

## RESOLUTION NO. 2346

### A RESOLUTION ACCEPTING A PERPETUAL NONEXCLUSIVE UTILITY EASEMENT ALONG NW GRAHAM ROAD FROM THE PORT OF PORTLAND

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

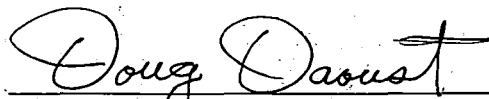
1. The Port of Portland is constructing improvements to the storm drainage system along NW Graham Road in partnership with the City of Troutdale.
2. The Port of Portland is the owner of the real property identified by State ID 1N3E23 - 00111.
3. A utility easement from the Port of Portland to the City of Troutdale on the above referenced property is necessary to complete and maintain the improvements.
4. The Port has prepared the necessary easement documents in collaboration with the City and the Port has executed the easement agreement.
5. The Port is not requesting compensation for this easement.

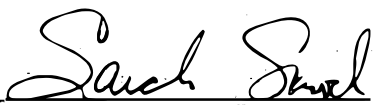
#### NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The City of Troutdale accepts the Utility Easement from the Port of Portland, included herewith as Attachment A.

Section 2. This resolution is effective upon adoption

YEAS: 6  
NAYS: 0  
ABSTAINED: 0

  
\_\_\_\_\_  
Doug Daoust, Mayor  
7/13/16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Sarah Skroch, City Recorder  
Adopted: July 12, 2016

After recording return to:

*plu*

City Recorder  
City of Troutdale  
104 SE Kibling Avenue  
Troutdale, OR 97060



01752884201600916880100100

\$91.00

07/26/2016 02:15:32 PM

1R-EASEMT

Pgs=10 Stn=11 ATAAH

\$50.00 \$11.00 \$20.00 \$10.00

*2016-092*

**UTILITY EASEMENT AGREEMENT**

This Public Utility Easement Agreement ("AGREEMENT") is entered into by THE PORT OF PORTLAND, a port district of the State of Oregon, whose address is P.O. Box 3529, Portland, Oregon 97208 ("GRANTOR"), and the CITY OF TROUTDALE, an Oregon municipal corporation ("GRANTEE"), shall become effective (the "Effective Date") upon the date both parties sign.

**RECITALS**

A. GRANTOR owns the property described in this Agreement in paragraph 1.1 and depicted in Exhibit A (the "Easement Area"). GRANTOR also owns other real property adjacent to and in the vicinity of the Easement Area.

B. GRANTEE is a municipal corporation in the State of Oregon which owns and operates public utilities consisting of storm water systems serving drainage basins identified in the City's National Pollutant Discharge Elimination System Permit (WQ File Number: 110793), a portion of which drains through the Easement Area (the "City MS4 Stormwater Systems").

C. The purpose of this Agreement is to grant a storm water systems utility easement to GRANTEE for access and use of the Easement Area, which area shall include storm water systems improvements shown in the plans described in Exhibit B, which are being constructed by GRANTOR (the "Port-Constructed Improvements"), the ownership of which will be transferred to GRANTEE by the dedication process applicable to the improvements.

**EASEMENT GRANTED**

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Easement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. GRANT**

For no dollars but for other good and valuable consideration that is acknowledged and received, GRANTOR hereby grants to GRANTEE, and GRANTEE hereby accepts from GRANTOR, a perpetual nonexclusive easement for the Easement Area so that GRANTEE may own, operate, maintain, repair, replace, and/or modify the Port-Constructed Improvements and any storm water systems constructed, replaced, repaired, or modified by the City within the Easement Area (collectively, the "Storm Water System Improvements"). These easements shall extend to a depth not exceeding five (5) feet below any utility systems installed beneath the ground surface

*10*

of each easement or, in the case of ditches, a depth not exceeding five (5) feet below the ditch bottom. In the event of abandonment of this use by GRANTEE, this easement will automatically terminate.

## **2. LIMITATIONS; GRANTOR AND GRANTEE'S OBLIGATIONS FOR EXISTING CONDITION OF EASEMENT AREA**

Any structure, pavement, or vegetation GRANTEE has within the Easement Area will be compatible with the operation of an airport and comply with all applicable law, including but not limited to any applicable Federal Aviation Administration regulations.

The parties agree that GRANTOR shall, release, indemnify, and defend GRANTEE from and against any and all past, present, and future liability, costs (including attorney fees), losses, fines, penalties, claims, demands, orders, causes of action, or lawsuits (collectively, "Claims Against GRANTEE") brought by any party under any theory or source of law relating to or arising from the environmental condition of, on, in, or under the Easement Area, whether known or unknown, existing as of the Effective Date or contamination migrating to the Easement Area from the Troutdale Reynolds Industrial Park or the Troutdale Airport after the Effective Date (the "Covered Environmental Condition"), provided that this indemnity does not extend to an environmental condition to the extent that GRANTOR demonstrates that such an environmental condition is the result of past, present or future discharges from the City MS4 Stormwater Systems and unrelated to the ownership and/or operations of GRANTOR. GRANTEE shall release, indemnify, and defend GRANTOR and its agents and officials from and against any and all liability, costs (including attorney fees), losses, fines, penalties, claims, demands, orders, causes of action, or lawsuits (collectively, "Claims Against GRANTOR") brought by any party under any theory or source of law arising from or relating to the environmental condition of, on, in, or under the Easement Area arising after the Effective Date to the extent caused by GRANTEE's ownership and/or operation of the City MS4 Storm Systems draining to the Easement Area. GRANTOR and GRANTEE's respective release, defense, and financial responsibility obligations under this paragraph shall apply to, without limitation, Claims Against GRANTOR or Claims Against GRANTEE, as applicable, by a third party and/or agency relating to or arising from (a) damages to natural resources or (b) the cost to oversee, investigate, respond to, or remediate the release or migration of hazardous substance or material to, on, in, under, or from the Easement Area. To the extent all or any part of the parties' release, indemnity, and defense obligations in this paragraph 2 are not permitted by Oregon law, the unpermitted obligation(s) shall be void and unenforceable and shall be considered severed from this Agreement. The obligations in this paragraph 2 will survive any termination of the Agreement under paragraph 1.

## **3. USE AND ACCESS**

GRANTOR shall allow GRANTEE unrestricted access to the Easement Area at all times to properly construct, install, own, operate, maintain, repair, replace, and/or modify the Storm Water System Improvements, provided such access does not impact airport operations including but not limited to constraining or otherwise limiting access to or from the airport and access to GRANTOR owned infrastructure, including existing conduits and vaults if coordinated in advance with the GRANTOR. Any loss, damage, or destruction caused by the negligence or

willful misconduct of GRANTEE to GRANTOR's property in accessing the Easement Area or in performing the aforementioned actions shall be the responsibility of GRANTEE.

#### **4. GRANTOR'S USE**

Grantor reserves the right for reasonable use of the Easement Area in compliance with all applicable law consistent with Grantee's use permitted in paragraphs 1 and 3, including the installation, maintenance, repair, removal, replacement or relocation of underground utilities and services and continued operation and development of its adjoining property; provided, however, that Grantor's use shall neither impede nor interfere with Grantee's rights under this Agreement. In the event that Grantor needs all or a portion of the Easement Area for other purposes, Grantor reserves the right to relocate, at Grantor's expense, the Easement Area and any utilities located in the Easement Area provided that all of the following conditions are satisfied: (i) Grantor shall install new storm water systems in the relocated easement area at the sole expense of Grantor, equal to or better than the Storm Water System Improvements replaced; (ii) the relocated route has the same flow and treatment capacity as the Storm Water System Improvements replaced; (iii) drainage during the period of any construction is maintained; (iv) Grantee shall have approved the specifications for the relocated storm water systems prior to commencement of construction; and (v) Grantor shall obtain all permits and consents required to undertake the construction.

#### **5. BINDING EFFECT, RUN WITH THE LAND**

This Agreement shall run with the land as to all real property burdened and benefited, and shall inure to the benefit of GRANTOR, GRANTEE and their respective successors and assigns.

#### **6. ATTORNEY FEES**

In the event legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and any appeal therefrom. The term "action" shall be deemed to include action commenced in the Bankruptcy Court of the United States and any other court of general or limited jurisdiction. The reference to "costs" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out-of-pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

#### **7. SEVERABILITY**

If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

#### **8. INTEGRATION AND RESERVATION OF RIGHTS**

This Agreement constitutes the entire, final and complete agreement of the parties pertaining to this utility easement, and supersedes and replaces all other written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Easement Area is concerned. Neither party shall be bound by any promises, representations or agreements except as are expressly set forth herein. This Agreement is not intended to address stormwater quantity or flow issues, and the parties reserve the right to enter into good faith discussions in the future if necessary to address water quantity and flow across GRANTOR's property.

**9. GOVERNING LAW; VENUE**

This validity of this Agreement and the rights, obligations and relations of the parties shall be construed in accordance with and governed by the laws of the state of Oregon without regard to its principles of conflicts of law. The parties agree to the exclusive jurisdiction and venue for any action to enforce or interpret this Agreement shall be either the Multnomah County Circuit Court, state of Oregon, or the United States District Court, District of Oregon, Portland Division.

**10. NONWAIVER**

Failure by either party at any time to require performance by the other party of any of the provisions in this Agreement shall in no way affect the party's rights under the Agreement to enforce the provisions in this Agreement, nor shall any waiver by a party of the breach of the provisions in this Agreement be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

**11. EASEMENT AREA**

**STORM DRAINAGE LEGAL DESCRIPTION**

A STRIP OF LAND VARIABLE IN WIDTH, LOCATED IN THE JAMES M. STOTT D.L.C No. 48 AND THE LEWIS MARR D.L.C. No. 45 IN THE SOUTHWEST AND SOUTHEAST ONE-QUARTERS OF SECTION 23, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON, THE OUTBOUNDS BEING DESCRIBED AS FOLLOWS:

COMMENCING AT A 4-1/4 INCH DIAMETER BRASS DISK IN CONCRETE AT THE SOUTHEAST CORNER OF SAID SECTION 23; THENCE NORTH 29°25'57" WEST, 1,613.49 FEET TO A FOUND 9/16-INCH DIAMETER STAINLESS STEEL ROD (PORT OF PORTLAND SURVEY CONTROL POINT No. 200, AS SHOWN ON DWG. No. "MD TTD 2011-3012"; THENCE NORTH 45°38'50" EAST, 421.20 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF NW GRAHAM ROAD (30.00 FEET FROM CENTERLINE) AND THE TRUE POINT OF BEGINNING; THENCE, DEPARTING SAID RIGHT OF WAY LINE, SOUTH 41°00'52" WEST, 26.92 FEET; THENCE SOUTH 72°49'48" WEST, 42.28 FEET; THENCE SOUTH 89°44'26" WEST, 84.11 FEET TO A POINT OF CURVATURE; THENCE 369.18 FEET ALONG THE ARC OF A 735.48-FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE SOUTHEAST, THROUGH A CENTRAL ANGLE OF 28°45'35" (THE LONG CHORD BEARS SOUTH 75°21'39" WEST, 365.31 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 60°58'51" WEST, 295.83 FEET TO A POINT OF CURVATURE; THENCE 240.34 FEET ALONG THE ARC OF A 862.50-FOOT RADIUS CURVE TO THE RIGHT, CONCAVE TO THE NORTHWEST, THROUGH A CENTRAL ANGLE OF 15°57'56" (LONG CHORD BEARS SOUTH 68°57'49" WEST, 239.56 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 76°56'47" WEST, 35.86 FEET; THENCE SOUTH 58°27'20" WEST, 104.97 FEET; THENCE SOUTH 89°01'37" WEST, 1,156.54 FEET; THENCE NORTH 31°16'55" WEST, 42.86 FEET; THENCE NORTH 89°01'37" EAST, 1,209.65 FEET; THENCE NORTH 02°14'37" WEST, 42.03 FEET TO A POINT OF NON-TANGENCY ON THE SOUTH RIGHT OF WAY LINE OF SAID NW GRAHAM ROAD, FROM WHICH THE RADIUS POINT BEARS NORTH 06°53'30" WEST; THENCE, RUNNING ALONG SAID SOUTH RIGHT OF WAY LINE, 319.44 FEET ALONG THE ARC OF A 830.00-FOOT NON-TANGENT RADIUS CURVE TO THE LEFT,

CONCAVE TO THE NORTHWEST, THROUGH A CENTRAL ANGLE OF 22°03'04" (THE LONG CHORD BEARS NORTH 72°04'57" EAST, 317.47 FEET) TO A POINT OF TANGENCY, THENCE NORTH 61°03'25" EAST, 297.60 FEET TO A POINT OF CURVATURE; THENCE 385.32 FEET ALONG THE ARC OF A 770.00-FOOT RADIUS CURVE TO THE RIGHT, CONCAVE TO THE SOUTHEAST, THROUGH A CENTRAL ANGLE OF 28°40'19" (THE LONG CHORD BEARS NORTH 75°23'34" EAST, 381.31 FEET) TO A POINT OF TANGENCY; THENCE NORTH 89°44'37" EAST, 141.60 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 81,481 SQUARE FEET MORE OR LESS.

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

As depicted on Exhibit A below.

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**EXHIBIT B**

Port Constructed Improvements

As shown on:

TROUTDALE REYNOLDS INDUSTRIAL PARK

PHASE 2 – GRAHAM ROAD AND SWIGERT WAY IMPROVEMENTS  
DITCH PLAN AND PROFILE  
STA D39+00 TO D44+00

REVISED AS OF 3/31/15

DRAWING NO. TRIP 2014-501 PAGES 54-58/188 (C-51), SUBMITTED BY ROGER  
ANDERSON  
PREPARED BY DAVID EVANS AND ASSOCIATES INC. FOR THE PORT OF  
PORTLAND

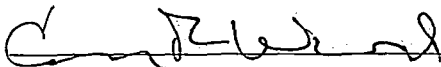
CERTIFICATE OF GRANTOR

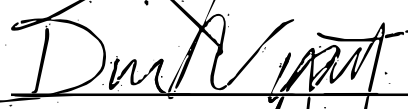
I, Bill Wyatt, ~~owner~~ or the authorized representative of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 25<sup>th</sup> day of July, 2016

**GRANTEE**  
**CITY OF TROUTDALE**

**GRANTOR**  
**THE PORT OF PORTLAND**

By: 

By: 

Print Name: Craig Ward

Print Name: BILL WYATT

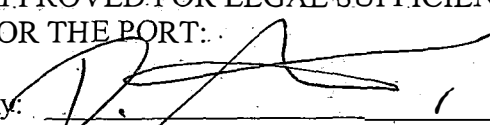
As Its: City Manager

As Its: EXECUTIVE DIRECTOR

Date: 7/25/16

Date: 6/13/16

APPROVED FOR LEGAL SUFFICIENCY  
FOR THE PORT:

By:   
Counsel for Port of Portland

ACKNOWLEDGMENTS

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

This Easement was acknowledged before me on June 13, 2016 2016, by Bill Wyatt, as Exec. Dir. of the Port of Portland, a port district of the State of Oregon.



Elise L. Neibert  
Notary Public for Oregon  
My Commission Expires: May 5, 2020

CERTIFICATE OF GRANTEE

I, Sarah Skroch Recorder of the City of Troutdale, hereby certify that the foregoing easement was accepted by the City Council of the City of Troutdale on the 12<sup>th</sup> day of July, 2016 by Resolution No. 2346

Dated this 20<sup>th</sup> day of July, 2016.

Joel Skel  
\_\_\_\_\_  
City Recorder

(seal)

APPROVED AS TO FORM:

By: [Signature]

Special City Attorney  
Nathan Karman  
Ater Wynne, LLP

STATE OF OREGON            )  
  ) ss.  
COUNT OF MULTNOMAH    )

Personally appeared the above named City Recorder and acknowledged the foregoing instrument to be the voluntary act and deed of the CITY OF TROUTDALE.



BEFORE ME: Kenda Rena Schlant  
Notary Public for Oregon  
Commission Expires: 2/15/20

(seal)