

CITY OF BATAVIA

Date: June 18, 2010
To: City Services Committee
From: Karen R. Young, P.E. – Assistant City Engineer
Engineering Department
Re: **City Services Committee Meeting – June 22, 2010**
Driveway Apron and Service Walks

The specialty driveway aprons and service walks were presented again at the May 18, 2010 City Services Meeting. At that meeting the committee requested staff to prepare the agreement as discussed for the Non-Standard Pavement and Non-Standard Sidewalk.

Agreements for Non-Standard Pavement and Sidewalks

Attached are two agreements as prepared by Staff and reviewed by John Noble. The first agreement is called the Agreement for Non-Standard Pavement Running with the Land. This agreement will be used for driveway aprons that are requesting to use non-standard materials (other than asphalt or concrete). The proposed non-standard materials include; stamped asphalt, stamped concrete, paving brick, landscape brick. The second agreement is called Agreement for Non-Standard Sidewalk Running with the Land. This agreement will be used for the installation of service walks of any material.

Both of these agreements are identical with the exception of changing the terms of Pavement and Sidewalk and the materials allowed. Below is a summary of these agreements:

- Agreements will allow either the specialty driveway apron material or allow the installation of a service walk of any material.
- Agreements will be executed by both the property owner and the City Engineer and recorded at Kane County by the property owner prior to the approval of the right-of-way permit.
- Property owner will be required to maintain the installed material.
- Property owner will be required to replace the material at their expense should the City or utility company perform work within the right-of-way that causes damage to the Non-Standard item.
- This agreement will run with the land and as property ownership changes this agreement will remain in place and new property owners will be made aware of the agreement as part of the title search.
- This agreement acts as hold harmless for the City as well.

Specialty Driveway Apron Material Cash in Lieu of Repair

Staff recommends creating a policy of reimbursing the property owner the amount which the City would have paid to repair the driveway apron damaged as part of a construction project for the standard asphalt or concrete material. For bid City projects this amount would be based on the bid unit price and the patch area required. This reimbursement will not take place until after the homeowner had filed for a permit and the City has signed off on the final inspection for the driveway apron installed by the homeowner's contractor. If there is record of a previous permit



for the specialty item and a recorded agreement, the City will waive the permit fee for the replacement work.

Driveway Apron Patching

As previously discussed there are economic impacts to the various City projects relating to the driveway apron work. Staff presented the option of replacing the driveway aprons to the extent of the patch necessary. In cases when the patch area is more than 50% of the driveway apron area for an asphalt driveway the entire driveway apron would be replaced. For concrete driveway aprons the patch will go the nearest logical joint and will not be subject to the 50% requirement. In addition, the homeowner would have the option of paying to replace the remaining driveway apron at contract unit prices.

Service Walks:

The service walk is the sidewalk that homeowners have installed from the back of curb to the sidewalk, which is located within the public right-of-way. As mentioned with the driveway aprons the service walk is located on public property, but it serves the sole purpose of providing access to the homeowner's property and has no direct benefit to the community as a whole. Standard accepted practice consists of the homeowners maintaining the service walk, similar to mowing the grass area within the right-of-way.

Below are the findings from the surrounding communities regarding their policies on service walks. They are very similar to the policies on driveway aprons.

	Service Walks Permitted	Service Walks Replaced by City During Construction
City of Batavia	No - Currently	
City of Elgin	No	No – Removed during construction
City of Geneva	Yes	No – Removed during construction
City of St. Charles	Yes** Homeowner must execute Hold Harmless Agreement like the driveway apron	No – It is the homeowners responsibility to replace per the Hold Harmless Agreement

Economic Impacts of Service Walk Policies

As with the driveway aprons, there significant impacts to the project budgets for the replacement of the service walks. On one of our current jobs the cost to replace these service walks is approximately \$11,000. This would equate to approximately 175 feet of a street and 423 square yards of pavement patching, which again would be a benefit to the community as a whole. As with the specialty driveway aprons, these could be treated as a specialty item in which the



homeowner would execute a Hold Harmless Agreement and the replacement and repair of the service walks would be the responsibility of the homeowner.

Service Walks Discussion Points:

1. Should the City allow service walks?
2. Should the City implement a Hold Harmless Agreement, which would be executed by both the homeowner and City specifying that the City is not responsible for the replacement, maintenance, etc. of the service walks?

Recommended Action:

Staff recommends for the City Services Committee approve the following:

1. Approval of the use of the Agreement for Non-Standard Pavement Running with the Land for the use of stamped asphalt, stamped concrete, paving brick and landscape brick materials.
2. Approval of pavement patch area only for driveway aprons up to 50% and anything over 50% patching area for asphalt will require full driveway apron replacement.
3. Approval of the reimbursement to the homeowner of a non-standard pavement driveway the cost to repair the area at unit price for either standard asphalt or concrete. The property owner will not be reimbursed until the restoration work has been completed by the homeowner.
4. Approval for the property owner to have the option of replacing the entire driveway apron that is disturbed at the City's contract unit prices.
5. Approval of the use of the Agreement for Non-Standard Sidewalk Running with the Land for the use of concrete, asphalt, stamped asphalt, stamped concrete, paving brick and landscape brick materials.

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Cc: Noel Basquin, City Engineer
File – 2010 Street Program

AGREEMENT FOR NON-STANDARD PAVEMENT RUNNING WITH THE LAND – RECORD

THIS AGREEMENT made this

_____ day of _____, 20____,

by_____

being **all** of the owners (“OWNERS”) of the following described property; to-wit: **(Insert Legal Description)**

Parcel Number: _____

Commonly known as: _____ **Batavia, IL**
(Address – Please Print)

WHEREAS, the City of Batavia (“CITY”) regulates the right-of-ways within its boundaries; and

WHEREAS, the OWNER’S PROPERTY abuts a public right-of-way held in trust by the CITY as shown on Exhibit “A” attached hereto and made a part hereof (“CITY PROPERTY”); and

WHEREAS, the OWNERS request that the CITY grant a permit to construct, install, maintain and use Non-Standard Pavement in said public right-of-way; and

WHEREAS, Non-Standard Pavement is defined as Stamped Concrete, Colored Concrete, Stamped Asphalt, Paving Bricks, or Landscape Bricks; and

WHEREAS, the CITY finds that the encroachment of the Non-Standard Pavement in the CITY PROPERTY is minor and as such will not impede the public use of the CITY PROPERTY; and

WHEREAS, the City is willing to enter into an Agreement for Non-Standard pavement (the “AGREEMENT”) to permit the installation, construction, existence and use of Non-Standard Pavement in the CITY PROPERTY under certain conditions and restrictions as stated below; and

WHEREAS, the City Engineer is authorized to execute the AGREEMENT on behalf of the City; and

WHEREAS, OWNERS agree to abide by those conditions and restrictions in exchange for the CITY entering into the AGREEMENT;

NOW, THEREFORE, in consideration of the City of Batavia issuing a permit to the OWNERS to install Non-Standard Pavement in the right-of-way adjacent to the above described property, said property is hereby made subject to the following covenants and restrictions, all of which shall be deemed to run with the above described property:

1. OWNERS represent, warrant and covenant that they are all of the record owners of the OWNER’S PROPERTY.
2. The CITY grants to OWNERS, and OWNERS do hereby accept, a permit to construct, install, maintain, and use the above-described Non-Standard Pavement subject to all the terms and conditions of this AGREEMENT.

3. The Non-Standard Pavement shall be constructed and installed by OWNERS, at their expense, in strict accordance with descriptions contained in Exhibit "B". All plans and specifications for construction and installation of the Non-Standard Pavement shall be submitted and approved by the Engineering Department prior to the commencement of any construction and/or installation whatsoever. All construction, installation, maintenance and use shall be done pursuant to all the laws, ordinances, resolutions, rules and regulations of the CITY, Kane County, State of Illinois or any other governmental unit or agency applicable thereto as amended from time to time.
4. Upon construction and installation or removal of said Non-Standard Pavement, OWNERS shall restore the surrounding area to its original condition immediately prior to construction and installation, or removal. In the event OWNERS do not restore the surrounding area, the CITY may restore the surrounding area and charge the costs thereof to OWNERS. Any such expense incurred by the CITY in connection with this Paragraph shall create a lien against the OWNERS PROPERTY.
5. The Non-Standard Pavement shall at all times remain the property of the OWNERS and the CITY shall not be responsible for the continued maintenance of the Non-Standard Pavement; provided, however, the CITY may at its option, maintain the Non-Standard Pavement and charge OWNERS the costs and expenses incurred therein. Any such expense incurred by the CITY in connection with this Paragraph shall create a lien against the OWNER'S PROPERTY.
6. THE OWNER understands, acknowledges and accepts any and all responsibility for repair, restoration and any and all other work necessary to restore Non-Standard Pavement as a result of CITY damage during use or access of public R.O.W. shall be OWNER'S sole responsibility. The CITY shall have no responsibility under any condition for repair or restoration of Non-Standard Pavement.
7. This Agreement shall not give rise to any right of ownership in the CITY PROPERTY to OWNERS; the CITY PROPERTY shall continue to be a public property held by the CITY in trust for the general public.
8. The Non-Standard Pavement shall be constructed, installed, maintained and used so as to not interfere with either the public use of the CITY PROPERTY or the rights of abutting and adjoining landowners. The construction, installation, maintenance or use of the Non-Standard Pavement shall not at any time interfere with the public use of the CITY PROPERTY.
9. The OWNERS, their assigns and successors in title agree to indemnify and hold the CITY, its officers, officials, employees and agents harmless from (a) any causes of action or claims for damages to the Non-Standard Pavement caused by work by the CITY or its agents, within the CITY PROPERTY, and/or (b) any and all claims and causes of action (including, but not limited to, those brought, asserted or alleged by third parties), and liabilities or expenses, including judgments, costs and damages, and including any and all attorney's fees and costs incurred by the CITY, alleged to have occurred from the installation, construction, repair, maintenance, continued existence, or removal of the Non-Standard Pavement.
10. OWNERS understand and agree that the CITY, public utilities and/or cable television companies, and their successors and assigns, may also have certain rights in, over, under, upon or across the CITY PROPERTY and that this Permit Agreement does not affect or diminish the rights of those parties and that the construction, installation, repair, maintenance and/or use of the Non-Standard Pavement will not affect or diminish those parties rights referred to above.
11. This Permit Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.
12. The OWNERS, their assigns and successors in title hereby agree to and do hereby release the City of Batavia, its officers, agents and employee's which are from time to time authorized to use said right-of-way for any obligations as a result of damages to the Non-Standard Pavement which may occur in the course of the installation, removal, maintenance or repair of any utility within said right-of-way, or as the result of street construction/repair, snow removal, utility construction/repair, or street cleaning by the City of Batavia.

USE BLACK INK ONLY

City of Batavia

By: _____
City Engineer

IN WITNESS WHEREOF, we have hereunto set our hands and seals the date and year first above written.

OWNERS (S)

State of Illinois)
)SS
Kane County)

I, the undersigned, a Notary Public in, and for said County and State aforesaid, DO HEREBY CERTIFY that _____ and _____ Personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this _____ day of _____, A.D., _____.

Notary Public

AGREEMENT FOR NON-STANDARD SIDEWALK RUNNING WITH THE LAND – RECORD

THIS AGREEMENT made this

_____ day of _____, 20____,

by_____

being **all** of the owners (“OWNERS”) of the following described property; to-wit: **(Insert Legal Description)**

Parcel Number: _____

Commonly known as: _____ **Batavia, IL**
(Address – Please Print)

WHEREAS, the City of Batavia (“CITY”) regulates the right-of-ways within its boundaries; and

WHEREAS, the OWNER’S PROPERTY abuts a public right-of-way held in trust by the CITY as shown on Exhibit “A” attached hereto and made a part hereof (“CITY PROPERTY”); and

WHEREAS, the OWNERS request that the CITY grant a permit to construct, install, maintain and use Non-Standard Sidewalk in said public right-of-way; and

WHEREAS, Non-Standard Sidewalk is defined as a carriage walk within the said right-of-way consisting of Asphalt, Concrete, Stamped Concrete, Colored Concrete, Stamped Asphalt, Paving Bricks, or Landscape Bricks; and

WHEREAS, the CITY finds that the encroachment of the Non-Standard Sidewalk in the CITY PROPERTY is minor and as such will not impede the public use of the CITY PROPERTY; and

WHEREAS, the City is willing to enter into an Agreement for Non-Standard Sidewalk (the “AGREEMENT”) to permit the installation, construction, existence and use of Non-Standard Sidewalk in the CITY PROPERTY under certain conditions and restrictions as stated below; and

WHEREAS, the City Engineer is authorized to execute the AGREEMENT on behalf of the City; and

WHEREAS, OWNERS agree to abide by those conditions and restrictions in exchange for the CITY entering into the AGREEMENT;

NOW, THEREFORE, in consideration of the City of Batavia issuing a permit to the OWNERS to install Non-Standard Sidewalk in the right-of-way adjacent to the above described property, said property is hereby made subject to the following covenants and restrictions, all of which shall be deemed to run with the above described property:

1. OWNERS represent, warrant and covenant that they are all of the record owners of the OWNER’S PROPERTY.
2. The CITY grants to OWNERS, and OWNERS do hereby accept, a permit to construct, install, maintain, and use the above-described Non-Standard Sidewalk subject to all the terms and conditions of this AGREEMENT.

3. The Non-Standard Sidewalk shall be constructed and installed by OWNERS, at their expense, in strict accordance with descriptions contained in Exhibit "B". All plans and specifications for construction and installation of the Non-Standard Sidewalk shall be submitted and approved by the Engineering Department prior to the commencement of any construction and/or installation whatsoever. All construction, installation, maintenance and use shall be done pursuant to all the laws, ordinances, resolutions, rules and regulations of the CITY, Kane County, State of Illinois or any other governmental unit or agency applicable thereto as amended from time to time.
4. Upon construction and installation or removal of said Non-Standard Sidewalk, OWNERS shall restore the surrounding area to its original condition immediately prior to construction and installation, or removal. In the event OWNERS do not restore the surrounding area, the CITY may restore the surrounding area and charge the costs thereof to OWNERS. Any such expense incurred by the CITY in connection with this Paragraph shall create a lien against the OWNERS PROPERTY.
5. The Non-Standard Sidewalk shall at all times remain the property of the OWNERS and the CITY shall not be responsible for the continued maintenance of the Non-Standard Sidewalk; provided, however, the CITY may at its option, maintain the Non-Standard Sidewalk and charge OWNERS the costs and expenses incurred therein. Any such expense incurred by the CITY in connection with this Paragraph shall create a lien against the OWNER'S PROPERTY.
6. THE OWNER understands, acknowledges and accepts any and all responsibility for repair, restoration and any and all other work necessary to restore Non-Standard Sidewalk as a result of CITY damage during use or access of public R.O.W. shall be OWNER'S sole responsibility. The CITY shall have no responsibility under any condition for repair or restoration of Non-Standard Sidewalk.
7. This Agreement shall not give rise to any right of ownership in the CITY PROPERTY to OWNERS; the CITY PROPERTY shall continue to be a public property held by the CITY in trust for the general public.
8. The Non-Standard Sidewalk shall be constructed, installed, maintained and used so as to not interfere with either the public use of the CITY PROPERTY or the rights of abutting and adjoining landowners. The construction, installation, maintenance or use of the Non-Standard Sidewalk shall not at any time interfere with the public use of the CITY PROPERTY.
9. The OWNERS, their assigns and successors in title agree to indemnify and hold the CITY, its officers, officials, employees and agents harmless from (a) any causes of action or claims for damages to the Non-Standard Sidewalk caused by work by the CITY or its agents, within the CITY PROPERTY, and/or (b) any and all claims and causes of action (including, but not limited to, those brought, asserted or alleged by third parties), and liabilities or expenses, including judgments, costs and damages, and including any and all attorney's fees and costs incurred by the CITY, alleged to have occurred from the installation, construction, repair, maintenance, continued existence, or removal of the Non-Standard Sidewalk.
10. OWNERS understand and agree that the CITY, public utilities and/or cable television companies, and their successors and assigns, may also have certain rights in, over, under, upon or across the CITY PROPERTY and that this Permit Agreement does not affect or diminish the rights of those parties and that the construction, installation, repair, maintenance and/or use of the Non-Standard Sidewalk will not affect or diminish those parties rights referred to above.
11. This Permit Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.
12. The OWNERS, their assigns and successors in title hereby agree to and do hereby release the City of Batavia, its officers, agents and employee's which are from time to time authorized to use said right-of-way for any obligations as a result of damages to the Non-Standard Sidewalk which may occur in the course of the installation, removal, maintenance or repair of any utility within said right-of-way, or as the result of street construction/repair, snow removal, utility construction/repair, or street cleaning by the City of Batavia.

USE BLACK INK ONLY

City of Batavia

By: _____
City Engineer

IN WITNESS WHEREOF, we have hereunto set our hands and seals the date and year first above written.

OWNERS (S)

State of Illinois)
)SS
Kane County)

I, the undersigned, a Notary Public in, and for said County and State aforesaid, DO HEREBY CERTIFY that _____ and _____ Personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this _____ day of _____, A.D., _____.

Notary Public