

RESOLUTION NO. 2432

A RESOLUTION ACCEPTING A PERPETUAL NONEXCLUSIVE UTILITY EASEMENT ALONG NE HARLOW ROAD FROM FIREBIRD INDUSTRIAL LLC

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Firebird Industrial LLC is the owner of the real property at 803 NE Harlow Road that is being developed.
2. The City typically requires public utility easements adjacent to rights-of-way in the City.
3. As a condition of development, Firebird Industrial LLC is required to dedicate an eight foot wide public utility easement on the NE Harlow Road frontage and has provided signed easement documents of a form and content that is in accordance with the requirements of the City (attached).

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

Section 1. The City of Troutdale accepts the public utility easement from Firebird Industrial LLC, included herewith as Attachment A, for the construction, installation, operation, maintenance, repair, and/or modification of utility system or components thereof.

Section 2. This resolution is effective upon adoption.

YEAS: 6

NAYS: 0

ABSTAINED: 0



Casey Ryan, Mayor

Date: September 26, 2018



Sarah Skroch, City Recorder

Adopted: September 25, 2018

After recording, return to:
City of Troutdale
City Recorder
219 E Historic Columbia River Highway
Troutdale, OR 97060

UTILITY EASEMENT AGREEMENT

This Utility Easement Agreement ("AGREEMENT") is entered into by Firebird Industrial LLC, a corporation authorized to do business in Oregon ("GRANTOR"), and the CITY OF TROUTDALE, an Oregon municipal corporation ("GRANTEE"), as of the date the GRANTOR signs the Certificate of Grantor.

RECITALS

A. GRANTOR owns the property described in this Agreement under paragraph 10 (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 and grants franchises to other entities to provide additional utilities within the City of Troutdale.

C. The purpose of this Agreement is to grant a utility easement to GRANTEE for access and use of the Easement Area.

EASEMENT GRANTED

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 non-exclusive easement for the Easement Area so that GRANTEE, its franchised utility companies, and its agents and assigns, may construct, install, access, operate, inspect, maintain, repair, replace, and/or modify components of utility systems including, but not solely limited to water, sanitary sewer, transportation, storm water, electric power, natural gas, and telecommunications systems.

2. **Limitations.** GRANTOR shall not construct, install, nor place any structure (including any eaves or other architectural appendages), pavement, or vegetation within the Easement Area except for shallow-root grasses and low-growing shrubs (but not trees), fences as permitted by applicable City regulations, and sidewalks or driveways. Any damages to GRANTEE's utilities caused by GRANTOR's construction, installation, or placement of shallow-root grasses, low-growing shrubs, fences, sidewalks, driveways, or any unauthorized structures, pavement or vegetation, within the Easement Area shall be repaired or replaced by GRANTOR, or by the GRANTEE at the GRANTOR's expense, as determined by the GRANTEE.

3. **Use and Access.** GRANTOR shall allow GRANTEE, its franchised utility companies, and its agents and assigns, unrestricted and unobstructed access to the Easement Area at all times to properly construct, install, access, operate, inspect, maintain, repair, replace, and/or modify components of utility systems. All maintenance and grounds keeping within the easement

area, other than maintenance that is necessary to install, access, operate, inspect, maintain, or repair utility systems or components, is the responsibility of the GRANTOR. Any loss, damage, or destruction caused by GRANTEE to GRANTOR's property in accessing the Easement Area or in performing the aforementioned actions, whether or not such loss, damage or destruction was to GRANTOR's shallow-root grasses, low-growing shrubs, fences, sidewalks or driveways that are allowed in accordance with paragraph 2, shall be the responsibility of GRANTOR.

4. **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.

5. **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.

6. **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.

7. **Integration.** 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.

8. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon. The parties agree to venue in Multnomah County, state of Oregon.

9. **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.

10. **Easement Area.**

See Attached Exhibits "A" & "B"

LEGAL DESCRIPTION

FOR AN 8.00 FOOT PUBLIC UTILITIES EASEMENT

All that property in the Northwest Quarter of Section 25, Township 1 North, Range 3 East, of the Willamette Meridian, conveyed to Firebird Bronze Incorporation in Document #2017-032608, Multnomah County Records, being 8.00 feet in width. Lying Westerly and adjacent to a line that is 30.00 feet offset to the right (Westerly) of the following described Centerline:

Beginning at Engineer's Station 7 + 27.85 per Multnomah County Survey Record 60417, said point being on the Centerline of Harlow Road (County Road Number 1728)

THENCE along a 716.30 foot radius curve to the left through a central angle of 11° 25' 32" an arc distance of 142.84 feet and a chord of which bears South 25° 01' 14" East, 142.60 feet;

THENCE South 30° 44' 00" East, for a distance of 42.35 feet;

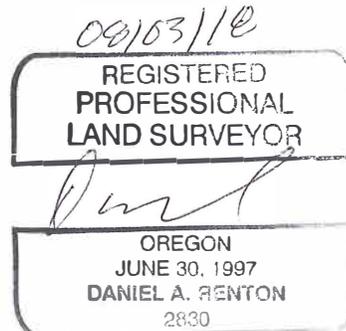
THENCE along a 716.30 foot radius curve to the right through a central angle of 11° 59' 19" an arc distance of 149.88 feet and a chord of which bears South 24° 44' 20" East, 149.61 feet;

THENCE South 18° 44' 41" East, for a distance of 163.85 feet and end of described centerline;

Bearings are based on Record of Survey number 60417.

The above described land contains 1026 ± Square Feet

Subject to and Together with Public Roads, Easements and Restrictions of Record.



EXPIRATION DATE: DEC 31, 2010

CERTIFICATE OF GRANTOR

I, Harlon Rip Caswell, owner or the authorized representative of the owner of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 7 day of August, 2018

Firebird Industrial LLC, an Oregon limited liability company

by: Harlon Rip Caswell

Print Name: Harlon Rip Caswell

partner

Member

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

This instrument was acknowledged before me on August 7, 20 18, by Harlon Rip Caswell as
Owner of Firebird Industrial LLC

Molly Boggioni

Signature of Notary molly Boggioni
Notary Public for: washington
My commission expires: Dec 4, 20 21.



CERTIFICATE OF GRANTEE

I, _____ 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 ____ day of _____, _____ by Resolution No. _____.

Dated this _____ day of _____, _____.

City Recorder

(seal)

APPROVED AS TO FORM:

By: _____
City Attorney

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: _____
Notary Public for Oregon
Commission Expires: _____

(seal)