

RESOLUTION NO. 2311

A RESOLUTION GRANTING A TEMPORARY CONSTRUCTION EASEMENT ABUTTING NW GRAHAM ROAD TO THE PORT OF PORTLAND AND ACCEPTING A CONSENT INSTRUMENT FROM THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The Port of Portland is constructing improvements to NW Graham Road in partnership with the City of Troutdale.
2. The City of Troutdale owns the real property identified by State ID # 1N3E24C-00104 by means of a federal surplus property grant.
3. The City of Troutdale owns the real property identified by State ID # 1N3E24C-01900.
2. A temporary construction easement from the City of Troutdale to the Port of Portland on the above referenced property is necessary to complete the improvements.
3. The Port has requested that the City grant this easement, and has prepared the necessary easement documents.
4. The federal Department of Health and Human Services has provided a Consent Instrument approving the City's granting of the easement.

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

Section 1. The City of Troutdale grants a Temporary Construction Easement to the Port of Portland, included herewith as Attachment A.

Section 2. The City of Troutdale accepts the Department of Health and Human Services Consent Instrument, included herewith as Attachment B.

Section 3. This resolution is effective upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Doug Daoust, Mayor

10/15/15

Date



Sarah Skroch, Acting City Recorder

Adopted: October 13, 2015

City of Troutdale PIO
Please return to:

Port of Portland
Box 3529
Portland, OR 97208
Attn: Nicole Miranda

2015-212

RE: I-84 Troutdale Interchange Project
Tax Lots #1N3E24C 00104 and 1N3E24C 01900

Multnomah County Official Records
R Weldon, Deputy Clerk

2015-154976



\$106.00

12/10/2015 12:45:22 PM

1R-AGMT

\$65.00 \$11.00 \$20.00 \$10.00

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TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This TEMPORARY CONSTRUCTION EASEMENT ("Agreement") is made by and between the City of Troutdale ("Grantor"), and the Port of Portland, a Port district of the State of Oregon ("Grantee"). Grantor and Grantee are sometimes hereinafter referred to collectively as the "Parties" and each individually as a "Party."

RECITALS

A. Grantor is the fee simple owner of certain real property, described in the attached **Exhibit A** ("Grantor's Property").

B. Grantee desires to improve Northwest Graham Road in Troutdale, Oregon, which improvements may include without limitation, the improvement of driveways and road slope, sidewalks, utilities, stormwater conveyance and treatment facilities and street lighting (the "Project").

C. Grantee wishes to acquire a temporary construction easement over a portion of Grantor's Property as necessary to accommodate Project construction.

D. This Easement shall be subject to the terms and conditions of that certain Quitclaim Deed dated May 9, 2012, between the United States of America and the City of Troutdale.

NOW, THEREFORE, in consideration of the promises and covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. Recitals. The Parties acknowledge that the foregoing Recitals are true and correct.
2. Temporary Construction Easement. Grantor does hereby grant and convey to Grantee, its successors and assigns, a temporary and exclusive construction easement on and over Grantor's Property in the location shown and more particularly depicted on the attached **Exhibit B** ("Easement Area").
3. Use of Easement Area. Subject to the terms and conditions of this Easement, Grantee will have full and free use of the Easement Area for the sole purpose of completing Project construction which may include without limitation, improvements to driveways and Graham road slope specification. The term of this Easement shall commence ten (10) days following the date on which Grantee provides to Grantor written notice of its intent to commence

construction necessitating its use of the Easement Area ("Commencement Date"). Grantee and/or its agents or contractors may at any after the Commencement Date enter upon the Easement Area for the uses described in this Easement. From and after the Commencement Date until completion of construction, Grantee will erect and maintain barriers to enclose, secure and protect the Easement Area.

4. Consideration. Consideration for this Easement shall be deemed to be the mutual benefits of completion of the construction contemplated hereunder.

5. Term. The Easement will begin on the Commencement Date, subject to change, and will terminate on the earlier of Grantee's completion of construction indicated in a written notice thereof from Grantee to Grantor, or that date which is thirty-six (36) months after the Commencement Date.

6. Liens. Grantee will use its best efforts to ensure that no mechanics, materialmen or other liens are filed against Grantor's Property as a result of the exercise of Grantee's rights under the Easement, and Grantee will cause any such mechanics, materialmen or other liens to be promptly released or Grantee shall provide Grantor with a performance bond to guarantee release of the lien.

7. Compliance with Laws. Grantee will comply with all applicable Federal, State, municipal and local laws, and the rules, orders, regulations and requirements in regard to its use of the Easement Area granted under this Agreement, including all appropriate environmental rules, regulations, standards or laws required for the Project. Grantee's use and occupation of the Easement Area and Grantee's exercise of the privileges granted by this Agreement will be subject to such rules and regulations providing for the safety and security of Grantor's Property as the Grantor may from time to time prescribe and publish.

8. Grantee's Indemnity. To the extent permitted by Oregon law, specifically the Oregon Constitution, Article XI, Section 9, and the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300), Grantee will indemnify and hold Grantor, its employees, officers, representatives, and agents, in both their individual and official capacities, harmless from and against any and all claims, demands, causes of action, suits, costs, and expenses (including attorney's fees and expenses and court costs) and damages to person or property to the extent such damage arises out of the exercise of, or relating to Grantee's rights under this Easement, or any other act or omission of Grantee to the extent of Grantee's negligence or willful misconduct. Grantee will be financially responsible to Grantor for damage caused by the negligence or willful misconduct of Grantee and its employees, agents, or contractors.

9. Activities on Grantor's Property. Grantee's use of the Easement Area will not interfere, as reasonably determined by the Grantor, with the operations or functions of the Grantor's Property.

10. Insurance. Grantee must maintain at least TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00) in comprehensive general liability, auto liability, contractors pollution liability and employer's liability insurance policies to cover claims arising from the contractor's operations that cause damage to the person or property of third persons. Each contractor shall also obtain and maintain workers' compensation insurance in the amounts required by applicable laws. The failure to comply with the terms and conditions of this paragraph will not diminish or otherwise affect the property interest herein conveyed; provided, however, that at the option of

Grantor, Grantee's activities must immediately cease and desist until such time as the evidence required under this section is delivered to Grantor.

11. Termination for Breach. The Grantor reserves the right to terminate the Easement in whole or in part if there is a breach of this Agreement by Grantee which remains uncured following Grantor's delivery to Grantee of a thirty (30) day written notice of its intent to terminate. The termination shall be effective upon the expiration of such thirty (30) day notice provided that Grantee's breach then remains uncured.

12. Dispute Costs. In the event that either Party be required to bring any action to enforce any of the provisions of this Agreement, or be required to defend any action brought by the other Party with respect to this Agreement, each Party will be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

13. Notices: Notices to the Parties shall be delivered by Federal Express or United Parcel Service overnight express delivery to each Party at the following addresses or to such other address as a Party may designate by written notice to the other Party:

To Grantor: City of Troutdale Public Works
342 SW 4th Street
Troutdale, OR 97060

To Grantee: The Port of Portland
Business Development & Properties
7200 NE Airport Way
Portland, OR 97218
Attn: Legal Department

14. Severability. If any term, covenant or condition of the Agreement or the application thereof to any person or circumstance will to any extent be invalid or unenforceable, then the remainder of the Agreement or the application of such term, covenant or condition to any other person or circumstance will not be affected thereby, and each such term, covenant and condition will be valid and enforceable to the fullest extent permitted by law.

15. Governing Law. This Agreement will be governed by the laws of the State of Oregon.

16. Authority. Execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of the Parties hereto.

17. Amendments and Waivers. No amendment or modification of this Agreement or any provisions hereof will be effective unless reduced to writing and such document is signed by duly authorized representatives of each of the Parties. No waiver of any right or obligation hereunder, will be effective unless reduced to writing and signed by a duly authorized representative of the Parties subject to such right or obligation.

18. Time. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

State of Oregon)
) ss.
County of Multnomah)

This instrument was acknowledged before me on October 20, 2015, by Vince Granato as the Chief Operating Officer of THE PORT OF PORTLAND, a port district of the State of Oregon.

WITNESS my hand and official seal.

M. Kristine Shigley
Notary Public for the State of Oregon
My commission expires: 3/19/17



EXHIBIT A

SLOPE EASEMENT

A TRACT OF LAND SITUATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON LYING WITHIN THAT PROPERTY DESCRIBED IN DEED TO THE CITY OF TROUTDALE, RECORDED DECEMBER 14, 2012 IN DOCUMENT No. 2012-162947, MULTNOMAH COUNTY DEED RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF SAID CITY OF TROUTDALE PROPERTY ON THE NORTH RIGHT OF WAY LINE OF NW GRAHAM ROAD; THENCE, ALONG SAID NORTH RIGHT OF WAY LINE, NORTH 89°44'37" EAST, 69.36 FEET TO THE TRUE POINT OF BEGINNING; THENCE, DEPARTING SAID NORTH RIGHT OF WAY LINE, NORTH 00°15'23" WEST, 2.00 FEET; THENCE NORTH 89°44'37" EAST, 83.21 FEET; THENCE SOUTH 00°15'23" EAST, 2.00 FEET TO SAID NORTH RIGHT OF WAY LINE; THENCE, ALONG SAID NORTH RIGHT OF WAY LINE, SOUTH 89°44'37" WEST, 83.21 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 166 SQUARE FEET MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PARTITION PLAT No. 2012-46, MULTNOMAH COUNTY PLAT RECORDS.

PARCEL 1 TEMPORARY CONSTRUCTION EASEMENT

A TRACT OF LAND SITUATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON LYING WITHIN THAT PROPERTY DESCRIBED IN DEED TO THE CITY OF TROUTDALE, RECORDED DECEMBER 14, 2012 IN DOCUMENT No. 2012-162947, MULTNOMAH COUNTY DEED RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHWEST CORNER OF SAID CITY OF TROUTDALE PROPERTY ON THE NORTH RIGHT OF WAY LINE OF NW GRAHAM ROAD; THENCE, ALONG THE WEST LINE OF SAID CITY OF TROUTDALE PROPERTY, NORTH 00°14'57" WEST, 11.05 FEET; THENCE, DEPARTING SAID WEST LINE, NORTH 46°00'27" EAST, 43.40 FEET; THENCE SOUTH 71°22'34" EAST, 40.17 FEET; THENCE SOUTH 00°15'23" EAST, 28.06 FEET TO SAID NORTH RIGHT OF WAY LINE; THENCE, ALONG SAID NORTH RIGHT OF WAY LINE, SOUTH 89°44'37" WEST, 69.36 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 2,130 SQUARE FEET MORE OR LESS.

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PARCEL 2 TEMPORARY CONSTRUCTION EASEMENT

A TRACT OF LAND SITUATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON LYING WITHIN THAT PROPERTY DESCRIBED IN DEED TO THE CITY OF TROUTDALE, RECORDED MARCH 29, 2000 IN DOCUMENT No. 2000-043577, MULTNOMAH COUNTY DEED RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF SAID CITY OF TROUTDALE PROPERTY ON THE EAST RIGHT OF WAY LINE OF NW GRAHAM ROAD; THENCE, ALONG SAID EAST RIGHT OF WAY LINE, NORTH 00°14'08" WEST, 15.06 FEET TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING ALONG SAID EAST RIGHT OF WAY LINE, NORTH 00°14'08" WEST, 42.66 FEET; THENCE, DEPARTING SAID EAST RIGHT OF WAY LINE, NORTH 66°17'26" EAST, 3.97 FEET; THENCE SOUTH 19°05'38" EAST, 37.34 FEET; THENCE SOUTH 60°12'58" WEST, 18.06 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 409 SQUARE FEET MORE OR LESS.

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CONSENT INSTRUMENT

WHEREAS, the UNITED STATES OF AMERICA, acting by and through the Secretary of Health and Human Services (“Grantor”) by Quitclaim Deed dated the 9th day of May, 2012, conveyed certain real property, more particularly described therein and situated in the County of Multnomah, State of Oregon, to the City of Troutdale (“Grantee”), for the purposes specified in Grantee’s application dated January 26, 2011, and amended on March 17, 2011, and April 8, 2011; and

WHEREAS, the said deed dated the 9th day of May, 2012, recorded as Document Number 2012-066630 (“Deed”), in the Multnomah County Official Records on May 31, 2012, re-recorded as Document Number 2012-162947 on December 14, 2015, contains certain conditions and restrictions including a prohibition against the sale, lease, mortgage, encumbrance or other disposal of any portion of the property thereby conveyed or any interest therein without the consent of the Grantor; and

WHEREAS, the Grantee has requested authorization to grant a Temporary Construction Easement to the Port of Portland, Oregon, for the purpose of improving the ingress-egress driveways and the road slope in conjunction with roadway improvement of Northwest Graham Road and said temporary easement will not interfere with the purpose for which the property was conveyed to Grantee; and

WHEREAS, notice of the proposed action to be taken has been given to the United States General Services Administration in accordance with the provisions of 40 U.S.C. § 550, as amended, and it has not interposed objection thereto;

NOW, THEREFORE, in consideration of the premises, the observance and performance by the Grantee of the covenants and conditions hereinafter contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor, acting by and through the Secretary of Health and Human Services, by his duly designated officers and employees of the U.S. Department of Health and Human Services, under and pursuant to the Authority contained in 40 U.S.C. § 550, does hereby grant its consent to the execution by the Grantee of an easement to the said Port of Portland, its successors and assigns, for access to the real property described and shown on Exhibit “A” attached hereto and made part hereof.

The consent granted hereby is subject to the following conditions:

- (1) that use of the access will not unduly interfere with the uses for which the aforesaid real property was transferred to the Grantee; and

- (2) that this consent shall not be deemed a waiver or relinquishment of any of the conditions, restrictions, reservations, rights or remedies provided for in the said deed hereinabove referred to insofar as those conditions, restrictions, reservations, rights and remedies relate to those portions of the property in which the access is not located;
- (3) that the said easement be terminated upon completion of construction but no later than thirty-six (36) months after the easement commencement date.

IN WITNESS WHEREOF, the United States of America, acting by and through the Secretary, Department of Health and Human Services, has caused this instrument to be executed on this 3rd day of September 2015.

UNITED STATES OF AMERICA
Acting by and through the Secretary
of Health and Human Services

By: *Theresa Ritta*
Theresa M. Ritta, Program Manager
Real Property Management Services
Program Support Center

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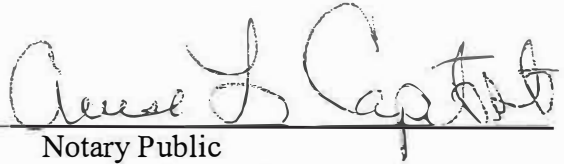
ACKNOWLEDGMENT

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)

On this 3rd day of September, 2015, before me the undersigned officer, personally appeared Theresa M. Ritta, known to me to be the Program Manager, Real Property Management Services, Program Support Center, Department of Health and Human Services, and known to me to be the person who executed the foregoing instrument on behalf of the Secretary of Health and Human Services, for the United States of America, and acknowledged to me that she subscribed to the said instrument in the name of the Secretary of Health and Human Services and on behalf of the United States of America.

Witness my hand and official seal.

(SEAL)



Notary Public

My commission expires 2/08/2016

ANISE L. CAPOTOSTO
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires February 8, 2016

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ACCEPTANCE

The City of Troutdale, accepts this Consent Instrument and thereby accepts and agrees to all the terms, covenants, conditions and restrictions contained therein.

By Doug Daoust

ACKNOWLEDGMENT

STATE OF OREGON)
COUNTY OF MULTNOMAH)

On this 15th day of October, 2015, before me, a Notary Public in and for the County of Multnomah, State of Oregon, personally appeared Doug Daoust, known to me to be the Mayor, City of Troutdale, and known to me to be the person who executed the foregoing instrument on behalf of the City of Troutdale, and acknowledged to be that ~~he~~ executed the same as the free act.

Witness my hand and official seal.

(SEAL)

Sarah Lynn Skroch
Notary Public

My commission expires July 26, 2019



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PARCEL 2 TEMPORARY CONSTRUCTION EASEMENT

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