

## **RESOLUTION NO. 2358**

### **A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE PORT OF PORTLAND FOR THE WARRANTY OF THE PUBLIC IMPROVEMENTS ASSOCIATED WITH THE TROUTDALE REYNOLDS INDUSTRIAL PARK PHASE II**

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

1. Construction of the public improvements associated with the Troutdale Reynolds Industrial Park Phase I (TRIP) are nearing completion by the Port of Portland.
2. The Port of Portland is required by the Troutdale Development Code (TDC) to provide a warranty against defects in materials and workmanship for the public improvements for a period of two years following completion.
3. The Port of Portland has proposed an Intergovernmental Agreement (IGA) to guaranty their warranty obligations to the City in lieu of the typical instruments specified by the TDC.
4. 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 for the warranty of the public improvements associated with the Troutdale Reynolds Industrial Park Phase II in substantial conformance with the Attachment A hereto.

Section 2. This resolution is effective upon adoption.

YEAS: 6  
NAYS: 0  
ABSTAINED: 0



Doug Daoust, Mayor

Date

10/28/16



Sarah Skroch, City Recorder  
Adopted: October 25, 2016

**INTERGOVERNMENTAL AGREEMENT****FINANCIAL ASSURANCE IN SUPPORT OF CERTIFICATE OF COMPLETION****TRIP PHASE II PUBLIC IMPROVEMENTS**

Project Title:	Troutdale-Reynolds Industrial Park Phase II Public Improvements City File No. 12-031	("TRIP") ("Project")
Parties:	The Port of Portland The City of Troutdale	("Port") ("City")

**Recitals**

A. The Port has completed that portion of the Project improvements which are identified as "Public Works Requirements" in Section 4 of the Conditions of Approval set forth in the October 10, 2012 Findings of Fact and Final Order in the matter of TRIP Subdivision Phase II, regarding the Port's application to re-plat Tract D of TRIP Subdivision Phase I. As further described on the attached Exhibit A, such improvements are collectively referred to as the "**Improvements**" below.

B. The City Director of Public Works has verified that the Improvements have been constructed in accordance with the applicable construction drawings, standards, and specifications.

C. Troutdale Development Code (the "**Code**") Section 7.410.B requires that, prior to the City's issuance of a Certificate of Completion for the Project, a financial assurance be submitted in an amount which is not less than ten percent of the cost of the Improvements. Such financial assurance must run for a period of at least two years following the City's issuance of the Certificate of Completion, and must require the Port to promptly correct all deficiencies of workmanship and materials within the Project for that period.

D. The parties intend that this Intergovernmental Agreement (the "**Agreement**") solely and satisfactorily represent the financial assurance required under Code Section 7.410.B for the Project, in lieu of the Port providing any other form of financial instrument to accomplish such purpose.

**Agreement****1. Completion Financial Assurance; Amount**

a. Completion Financial Assurance. Consistent with Code Section 7.410.B, for a period of two years following the date of the City's issuance of the Certificate of Completion for the Project, and subject to the amount set forth in Section 1b below, the Port will correct or cause to be corrected all deficiencies of Project workmanship and materials (the "**Completion**

**Financial Assurance**”). The Port will have no obligations under this Section 1 after such time period.

b. Amount. For purposes of Code Section 7.410.B, the cost of the Improvements is deemed to be \$3,708,000. Ten percent (10%) of such cost is \$370,800; therefore, the amount of the Completion Financial Assurance is \$370,800.

2. **Acceptance of Completion Financial Assurance**. The City accepts the Completion Financial Assurance in satisfaction of the Port’s obligation to provide a financial assurance under Code Section 7.410.B, 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 any requirement that the Completion Financial Assurance be provided in any other form, whether such requirement arises under the Code or any other authority. This waiver applies exclusively to the Project and does not apply to any other, future project undertaken by the Port within the City.

3. **Effect of Completion Financial Assurance**

a. If the City discovers a defect covered by this Agreement, the City must notify the Port in writing of the nature and extent of the defect. The Port will commence the correction of the defect identified in the City’s notice within 15 business days after receiving such notice.

b. If in the City’s opinion delay in correction of the defect would cause serious loss or damage, the City must immediately notify the Port by the fastest commercially reasonable means of: (i) the nature and extent of the defect; (ii) the fact that the City believes delay in the correction of the defect would cause serious loss or damage; and (iii) the date and time by which the City expects the Port to commence correction of the defect, provided that such date and time must be at least eight business hours after the Port receives the notification. The Port will use its best efforts to commence the correction of the defect within the time period identified in the City’s notice.

c. If the Port has not commenced correction of a defect within the applicable time period under Section 3a or Section 3b above, or if the Port fails to expeditiously pursue the corrections, the City may cause the corrections to be made and may recover the reasonable cost of such corrections from the Port subject to the following conditions:

i. Before engaging City staff or a contractor to complete the corrections pursuant to Section 3c above, the City must notify the Port in writing of: (i) the Port’s failure to timely commence correction of a defect or to expeditiously pursue the correction; and (ii) the City’s intent to engage City staff or a contractor to perform the corrections. The City shall allow the Port a reasonable time after delivery of the written notice to cure its failure before engaging City staff or a contractor to perform the corrections. For purposes of this subsection, the Port will be deemed to have cured its failure if the Port has engaged Port staff or a contractor to commence the corrections.

ii. Provided notice and an opportunity to cure is provided in accordance with Section 3ci above and the City reasonably determines that the Port has not timely met 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

corrections, up to the amount of the Completion Financial Assurance. Following the City's completion of the corrections, such payment may be adjusted up or down to reflect the reasonable and necessary costs actually incurred by the City to complete the corrections. 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 the Completion 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 corrections.

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.

THE CITY OF TROUTDALE

By:



Doug Daoist  
Mayor

Date:

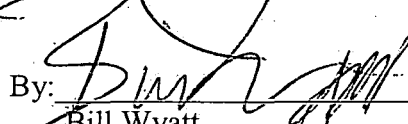
10/28/16

Approved as to form  
for the City of Troutdale

  
Counsel for the City of Troutdale

THE PORT OF PORTLAND

By:

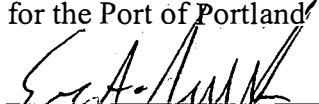


Bill Wyatt  
Executive Director

Date:

10/12/16

Approved as to legal sufficiency  
for the Port of Portland

 10/6/16  
Counsel for the Port of Portland

**Exhibit A**  
**TRIP Phase II Subdivision - Public Improvements**  
**Warranty Bond Asset Value**  
**October 7, 2016**

Item Description	Quantity	Unit	Estimated Value
Traffic Signage	1	LS	10,000
Bedding Material for Pipes	986	CY	25,000
Trench Cutoff Walls	108	CY	15,000
Pavement Repair, 22-Inch Depth	1249	SY	44,000
CTB Pavement	1	LS	144,000
Aggregate Base Course, 2-Inch Depth	2599	SY	10,000
Aggregate Base Course, 4-Inch Depth	4511	SY	25,000
Aggregate Base Course, 8-Inch Depth	1207	SY	11,000
Aggregate Base, 12-Inch Depth Open Graded	1595	SY	
Aggregate Base Course, 18-Inch Depth	2307	SY	44,000
Level 2, 1/2 Inch Open Graded HMAc	442	Ton	42,000
Level 3, 1/2 Inch Dense Graded HMAc	2648	Ton	187,000
Tack Coat	9	Ton	9,000
Remove and Replace Troutdale Curb and Gutter	3620	LF	47,000
Curb Drop and Splash Pad	60	Each	14,000
Driveway, 8-Inch Depth Concrete	4181	SF	25,000
Sidewalk	23389	SF	88,000
Pavement Marking	1283	Each	4,000
4-Foot Chain Link Fence	200	Each	6,000
Box Culvert Headwalls at Graham Rd	1	LS	126,000
CIP Rigid Gravity Retaining Wall at Graham Rd	1	LS	33,000
12-Inch Water Pipe	58.3	Each	11,000
Adjust Air Release Valve	1	Each	1,000
Adjust Water Valve	2	Each	1,000
2-Inch Air Release Valve Assembly	2	Each	7,000
6-Inch Sanitary Sewerage Pipe	30	LF	6,000
Manhole Adjustment, Sanitary	3	LF	2,000
12-Inch Storm Drainage Pipe, RCP	181	LF	11,000
12-Inch Storm Drainage Pipe, DIP	704	LF	54,000
18-Inch Storm Drainage Pipe, RCP	74	LF	6,000
24-Inch Storm Drainage Pipe, RCP	156	LF	15,000
30-Inch Storm Drainage Pipe, RCP	433	LF	65,000
30-Inch Storm Drainage Pipe, DIP	1218	LF	254,000
36-Inch Storm Drainage Pipe, DIP	96	Each	25,000
48-Inch Storm Drainage Pipe, RCP	806	Each	193,000
48-Inch Storm Drainage Pipe, DIP	39	Each	30,000
Additional Pipe Restraints	1	LS	12,000
Storm Manhole, 48-Inch	1	Each	3,000
Storm Manhole, 48-Inch, Lined	4	Each	22,000
Storm Manhole, 54-Inch with Inlet	1	Each	4,000
Storm Manhole, 60-Inch	2	Each	9,000
Storm Manhole, 60-Inch, Lined	7	Each	62,000
Storm Manhole, 60-Inch with Inlet	1	Each	5,000
Storm Manhole, 72-Inch, Lined	3	Each	39,000

**Exhibit A**  
**TRIP Phase II Subdivision - Public Improvements**  
**Warranty Bond Asset Value**  
**October 7, 2016**

Item Description	Quantity	Unit	Estimated Value
Storm Manhole, 84-Inch	2	Each	17,000
Storm Manhole, 84-Inch with Inlet	2	Each	18,000
Storm Manhole, 84-Inch with Inlet, Lined	1	Each	14,000
Storm Manhole, 84-Inch	2	Each	17,000
Storm Manhole, 108-Inch, Lined	1	Each	40,000
Troutdale Catch Basin	3	Each	7,000
Troutdale Catch Basin, Lined	2	Each	7,000
Troutdale Catch Basin with Solid Cover, Lined	1	Each	4,000
STS Ditch Inlet	3	Each	8,000
STS Ditch Inlet, Lined	6	Each	29,000
Catch Basin Adjustment	3	LF	2,000
29H.x 45W Concrete Storm Culvert Pipes	256	LF	73,000
Graham Road Box Culvert	1	Each	123,000
Grassy Swale, 9-Foot Width	291	Each	25,000
Grassy Swale, 9-Foot Width with Membrane	541	Each	48,000
2-Cartridge Linear Storm Filter Vault(2-Cartridge)	1	Each	20,000
4-Cartridge Linear Storm Filter Vault(3-Cartridge)	1	Each	24,000
4-Cartridge Linear Storm Filter Vault(4-Cartridge)	1	Each	25,000
8-Cartridge Linear Storm Filter Vault(6-Cartridge)	1	Each	33,000
6x12 Storm Filter Vault (12 Cartridge)	1	Each	43,000
6x12 Storm Filter Vault (13 Cartridge)	1	Each	45,000
Curb and Splash Pad Modifications	1	LS	15,000

**Graham Road Subtotal 2,416,000**

Item Description	Qty	Unit	Value
Traffic Signage	1	LS	5,000
Bedding Material for Pipes	426	CY	11,000
Trench Cutoff Walls	249	CY	35,000
Aggregate Base Course, 4-Inch Depth	544	SY	3,000
Aggregate Base Course, 8-Inch Depth	3559	SY	34,000
Aggregate Base Course, 18-Inch Depth	1159	SY	22,000
Level 3, 1/2 Inch Dense Graded HMAc	2902	Ton	205,000
Tack Coat	6.8	Ton	7,000
Troutdale Typical Curb and Gutter	347.8	LF	42,000
Curb Drop and Splash Pad	80	Each	18,000
Driveway, 8-Inch Depth Concrete	4896	SF	29,000
Sidewalk	42668	SF	160,000
Pavement Marking	169	Each	1,000
6-Inch Water Pipe	24	LF	2,000
12-Inch Water Pipe	22	Each	4,000
Connection to Waterline	4	Each	20,000
2-Inch Water Meter	1	Each	2,000
Adjust Water Valve	7	Each	2,000
Fire Hydrant Assembly	4	Each	21,000

**Exhibit A**  
**TRIP Phase II Subdivision - Public Improvements**  
**Warranty Bond Asset Value**  
**October 7, 2016**

Item Description	Quantity	Unit	Estimated Value
2-Inch Air Release Valve Assembly	1	Each	3,000
6-Inch Sanitary Sewerage Pipe	64	LF	13,000
Manhole Adjustment, Sanitary	1	LF	1,000
12-Inch Storm Drainage Pipe, DIP	430	LF	26,000
24-Inch Storm Drainage Pipe, DIP	64	LF	7,000
30-Inch Storm Drainage Pipe, DIP	699	LF	114,000
36-Inch Storm Drainage Pipe, DIP	443	Each	91,000
42-Inch Storm Drainage Pipe, DIP	296	Each	81,000
Additional Pipe Restraints	1	LS	9,000
Storm Manhole, 48-Inch with Inlet, Lined	3	Each	18,000
Storm Manhole, 60-Inch, Lined	5	Each	45,000
Storm Manhole, 72-Inch, Lined	5	Each	65,000
Storm Manhole, 84-Inch, Lined	1	Each	15,000
STS Ditch Inlet, Lined	8	Each	51,000
Special Ditch Inlet, Lined	1	LF	6,000
Connection to Storm Manhole or Catch Basin	1	LF	2,000
Manhole Adjustment, Storm	1	LF	1,000
Grassy Swale, 9-Foot Width with Membrane	1160	Each	102,000
<b>Swigert Way Subtotal</b>			<b>1,292,000</b>
<b>Subdivision Total</b>			<b>3,708,000</b>