the Public Improvements. If so terminated, the City will cease processing the Final Plat and except for the Parties' obligations under Sections 3, 4, 5.1, 5.2 and 5.4 through 12, the remaining terms and conditions under this Agreement shall continue and survive in full force and effect. If the City approves the Final Plat and the City accepts the Public Improvements, Section 7 of this Agreement shall terminate pursuant to the deadlines set forth in Section 7.5, and all other terms and conditions of this Agreement shall continue and survive in full force and effect. .

24. Successors and Assigns; Assignment of Agreement

This Agreement shall be binding on the successors and assigns of the Parties. This Agreement may be assigned upon consent of the non-assigning Party, which consent shall not be unreasonably withheld, provided that either Party may assign the Agreement to an entity that is wholly owned and controlled by that Party.

25. Definitions

As used in this Agreement, the following terms shall have the meanings set forth below:

25.1 "Applicable Law" shall mean, without limitation, any federal, state or local statute, common law, regulation or ordinance, any judicial or administrative rule or order, permit or other authorization, whether now existing or hereinafter enacted, promulgated, issued, or amended.

25.2 "BFPP Defense" means the bona fide prospective purchaser defense under CERCLA section 107(r), 42 USC § 9607(r).

25.3 “City Operating Expenses” means for the purposes of billing the Port pursuant to Section 6.3 of this Agreement, the City shall not seek reimbursement for the typical costs and expenses as determined by the City that are incurred by the City for conducting operation and maintenance activities on facilities owned and operated by the City where such facilities have no known or suspected Hazardous Materials Release.

25.4 “City Phase I ESA for TRIP Phase I Public Improvements” means the environmental site assessment conducted consistent with ASTM E-1527 for the City.

25.5 “City Phase II ESA for TRIP Phase I Public Improvements” means the environmental site assessment that addresses any data gaps identified in the City Phase I ESA for the City.

25.6 “City Phase I ESA for TRIP Phase II Public Improvements” means the environmental site assessment consistent with ASTM E-1527 for the City concerning the Port’s proposed TRIP Phase II Public Improvements.

25.7 Contaminated Media Management Plan (“CMMP”) means the Contaminated Media Management Plan for the Reynolds Metals Superfund Site approved by Environmental Protection Agency Region 10 and Oregon Department of Environmental Quality.

25.8 “Effective Date” is, except as stated in Section 9, June 1, 2009, the date on which both Parties received authorization for entering into the original Agreement and executed that Agreement.

25.9 “Final Plat” means the final plat of the Property for TRIP Phase I, and any subsequent plat for Phase II or any other changes to or improvements made on the Property (Property is defined in Section 25.19, as approved by the City of Troutdale and Multnomah County and recorded in the title records of Multnomah County.

25.10 “Hazardous Materials” shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance, including without limitation asbestos, petroleum, and petroleum products (including crude oil), which is or becomes defined, determined or identified as hazardous or toxic under any Applicable Law. Without limiting the generality of the foregoing, the term shall mean and include:

25.10.1 “Hazardous Substances” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder;

25.10.2 “Hazardous Waste” as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

25.10.3 "Hazardous Materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

25.10.4 "Chemical Substance or Mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

25.11 "Non-Tax Revenues" shall mean any funds, grants, revenues or monies now existing or hereafter received by the Port, which are not derived from the general tax revenues of the Port.

25.12 "O&M Plan" means the operation and maintenance plan described in Section 5.4.

25.13 "Existing Hazardous Materials Releases" shall mean all Hazardous Materials Releases prior to the Effective Date of this Agreement, including the Reynolds Contamination, the Hazardous Materials Releases documented in or consistent with the following documents: (i) Port's Environmental Site Assessment, RMC/Alcoa Facility, Troutdale, Oregon dated August 16, 2005, as supplemented by the Supplemental Environmental Site assessment, RMC/Alcoa Facility, Troutdale, Oregon dated December 13, 2007; (ii) ATC Associates, Inc.'s Reynolds Site Phase I Environmental Site Assessment dated August 15, 2007; (iii) ATC Associates, Inc.'s Revised Phase II Site Assessment dated December 13, 2007; (iv) ATC Associates, Inc.'s Phase I Site Assessment Update dated February 22, 2008; (v) ATC Phase I ESA Update dated August 29, 2008; (vi) the Bridgewater Phase I Environmental Site Assessment dated March, 2009; (vii) the Bridgewater Phase II Environmental Site Assessment dated April, 2009; (viii) the Bridgewater Final Phase I Environmental Site Assessment Update dated November 8, 2010; (viii) the City Phase I ESA for TRIP Phase II Public Improvements; any Hazardous Materials Release during construction of the Public Improvements; and any Hazardous Materials Release caused by or arising from the acts or omissions of the Port, its contractors and Lessees related to the Public Improvements. For purposes of this Subsection 25.13, any subsurface Hazardous Materials Release to, on, in or from the Public Improvements shall be presumed to be an Existing Hazardous Materials Release unless such presumption is rebutted by a preponderance of the facts and reasonable technical and scientific evidence.

25.14 "Hazardous Materials Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, placing, leaving, escaping, leaching, dumping, discarding, burying, abandoning, passive migration, or disposing into the environment (whether natural or constructed environment) of any Hazardous Materials, including but not limited to Existing Hazardous Materials Releases, the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Materials, or threat thereof, except for a Hazardous Materials Release specifically authorized by a current and valid permit with which the permittee is in compliance at the time of the release.

25.15 "Investigation" shall mean any inspection, assessment, testing, analysis, observation, due diligence, or preparation or dissemination of any report or

document concerning any environmental condition on, under, or arising from, related to or concerning the TRIP Property or the Public Improvements.

25.16 "Passive Migration" shall mean any Hazardous Materials Release that is not caused by human intervention, but shall not include infiltration or inflow into the City's Publicly Owned Treatment Works (POTW) or storm sewer system (MS4) caused by the negligence or willful misconduct of the City.

25.17 "Port Consent Judgment" means the consent judgment entered into between the Port and the State of Oregon on December 18, 2007, in settlement of Multnomah County Circuit Court Case No. 0712-15146, as modified or amended.

25.18 "Port Continuing Obligations" means the Port's obligations under the Port Consent Judgment, as modified or amended, and certain continuing obligations under the 42 USC §9607(r) bona fide prospective purchaser defense to maintain the Port's non-liability for the Reynolds Contamination.

25.19 "Property" means the property that is the subject of the Preliminary Plat or the Public Improvements.

25.20 "Public Improvements" shall mean that part of the Port's proposed subdivision of the TRIP Property, including without limitation, the Swigert Way Corridor and TRIP Phase I Public Improvements described in Exhibit B, and the Swigert Way Infrastructure and TRIP Phase II Public Improvements including all rights of way, roads, water lines, sanitary sewers (including force mains), storm sewers, utility conduits, pump stations, described in Exhibits B, B-1 and C, pedestrian, vehicular, and landscape facilities, and any other property to be dedicated to the City pursuant to the Final Plat or otherwise accepted by the City.

25.21 "Removal" means the cleanup or removal of a released Hazardous Material from the environment, such actions as may be necessary to be taken in the event of the threat of release of a Hazardous Material into the environment, such actions as may be necessary to monitor, assess, and evaluate the Release or threat of release of a Hazardous Material, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health, safety, welfare, or to the environment, that may otherwise result from a Release or threat of release. "Removal" also includes but is not limited to security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals, any actions taken under ORS Chapter 465, and 42 U.S.C. §9601 to 9675, as may be amended from time to time, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121 *et. seq.*

25.22 "Remedial Action" means those actions taken instead of or in addition to Removal actions in the event of a Release or threat of release of a Hazardous Material into the environment, to prevent or minimize the Release of a Hazardous Material so that it does not migrate to cause substantial danger to present or future public

health, safety, welfare, or the environment. "Remedial Action" includes, but is not limited to:

25.22.1 Such actions at the location of the Release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released Hazardous Materials and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that the actions protect the public health, safety, welfare and the environment;

25.22.2 Offsite transport and offsite storage, treatment, destruction or secure disposition of Hazardous Materials and associated, contaminated materials;

25.22.3 Such actions as may be necessary or required to monitor, assess, evaluate or investigate a Release or threat of release; and

25.22.4 Permanent relocation of residences and businesses and community facilities, if necessary or appropriate.

25.23 "Reynolds Contamination" means known and unknown hazardous substance releases existing on the TRIP Property as of December 21, 2007, when the Port acquired the TRIP Property from Reynolds Metals Company.

25.24 "Reynolds Remedial Action Requirements" means the Consent Decree, Case No. 3:08-cv-00108-KI, between the United States and Reynolds Metals Company and Alcoa, Inc. ("Reynolds") entered in the United States District Court for the District of Oregon on September 10, 2008 ("United States Consent Decree"), and a Consent Judgment, Case No. 0810-14363, between the State of Oregon and Reynolds entered in the Multnomah County Circuit Court on October 10, 2008 ("State of Oregon Consent Judgment"), each requiring implementation of the Final Record of Decision issued by EPA with the concurrence of DEQ on September 29, 2006 ("ROD"), and compliance with the Reynolds-DEQ Easement and Equitable Servitudes dated December 19, 2007, and the Reynolds-Oregon Department of Parks and Recreation Conservation Easement dated December 13, 2007.

25.25 "Swigert Way Corridor" means the public right-of-way as illustrated in **Exhibit B**.

25.26 "Swigert Way Infrastructure" means those Public Improvements illustrated in **Exhibits B and C**.

25.27 "TRIP Property" means the property purchased by the Port from Reynolds Metals Company on December 21, 2007 located within the City of Troutdale as described in **Exhibit A**.

25.28 "TRIP Phase I Public Improvements" means those portions of the Public Improvements set forth in **Exhibits B and C** concerning Phase I of TRIP.

25.29 "TRIP Phase II Public Improvements" means those portions of the Public Improvements set forth in **Exhibits B-1 and C** concerning Phase II of TRIP.

25.30 "Troutdale Consent Judgment" means the consent judgment entered into between the City and the State of Oregon on June 16, 2010, in settlement of Multnomah County Circuit Court Case No. 1006-08622, as modified or amended.

25.31 "United States Consent Decree" means the consent decree entered into between the United States and Reynolds Metals Company in Case No. 3:08-cv-00108-KI in the United States District Court for the District of Oregon.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first written above.

**CITY OF TROUTDALE**

**THE PORT OF PORTLAND**

By: 

By: 

Printed Name: Craig Ward

<sup>pe</sup> Printed Name: Bill Wyatt

As Its: City Manager

As Its: Executive Director


Date: 7/14/15

Date: June 24, 2015

APPROVED AS TO THE LEGAL SUFFICIENCY FOR THE CITY

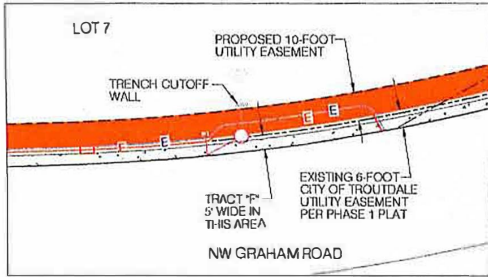
APPROVED AS TO THE LEGAL SUFFICIENCY FOR THE PORT

By:   
City Attorney

By:   
Counsel for the Port of Portland




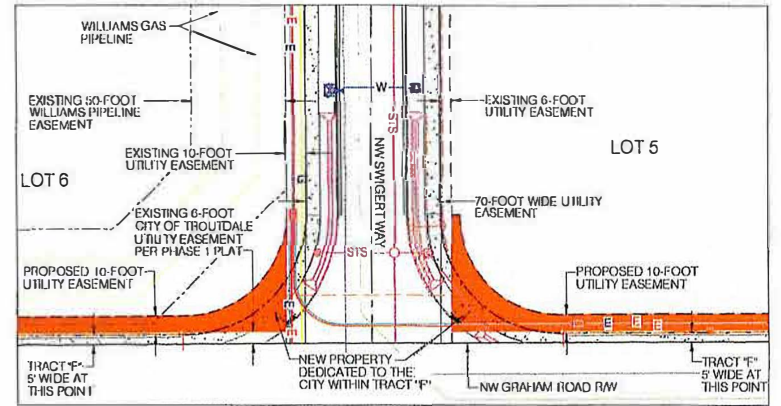




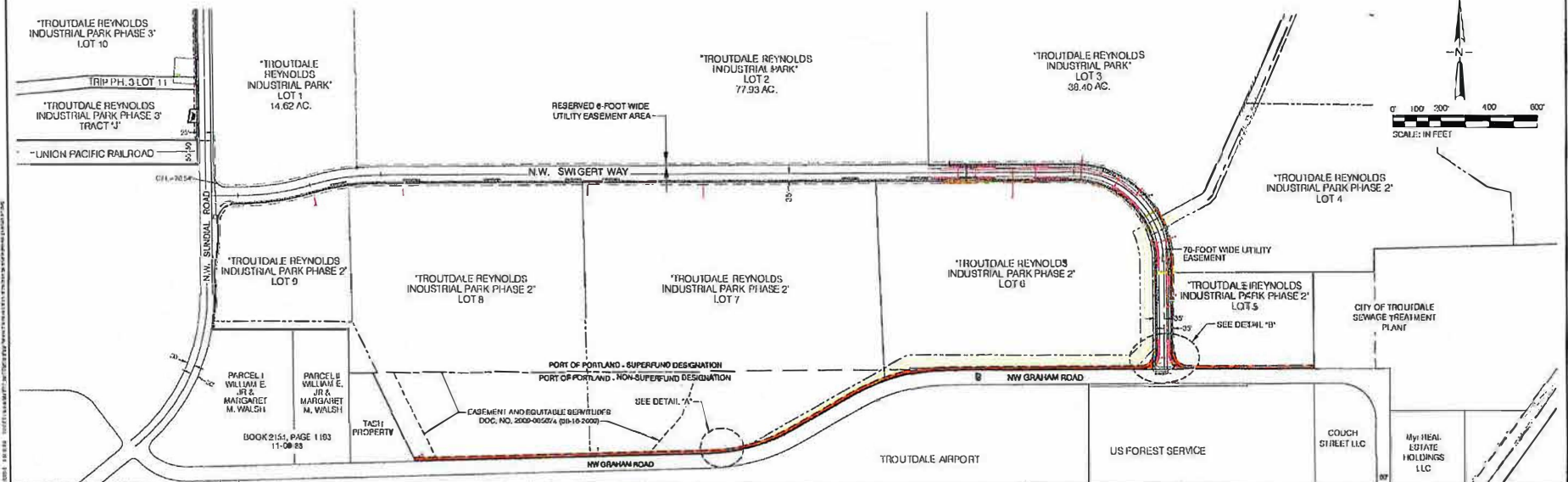
DETAIL "A": TYPICAL GRAHAM RD. INFRASTRUCTURE  
SCALE: 1"=20'

**LEGEND:**

 ADDITIONAL UTILITY EASEMENT AREA GRANTED TO THE CITY OF TROUTDALE AS PART OF THE "TROUTDALE REYNOLDS INDUSTRIAL PARK PHASE 2" SUBDIVISION PLAT. A 6-FOOT UTILITY EASEMENT WAS ORIGINALLY GRANTED TO THE CITY OF TROUTDALE AS PART OF THE "TROUTDALE REYNOLDS INDUSTRIAL PARK" PHASE 1 SUBDIVISION PLAT.



DETAIL "B": TYPICAL GRAHAM RD. INFRASTRUCTURE  
SCALE: 1"=30'



										<b>PORT OF PORTLAND</b> PORTLAND, OREGON		DESIGNED BY: C. WUNDERLICH DRAWN BY: J. JENSEN DATE: APRIL 2015 SCALE: 1"=200'		<b>TROUTDALE REYNOLDS INDUSTRIAL PARK</b> PORT OF PORTLAND - CITY OF TROUTDALE IGA EXHIBIT TRIP PHASE 2 INFRASTRUCTURE AND DEDICATED TRIP PROPERTY EXHIBIT "B-1"			
NO.	DATE	BY	DESCRIPTION	DATE	BY	DESCRIPTION	DATE	BY	DESCRIPTION	DATE	BY	DESCRIPTION	DATE	BY	DESCRIPTION		
PREPARED BY: JIMMY PARKER CHECKED BY: JIMMY PARKER DATE: APRIL 2015 SCALE: 1"=200'												SHEET NO.: PC TRIP 2015- 2/2 (SU-2)					

**SWIGERT WAY SANITARY SEWER PUMP STATION DESCRIPTION**

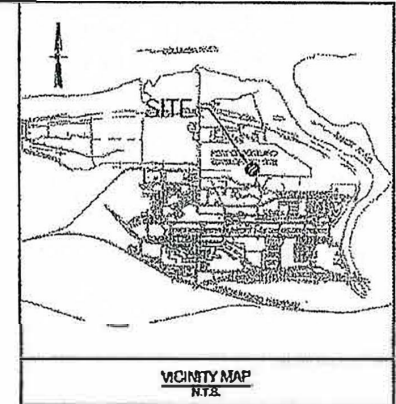
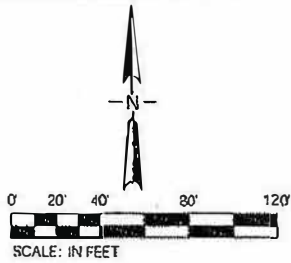
A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "D.E.A INC." AT THE SOUTHEAST CORNER OF TRACT "2", AS DESCRIBED IN DEED FEE #2008-140037, RECORDED ON 10/03/2008, MULTNOMAH COUNTY DEED RECORDS, FROM WHICH A 4" BRASS DISC FOUND AT THE SOUTHEAST CORNER OF SAID SECTION 23, BEARS SOUTH 15°20'10" EAST, 2709.60 FEET; THENCE, ALONG THE SOUTH LINE OF SAID TRACT "2", SOUTH 89°46'48" WEST, 414.64 FEET TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING ALONG SAID SOUTH LINE, SOUTH 89°46'48" WEST, 50.00 FEET; THENCE, DEPARTING SAID SOUTH LINE, NORTH 00°13'12" WEST, 50.00 FEET; THENCE NORTH 89°46'48" EAST, 50.00 FEET; THENCE SOUTH 00°13'12" EAST, 50.00 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 2,500 SQUARE FEET MORE OR LESS.

THE BASIS OF BEARING FOR THIS LEGAL DESCRIPTION IS SURVEY NUMBER 61996 AS RECORDED IN MULTNOMAH COUNTY SURVEY RECORDS, MULTNOMAH COUNTY, OREGON.

**NOTE:**

1. THE BASIS OF BEARING FOR THIS EXHIBIT IS SURVEY NUMBER 61996 AS RECORDED IN MULTNOMAH COUNTY SURVEY RECORDS, MULTNOMAH COUNTY, OREGON DATED JUNE 30, 2008.
2. THE PURPOSE OF THIS DRAWING IS TO SHOW THE LOCATION OF THE SANITARY SEWER PUMP STATION EASEMENT.



FEDEX GROUND PACKAGE SYSTEM, INC.  
DEED FEE #2008-140037  
RECORDED 10/03/2008  
77.93 AC.

PROPOSED LOT 3  
"TROUTDALE REYNOLDS  
INDUSTRIAL DISTRICT"



SE. CORNER OF TRACT 2,  
DEED FEE #2008-140037  
(10/03/2008)

NW SWIGERT WAY

T.P.O.B.  
SWIGERT WAY  
SANITARY SEWER PUMP  
STATION EASEMENT  
AREA = 2,500 SQ. FT.

PROPOSED TRACT "D"  
"TROUTDALE REYNOLDS INDUSTRIAL DISTRICT"

4/17/09 1:16:11 PM T:\MIS\survey\2008\20080414\troutdale\swigert\swigert\_iga\_exhibit\_c.dwg

						PORT OF PORTLAND PORTLAND, OREGON		REGISTERED PROFESSIONAL LAND SURVEYOR		DESIGNED BY _____		TROUTDALE REYNOLDS INDUSTRIAL PARK	
						20070054      1284 <small>REGISTRATION NO.      PROJECT NUMBER</small>		OREGON <small>REGISTERED</small> CHRISTOPHER VANDERWERF 2719		DRAWN BY C. VANDERWERF CHECKED BY D. ANDERSON		PORT OF PORTLAND - CITY OF TROUTDALE IGA EXHIBIT SWIGERT SANITARY PUMP STATION EXHIBIT "C"	
NO.	DATE	BY	REVISIONS	CHKD	APPVD	DATE APRIL 2009		SIGNED BY RYAN PARKER		TYPE EP		DRAWING NO. TRIP 2009-4	
						SCALE 1"=40'		SUBMITTED BY RYAN PARKER		DRAWING NO. TRIP 2009-4		1/2 (SU-1)	



# Exhibit D

TRIP Master Plan 4-2-2015

