

1 IT IS HEREBY ORDERED that pursuant to ORS 455.895, the City is assessed a \$5,000
2 civil penalty, \$1000 due and payable within thirty (30) days of the execution of this Final Order and
3 Settlement Agreement, but \$4,000 of the civil penalty may be stayed and considered satisfied,
4 pursuant to the terms of paragraph 3.1 and 3.2 of the attached Settlement Agreement; otherwise, the
5 remaining \$4,000 civil penalty is due and payable according to the terms of paragraph 3.3 of the
6 attached Settlement Agreement.

7 IT IS FURTHER ORDERED that pursuant to ORS 183.745, the Director accepts the terms
8 of sub-paragraph 3.1.3 of the attached Settlement Agreement.

9 IT IS FURTHER ORDERED that the Cease and Desist Order issued against City by the
10 Director on August 14, 2014 remains in effect.

11 IT IS FURTHER ORDERED that any violation by City of the terms of this Order and
12 Settlement Agreement shall subject City to further enforcement action by the Director, including
13 but not limited to Director's review of delegation of City's building program.

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16 Dated this 26 day of October, 2015.

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19 Andrea Simmen for

20 Patrick Allen, Director
21 Department of Consumer and Business Services
22 State of Oregon

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SETTLEMENT AGREEMENT

The Director of the Department of Consumer and Business Services, State of Oregon (Director or BCD) and the City of Medford (City), do hereby agree to settle this matter in accordance with ORS 183.415 under the following terms and conditions:

1. The Director finds the facts and violations alleged in the Director's Notice of Proposed Penalty and Cease and Desist Order (Notice), with which the City was served on August 14, 2014 and which is incorporated herein by reference, are true.

2. This Final Order Incorporating Settlement Agreement sets forth the entire agreement of the parties, and City hereby waives all rights to a contested case hearing, judicial review, and any appeal in this matter.

3. City is assessed a civil penalty of \$5,000 and \$1,000 of this civil penalty is due and payable not more than 30 days after the execution of this Final Order and Settlement Agreement.

3.1 However, if:

3.1.1 The Medford City Council votes to repeal Medford Municipal Code 11.505, or amend Medford Municipal Code 11.505 so that does not require and does not permit the City to enforce it to require Fats, Oils and Grease (FOG) interceptors or similar FOG devices to be installed in any manner different from what is required by the Oregon Plumbing Specialty Code (OPSC), the rules adopted thereunder, or any statute or rule of general applicability administered by the Division;

3.1.2 The repeal or amendment of Medford Municipal Code 11.505 those rules, ordinances, and codes is effective no later than January 1, 2016; and,

3.1.3 Before the Division shall issue this order and settlement agreement, but in no case later than October 15, 2015, the City Manager executes and issues to the Division a Memorandum of Understanding, on behalf of the City, in which the City acknowledges its responsibility to administer the Oregon State Building Code (Building Code), and of the

1 prohibition in ORS 455.020 against adopting or enforcing any ordinance, regulation, or code
2 with requirements that are different from the statewide Building Code, including standards
3 or requirements that are higher or more stringent than those in the Building Code; then,

4 3.1.4 Subject to BCD's approval of any new rule, ordinance, or code
5 language, and of the Memorandum of Understanding referenced under sub-paragraph 3.1.3,
6 \$4,000 of the civil penalty assessed shall be stayed for two (2) years from the date this Final
7 Order and Settlement Agreement is executed;

8 3.2 If: the above terms of paragraph 3.1 are met; City adopts no new rule,
9 ordinance or code covering the same matters addressed by the State Building Code, but
10 which requires, or allows City to require, different standards than those of the Oregon
11 Plumbing Specialty Code (OPSC), any other provisions of the State Building Code, the
12 rules adopted thereunder, and any statutes or rules of general applicability administered by
13 BCD; and, City does not apply or enforce any statute, rule, ordinance or code in a manner
14 that is inconsistent with State Building Code, or statutes and rules administered by BCD,
15 then the remaining \$4,000 of the penalty assessed against City shall be considered satisfied
16 two (2) years after the execution of this Final Order and Settlement Agreement.

17 3.3 If the terms of 3.1 and 3.2 are not met, the remaining \$4,000 of the penalty
18 assessed against City shall be immediately due and payable as of January 2, 2016.

19 3.4 City understands and agrees that any determination of whether any new
20 ordinance, rule or code language it adopts is consistent with the State Building Code, or
21 statutes and rules administered by BCD, including but not limited to those relating to FOG
22 devices, is entirely within the discretion of BCD.

23 4. City understands that the Director's Cease and Desist Order, issued against it on
24 August 14, 2014, remains in effect.

1 5. City understands that the Final Order Incorporating Settlement Agreement is a public
2 record and may be disclosed, in accordance with Oregon's public records law.

3 6. By the signature below, City affirms that it has reviewed and fully understands the
4 terms of this Settlement Agreement and was under no duress or coercion to enter into it.

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IT IS SO AGREED:

 for and on behalf of
City Manager PRO TEM (ACTING)
The City of Medford

Dated this 9 day of OCTOBER, 2015.

 for
Patrick Allen, Director
Department of Consumer and Business Services
State of Oregon

Dated this 26th day of October, 2015.