

DEVELOPMENT AGREEMENT

BETWEEN PORT OF PORTLAND AND THE CITY OF HILLSBORO FOR THE FUTURE RIGHT-OF-WAY DEDICATION AND CONSTRUCTION OF A FUTURE COMMERCIAL & INDUSTRIAL COLLECTOR

This Development Agreement is entered into by and between Port of Portland (hereafter referred to as "PORT") and the City of Hillsboro, a municipal corporation in Washington County, acting by and through its Manager (hereafter referred to as "CITY") to defer right-of-way dedication and construction of future commercial & industrial collector half-street improvements.

RECITALS

- A. PORT prepared and completed a HIO (Hillsboro Airport) Master Plan Update in March of 2020 that proposed a public road with utilities connecting the eastern end of NE Springer Street to the traffic signal on NE Brookwood Parkway at the Hillsboro Brookwood Library intersection.
- B. CITY adopted the proposed road in the CITY's Transportation System Plan in March of 2022 as a "Commercial & Industrial Collector".
- C. PORT is leasing 13.14 acres of land on the southwest corner of the NE Brookwood Parkway / Hillsboro Brookwood Library intersection to the Sky Harbour Group to construct and operate six private aircraft hangars that will front the proposed Commercial & Industrial Collector as depicted in **Exhibit A** attached hereto.
- D. PORT requests to defer the Commercial & Industrial Collector right-of-way dedication and half-street improvements due to PORT uncertainty of the Commercial & Industrial Collector alignment.
- E. CITY has imposed land use conditions of approval on Case File DR-044-25 that require PORT to fully fund half-street improvements and to provide right-of-way at no cost to the CITY along the site frontage at the time of a project to construct the public roadway identified in the CITY's Transportation System Plan.

Now, THEREFORE, in consideration of the public benefit to provide more street connectivity in the city, the Parties hereby agree to the following:

AGREEMENT

1. PORT shall establish a restrictive covenant of a 48-foot setback from the centerline of the existing paved roadway along the northern frontage of the site as depicted in **Exhibit A** attached hereto. This setback prevents any permanent structures, such as buildings and stormwater facilities, from being placed within the setback.
2. PORT will dedicate right-of-way to the CITY at the time of a project to construct the commercial & industrial collector as depicted in **Exhibit A** attached hereto. Forty feet of the restrictive covenant width shall be utilized as right-of-way and the remaining 8 feet shall be utilized as a public utility easement.
3. PORT will fully fund half-street improvements along the site frontage at the time of a project to construct the commercial & industrial collector as depicted in **Exhibit A** attached hereto. The funded cost of the half-street improvements will include 28 feet of concrete for two travel lanes, 0.5-feet of curb, 7-foot cycle track, 6-foot landscape strip, 5-foot sidewalk, and 0.5-feet behind the curb based on the CITY's Design and Construction Standards. Street lighting, water, sewer, and transportation communications infrastructure will also be funded along the site frontage.
4. PORT will fully fund the relocation of the site's driveway farther west from NE Brookwood Parkway at the time of a project to construct the commercial & industrial collector as depicted in **Exhibit A** attached hereto. This site driveway relocation would likely require the relocation of the trash enclosure to the location of the old driveway. The relocation of the trash enclosure will also be fully funded by the PORT.
5. The above obligations of the PORT can be rescinded if the proposed public roadway is removed from the PORT's HIO Master Plan and the CITY removes the collector from their Transportation System Plan.

TERMS AND CONDITIONS

- A. Default: Time is of the essence in the performance of the Agreement. A party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. Any party shall provide any other party with written notice of default and allow thirty (30) days within which to cure the defect.

- B. Indemnification: This Agreement is for the benefit of the Parties only. Each Party agrees to indemnify and hold harmless the other Parties, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services, or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification obligation of CITY and PORT is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each Party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the Parties under this Agreement.
- C. Modification of Agreement: No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by all Parties.
- D. Disputes: The Parties shall attempt to informally resolve any dispute concerning any Party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. The Parties agree that in the event of an impasse in the resolution of any dispute, a neutral third party may be used to facilitate these negotiations if the Parties agree.
- E. Remedies: Any Party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The Parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.
- F. Excused Performance: In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control of the Party to be excused.
- G. Severability: If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.
- H. Integration: This Agreement is the entire agreement of the Parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

- I. Notice: Any notice required or permitted under this Agreement shall be addressed and given in writing as follows: (i) by certified mail, return receipt requested, which shall be effective when actually delivered in person or 72 hours after having been deposited in the United States mail, whichever occurs first; (ii) by personal delivery, which shall be effective on the date of delivery; (iii) by email (including by .pdf attachment) if successful delivery is confirmed by electronic delivery receipt provided that the addressee acknowledges in writing (including by return email) that the addressee has received the emailed notice, which shall be effective on the date of electronic delivery receipt; or (iv) by FedEx and similar reputable overnight delivery service, which shall be effective on delivery:

To CITY: Rahim Harji
 Assistant City Manager
 150 East Main Street
 Hillsboro, OR 97123
 Email: rahim.harji@hillsboro-oregon.gov

To PORT: Name
 Title
 Address
 City
 Email:

- J. Time Periods: If the time for performance of any obligation under this Agreement expires on a day that is not a business day, the time for performance shall be extended to the next business day. As used herein, "business day" means any day other than a Saturday, Sunday, or a day on which banking institutions in the state of Oregon are authorized by law or executive order to close.
- K. Nonwaiver: Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this no waiver clause.
- L. Counterparts: This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, and each counterpart, when so executed and delivered, shall be deemed to be an original and all of the counterparts, taken together, shall constitute but one and the same agreement. A party's properly executed and authorized signature may be given in .pdf format and transmitted by email and upon receipt by the other party shall constitute an original signature.
- M. Authority to Sign: Each Party acknowledges that its respective signer of this Agreement has the full and complete authority to do so.

N. Term of Agreement/Termination: The term of this Agreement shall be from the last date executed by the parties below until the completion of the new southbound deceleration and right turn lane on SW 209th Avenue as shown in **Exhibit B** and the eastbound right turn lane on SW Blanton Street at the intersection with SW 209th Avenue shown in **Exhibit A**, but not to exceed five (5) years. This Agreement may be amended or extended for periods of up to one (1) year by mutual written consent of the parties. It may be canceled or terminated for any reason by any party. Termination or cancellation shall be effective thirty (30) days after written notice to the other parties, or at such time as the parties may otherwise agree. The parties shall, in good faith, agree to such reasonable provisions for winding up the projects and paying for any additional costs as necessary.

IN WITNESS WHEREOF, the parties have executed this Development Agreement as of the Effective Date.

PORT OF PORTLAND, OREGON

CITY OF HILLSBORO

Authorized Signature

Printed Name: _____

Date Executed: _____

APPROVED AS TO FORM

Assistant Port Counsel
Port of Portland, Oregon

Authorized Signature

Printed Name: _____

Date Executed: _____

APPROVED AS TO FORM

Attorney for City of Hillsboro