

RESOLUTION NO. 2334

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE PORT OF PORTLAND GUARANTEEING PERFORMANCE OF THE PUBLIC IMPROVEMENTS ASSOCIATED WITH THE TROUTDALE REYNOLDS INDUSTRIAL PARK PHASES II AND III

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. The Port of Portland is currently in the process of developing phases II and III of the Troutdale Reynolds Industrial Park (TRIP).
2. The TRIP Phase II tentative plat was approved by the Planning Commission on October 19, 21012.(Case File No. 12-031)
3. The TRIP Phase III tentative plat was approved by the Planning Commission on October 19, 21012.(Case File No. 12-032)
4. Construction of the public improvements associated with the TRIP II and III commenced in July of 2015 and is anticipated to complete in 2017.
5. The Port of Portland desires to obtain approval of the final plats for TRIP II and III and record them prior to completing the required improvements.
6. The Port of Portland is required by Troutdale Development Code (TDC) 7.350 to provide a financial assurance guaranteeing completion of the required improvements prior to recording the plats.
7. The Port of Portland has proposed an Intergovernmental Agreement (IGA) to serve as its financial assurance to the City in lieu of a the surety bond, cashier's check, certified check or letter of credit specified in TDC 7.350(B).
8. The City Council accepted an IGA in lieu of bond, check or letter of credit for the warranty of the TRIP PH I improvements.
9. The Port of Portland is uniquely qualified to provide an IGA as Performance Guarantee for the subdivision, in lieu of bond, check or letter of credit.
10. The City's legal staff has reviewed the proposed IGA and finds it to be in order.

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

Section 1. The Mayor is authorized to execute an intergovernmental agreement with the Port of Portland, substantially in conformance with Attachment A, guaranteeing performance of the public improvements associated with the Troutdale Reynolds Industrial Park Phases II and III.

Section 2. This resolution is effective upon adoption.

**YEAS: 7
NAYS: 0
ABSTAINED: 0**



Doug Daoust, Mayor
Date 5/26/16



Sarah Skroch, City Recorder

Adopted: May 24, 2016

INTERGOVERNMENTAL AGREEMENT

FINANCIAL ASSURANCE IN SUPPORT OF SUBDIVISION APPROVAL

Project Title: Troutdale Reynolds Industrial Park ("TRIP")
Subdivision Phase II -- City File No. 12-031
Subdivision Phase III -- City File No. 12-032

Parties: The Port of Portland ("Port")
The City of Troutdale ("City")

Recitals

A. The Port wishes to file plats for the above-described subdivisions ("**Subdivision Phases II and III**") prior to the completion and acceptance of City-required improvements. Troutdale Development Code ("**TDC**") Section 7.350(B) allows property subdividers to file plats prior to the completion and acceptance of improvements when the subdivider provides the City an assurance for faithful performance of the required improvements (a "**Financial Assurance**").

B. The Port wishes to provide the City with a Financial Assurance for Subdivision Phases II and III under the terms and conditions of this Intergovernmental Agreement (the "**Agreement**"). The City wishes to indicate its acceptance of such Financial Assurance under the terms and conditions of this Agreement.

C. The parties intend that this Agreement solely and satisfactorily represent the Financial Assurance required under TDC Section 7.350(B) for TRIP Subdivision Phases II and III, in lieu of the Port providing any other form of financial instrument to accomplish such purpose.

Agreement

1. **Financial Assurance; Amount**

a. Financial Assurance. Consistent with TDC Section 7.350(B), and subject to the amount set forth below in Section 1(b), the Port assures the City, as beneficiary, that the Port will faithfully perform all improvements required or approved by the City for TRIP Subdivision Phases II and III (the "**Completion Requirements**") by December 31, 2017. The Port will have no obligations under this Agreement after the Completion Requirements have been met.

b. Amount. For purposes of TDC Section 7.350(B), the estimated value of the TRIP Subdivision Phases II and III improvements is \$5,390,000. The City's Director of Public Works has verified such estimated value. One hundred-ten percent (110%) of such estimated value is \$5,929,000; therefore, the amount of this Financial Assurance is \$5,929,000.

2. **Acceptance of Financial Assurance.** The City accepts the Port's Financial Assurance under in this Agreement in satisfaction of the Port's obligation under TDC 7.350 to provide a Financial Assurance for the TRIP Subdivision Phases II and III improvements, in lieu of

requiring any other form of Financial Assurance such as a surety bond, cashier's check, certified check, irrevocable letter of credit, or other instrument. The City waives its requirement that the Financial Assurance established under this Agreement be provided in any other form, whether such requirement arises under the TDC or any other authority. This waiver applies exclusively to TRIP Subdivision Phases II and III and does not apply to any other, future project undertaken by the Port within the City.

3. **Effect of Financial Assurance.** In the event the Port fails to satisfactorily complete all improvements in accordance with the Completion Requirements within the time authorized under Section 1.a above, and the City desires to complete such improvements, the City may do the following in lieu of the remedy set forth in TDC Section 7.350(C):

a. Engage City staff or a contractor to complete the unfinished improvements in accordance with the Completion Requirements. Before taking such action, the City must give the Port written notice of the Port's failure to satisfactorily perform the work at issue, and of the City's intent to engage City staff or a contractor to perform such work. The City shall allow the Port a reasonable time of not less than 60 calendar days after delivery of the written notice to cure such failure, or to commence cure activities if the cure would reasonably take longer than 60 calendar days to perform. For purposes of this subsection, the Port will be deemed to have commenced cure activities if the Port has ordered its contractor to commence the work at issue, or has solicited bids, quotations, or proposals to accomplish such work.

b. Provided such notice and an opportunity to cure is provided and the Port does not meet all material cure requirements, then the City may demand that the Port provide advance payment to the City for costs anticipated to be actually and necessarily incurred by the City to complete the improvements in accordance with the Completion Requirements, up to the amount of this Financial Assurance. Following completion of the improvements, such payment may be adjusted up or down to reflect the reasonable and necessary costs actually incurred by the City to complete the improvements pursuant to this subsection. The City will refund any overpayment to the Port, and the City will invoice the Port for any underpayment, provided that the Port's aggregate payment obligation will not exceed the amount of this Financial Assurance. "Overpayment" and "underpayment" under this subsection will be calculated based on any difference between the advance payment made by the Port and the reasonable and necessary costs actually incurred by the City to complete the improvements pursuant to this subsection.


Nothing in this agreement shall obligate the City to the Port or any third party to complete unfinished improvements in the event Port fails to perform. Exercise of the rights enumerated in this Section 3 and/or construction of unfinished improvements shall be at the sole discretion of the City.

4. **Entire Agreement; Modification.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by an authorized representative of each party.

5. **Signatures.** This Agreement may be signed in counterparts.

[Signature page follows]

THE CITY OF TROUTDALE

By: 
Doug Daoust
Mayor

Date: 5/26/16

Approved as to Form
for the City of Troutdale

Counsel for the City of Troutdale

THE PORT OF PORTLAND

By: _____
Bill Wyatt
Executive Director

Date: _____

Approved as to Legal Sufficiency
for the Port of Portland

Counsel for the Port of Portland