

RESOLUTION NO. 2098

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A REVISED INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE PORT OF PORTLAND RELATING TO THE TROUTDALE REYNOLDS INDUSTRIAL PARK

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. On May 26, 2009, the City Council authorized the Mayor to sign an Intergovernmental Agreement (IGA) with the Port of Portland 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. Also on May 26, 2009, the City Council authorized the Mayor to enter into a Stipulated General Judgment in *State of Oregon, ex.rel. Richard Peterson, Director, Department of Environmental Quality v. City of Troutdale*, Case No. 1006-08622, (Consent Judgment), which judgment, among other things, incorporated the definition or "baseline" description of environmental conditions at the TRIP property as that description was set forth in the IGA. Oregon law requires that the Consent Judgment be entered in Multnomah County Circuit Court and recorded with Multnomah County Property Records prior to accepting dedication of the Public Improvements. The Consent Judgment was entered by the court on June 16, 2010, and recorded with Multnomah County Property Records on July 23, 2010.
3. Federal regulations require that a Phase I Environmental Site Assessment (ESA) be conducted prior to dedication of the Public Improvements for the City to establish certain defenses to liability under federal law for preexisting environmental conditions. Federal law also requires that specific elements of the ESA be updated if they are older than 180 days when the property subject to the ESA is acquired or dedicated. Due to the timing of the entry and recording of the consent judgment and the subsequent completion of the City's plat requirements by the Port of Portland, the Phase I ESA that was initially completed in March 2009 was required by federal law to be updated. The updated ESA is dated November 8, 2010.
4. It is necessary to revise the IGA with the Port to include a reference to the Bridgewater Final Phase I Environmental Site Assessment Update dated November 8, 2010.

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

Section 1. The Mayor is authorized to enter into a revised Intergovernmental Agreement for the Troutdale Reynolds Industrial Park substantially in accordance with Exhibit "A" of the staff report.

Section 2. This resolution is effective upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0

Mayor Jim Kight
Mayor Jim Kight
April 14, 2011
Date

Debbie Stickney
Debbie Stickney, City Recorder

Adopted: April 12, 2011

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 that portion of the “Troutdale Reynolds Industrial Park Property” or “TRIP Property,” located in Troutdale, Oregon, as depicted in **Exhibit A** to this Agreement, including the Swigert Way Infrastructure and the Swigert Way Corridor, as depicted in **Exhibit B**, utilities, roads, pump stations, as depicted in **Exhibit C**, rights of way and other property proposed for dedication (collectively the proposed “Public Improvements”) as more specifically defined herein.

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 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 a major partition plat on August 15, 2007;

C. 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;

D. 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 25.28) 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);

E. 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;

F. 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 25.16) and the Bona Fide Prospective Purchaser defense (“BFPP Defense” defined in Section 25.2) pursuant to CERCLA Section 107(r), 42 USC § 9607(r);

G. 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 25.17);

H. WHEREAS, in connection with the redevelopment of the TRIP Property the Port is constructing the Public Improvements, including the Swigert Way Corridor as illustrated in **Exhibit B** and the Swigert Way Infrastructure as illustrated in **Exhibit C**;

I. WHEREAS, it is the intent of the Port and the City that any ownership or operational obligations related to the Public Improvements, if 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 26.12) to, in, on, or from the Public Improvements, provided that the Port shall not be liable to the City for such costs or expenses occurring after the dedication and acceptance of the Public Improvements by the City to the extent that (i) they result solely from acts or omissions of third parties as set forth in this Agreement or (ii) result from a Hazardous Materials Release caused by the negligence or willful misconduct of the City. In addition the City has agreed not to seek reimbursement for City Operating Expenses as defined in Section 25.3 from the City’s reimbursement requests to the Port, as applicable;

J. WHEREAS, prior to finalizing, approving, and recording the Final Plat (defined in Section 25.8), 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;

K. 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.

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, 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 the 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 25.6) 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 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, Existing Hazardous Materials Releases to soil, groundwater, or other media encountered to, on, in or from the area of the Public Improvements, 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 O&M Plan in the amount of \$4500.00, 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 25.15) 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 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.

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. 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 25.15) 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 25.10) 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: (i) \$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, if before acceptance and dedication of the Public Improvements the City enters into a consent judgment with Oregon Department of Environmental Quality under ORS 465.327 and makes a good faith effort to establish, in its sole discretion, the elements of the BFPP Defense, as defined in Subsection 25.2; (ii) if the City does not enter into a consent judgment as described in Subsection 7.3 and make a good faith effort to establish, in the City's sole discretion, the elements of the BFPP Defense then the total indemnity limit shall be **\$2,000,000 (two million) US DOLLARS** in respect of any and all claims. The City's good faith effort to establish the elements of the BFPP Defense shall be conclusively presumed to have occurred unless the Port delivers written notice to the City on or before the earlier of: a) 90 days after the Effective Date, or b) 10 days prior to the final inspection of the Public Improvements. The Port's notice shall set forth the specific reasons why it believes the City has not made the good faith effort. The City shall notify the Port within 10 business days of receiving the Port's notice setting forth the City's proposed cure. 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, the Port's obligations to indemnify the City under this Section 7 will expire the later of: (i) ten (10) years after the date EPA issues its Certification of Completion of the work required under the United States Consent Decree; (ii) ten (10) years after the date the property owners are notified by the Port; or (iii) ten (10) years after the recording of the Final Plat in Multnomah County title records. With regard to future owners and occupants on the Property, the Port's obligations to the City under this Section 7 will expire either the earlier of: (a) the date the Port secures a written release of liability substantially in the form attached as **Exhibit F** from such owners and occupants in favor of the City regarding the Existing Hazardous Materials Releases or if no written release is obtained, the later of ten (10) years after the date EPA issues its Certification of Completion under the United States Consent Decree; or (b) ten (10) years after such owners and occupants are notified in writing by certified mail return receipt requested by the Port substantially in the form attached as **Exhibit G** of the presence of the Existing Hazardous Materials Releases.

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 shall become effective upon the earlier of: (i) the City's acceptance of the Public Improvements or (ii) recordation of the Final Plat.

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. No New Leases or Uses.

After the Effective Date of this Agreement, the Port shall not enter into any new lease relating to the Public Improvements or authorize any use of the Public Improvements without the written consent of the City; provided, however, that this provision shall not apply if the City declines to accept dedication of the Public Improvements.

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 Administrator
104 SE Kibling Avenue
Troutdale OR 97060-2099

With a copy to:

City of Troutdale
Attn: City Attorney
104 SE Kibling Avenue
Troutdale, OR 97060-2099

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. Permits and Approvals

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.

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” means the environmental site assessment conducted consistent with ASTM E-1527 for the City.

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

25.6 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.

25.7 “Effective Date” means the date on which both Parties have received authorization for entering into the Agreement and have executed the Agreement.

25.8 "Final Plat" means the final plat of the Property, defined in Section 25.19, approved by the City of Troutdale and Multnomah County and recorded in the title records of Multnomah County.

25.9 "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:

25.9.1 "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;

25.9.2 "Hazardous Waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

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

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

25.10 "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.

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

25.12 "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; 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 25.12, 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.

25.13 “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.

25.14 “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.

25.15 “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.

25.16 “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.

25.17 “Port Continuing Obligations” means the Port’s obligations under the Port Consent Judgment 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.

25.18 “Preliminary Plat” means the preliminary approval of a major partition plat for the Property by the Planning Commission of the City of Troutdale on August 15, 2007.

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 described in Exhibit B, and the Swigert Way Infrastructure including all rights of way, roads, water lines, sanitary sewers (including force mains), storm sewers, utility conduits, pump stations, described in Exhibits B 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.

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**.

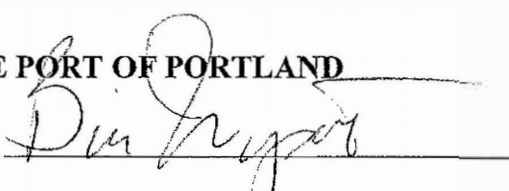
25.28 "United States Consent Decree" means the consent decree entered into between the United States and Reynolds Metals Company in Case No. 3:08-cv-00108-KI in the United States District Court for the District of Oregon;

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: TIM RIGHT

Printed Name: Bill Wyatt

As Its: MAYOR

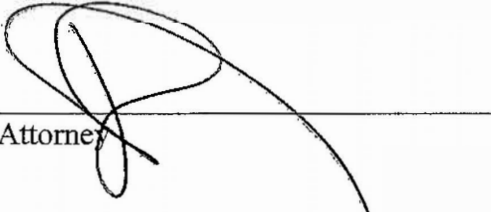
As Its: Executive Director


Date: April 14, 2011

Date: 4/13/11

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