

RESOLUTION 2013-20

A RESOLUTION OF THE CITY OF GARIBALDI APPROVING AN AGREEMENT WITH THE PORT OF GARIBALDI FOR INSTALLMENT PAYMENTS OF SYSTEM DEVELOPMENT CHARGES

Whereas, the City of Garibaldi ("City") has received an application from the Port of Garibaldi ("Owner") for development of property located on Tillamook County Tax Assessors Lot 14127, on Map Number 1, N, 10, 21, AC-sup1, and also identified as Tract 24-A on the Tillamook County Surveyor Map Number B-1865 ("Property"); and,

Whereas, development of the Property as proposed in the Land Use Permit Application Number GLU-2013-14, as approved on 14 August 2013, requires the following System Development Charges (SDCs) pursuant to Garibaldi Municipal Code (GMC) §13.25 and City Council Resolution 2012-02:

Water	9,312.00
Sewer	10,532.00
Storm Water	25,561.05
Transportation	165,123.36
Total	<u>210,528.41</u>

Whereas, as Owner of the Property the Port of Garibaldi will be responsible for payment of SDCs to the City in the amount of \$210,528.41 as a result of proposed development of the Property; and,

Whereas, the SDCs are due and payable at the time Permit No. GLU-2013-14 is issued; and,

Whereas, Owner may enter into an installment payment agreement with the City pursuant to Garibaldi Municipal Code §13.25.080(D) and (E), and make payment of the SDCs in regular annual installments, upon Owner's request and consent of the Garibaldi City Council by Council Resolution; and,

Whereas, Garibaldi Municipal Code requires such an installment payment agreement to be secured by property, bond, deposits, letter of credit or other security acceptable to the city recorder in order to secure payment of the outstanding amount of SDCs.

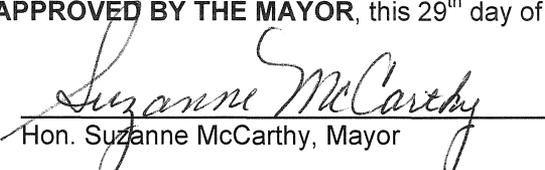
NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:

Section 1. The City Council approves the installment payment agreement attached as **Exhibit A** and incorporated by reference to this resolution.

Section 2. The City Manager is authorized to make any minor changes to **Exhibit A** as necessary to conform to the City Council's intent.

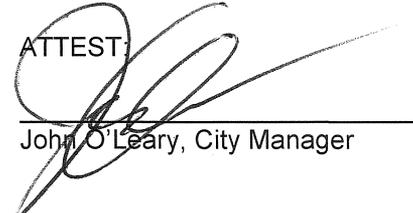
Section 3. This resolution shall take effect on the date of its adoption.

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR, this 29th day of August, 2013.



Hon. Suzanne McCarthy, Mayor

ATTEST:



John O'Leary, City Manager

**INSTALLMENT PAYMENT AGREEMENT
Port of Garibaldi to City of Garibaldi**

RECITALS

- A. The City of Garibaldi ("City") has received an application from the Port of Garibaldi ("Owner") for commercial development of property located on Tillamook County Tax Assessors Lot 14127, on Map Number 1, N, 10, 21, AC-sup1, and also identified as Tract 24-A on the Tillamook County Surveyor Map Number B-1865 ("Property").
- B. Development of the Property as proposed in the Land Use Permit Application Number GLU-2013-14, as approved on 14 August 2013, requires payment of the following System Development Charges ("SDCs") pursuant to Garibaldi Municipal Code ("GMC") §13.25 and City Council Resolution 2012-02:

Water	9,312.00
Sewer	10,532.00
Storm Water	25,561.05
Transportation	165,123.36
<u>Total</u>	<u>210,528.41</u>

- C. As Owner of the Property, the Port of Garibaldi is responsible for payment of SDCs to the City in the amount of \$210,528.41 as a result of proposed and permitted development of the Property.
- D. The SDCs are due and payable at the time Permit No. GLU-2013-14 is issued.
- E. Owner may enter into an installment payment agreement with the City pursuant to Garibaldi Municipal Code §13.25.080(D) and (E), and make payment of the SDCs in regular annual installments, upon Owner's request and consent of the Garibaldi City Council by Council Resolution.
- F. Garibaldi Municipal Code requires such an installment payment agreement to be secured by property, bond, deposits, letter of credit or other security acceptable to the city recorder in order to secure payment of the outstanding amount of SDCs.

TERMS

Section 1. Obligation.

For the purpose of securing the obligation to pay SDCs in the amount of \$210,528.41, Owner hereby assures and certifies that it will make funds available to the City of Garibaldi sufficient to pay such amount with accrued interest within a period of not more than two years from the date of this agreement. Owner shall provide City documentation demonstrating its ability to make installment payments over the term of this agreement. Documentation shall include a current balance sheet for Owner showing available cash balance, a copy of Owner's adopted budget for the current fiscal year, and a letter to City indicating the intended funding source for payment of SDCs to City. Owner shall certify that it will not encumber itself beyond its ability to meet the terms of this agreement. Owner shall include in its annual audit as debt the amount of SDCs due as of June 30, 2014, and shall provide a copy of the Owner's audited financial statements to the City within 180 days of the end of each fiscal year for the duration of this agreement.

Section 2. Payments.

Owner will make an initial payment of \$55,000 when Permit No. GLU-2013-14 is issued to the applicant and will make a final installment payment in the amount of \$155,528.41, payable on 1

Exhibit A -- A RESOLUTION OF THE CITY OF GARIBALDI APPROVING AN AGREEMENT WITH THE PORT OF GARIBALDI FOR INSTALLMENT PAYMENTS OF SYSTEM DEVELOPMENT CHARGES

September 2014. The last payment will be applied first to payment of any late charges, second to the interest on the principal as of the date of the payment, and third to the balance of the principal. Checks will constitute payment only when collected. Owner has the right to prepay this Agreement, in whole or in part, at any time with no prepayment penalties. Owner agrees to pay interest at the rate of 5% per annum on the outstanding principal. Interest shall begin to accrue 180 days after the first payment or beginning 1 March 2013.

Section 3. Acceleration.

The City may declare the principal of this Agreement, together with interest, to be immediately due and payable if the Owner neglects or refuses to pay any installment as it becomes due and payable, and such neglect or refusal continues for a period of one month. In the event of nonpayment on the date the final installment is due and payable, the City shall give not less than ten days' written notice to Owner stating that Owner is delinquent, and that if failure to make such payment continues for a period of one month, that the City may declare all principal and interest due under this Agreement to be immediately due and payable, and the City may proceed to collect all unpaid installments, plus interest, through legal action. Any forbearance or failure to exercise this right will not constitute a waiver of the City's right to exercise the right with respect to the default and any subsequent default.

Section 4. Transfer of Property.

In the event the Property is transferred or sold prior to full payment of all SDCs, Owner agrees to pay at the time of sale or transfer the outstanding principal and interest on the balance of SDCs owed. This Agreement may not be assigned except on the express consent of the City Council through Council Resolution. The City may attach such conditions to its consent as the City may determine in its sole discretion, including payment of transfer or assumption fees, and the payment of administrative and legal fees and costs incurred by the City. In the event this Agreement is assigned, this Agreement shall be binding on the successors and assigns of the Owner.

Section 5. Modification.

The terms of this Agreement may be modified, amended, or extended only upon the express approval of the Garibaldi City Council by resolution.

Section 6. Governing Law.

This Agreement is to be governed by and construed in accordance with the laws of Oregon. If any provision or clause of this Agreement is construed by a court of competent jurisdiction for Tillamook County, Oregon to be void, invalid, or unenforceable, that construction will not affect other provisions of this Agreement that can be given effect without the void, invalid, or unenforceable provision, and to this end the provisions of this Agreement are declared to be severable.

Section 7. Sole Agreement.

This Agreement contains the entire agreement of the parties with respect to the Property. No prior agreement or promise made by any party to this Agreement that is not contained herein shall be binding or valid. If this Agreement is executed by two or more persons as Owner, all of such persons shall be liable, jointly and severally, for payment of all sums and performance of all other requirements of this Agreement.

Section 8. Other Provisions

By Owner's signature, Owner waives all irregularities or defects, jurisdictional or otherwise, in regard to the obligation to pay SDCs.

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The Owner acknowledges the SDCs are not subject to Section 11b, Article XI, of the Oregon Constitution and that the charge is outside the \$10 limited for each \$1,000 of real market value for ad valorem property tax purposes.

Port of Garibaldi

State of Oregon)
) SS.
County of Tillamook)

This instrument was acknowledged before me on _____
_____, 2013, By _____

Notary Public – State of Oregon
My commission expires _____

City of Garibaldi

State of Oregon)
) SS.
County of Tillamook)

This instrument was acknowledged before me on _____
_____, 2013, By _____

Notary Public – State of Oregon
My commission expires _____