

SETTLEMENT AGREEMENT

DATED: August 25, 2011

The parties to this Settlement Agreement are the Eastridge Park Homeowner's Association ("Eastridge Park") and the City of Portland ("City"), a municipal corporation of the State of Oregon (collectively, "the Parties").

WHEREAS, Eastridge Park is the owner of real property described as EASTRIDGE PARK, LOT C TL 200, SPLIT MAP R153391 (R233150040), R153393 (R233150046) & R153394 (R233150050), Multnomah County, Oregon ("the Property");

WHEREAS, in January 2009 a slope failure occurred on a portion of the Property behind residential lots described as 7429 and 7525 SE 141st Avenue, Portland, Oregon;

WHEREAS, the slope failure damaged a storm sewer pipe and an access road, both owned by City and located within an easement area;

WHEREAS, in June 2009 Eastridge Park filed Risk Claim G2009-0426-01 with City for damages related to the slope failure, which claim was denied by City owing to the steep grade of that portion of the Property and the occurrence of heavy rains immediately before the slope failure;

WHEREAS, the Property has been temporarily stabilized but the potential for further earth movement remains, threatening public and private property, including an adjacent City-owned sanitary sewer;

WHEREAS, Preliminary cost estimates include \$55,000 to \$80,000 to restore the slope, storm sewer pipe and access road, and an additional \$20,000 to extend the storm sewer pipe to meet the long-term needs of the City; and

WHEREAS, City has an interest in ensuring the stability of the slope in order to protect City infrastructure as well as private property, and City desires to increase the length of the storm sewer pipe for City's long-term stormwater management needs.

NOW, THEREFORE, the Parties agree as follows:

1. Eastridge Park shall obtain complete engineering plans for the repair of the slope and access road, and incorporate plans and specifications, provided by City, relating to the replacement and extension of the storm sewer pipe.
2. Eastridge Park shall obtain itemized preliminary bids for the repair of the slope and access road, and replacement and extension of the storm sewer pipe. Eastridge Park shall submit the itemized bids to City. Based on a review of the bids, City may elect to complete the work related to the replacement and extension of the storm sewer pipe

independent of the work to repair the slope and access road. City shall notify Eastridge Park of its intent to complete the work related to the storm sewer pipe within 10 calendar days of receipt of the bids.

3. Eastridge Park shall engage a contractor of its choice to construct the improvements agreed to by Eastridge Park and City, and shall obtain a permit from City's Bureau of Development Services for such work. Drafts of Eastridge Park's contract, scope of work, and any other relevant agreements or specifications shall be submitted to City for its approval. All work shall be performed in full compliance with applicable federal, state, and local regulations.
4. Eastridge Park shall notify City before the work begins and allow City personnel to monitor the work.
5. Upon completion of the work and acceptance thereof by City, Eastridge Park shall submit an itemized invoice to City. Within thirty days of receipt, City shall review the itemized invoice, and, if approved, reimburse Eastridge Park for the following:
  - a. Twenty-five percent of that portion of the invoice related to the slope and access road repair, but no more than \$25,000;
  - b. The entire portion of the invoice related to replacement and extension of the storm sewer pipe, if included in the contract; and
  - c. Any public works permit costs paid by Eastridge Park associated with the work.
6. Eastridge Park shall provide final as-built plans to City for any portion of the work involving public infrastructure.
7. Eastridge Park waives any past, present, or future claim against City for damages related to the slope failure. Eastridge Park shall indemnify and defend City against any claim related to or arising out of the slope failure or the repair thereof, including claims brought by the individual members of Eastridge Park.
8. This settlement agreement represents the full and complete agreement between the Parties and supersedes any prior written or oral agreements. The terms of this settlement agreement are contractual and not a mere recital.
9. The Parties, through their respective signatories, represent and warrant that they have carefully read the foregoing terms of this settlement agreement and that they are authorized to execute this settlement agreement on behalf of their respective entities.
10. This settlement agreement shall be governed by and construed in accordance with the laws of the State of Oregon with the exception of Oregon's choice-of-law rules if such rules would require application of the law of a different state.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

CITY OF PORTLAND

EASTRIDGE PARK HOMEOWNER'S  
ASSOCIATION

\_\_\_\_\_  
Bureau of Environmental Services  
Director or designee

Approved as to form:

**APPROVED AS TO FORM**

*[Handwritten Signature]*  
\_\_\_\_\_  
City Attorney  
**CITY ATTORNEY**