

## RESOLUTION NO. 2548

### A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TROUTDALE AND MID-COUNTY LIGHTING DISTRICT

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

1. The Mid-Multnomah County Street Lighting Service District No. 14, also referred to as the "Mid-County Lighting District" is a public utility that operates, constructs, and maintains the city's street light system.
2. The Mid-County Lighting District and the City regularly work together to ensure adequate lighting is available on all streets and throughfares of the city, particularly in the event of prospective development that requires new or upgraded lighting to fulfill standards.
3. To ensure cost recoveries and the carrying out of street lighting improvements when required by land use applications, the District is requesting the City enter into an intergovernmental agreement that outlines expectations of both agencies.

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

- Section 1. The City of Troutdale approves, and the Mayor is authorized to sign, an Intergovernmental Agreement Between City of Troutdale & Mid-Multnomah County Street Lighting Service District No. 14, which is attached and made a part hereto.

**YEAS: 7**

**NAYS: 0**

**ABSTAINED: 0**



**Randy Lauer, Mayor**

**Date: October 27, 2021**



**Sarah Skroch, City Recorder**

**Adopted: October 26, 2021**

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CITY OF TROUTDALE & MID-MULTNOMAH COUNTY STREET  
LIGHTING SERVICE DISTRICT NO. 14**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between the CITY OF TROUTDALE, acting by and through its elected officials, hereinafter referred to as "City," and MID-MULTNOMAH COUNTY STREET LIGHTING SERVICE DISTRICT NO. 14, a service district of Multnomah County, acting by and through the Multnomah County Board of Commissioners, hereinafter referred to as "District." City and District are referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. ORS 190.003 to 190.030 allows units of local government to enter into agreements for performance of any or all functions and activities that a party to such agreement, its officers or agencies, have authority to perform.
2. City is responsible for City right-of-way located within its incorporated boundary.
3. District is responsible for construction, maintenance and operation of street lighting, including all facilities necessary for the lighting of streets and highways in unincorporated portions of Multnomah County and the cities of Fairview, Maywood Park, and Troutdale.
4. City, in accordance with the Troutdale City Code, may require construction or installation of street lighting or related facilities on development projects located in the District's service area.

**NOW THEREFORE**, the Parties agree as follows:

1. **Term of Agreement.** This Agreement becomes effective upon execution by both Parties and will remain in effect until terminated as allowed herein.
2. **Definitions.**
  - A. "Developer" means any government or private entity that is constructing, altering, removing, or otherwise impacting facilities that are or will become District Facilities.
  - B. "District Performance Guarantee" means a Financial Assurance that may be used by the District, or with the District's permission by another on behalf of the District, to provide for the construction and installation of District Facilities not completed or not timely completed by a Developer.
  - C. "District Warranty Guarantee" means a Financial Assurance that may be used by the District, or with the District's permission by another on behalf of the District, to

## INTERGOVERNMENTAL AGREEMENT

provide for Warranty Work on District Facilities in the first two years after the District Performance Guarantee is released.

- D. “District Facilities” means poles, luminaires, circuits, junction boxes, service panels, conduits, foundations, facilities or property of any kind owned by the District or that will be transferred to District ownership upon completion of construction and acceptance by the District.
- E. “Financial Assurance” means a surety bond, cashier’s check, or certified check for deposit with the City, or irrevocable letter of credit that meets the requirements of ORS 19.315(1)(a), (1)(c)-(e), and (2), with City or District or both as beneficiary, securing a District Performance Guarantee or District Warranty Guarantee, as applicable and appropriate. A Financial Assurance for a District Performance Guarantee or District Warranty Guarantee may be combined into a Financial Assurance instrument for a similar and related Performance Guarantee or Warranty Guarantee, respectively, provided by a Developer to the City.
- F. “Permit” means a City land use decision or a City permit to build in the City’s right-of-way.
- G. “Right-of-way” means an existing public right-of-way controlled by the City and/or a public right-of-way to be dedicated to the City as a requirement of development.
- H. “Warranty Work” means corrective work required due to defects in materials or workmanship.

### **3. Responsibilities of the District.** The District agrees to:

- A. Provide written notification to the City when the District requires a Developer to install, construct, or modify District Facilities in association with a Permit.
- B. Review a Developer’s estimate of the actual costs of the proposed District Facility, for purposes of calculating the amount of a District Performance Guarantee and a District Warranty Guarantee, and notify the City in writing when the District has approved the estimate.
- C. Provide written notification to the City when District Facilities have not been completed or timely completed and the District Performance Guarantee needs to be called and funds dispersed to the District or to another on behalf of and with written permission of the District.
- D. Provide written notification to the City when District Facilities require Warranty Work covered by the District Warranty Guarantee and the District Warranty Guarantee needs to be called and funds disbursed to the District or to another on behalf of and with written permission of the District.
- E. Grant power of attorney or such other authority as is necessary to the City to collect any payments, requirements, or reimbursements for a District Performance Guarantee

## INTERGOVERNMENTAL AGREEMENT

or District Warranty Guarantee, whether as agent under power of attorney or assignment, as the case may be, provided that the City shall transfer such payments, requirements, or reimbursements to the District for the District's use, or to another on behalf of and with written permission of the District for District's benefit.

- F. Provide written notification to the City when the District Performance Guarantee or District Warranty Guarantee is no longer needed and may be released.
- G. Provide and defend to all affected parties any and all evidence establishing District's basis for determining that there is just cause for calling a District Performance Guarantee or District Warranty Guarantee or receiving disbursement of funds from either such Financial Assurances.

### **4. Responsibilities of the City.**

- A. If the City requires a Developer to provide a Financial Assurance, through a Permit condition or otherwise, for work authorized under a Permit, the City will require the Developer to provide the same type of Financial Assurance(s) for District Facilities required to be constructed, installed, or modified under that Permit.
- B. When the City requires, through a Permit condition or otherwise, a Developer to provide a District Performance Guarantee, a District Warranty Guarantee, or both, the City agrees to:
  - i. Require a Developer who is constructing or installing a proposed District Facility as a requirement of the Permit to provide the City and the District with an estimate of the actual costs of any proposed District Facility for purposes of determining the value of the required District Performance Guarantee and District Warranty Guarantee.
  - ii. Require a Developer who is installing a proposed District Facility as a requirement of the Permit to provide a District Performance Guarantee in a sum equal to 110 percent of the actual costs of the District Facility, as estimated by the Developer and approved in writing by the District, and a District Warranty Guarantee in a sum equal to 10 percent of the actual costs of the District Facility.
- C. If the District determines that a District Performance Guarantee or District Warranty Guarantee needs to be called to complete performance or perform Warranty Work, the City will facilitate calling such Financial Assurance with the surety and assist the District with financial and accounting requirements, notwithstanding that the District will be solely responsible for providing and defending to all affected parties any and all evidence establishing the District's basis for determining that there is just cause for calling the Financial Assurance. If the District Performance Guarantee or District Warranty Guarantee is part of a Financial Assurance with the City as the sole beneficiary, the City agrees to disburse funds collected on the District's behalf to the District.

## INTERGOVERNMENTAL AGREEMENT

- D. City will facilitate release of a District Performance Guarantee and District Warranty Guarantee following receipt of written notice from the District that those Financial Assurances may be released, but not before such receipt of written notice.
- E. If a Developer elects to have the City hold a District Performance Guarantee or District Warranty Guarantee in the form of a Financial Assurance other than a surety bond, City will collect from the Developer and hold the Financial Assurance on behalf of the District.
- F. If a Developer elects to have the City hold a District Performance Guarantee pursuant to **Section 4(E)**, the City will disburse District Performance Guarantee funds to the District in the amount identified by the District within 60 days of receiving written notification from the District that the proposed District Facilities have not been timely completed, notwithstanding that the District will be solely responsible for providing and defending to all affected parties any and all evidence establishing District's just cause for receiving disbursement of such Financial Assurance funds.
- G. If a Developer elects to have the City hold a District Warranty Guarantee pursuant to **Section 4(E)**, the City will disburse District Warranty Guarantee funds to the District in the amount identified by the District within 60 days of receiving written notification from the District that Warranty Work covered by the District Warranty Guarantee is required, notwithstanding that the District will be solely responsible for providing and defending to all affected parties any and all evidence establishing District's just cause for receiving disbursement of such Financial Assurance funds.
- H. If a Developer elects to have the City hold a District Performance Guarantee or District Warranty Guarantee pursuant to **Section 4(E)**, the City will release the Financial Assurances following receipt of written notification from the District that the District Performance Guarantee or District Warranty Guarantee may be released, but not before receipt of such written notice.

### **5. Termination.**

- A. This Agreement may be terminated by either Party upon 60 days' written notice and in accordance with the terms of this Agreement.
- B. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
- C. Upon notice of termination, Parties shall work together to close out any and all outstanding District Performance Guarantees and District Warranty Guarantees. The obligations of this Agreement do not terminate until all outstanding District Performance Guarantees and District Warranty Guarantees are released or transferred.

# INTERGOVERNMENTAL AGREEMENT

## 6. Contact Information.

- A. City Liaison. City's liaison for the Project will be:

Travis Hultin  
Deputy PW Director/Chief Engineer

- B. District Liaison. District's liaison for the Project will be:

Chet Hagen  
Asset Management Program Manager

## 7. General Terms

- A. Compliance with Laws. City and District agree to comply with all applicable local, state, and federal ordinances, statutes, laws, rules and regulations in performance of this Agreement.

- B. Negation of Agency and Partnership. Except as expressly provided for herein, the Agreement does not create any form of legal association that would impose liability upon one Party for any act or omission of the other, nor does it preclude either Party from conducting similar business with other parties.

- C. Indemnity and Hold Harmless. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, City shall hold harmless and indemnify District, its, officers, elected officials, employees, and agents against any and all claims, damages, losses and expenses (including all attorney(s) fees and costs), arising out of, or resulting from the City's performance of this Agreement when the loss or claim is attributable to the acts or omissions of the City.

Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and Oregon Constitution, District shall hold harmless and indemnify City, its officers, elected officials, employees, and agents against all claims, damages, losses and expenses (including all attorney(s) fees and costs) arising out of or resulting from District's performance of this Agreement when the loss or claim is attributable to the acts or omissions of District.

- D. Authorization. The Parties certify and represent that the individual(s) signing this Agreement have been authorized to enter into and execute this Agreement, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind each Party.
- E. Counterparts. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed will constitute an original.

## INTERGOVERNMENTAL AGREEMENT

- F. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement will not constitute a waiver by either Party of that or any other provision.
- G. Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- H. Notice. Any notice required or permitted under this Agreement shall be in writing and deemed given when either (i) actually delivered, or (ii) three days after deposit in United States certified mail, postage prepaid, addressed to the other Party to the contact listed above in **Section 6**.
- I. Jurisdiction; Law. This Agreement is executed in the state of Oregon and is subject to Oregon law and jurisdiction. Venue for any trial court proceeding to enforce this Agreement shall be in Multnomah County Circuit Court, unless otherwise agreed in writing by the Parties.

**INTERGOVERNMENTAL AGREEMENT**

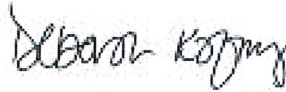
**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**CITY**

**DISTRICT**

By: Troutdale City Council

By: County Commissioners for Multnomah County – Governing Body for Mid-Multnomah County Street Lighting Service District No. 14



\_\_\_\_\_  
Randy Lauer, Mayor, City of Troutdale

\_\_\_\_\_  
Deborah Kafoury, District Chair

11/2/21

1/6/22

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**REVIEWED:**

By



\_\_\_\_\_  
City Attorney

11-1-21  
\_\_\_\_\_  
Date

By Katherine Thomas  
Katherine Thomas, Assistant County Attorney

1/6/22  
\_\_\_\_\_  
Date