Standard Easement Forms, Etc.

Appendix D

Note: Forms in this appendix are sample model documents only, included for convenience of reference by developers.

The documents are subject to modification by the City to address project specific conditions *(as required by the Public Works Director, the City Engineer or the City Attorney)*.

Easement Procedure Summary.

- For easements from a developer or property owner to the City, the easement legal description and exhibit map for the proposed easement shall be submitted to the City for review and approval.
- Once approved, the City will attach the legal description and exhibit map to the appropriate City easement form *(modified by the City as applicable based on specific project conditions)*, and it will be returned to the developer for execution and recording at the County.
- A photocopy of recorded easements documents must be returned *(hard copy or email)* to the City after recording *(ie. to the City Planner, Public Works Director & City Engineer)*.

After recording, return to:
City of Philomath
PO Box 400
Philomath, OR 97370

COVENANT FOR PERMANENT UTILITY EASEMENT & ACCESS EASEMENT

WHEREAS, the owner of record of the Property referenced below is _____, hereinafter called "Owner" and "Grantor", and said Owner (or subsequent owner of the lot or property as noted below) shall be subject to a covenant that creates an easement in perpetuity as outlined herein, which is recorded against the Property referenced below.

The undersigned Owner and Grantor does hereby grant to City of Philomath, Benton County, Oregon, a municipal corporation, referred to herein as City, a permanent exclusive utility easement & a permanent non-exclusive maintenance access easement for the construction, reconstruction, operation and maintenance of City utilities, including water, sanitary sewer, storm drainage and other City utilities (and such other uses not deemed by the City to be incompatible therewith), and all necessary related facilities above, upon and under the following described premises, including the right to utilize routes on and across the Grantor's property as required to access said easement, and subject to the conditions relating to merger as summarized herein:

Sample wording

All that portion of the tract of land described in the attached Legal Description labeled "Exhibit A" and map labeled "Exhibit B" (incorporated herein by reference), which is located within the following described parcels:

- Lot __, Block __, _____ subdivision plat

-or- • Tract described in Volume ___, page ___, Benton County Deed Records.

-or-

A portion of Parcel __/Lot __ of Partition Plat 200_-____/_____ (*subdivision*), Deed Records of Benton County, incorporated herein by reference, said easement shown as "Easement __" on said _____ plat.

-or-

Easement __ as shown on plat for _____, Benton County deed records, incorporated herein by reference.

This covenant and easements are in gross, for the benefit of the City and afford the City all rights to utilize said easements in perpetuity.

The covenant and utility easement shall include the right of the City, its employees, agents, contractors, consultants and assigns to have ingress and egress above, upon and under the easement at all times for the purpose of excavating, constructing, installing, operating, repairing, maintaining and removing public or private utilities. The City, its employees, agents, contractors, consultants and assigns, shall have the right to clear and keep clear all trees, undergrowth, and other obstructions that may interfere with access, normal operation or maintenance of said utilities, out of and away from the easement.

The Grantor agrees not to plant, build, construct, or create (nor permit others to plant, build, construct, or create) any fills, flora, buildings or other structures, including fences or parallel utilities, on the easement that may interfere with the use of the easement for the purposes set forth herein or with the normal operation, inspection, access to or maintenance of the utilities, including excavation to for repairs or replacement if necessary. Prohibited structures shall include decks, footings or overhanging portions of structures which are located outside of the easement. The Grantor agrees not to construct cuts or fills within or on the easement area without express written approval by the City, since this will interfere with the use of the easement for the purposes set forth herein. Fills will make the utilities less accessible for inspection and/or maintenance, and cuts may result in inadequate cover over said utilities, and either will result in access points (manholes, inlets, valve, cleanout or meter boxes, etc.) no longer being at the proper grade. Any such approval by the City (which approval may be granted or withheld at the City's sole discretion), shall be contingent on the Grantor performing all work required by the City in order to mitigate impacts due to such cuts or fills, including reconstructing or resetting the utilities and appurtenances as directed by the City at the Grantor's expense. It is understood and agreed that City may remove (or require removal by the Grantor) any physical obstructions including buildings, overhangs, fences, trees, shrubbery or fill material, and abate any use of the easement if City finds that the physical obstruction or use will interfere with the City utility or City's ability to access, maintain or repair the City utility, and that such removal or abatement may be completed (including if removal by Grantor is required) without recompense to the Grantor(s). Access gates acceptable to the City shall be installed in fences which the City allows to be constructed across the easement. The City acknowledges that Grantor may use the easement area for permitted parking and/or access.

With the exception of appurtenances which must be at or above grade, all utilities will be placed underground.

Upon the final acceptance of the installed utility system and related improvements by the City (after any required warranty periods), the City shall be responsible for all further restorations of the premises if at any time the City causes the utilities to be repaired or maintained. The City, upon each and every occasion that the same be repaired, maintained or removed shall restore the premise of the Grantor, by removing all debris and leaving the ground surface in a neat and presentable condition. Grass and topsoil shall be restored as near as feasible to as good a condition as the same were prior to any repair or maintenance by the City.

( ) Consideration for this covenant and grant consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

( ) Consideration for this covenant and grant consists of _____ dollars and other valuable consideration to Grantor paid by _____, as well as the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

Legal Effect. This covenant and easement is binding upon and inures to the benefit of all heirs, successors and assigns of Grantor and City and runs with the land.

Doctrine of Merger. In the event of a finding that the easement rights granted under this covenant and easement agreement would otherwise be extinguished or be of no effect under the doctrine of merger (due to current or future common ownership of the dominant estate property and the servient estate property), the covenant and easement agreement entered into herein shall be considered as a "Covenant Creating an Springing Easement

Effective upon Date of Sale", which will result in the easement as set forth above taking effect at such time as the dominant or servient estates (or portions thereof containing or affected by the easement) are transferred, sold or conveyed in a manner so as to be under separate ownership (ie. such merger due to common ownership shall not result in the extinguishment of this covenant and easement agreement). This covenant shall automatically create the subject easement upon the recording of a deed conveying either the dominant estate property or the servient estate property (or portions thereof containing or affected by the easement) to another party, whether or not the easement is referenced in the deed. From and after the date that the easement thus becomes effective, the affected properties shall be subject to all terms and conditions contained herein.

Provision Applicable Law. This easement covenant and shall be governed by, and construed in accordance with the laws of the State of Oregon.

Waiver. Failure of either party at any time to require performance of any provision of this covenant and easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this covenant and easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Severability. The determination that one or more provisions of this covenant and easement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this covenant and easement.

Amendment or Modification. No amendment or modification of this covenant and easement shall be valid unless in writing and signed by all parties hereto. City may vacate this easement in accordance with state law and local ordinance. This easement will not be considered abandoned until City Council has declared (in writing) the easement abandoned and no longer in use by City.

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The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20___.

_____ _____

_____ _____

(Printed Name of Grantors) (Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 20___, personally appeared before me, the above named persons, _____, _____, _____, known to me to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed. In witness whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

_____
(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

_____ _____

Philomath City Manager Date

This instrument was acknowledged before me on the ____ day _____, 20__, by

_____
(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

Public Works (Initial) _____

City Engineer (Initial) _____ (if modified)

After recording, return to:
City of Philomath
PO Box 400
Philomath, OR 97370

COVENANT FOR PERMANENT ACCESS EASEMENT AND FIRE LANE EASEMENT

WHEREAS, the owner of record of the Property referenced below is _____, hereinafter called "Owner" and "Grantor", and said Owner (or subsequent owner of the lot or property as noted below) shall be subject to a covenant that creates an easement in perpetuity as outlined herein, which is recorded against the Property referenced below.

The undersigned Owner and Grantor does hereby reserve, create and grant to City of Philomath, Benton County, Oregon, a municipal corporation, referred to herein as City, a permanent access easement and fire lane easement for the construction, reconstruction, operation and maintenance of an fire lane (and such other uses not deemed by the City to be incompatible therewith), and all necessary related facilities above, upon and under the following described premises, and subject to the conditions relating to merger as summarized herein:

Sample wording

All that portion of the tract of land described in the attached Legal Description labeled "Exhibit A" and map labeled "Exhibit B" (incorporated herein by reference), which is located within the following described parcels:

- Lot __, Block __, _____ subdivision plat

-or-

- Tract described in Volume ___, page ___, Benton County Deed Records.

-or-

A portion of Parcel __/Lot __ of Partition Plat 2004-____/_____ (*subdivision*), Deed Records of Benton County, incorporated herein by reference, said easement shown as "Easement __" on said _____ plat.

-or-

Easement __ as shown on plat for _____, Benton County deed records, incorporated herein by reference.

This covenant and easements are in gross, for the benefit of the City and afford the City all rights to utilize said easements in perpetuity.

The permanent access easement and fire lane easement shall include the right of City, its employees, agents, contractors, consultants and assigns (including the Fire Department or Fire District with jurisdiction) to have ingress and egress above, upon and under the easement at all times for the purpose of installing, repairing, maintaining an emergency access and fire lane. The City, its employees, agents, contractors, consultants and assigns, shall have the right to clear and keep clear all obstructions, trees, undergrowth, and other obstructions that may interfere with access, normal operation or maintenance of said emergency access and fire lane, out of and away from the easement.

Notwithstanding these rights, the City and assigns shall be under no obligation to perform maintenance or repairs on said easement.

The access easement and fire lane easement shall be designated and signed for no parking, and the fire lane shall include the right, privilege, and authority of City and/or the Fire Department/Fire District to remove or cause to have removed any and all obstructions, including vehicles, from the above described premises which may interfere with the full use of the fire lane. Except for the uses specifically stated herein, this easement does not grant any rights to the public for access across the referenced property.

No trees, permanent structures or improvements (including overhanging portions of structures which are located outside of the easement), including parallel fences, shall be placed or constructed on the easement by the Grantor or the Grantor's heirs, assigns or successors in interest. Access gates acceptable to the City shall be installed in fences which the City allows to be constructed across the easement.

( ) Consideration for this covenant and grant consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

( ) Consideration for this covenant and grant consists of _____ dollars and other valuable consideration to Grantor paid by _____, as well as the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

Legal Effect. This covenant and easement is binding upon and inures to the benefit of all heirs, successors and assigns of Grantor and City and runs with the land.

Doctrine of Merger. In the event of a finding that the easement rights granted under this covenant and easement agreement would otherwise be extinguished or be of no effect under the doctrine of merger (due to current or future common ownership of the dominant estate property and the servient estate property), the covenant and easement agreement entered into herein shall be considered as a "Covenant Creating an Springing Easement Effective upon Date of Sale", which will result in the easement as set forth above taking effect at such time as the dominant or servient estates (or portions thereof containing or affected by the easement) are transferred, sold or conveyed in a manner so as to be under separate ownership (ie. such merger due to common ownership shall not result in the extinguishment of this covenant and easement agreement). This covenant shall automatically create the subject easement upon the recording of a deed conveying either the dominant estate property or the servient estate property (or portions thereof containing or affected by the easement) to another party, whether or not the easement is referenced in the deed. From and after the date that the easement thus becomes effective, the affected properties shall be subject to all terms and conditions contained herein.

Provision Applicable Law. This covenant and easement shall be governed by, and construed in accordance with the laws of the State of Oregon.

Waiver. Failure of either party at any time to require performance of any provision of this covenant and easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this covenant and easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Severability. The determination that one or more provisions of this covenant and easement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this covenant and easement.

Amendment or Modification. No amendment or modification of this covenant and easement shall be valid unless in writing and signed by all parties hereto. City may vacate this easement in accordance with state law and local ordinance. This easement will not be considered abandoned until City Council (upon consultation with the Fire Department/Fire District) has declared (in writing) the easement abandoned and no longer in use and will not be needed in the future.

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The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20___.

_____ _____

_____ _____
(Printed Name of Grantors) (Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 20___, personally appeared before me, the above named persons, _____, _____, _____, known to me to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed. In witness whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

_____
(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

_____ _____
Philomath City Manager Date

This instrument was acknowledged before me on the ____ day _____, 2___, by

_____
(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

City Engineer (Initial) _____ (if modified)

After recording, return to:
City of Philomath
PO Box 400
Philomath, OR 97370

COVENANT FOR PERMANENT SIDEWALK EASEMENT

WHEREAS, the owner of record of the Property referenced below is _____, hereinafter called "Owner" and "Grantor", and said Owner (or subsequent owner of the lot or property as noted below) shall be subject to a covenant that creates an easement in perpetuity as outlined herein, which is recorded against the Property referenced below.

The undersigned Owner and Grantor does hereby reserve, create and grant to City of Philomath, Benton County, Oregon, a municipal corporation, referred to herein as City, a permanent sidewalk easement for the construction, reconstruction, operation and maintenance of sidewalks and all necessary related facilities (and such other uses not deemed by the City to be incompatible therewith) above, upon or under the following described premises, and subject to the conditions relating to merger as summarized herein:

Sample wording

'The southerly __ feet (adjacent to the __ Street right-of-way) of the following described parcels:

- Lot __, Block __, _____ subdivision plat

-or-

- Tract described in Volume ___, page ___, Benton County Deed Records.

The covenant and easements are in gross, for the benefit of the general public and afford the public, by and through the City, all rights to utilize said easements in perpetuity. Grantor shall retain no special rights of use of the easement property beyond those held as member(s) of the general public.

The covenant and sidewalk easement shall include the right of the City, its employees, agents, contractors, consultants and assigns to have ingress and egress above, upon and under the easement at all times for the purpose of excavating, constructing, installing, operating, repairing, maintaining and removing the sidewalk and associated improvements.

The City or its utility franchisees, its employees, agents, contractors, consultants and assigns, shall have the right to clear and keep clear all trees, undergrowth, and other obstructions that may interfere with access, normal operation or maintenance of said sidewalk, out of and away from the easement. The Grantor agrees not to plant, build, construct, or create, nor permit others to plant, build, construct, or create any flora, buildings or other structures, including fences, on the easement that may interfere with the use of the easement for the purposes set forth herein or with the normal operation or maintenance of the sidewalk and associated improvements.

Except as expressly set forth herein, the Grantor reserves the right to utilize the Easement Property for any purpose which does not interfere with the use of the easement by City for the purposes set forth herein.

Grantor agrees that he shall comply with all obligations in regard to construction, maintenance, repair and other responsibilities in regard to the sidewalk as if the sidewalk were constructed and existing in the public right-of-way adjacent to the property and in accordance with City ordinances.

( ) Consideration for this covenant and grant consists wholly of value other than money, including the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

( ) Consideration for this covenant and grant consists of _____ dollars and other valuable consideration to Grantor paid by _____, as well as the mutual promises and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged.

Legal Effect. This covenant and easement is binding upon and inures to the benefit of all heirs, successors and assigns of Grantor and City and runs with the land.

Doctrine of Merger. In the event of a finding that the easement rights granted under this covenant and easement agreement would otherwise be extinguished or be of no effect under the doctrine of merger (due to current or future common ownership of the dominant estate property and the servient estate property), the covenant and easement agreement entered into herein shall be considered as a "Covenant Creating an Springing Easement Effective upon Date of Sale", which will result in the easement as set forth above taking effect at such time as the dominant or servient estates (or portions thereof containing or affected by the easement) are transferred, sold or conveyed in a manner so as to be under separate ownership (ie. such merger due to common ownership shall not result in the extinguishment of this covenant and easement agreement). This covenant shall automatically create the subject easement upon the recording of a deed conveying either the dominant estate property or the servient estate property (or portions thereof containing or affected by the easement) to another party, whether or not the easement is referenced in the deed. From and after the date that the easement thus becomes effective, the affected properties shall be subject to all terms and conditions contained herein.

Provision Applicable Law. This covenant and easement shall be governed by, and construed in accordance with the laws of the State of Oregon.

Waiver. Failure of either party at any time to require performance of any provision of this covenant and easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this covenant and easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Severability. The determination that one or more provisions of this covenant and easement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this covenant and easement.

Amendment or Modification. No amendment or modification of this covenant and easement shall be valid unless in writing and signed by all parties hereto. City may vacate this easement in accordance with state law and local ordinance. This easement will not be considered abandoned until City Council has declared (in writing) the easement abandoned and no longer in use by City.

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The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20___.

_____ _____

_____ _____

(Printed Name of Grantors) (Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 20___, personally appeared before me, the above named persons, _____, _____, _____, known to me to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed. In witness whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

_____
(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

_____ _____
Philomath City Manager Date

This instrument was acknowledged before me on the ____ day _____, 2___, by

_____
(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

City Engineer (Initial) _____

After recording, return to:
City of Philomath
PO Box 400
Philomath, OR 97370

PERMANENT ACCESS EASEMENT & STORMWATER DETENTION BASIN EASEMENT & DETENTION BASIN MAINTENANCE AGREEMENT

WHEREAS, the owner of record of the Property is _____, hereinafter called "Owner", and said Owner shall be subject to the maintenance provisions of this agreement;

WHEREAS, _____, hereinafter called "Developer", applied for (with concurrence from the Owner) and was granted approval to develop land in accordance with the City of Philomath Development Code under Philomath Planning File No. _____, hereinafter called "Planning Action," by the City of Philomath, Benton County, Oregon, a municipal corporation, hereinafter called "City," for property located as follows, hereinafter called "Property,":

Street Address: _____
Tax Lot: _____
Legal Description: Tract described in Deed Reference Number _____, Benton County Deed Records.

WHEREAS, the development & design standards require the Developer to construct a private storm drainage detention system, including storage basin, manholes & control structures, storm drain lines, control structures, etc. (and such other uses not deemed by the City to be incompatible therewith), hereinafter called "Detention System";

WHEREAS, the City development & design standards require that the Detention System be located on private property, and be within a public utility and access easement to the City;

WHEREAS, the City development & design standards require that the maintenance of the private Detention System shall be the responsibility of the property Owner, and shall be assured through a recorded maintenance agreement;

NOW, THEREFORE, Owner and the City agree as follows:

SECTION 1. Ownership of Detention System. The Detention System is a private facility owned and maintained by the property Owner noted above. Where there are multiple parties with ownership interest the property on which the Detention System is sited, the provisions of this agreement shall apply to all owners jointly and severally.

SECTION 2. Description of Easement Area.

2.1 All that portion of the tract of land described under "Easement __" in the attached Legal Description labeled "Exhibit A" and map labeled "Exhibit B" (incorporated herein by reference), which is located on the property noted above.

SECTION 3. Grant of Easement. The undersigned Owner does hereby grant to City of Philomath, in gross, a permanent and exclusive access & stormwater detention basin easement for the access to the Detention System

and all necessary related facilities above, upon and under the premises described under Section 2. The easement shall include the right of the City, its employees, agents, contractors, consultants and assigns to have ingress and egress above, upon and under the easement at all times for the purpose of inspecting said Detention System, or for performing any maintenance or repair work determined to be necessary by the City in order to protect public or private property, as outlined under Section 5 below. However, such right to inspect and perform maintenance or repairs does not obligate the City to perform such inspections, maintenance or repairs.

SECTION 4. Maintenance Responsibilities. The Owner shall be responsible for the maintenance, repair, replacement and upkeep of the Detention System, including the irrigation system serving the Detention System, at the Owner's sole expense. It shall be the Owner's responsibility to demonstrate to the City upon request that the system is operating properly. Maintenance responsibilities shall include, but are not limited to, the following:

4.1 Inspection. All Detention Basin components, irrigation system, vegetation, and control structures (outlet structures, control manholes, orifices, etc.) shall be inspected for proper operations and structural stability, at a minimum, quarterly for the first 2 years from the date of installation, 2 times per year thereafter, and within 48 hours after each major storm event.

4.2 Cleaning of Outlet Structures, Outlet Manhole and/or Control Structures. All sediment and/or debris shall be cleaned from the sump of any outlet structure, outlet manhole and/or control structures as required to maintain the design function and capacity of the system (water shall be pumped from said sumps as required to accomplish this cleaning). The initial cleaning & maintenance interval shall not exceed 6 months, unless the inspections above reveal a need for more frequent cleaning. After the end of the first year, if approved by Public Works based on the sumps in these structures having adequate capacity, the cleaning & maintenance interval can increased as appropriate, but shall not be cleaned and maintained less frequently than once a year.

4.3 Maintenance & Repair. Owner shall be responsible for maintenance, repair or replacement of any component that has been broken, damaged, altered, removed or other is not functioning as designed, including but limited to inlet & outlet structures, manholes & control structures, storm drain lines, etc.

4.4 Irrigation, Mowing, Basin Planting & Maintenance Owner shall be responsible for: (a) installation and operation of a permanent underground automatic sprinkler system to maintain the grass and landscaping in a healthy state to maintain the stability of the detention basin slopes; (b) planting of grass to cover the entire interior slopes & base of the detention basin (use of bark dust or similar material on the top of slopes or on interior slopes of the basin is prohibited), (c) planting of grass or other approved landscaping on the exterior slopes of the detention basin. No trees or shrubs which will impair the structural integrity of the detention basin shall be planted or allowed to grow on the detention basin exterior; (d) any work required on the interior or exterior slopes to stabilize and/or replant (including appropriate erosion control measures) when soil is exposed or if erosion is observed; (e) periodic mowing of grass areas not less than once a month during the growing season, or more frequently if required to keep the maximum height less than 5-inches; (f) periodic inspection of the Detention System to ensure that outlet and control pipes are not clogged and remain clear; (g) removal of all debris from catchment and detention basin areas, including litter, leaves, branches and other objects which are unsightly or which may clog storm pipe lines; (h) removal of all non-grass vegetation from the top and interior slopes of the detention basin, and removal of nuisance and invasive vegetation (such as blackberries, ivy, etc) from the exterior slopes when discovered.

4.4 Spill Prevention. Measures shall be exercised when handling substances that contaminate stormwater. Releases of pollutants shall be corrected as soon as identified.

4.5 Pest Control. Insects & rodents shall not be harbored in the Detention System. Pest control measures shall be taken when insects/rodents are found to be present. If mosquito larvicide is used, it shall be applied in strict conformance with manufacturer's recommendation and any applicable State regulations. Rodent holes in the ground located in and around the detention basin shall be filled by the Owner.

SECTION 5. Failure to Maintain.

5.1 If at any time the City determines, in the sole exercise of its discretion, that the Detention System is not properly cleaned, maintained and/or otherwise kept in good repair, the City shall give reasonable notice to the Owner that the detention basin needs to be cleaned, maintained and/or otherwise repaired (in the case of an emergency, the City may enter upon the property without notice to perform emergency maintenance or repairs in cases where the City, at its sole discretion, determines that it is necessary to protect public or private property). The notice shall provide a reasonable description of the problem with the detention basin, and the notice shall provide a reasonable time to correct the problem. Should the responsible parties fail to correct the specified problem, the City may enter upon the property to so correct the specified problem. Notice shall be effective to the Owner by the City's deposit of the notice into the regular United States mail, postage pre-paid. However, this agreement does not expressly impose on the Town a duty to so inspect, clean, repair or maintain the detention basin. Any surface restoration required due to access, inspection, maintenance or repairs thus performed by the City shall remain the responsibility of the Owner, whether or not the City chooses to complete such restoration in conjunction with the City's access, inspection, maintenance or repairs.

5.2 The Owner agrees and covenants (for themselves and their respective successors and assigns) that they will reimburse the City for its costs and expenses incurred in the process of cleaning, maintaining, and/or repairing the detention basin within 30 days of written request by the City. Such written request for payment shall be effective to the Owner by the City's deposit of the notice into the regular United States mail, postage pre-paid. The terms actual costs and expenses shall be liberally construed in favor of the City and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless whether the City uses its own personnel, tools, equipment and supplies, etc. to correct the matter. If the City initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the City shall be entitled to its damages and costs, including reasonable attorney's fees, regardless whether the City contracts with outside legal counsel or utilizes in-house legal counsel for the same. In the event that the costs and expenses are not timely paid, such costs and expenses shall be charged against the Property consistent with State and local regulations, and shall constitute a lien upon the Property until paid.

SECTION 6. Indemnification. The Owner agrees to indemnify and defend the City, its officers, agents and employees and hold them harmless for any and all liability, claims, damages or other costs or expenses related to failure of the private Detention System, including any damage or injury incurred during inspection or maintenance of the Detention System, or due to the Owner's failure to maintain the Detention System, or failure to follow proper safety procedures during such inspection or maintenance, or failure to adequately control access to the private Detention System by the public.

SECTION 7. Recording of this agreement by Developer. Developer shall cause this agreement to be recorded in the deed records of Benton County, and a photocopy of the recorded document returned to the City.

SECTION 8. Other Provisions.

8.1 Legal Effect, Successors and Assigns. This Agreement shall run with the land and be binding on all parties having or acquiring from the Owner, or the Owner's successors, any right, title, or interest in the property or any part thereof, as well as their title, or interest in the property or any part thereof, as well as their heirs, successors, and assigns. They shall inure to the benefit of each present or future successor in interest of said property or any part thereof, or interest therein, and to the benefit of the City.

8.2 Provision Applicable Law. This easement shall be governed by, and construed in accordance with the laws of the State of Oregon.

8.3 Nonexclusivity of Rights & Remedies. The rights and remedies authorized to the City under this

agreement are cumulative and are in addition to such other remedies as may be provided by law, equity, statute, ordinance or other source.

8.4 Waiver. Failure of either party at any time to require performance of any provision of this easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

8.5 Severability. The determination that one or more provisions of this easement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this easement.

8.6 Modification. No amendment or modification of this easement shall be valid unless in writing and signed by all parties hereto. City may, at their sole discretion, vacate this easement in accordance with state law and local ordinance.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20___.

_____ _____

_____ _____

(Printed Name of Grantors) (Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 20___, personally appeared before me, the above named persons, _____, _____, _____, known to me to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed. In witness whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

_____
(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

_____ _____
Philomath City Manager Date

This instrument was acknowledged before me on the ____ day _____, 2___, by

_____
(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

City Engineer (Initial) _____ (if modified)

After recording, return to:
City of Philomath
PO Box 400
Philomath, OR 97370

PERMANENT ACCESS EASEMENT & GREASE INTERCEPTOR VAULT MAINTENANCE AGREEMENT

WHEREAS, the owner of record of the Property is _____, hereinafter called "Owner", and said Owner shall be subject to the maintenance provisions of this agreement;

WHEREAS, _____, hereinafter called "Developer", applied for (with concurrence from the Owner) and was granted approval to develop land in accordance with the City of Philomath Development Code under Philomath Planning File No. _____, hereinafter called "Planning Action," by the City of Philomath, Benton County, Oregon, a municipal corporation, hereinafter called "City," for property located as follows, hereinafter called "Property,":

Street Address: _____
Tax Lot: _____
Legal Description: Tract described in Deed Reference Number _____, Benton County Deed Records.

WHEREAS, the development & design standards require the Developer to construct a private exterior two-compartment grease interceptor vault, hereinafter called "Grease Interceptor";

WHEREAS, the City design standards require that the maintenance of the Grease Interceptor shall be the responsibility of the property Owner, and shall be assured through a recorded maintenance agreement;

WHEREAS, the City design standards require that the Grease Interceptor be located on private property, and as such needs to be provided with a general access easement to the City;

NOW, THEREFORE, Owner and the City agree as follows:

SECTION 1. Ownership of Grease Interceptor. The Grease Interceptor is a private facility owned and maintained by the property Owner noted above. Where there are multiple parties with ownership interest the property on which the Grease Interceptor is sited, the provisions of this agreement shall apply to all owners jointly and severally.

SECTION 2. Grant of Access Easement. The undersigned Owner does hereby grant to City of Philomath, in gross, a permanent and non-exclusive right to access the Grease Interceptor location and all necessary related facilities above, upon and under the premises, along driveways, walkways or other areas that must be crossed between the public right-of-way and the Grease Interceptor location. The access rights shall include the right of the City, its employees, agents, contractors, consultants and assigns to have ingress and egress on the property at all times for the purpose of inspecting said Grease Interceptor, or for performing any maintenance or repair work determined to be necessary by the City in order to protect public or private property, as outlined under Section 4 below. However, such right to inspect and perform maintenance or repairs does not obligate the City to perform such inspections, maintenance or repairs.

SECTION 3. Cleaning & Maintenance Responsibilities. The Owner shall be responsible for the cleaning, maintenance, repair, replacement and upkeep of the Grease Interceptor, at the Owner's sole expense. It shall be the Owner's responsibility to demonstrate to the City upon request that the system is operating properly. Maintenance responsibilities shall include, but are not limited to, the following:

3.1 Inspection. All Grease Interceptor components (vault segments, inlets, outlets, control orifices, etc.) shall be inspected for proper operations and structural stability, at a minimum, annually.

3.2 Cleaning of Grease Interceptor. All grease and/or debris shall be removed from both compartments of the Grease Interceptor vault, as well as cleaned from inlet or outlet piping as required, to maintain the design function and capacity of the system (water shall be pumped from vault as required to accomplish this cleaning). The initial cleaning & maintenance interval shall not exceed every 3 months while the building is in use (including at the end of each school year), unless the inspections above reveal a need for more frequent cleaning. After the end of the first year, if approved by Public Works based on the vault having adequate capacity, the cleaning & maintenance interval can increased as appropriate, but shall not be cleaned and maintained less frequently than twice a year (including at the end of each school year). If subsequent inspections reveal capacity problems, the Owner shall revert to the more frequent cleaning intervals.

3.3 Maintenance & Repair. Owner shall be responsible for maintenance, repair or replacement of any component that has been broken, damaged, altered, removed or other is not functioning as designed, including but limited to the vault, divider walls, inlet & outlet structures, access lids, etc. All access lids and risers shall be extended to finish grade and maintained in a watertight condition, and exclude any infiltration of groundwater or inflow of surface water.

3.4 Spill Prevention. Measures shall be exercised when cleaning the Grease Interceptor to avoid spillage of pumped grease, solids or liquids. Any spillage shall be completely cleaned up prior to the cleaning or maintenance crew leaving the site.

3.5 Prohibited Substances. No chemical, enzyme or bacterial agent shall be added to the Grease Interceptor which will cause the release of grease into the sewer system. Unless otherwise specifically required in writing by the Plumbing Official, no garbage grinders, food pulpers or toilets shall discharge to the Grease Interceptor.

3.4 Records and Reporting. The Owner shall maintain a record (in the form of a log book) of steps taken to abide by the obligation under this section. The log book shall be available for inspection by the City upon request. The log book shall catalog the action taken (cleaning, inspection and/or maintenance), who took it, date and time it was done, how it was done, and any problems encountered or follow-up action recommended. Copies of all receipts for cleaning and pumping of the Grease Interceptor must be retained by the Owner with the log book. The Owner shall send a letter to the City prior to December 15 of each year that provides proof of cleaning, inspection and maintenance, including copies of pumping contracts and/or receipts of work conducted by a hired service.

SECTION 4. Failure to Maintain.

4.1 If at any time the City determines, in the sole exercise of its discretion, that the Grease Interceptor is not properly cleaned, maintained and/or otherwise kept in good repair, the City shall give reasonable notice to the Owner that the Grease Interceptor needs to be cleaned, maintained and/or otherwise repaired (in the case of an emergency, the City may enter upon the property without notice to perform emergency maintenance or repairs in cases where the City, at its sole discretion, determines that it is necessary to protect public or private property). The notice shall provide a reasonable description of the problem with the Grease Interceptor, and the notice shall provide a reasonable time to correct the problem. Should the responsible parties fail to correct the specified problem, the City may enter upon the property to so correct the specified problem. Notice shall be effective to the Owner by the City's deposit of the notice into the regular United States mail, postage pre-paid, or delivery to the Owner's local place of business. However, this agreement does not expressly impose on the City a duty to so inspect, clean, repair or maintain the Grease Interceptor. Any surface restoration required due to access, inspection,

maintenance or repairs thus performed by the City shall remain the responsibility of the Owner, whether or not the City chooses to complete such restoration in conjunction with the City's access, inspection, maintenance or repairs.

4.2 The Owner agrees and covenants (for themselves and their respective successors and assigns) that they will reimburse the City for its costs and expenses incurred in the process of cleaning, maintaining, and/or repairing the Grease Interceptor (including cleaning of downstream sewer system resulting from failure of the Grease Interceptor) within 30 days of written request by the City. Such written request for payment shall be effective to the Owner by the City's deposit of the notice into the regular United States mail, postage pre-paid, or delivery to the Owner's local place of business. The terms actual costs and expenses shall be liberally construed in favor of the City and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless whether the City uses its own personnel, tools, equipment and supplies, etc. to correct the matter. If the City initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the City shall be entitled to its damages and costs, including reasonable attorney's fees, regardless whether the City contracts with outside legal counsel or utilizes in-house legal counsel for the same. In the event that the costs and expenses are not timely paid, such costs and expenses shall be charged against the Property consistent with State and local regulations, and shall constitute a lien upon the Property until paid.

SECTION 5. Indemnification. The Owner agrees to indemnify and defend the City, its officers, agents and employees and hold them harmless for any and all liability, claims, damages or other costs or expenses related to failure of the Grease Interceptor, including any damage or injury incurred during inspection or maintenance of the Grease Interceptor, or due to the Owner's failure to maintain the Grease Interceptor, or failure to follow proper safety procedures during such inspection or maintenance.

SECTION 6. Recording of this agreement by Developer. Developer shall cause this agreement to be recorded in the deed records of Benton County, and a photocopy of the recorded document returned to the City.

SECTION 7. Other Provisions.

7.1 Legal Effect, Successors and Assigns. This Agreement shall run with the land and be binding on all parties having or acquiring from the Owner, or the Owner's successors, any right, title, or interest in the property or any part thereof, as well as their title, or interest in the property or any part thereof, as well as their heirs, successors, and assigns. They shall inure to the benefit of each present or future successor in interest of said property or any part thereof, or interest therein, and to the benefit of the City.

7.2 Provision Applicable Law. This easement shall be governed by, and construed in accordance with the laws of the State of Oregon.

7.3 Nonexclusivity of Rights & Remedies. The rights and remedies authorized to the City under this agreement are cumulative and are in addition to such other remedies as may be provided by law, equity, statute, ordinance or other source.

7.4 Waiver. Failure of either party at any time to require performance of any provision of this easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

7.5 Severability. The determination that one or more provisions of this easement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this easement.

7.6 Modification. No amendment or modification of this easement shall be valid unless in writing and signed by all parties hereto. City may, at their sole discretion, vacate this easement in accordance with state law and local ordinance.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

WITNESS our hands and seals this _____ day of _____, 20___.

_____ _____

_____ _____

(Printed Name of Grantors) (Signature of Grantors)

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 20___, personally appeared before me, the above named persons, _____, _____, _____, known to me to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed. In witness whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

_____
(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

APPROVED:

_____ _____
Philomath City Manager Date

This instrument was acknowledged before me on the ____ day _____, 20__, by

_____
(Notary Signature)
Notary Public for Oregon
My Commission Expires: _____

City Engineer (Initial) _____ *(if modified)*

This memo is considered to be sent to all land developers within the City of Philomath, at or near completion of their project.

Memo

Date:

To: _____
address

cc: *Philomath land use file (_____)*
Philomath Building Official
Philomath Public Works

From: **Philomath Public Works Director**
Subject: Lot Grading & Drainage During and After Construction of Structures

This memo is to reiterate grading requirements relative to the layout and building of homes and structures on this property, and the need to take extra care in the grading during and after building to facilitate good drainage on the lots and the surrounding area.

As you are no doubt aware, good grading around a house and on a lot can make all of the difference in how homes are affected by the rain (and resultant drainage concerns) in Oregon. It is important to ensure that the houses and structures are not set too low on the lots. To avoid drainage problems, it is important that the homes are kept high enough so that you can grade around the structures and the lots in a manner that will direct the surface runoff away from the homes and off the lots into the streets and drainage systems without ponding. This is particularly critical where there is drainage coming onto any lot from adjacent property, either within or outside the development. In addition, it is critical that existing drainage patterns from adjacent properties must be maintained when grading on lots, around houses or other structures so as to not pond water or block drainage.

The City design standards for new developments include provisions intended to ensure that the streets are low enough so that the lots can drain to the streets, or that drainage stubs are provided at an elevation that will provide a good positive outlet. However, in spite of this, poor grading around homes during house construction and landscaping is a common cause of problems. Depending on building location, landscaping and lot grading, in some cases it may be necessary to construct perimeter drains to collect water and direct it to another point. It may also be necessary to install area drains to prevent water from collecting and being trapped in areas around homes, particularly in the rear of the homes or on the high side of the lots. It is a good idea to ensure that the landscape contractor considers these elements when the lots are finished following house construction.

In the event that you sell all or any portion of this property to another builder or developer, please make sure that they are aware of the need for proper grading and drainage on the lots. Please be aware that under City standards, the builder is responsible for ensuring that these drainage issues are addressed.

Sample Insurance Certificates

Appendix E

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

CONTACT NAME:

PHONE (A/C, No, Ext):

FAX (A/C, No):

E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A :	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

SAMPLE

COVERAGES **CERTIFICATE NUMBER:** Cert ID 207788 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	X COMMERCIAL GENERAL LIABILITY	Y					DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
	CLAIMS-MADE X OCCUR						MED EXP (Any one person)	$ 10,000
	X Job Site Pollution						PERSONAL & ADV INJURY	$ 1,000,000
	X No XCU Exclusions						GENERAL AGGREGATE	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$ 2,000,000
	POLICY PRO-JECT LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO	Y					BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	X UMBRELLA LIAB X OCCUR	Y					EACH OCCURRENCE	$ Per Supplemental Conditions
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ Per Supplemental Conditions
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 500,000
							E.L. DISEASE - POLICY LIMIT	$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Philomath and Westech Engineering, Inc. are Additional Insured for General Liability per form CG 2010 1185 and Auto Liability. 30-days cancellation notice shall be provided.

CERTIFICATE HOLDER

City of Philomath
PO Box 400
Philomath, OR 97370-0400

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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CITY OF PHILOMATH
Public Works Design Standards

Adopting Ordinance & Resolutions

Appendix F

ORDINANCE #801

AN ORDINANCE ADDING CHAPTER 12.08, STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, TO THE PHILOMATH MUNICIPAL CODE

WHEREAS, to provide for uniform construction standards and quality standards, the City of Philomath contracted in 1998 with Westech Engineering to develop construction standards for the construction of streets, sidewalks, water, sewer, drainage and appurtenant facilities; and

WHEREAS, these standards, known as the City of Philomath Public Works Design Standards were approved by the Philomath Public Works Committee in December 1998; and

WHEREAS, the Public Works Design Standards were last updated by staff and Westech Engineering Inc. in June 2015; and

NOW, THEREFORE, The City of Philomath ordains as follows:

SECTION 1. Philomath Municipal Code Chapter 12.08, as set forth in Exhibit A, as attached to this ordinance and incorporated herein, is hereby adopted.

SECTION 2. The City Council finds that it is necessary for the health, protection and safety of the residents of and visitors to the City of Philomath to have this ordinance take effect upon adoption and hereby declares an emergency. This ordinance, therefore, shall become effective on the date of passage.

PASSED by the Council on this 14th day of September 2015.

APPROVED by the Mayor this 14th day of September 2015.

SIGNED:

Rocky Sloan, Mayor

ATTEST:

Shelley Bartlow, Police Clerk

TITLE 12. STREETS, SIDEWALKS, AND PUBLIC PLACES

CHAPTER 12.08
STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION

SECTIONS

12.08.010 Adoption, conformance required, amendment
12.08.900 Violation: penalty

12.08.010 Adoption, conformance required, modification

A. The City has adopted the "City of Philomath Public Works Design Standards" establishing design standards and construction specifications.

B. All public works design and construction, including workmanship and materials, shall be in accordance with the current edition of the City of Philomath Public Works Design Standards. This section applies to all public improvements within the city limits of the city of Philomath, the Philomath Urban Growth Boundary or otherwise required by law.

C. The Public Works Director may periodically update and modify the City of Philomath Public Works Design Standards to reflect changes in policy, procedure, new technology, design methods and construction methods.
   1. Changes in federal, state, county and other regulatory agency requirements will be reviewed and incorporated into the City of Philomath Public Works Design Standards.
   2. Requests for modifications may be initiated either by the city or by an interested party.
   3. The Public Works Director is hereby granted authority to approve or deny requests for modifications to the City of Philomath Public Works Design Standards.
   4. Updates to the City of Philomath Public Works Design Standards will be posted on the city's website. Copies may be purchased from the city.
   5. The Public Works Director will provide the City Council with an annual report which lists the updates and modifications made to the City of Philomath Public Works Design Standards during the preceding year.

12.08.900 Violation: penalty

Violation of any regulation promulgated by authority of this chapter is punishable by a fine of up to five hundred dollars ($500.00). A violation of this code shall be considered a separate offense for each day the violation continues.

RESOLUTION 15-04

A RESOLUTION REPEALING RESOLUTION 04-01 AND SETTING FEES FOR PROCESSING APPLICATIONS FILED PURSUANT TO THE PHILOMATH DEVELOPMENT CODE AND PHILOMATH PUBLIC WORKS STANDARDS, SUPERSEDING ALL PREVIOUS RESOLUTIONS RELATING TO FEES FOR THESE SERVICES AND PERMITS.

WHEREAS, Philomath Municipal Code Chapter 18, Zoning, allows for the review and processing of land use applications; and,

WHEREAS, PMC Chapter 18 allows fees for these applications to be set by resolution; and,

WHEREAS, the Philomath Public Works Standards defines the process for review of construction of infrastructure improvements as part of developments; and,

WHEREAS, the Public Works Standards allows fees for these development reviews to be set;

THEREFORE, the City Council of the City of Philomath hereby adopts Schedule A: Land Use Application Fees as attached.

PASSED by the Council this 8th day of June 2015.

APPROVED by the Mayor this 8th day of June 2015.

SIGNED: ATTEST:

Rocky Sloan, Mayor

Ruth Post, MMC, City Recorder

SCHEDULE A:
LAND USE APPLICATION FEES

Public Works:

Development Review

- Non-refundable fee of $1,000 due at time of required pre-design meeting;
- Plan review fee deposit of 4% of the initial engineer's estimate of all construction work related to the project, less the $1,000 pre-design fee, due at submission of engineered plans for review;
- Monthly billing of any fees exceeding the plan review fee deposit, payable within 30 days;
- Final reconciliation of project review costs, including Westech fees and Public Works staff expenses, to be completed at project completion, with any final balance due to be paid before City acceptance of the project. If a refund is due, the City shall issue refund within 30 days of City acceptance.

Planning:

Application	Type	Fee
Access Permit (public street)	Type I	$60
Annexation (deposit required to cover all election costs)	Type IV	$610 + $60/acre Plus election deposit
Appeals to Planning Commission	Actual cost for Preparing & conducting The hearing.	$250 deposit
Appeals to City Council	Actual cost for Preparing & conducting The hearing.	$250 deposit
Code Interpretation	Type II	$180
Code Amendment	Type IV	$970
Comprehensive Plan Amendment	Type IV	$970
Conditional Use Permit	Type III	$485
Development Review	Type I	$45
Flood Plain Permit	Type I	$90
Home Occupation Permit	Type I	$45
Lot Line Adjustment	Type I	$205
Lot Consolidation	See Partition	
Master Planned Development	Type III	$610 Concept $610 Detailed
Modification to Approval	Type II Type III	$335 $485
Non-conforming Use	Type III	$485
Partition	Type II	$335 + $120/lot
Site Design Review	Type II Type III	$335 $485
Subdivision	Type III	$760 + $180/lot first 10 $60/lot over 10
Temporary Use Permit	Type II Type III	$180 $335
Variance	Type I Type II Type III	$180 $335 $485
Vacation of Street or Alley	ORS Chapter 271	$485
Zoning Map Change	Type IV	$970

- Where multiple applications are to be processed concurrently, the higher application fee shall be assessed in full and 50% of the lesser fee(s).

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

U.S. Department of Transportation
Federal Highway Administration

Department of Justice/Department of Transportation Joint Technical Assistance[1] on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

Title II of the Americans with Disabilities Act (ADA) requires that state and local governments ensure that persons with disabilities have access to the pedestrian routes in the public right of way. An important part of this requirement is the obligation whenever streets, roadways, or highways are *altered* to provide curb ramps where street level pedestrian walkways cross curbs.[2] This requirement is intended to ensure the accessibility and usability of the pedestrian walkway for persons with disabilities.

An alteration is a change that affects or could affect the usability of all or part of a building or facility.[3] Alterations of treets, roads, or highways include activities such as reconstruction, rehabilitation, *resurfacing*, widening, and projects of similar scale and effect.[4] Maintenance activities on streets, roads, or highways, such as filling potholes, are not alterations.

Without curb ramps, sidewalk travel in urban areas can be dangerous, difficult, or even impossible for people who use wheelchairs, scooters, and other mobility devices. Curb ramps allow people with mobility disabilities to gain access to the sidewalks and to pass through center islands in streets. Otherwise, these individuals are forced to travel in streets and roadways and are put in danger or are prevented from reaching their destination; some people with disabilities may simply choose not to take this risk and will not venture out of their homes or communities.

Because resurfacing of streets constitutes an alteration under the ADA, it triggers the obligation to provide curb ramps where pedestrian walkways intersect the resurfaced streets. See Kinney v. Yerusalim, 9 F 3d 1067 (3rd Cir. 1993). This obligation has been discussed in a variety of technical assistance materials published by the Department of Justice beginning in 1994.[5] Over the past few years, state and local governments have sought further guidance on the scope of the alterations requirement with respect to the provision of curb ramps when streets, roads or highways are being resurfaced. These questions have arisen largely due to the development of a variety of road surface treatments other than traditional road resurfacing, which generally involved the addition of a new layer of asphalt. Public entities have asked the Department of Transportation and the Department of Justice to clarify whether particular road surface treatments fall within the ADA definition of alterations, or whether they should be considered maintenance that would not trigger the obligation to provide curb ramps. This Joint Technical Assistance addresses some of those questions.

Where must curb ramps be provided?

Generally, curb ramps are needed wherever a sidewalk or other pedestrian walkway crosses a curb. Curb ramps must be ocated to ensure a person with a mobility disability can travel from a sidewalk on one side of the street, over or through any curbs or traffic islands, to the sidewalk on the other side of the street. However, the ADA does not require installation of ramps or curb ramps in the absence of a pedestrian walkway with a prepared surface for pedestrian use. Nor are curb ramps required in the absence of a curb, elevation, or other barrier between the street and the walkway.

When is resurfacing considered to be an alteration?

Resurfacing is an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or vithout milling. Examples include, but are not limited to the following treatments or their equivalents: addition of a new layer of asphalt, reconstruction, concrete pavement rehabilitation and reconstruction, open-graded surface course, micro-surfacing and thin lift overlays, cape seals, and in-place asphalt recycling.

What kinds of treatments constitute maintenance rather than an alteration?

Treatments that serve solely to seal and protect the road surface, improve friction, and control splash and spray are considered to be maintenance because they do not significantly affect the public's access to or usability of the road. Some examples of the types of treatments that would normally be considered maintenance are: painting or striping lanes, crack filling and sealing, surface sealing, chip seals, slurry seals, fog seals, scrub sealing, joint crack seals, joint repairs, dowel bar retrofit, spot high-friction treatments, diamond grinding, and pavement patching. In some cases, the combination of several maintenance treatments occurring at or near the same time may qualify as an alteration and would trigger the obligation to provide curb ramps.

What if a locality is not resurfacing an entire block, but is resurfacing a crosswalk by itself?

Crosswalks constitute distinct elements of the right-of-way intended to facilitate pedestrian traffic. Regardless of whether there is curb-to-curb resurfacing of the street or roadway in general, resurfacing of a crosswalk also requires the provision of curb ramps at that crosswalk.

July 8, 2013

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1 The Department of Justice is the federal agency with responsibility for issuing regulations implementing the requirements of title II of the ADA and for coordinating federal agency compliance activities with respect to those requirements. Title II applies to the programs and activities of state and ›cal governmental entities. The Department of Justice and the Department of Transportation share ıesponsibility for enforcing the requirements of title II of the ADA with respect to the public right of way, including streets, roads, and highways.

2 See 28 CFR 35.151(*i*)(1) (Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway) and 35.151(i)(2) (Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways).

3 28 CFR 35.151(b)(1).

4 2010 ADA Accessibility Standards, section 106.5.

5 See 1994 Title II Technical Assistance Manual Supplement, Title II TA Guidance: The ADA and City Governments: Common Problems; and ADA Best Practices Tool Kit for State and Local Governments: Chapter 6, Curb Ramps and Pedestrian Crossings under Title II of the ADA, available at ada.gov.