



CITY OF OREGON CITY CITY COMMISSION REGULAR MEETING AGENDA

Hanlon Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City
Wednesday, August 5, 2026 at 7:00 PM

Ways to participate in this public meeting:

- Attend in person, location listed above. Please see the public comment guidelines below.
- Attend the livestream of the meeting on the City's YouTube Channel: <https://www.youtube.com/user/CityofOregonCity>
- Register to provide electronic testimony (email recorderteam@orc.org or call 503-496-1509 by 3:00 PM on the day of the meeting to register)
- Email recorderteam@orc.org (deadline to submit written public comment via email is 3:00 PM on the day of the meeting)
- Mail to City of Oregon City, Attn: City Recorder, P.O. Box 3040, Oregon City, OR 97045

EXECUTIVE SESSION

The Executive Session will begin at 6:00 PM pursuant to ORS 192.660(2)(e): To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

REGULAR MEETING OF THE CITY COMMISSION

1. CONVENE MEETING AND ROLL CALL

2. FLAG SALUTE

3. CEREMONIES AND PROCLAMATIONS

4. PUBLIC COMMENTS

Please see the public comment guidelines below.

5. PRESENTATIONS

- a. Downtown Oregon City Biannual Update
- b. Transportation Advisory Committee 2025 Annual Report

6. ADOPTION OF THE AGENDA

7. CONSENT AGENDA

- a. Public Improvement Contract with Sewer Renewal Specialist, LLC for the Clairmont Area Sanitary Sewer Rehabilitation Project (CI 25-004)
- b. Public Improvement Contract with Paul Brothers, Inc for Construction Services at Wesley Lynn Park (PK26-301)
- c. Amendment No. 1 to the Miscellaneous Contract and Agreement No. 73000-00019224 with the Oregon Department of Transportation for the Oregon City Quiet Zone
- d. Minutes of the December 03, 2025 City Commission Regular Meeting
- e. Minutes of the May 13, 2025 City Commission Work Session
- f. Minutes of the December 17, 2025 City Commission Regular Meeting

8. PUBLIC HEARINGS

9. GENERAL BUSINESS

- a. Stormwater Fee Appeal for 302 Bluff Street
- b. First Reading of Ordinance 26-1011 Adoption Of A New Flag

10. COMMUNICATIONS

City Manager

Commissioners

Mayor

11. ADJOURNMENT

ORDINANCE NOTICE

If an ordinance is noticed above in this agenda, the text of the ordinance is available online with the posted agenda packet. In addition, three copies are provided for public review in the Office of the City Recorder upon request.

PUBLIC COMMENT GUIDELINES

Complete a Comment Card prior to the meeting and submit it to the City Recorder. When the Mayor/Chair calls your name, proceed to the speaker's table, and state your name and city of residence. Each speaker is given 3 minutes to speak. Representatives of neighborhood associations may be given 5 minutes to speak if requested. As a general practice, the City Commission does not engage in discussion with those making comments. Complaints shall first be addressed at the department level prior to addressing the City Commission. Electronic presentations are permitted but must be delivered to the City Recorder 48 hours in advance of the meeting.

ADA NOTICE

The location is ADA accessible. Hearing devices may be requested from the City Recorder prior to the meeting. Individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.

Agenda Posted at City Hall, Pioneer Community Center, Library, City Website.

Video Streaming & Broadcasts: The meeting is streamed live on the [Oregon City's website](#) and available on demand following the meeting. The meeting can be viewed on Willamette Falls Television channel 28 for Oregon City area residents as a rebroadcast. Please contact WPMC at 503-650-0275 for a programming schedule.



CITY OF OREGON CITY

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

To: City Commission **Agenda Date:** August 5, 2026
From: Dayna Webb, Public Works Director

SUBJECT:

Item 5.b. - Transportation Advisory Committee 2025 Annual Report

STAFF RECOMMENDATION:

Staff recommend that the City Commission receive and listen to the presentation of the Transportation Advisory Committee's 2025 Annual Report provided by Tim Morgan, TAC Vice Chair.

EXECUTIVE SUMMARY:

Tim Morgan, Vice Chair of the Transportation Advisory Committee, will present the Committee's 2025 Annual Report to the City Commission.

Per the Administrative Policy 2-11 committees are required to present an annual report to the City Commission at a regular Commission meeting.

BACKGROUND:

The Transportation Advisory Committee is an advisory committee tasked with providing advice and recommendations to the City Commission, Urban Renewal Agency and Planning Commission on transportation related matters as well as to guide the preparation of transportation plans and programs.

The Transportation Advisory Committee (TAC) was established on February 7, 1996, through the adoption of Resolution No. 96-3. The purpose of the TAC was to provide advice to the Planning Commission, City Commission, and Urban Renewal Agency on the Development of a City Transportation System Plan and other transportation and land use matters relevant to Oregon City. The purpose of the TAC was further clarified through the adoption of Resolutions 99-40 and 02-04.

In 2009, TAC members determined that the creation of bylaws would help to better outline the purpose and procedures of the TAC. As a result, a subcommittee was formed to develop the bylaws which were forwarded to the City Commission by a unanimous vote of the TAC, and the bylaws were adopted through Resolution 09-27 on November 4, 2009.

On June 19, 2013, the bylaws were expanded to allow one TAC member that resides or works outside of the city limits but within the 97045 and 97004 zip codes through Resolution No. 13-20. On August 17, 2016, the bylaws were amended to allow the chair and vice-chair to hold two-year terms.

OPTIONS:

N/A

BUDGET IMPACT:

Amount	N/A
Fiscal Year(s):	N/A
Funding Source(s):	N/A
Included in Approved Budget:	N/A

2025 Annual Report

Ben Simmons served as Chair and Tim Morgan served as Vice Chair. Bruce Fries renewed his membership with the Committee. The Transportation Advisory Committee Membership terms are as follows:

Member	Membership Term		
Ben Simmons	April 2019	to	December 2026
Bruce Fries	January 2022	to	December 2027
Cedomir Jesic	January 2014	to	December 2025
Christian Wadsworth	March 2023	to	December 2025
Julie Hernandez	March 2023	to	December 2025
Raymond Rendleman	May 2023	to	December 2025
Tim Morgan	January 2021	to	December 2026
Betty Mumm	August 2025	to	December 2027

Beginning in January 2025, the Transportation Advisory Committee shifted from monthly meetings to a bi-monthly schedule, holding six meetings on the second Thursday of January, March, May, July, September, and November from 6:00 to 8:00 p.m.

Presentations Provided to the Committee

Throughout the year, the Transportation Advisory Committee received several presentations covering a wide range of topics.

Annual Pavement Maintenance Report

Public Works Director Dayna Webb presented the 2024 pavement maintenance report, noting nearly \$130,000 in in-house asphalt repairs, continued use of contracted slurry seal services, and plans for a grind-and-overlay paving project on Molalla Avenue in late 2026 following ADA ramp upgrades.

Committee Best Practices, Guidelines, and Rules

City Recorder Jakob Wiley presented an overview of committee best practices, governing documents, member responsibilities, and public meeting requirements, emphasizing transparency and proper recordkeeping. He also reviewed the advisory role of committees and key procedures related to voting, conflicts of interest, and meeting management.

I-205 Abernethy Bridge Improvement Project Update

ODOT representatives provided an update on the I-205 Abernethy Bridge Improvement Project, now approximately 70% complete. The project includes major seismic upgrades, ramp reconfigurations, multimodal improvements, sound walls, and roadway enhancements, with completion expected in late 2026. The committee discussed seismic readiness, construction methods, traffic management during closures, project costs, and coordination with related ADA and local improvement work.

Local Street Standards

Public Works Director Dayna Webb presented information on local street standards, noting community concerns about traffic impacts from recent land-use projects. She reported that the city is evaluating vehicle-volume thresholds and collecting data on 20 representative streets to inform a proposal to the City Commission. The committee also discussed rising neighborhood traffic from new developments and the potential need for future traffic-calming measures.

Signage at Trillium Park HOA

Assistant Public Works Director Vance Walker presented traffic concerns in the Trillium Park HOA area, outlining planned improvements including a no-parking sign to improve sight distance, a no-outlet sign on Davis Road, and consideration of a no-truck-traffic sign. He also provided the HOA with information on the city's speed-hump criteria.

Three-Way Stop Sign at Gaffney Lane and Berta Drive

Assistant Public Works Director Vance Walker reported that the city is revisiting the potential installation of a three-way stop at Gaffney Lane and Berta Drive, noting renewed support and related improvements such as stop signs, crosswalks, and future curb extensions. The committee agreed the change would enhance safety and unanimously approved a motion directing staff to implement an interim three-way stop.

Overview of Committee Updates

Throughout the year, the committee received periodic updates on key regional and local efforts, including the Clackamas County Evacuation Plan, the Clackamas County Transportation System Plan, the Holcomb Project and Safe Routes to Schools initiatives, ODOT budget and legislative developments, and the 2025 traffic count program.

Committee Actions and Collaborative Updates

Items that the Transportation Advisory Committee reviewed, acted on, and coordinated with Public Works throughout the year.

Neighborhood Traffic Fact Sheet

The Neighborhood Traffic Fact Sheet was reviewed and updated by the Transportation Advisory Committee in coordination with Public Works.

Review and Revision of 2024 Annual Report

The committee reviewed the annual report and updated the wording of the 20-is-Plenty initiative to clarify the police department's role in responding to speed complaints.

Review and Revision of 2024–2025 TAC Goals and Alignment with City Commission Priorities

The committee reviewed the 2024–2025 TAC goals alongside the updated 2025–2027 City Commission goals and refined several items to ensure alignment with current priorities.



CITY OF OREGON CITY

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

To: City Commission **Agenda Date:** August 5, 2026
From: Dayna Webb, Public Works Director

SUBJECT:

Item 7.a. - Public Improvement Contract with Sewer Renewal Specialist, LLC for the Clairmont Area Sanitary Sewer Rehabilitation Project (CI 25-004)

STAFF RECOMMENDATION:

Award the bid and authorize the City Manager to execute the Public Improvement Contract with Sewer Renewal Specialist, LLC in the amount of \$1,039,076.09 for construction of the Clairmont Area Sanitary Sewer Rehabilitation Project (CI 25-004).

EXECUTIVE SUMMARY:

The Settlers Point Sanitary Pump Station consistently experiences near overflow conditions during the wet weather season due to excessive inflow and infiltration (I&I). The sanitary sewer rehabilitation project will address this issue by installing a liner in the mainline and individual laterals on a portion of the system in the Clairmont neighborhood that was installed along side the stormwater system when the subdivision was constructed. In addition, the interior of the sanitary manholes in this project area will be resealed to prevent leakage.

BACKGROUND:

In August, 2025 the City contracted with Century West Engineering to provide design, bidding and construction administrative services for the Clairmont Area Sanitary Sewer Rehabilitation Project to address the Inflow & Infiltration (I&I) problem that leads to near overflow conditions at the Settlers Point Sanitary Sewer Pump Station during the wet weather season.

On June 22, 2026, this project was advertised in the Daily Journal of Commerce and DemandStar, the City's bid procurement platform, in accordance with City and State contracting procedures. The bid opening was held on July 14, 2026 and three (3) bids were received. Staff and Century West Engineering reviewed the bids and determined that Sewer Renewal Specialist, LLC was the low responsive bidder. The contract award value is one million, thirty-nine thousand, seventy-six dollars and nine cents (\$1,039,076.09).

The list below includes the bidders and bid amounts received for this project:

- Sewer Renewal Specialist, LLC \$1,039,098.60. Due to rounding errors associated with multiplying quantities by unit costs, most of the total cost values were slightly inaccurate, resulting in an actual total base bid of \$1,039,076.09. This amount is a decrease of \$22.51 under the as-bid total of \$1,039,098.60.

- Insituform Technologies, LLC \$1,243,123.00
- Landis & Landis Construction, LLC \$1,341,541.00

The Engineer's estimate was \$1,219,894.00.

Construction will occur in the Summer and Fall of 2026 and work is anticipated to be completed by November 2026.

This Public Improvement Contract is in alignment with the project's budget, and adequate funds are available.

OPTIONS:

1. Approve Public Improvement Contract with Sewer Renewal Specialist, LLC for the Clairmont Area Sanitary Sewer Rehabilitation Project (CI 25-004).
2. Approve Public Improvement Contract with Sewer Renewal Specialist, LLC for the Clairmont Area Sanitary Sewer Rehabilitation Project (CI 25-004) with Amendments.
3. Deny Public Improvement Contract with Sewer Renewal Specialist, LLC for the Clairmont Area Sanitary Sewer Rehabilitation Project (CI 25-004) and provide further direction.

BUDGET IMPACT:

Amount \$1,039,076.09

Fiscal Year(s): 2026/27

Funding Source(s): Sewer Fund

Included in Approved Budget: Yes

SECTION III A **CONTRACT AGREEMENT**

This Agreement, made and entered into this 5th day of August, 2026, between the CITY OF OREGON CITY (“CITY”), acting by and through the City Commission and **SEWER RENEWAL SPECIALISTS, LLC** (“CONTRACTOR”).

Witnesseth, that the CONTRACTOR and the CITY, for the considerations stated herein, agree as follows:

ARTICLE I - Scope of Work

The CONTRACTOR hereby agrees to furnish all of the materials, equipment and labor necessary, and to perform all of the work for the project entitled: **CLAIRMONT AREA SANITARY SEWER REHABILITATION PROJECT (CI 25-004)** in accordance with the contract documents which are hereby made a part of this agreement.

The contract documents consist of:

Invitation to Bid Instructions to Bidders Bid Submittal Requirements and Forms Contract Agreement Oregon City Public Improvement Standard Conditions Statutory Conditions to Contract Agreement Payment Bond Performance Bond State of Oregon Statutory Public Works Bond	Prevailing Wage Rates for Public Works Contracts in Oregon, dated January 5, 2026 Amendments to the Prevailing Wage Rates for Public Works Contracts in Oregon dated April 5, 2026. Prevailing Wage Apprenticeship Rates dated April 5, 2026 Definitions of Covered Occupations for Public Works Contracts in Oregon dated October 5, 2024 2021 Oregon Standard Specifications for Construction (ODOT and APWA) as referenced by these documents General Conditions Special Provisions Appendix A – Sewer Mainline Inspection Reports Appendix B – Lateral Pipe Inspection Inventory Appendix C – Manhole Inspection Reports Contract Drawings City of Oregon City Standard Details Addendum 1 All items included within these Contract Documents.
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The order of items cited above does not constitute an order of precedence different than that established in the special or standard specifications. Equivalent titles, which may be substituted for the above listed items, are included as if specifically named.

ARTICLE II - Time of Completion

The project shall be complete within **75 calendar days** from the authorized start date for On-site work as identified in the Notice to Proceed.

ARTICLE III – Contract Amount

The Contract Amount for the work covered by this Agreement is estimated to be **One Million Thirty-Nine Thousand Seventy-Six Dollars and Nine Cents (\$1,039,076.09)**.

ARTICLE IV - Warranty and Quality of Work

In addition to all other warranties, express or implied, that are part of this Agreement, the Contractor expressly warrants to the City for a period of one year from acceptance of the work by the City that all materials and equipment furnished under this contract will be new, unless otherwise specified, and that the work will be of good quality, free from faults and defects and in conformance with the City's specifications. Work that does not conform to these standards shall be considered defective.

Contractor shall, at its own expense, make good and repair any and all defects arising from faulty workmanship or materials, if the defective work is discovered within the one-year warranty period and notice thereof is given to the Contractor within 60 days after the expiration of the warranty period. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used to repair the defect.

In witness whereof, the parties hereto have executed this agreement, the day and year first above written.

CITY OF OREGON CITY

SEWER RENEWAL SPECIALISTS, LLC

By: _____
Anthony J. Konkol III
City Manager

Printed Name

By: _____
Dayna Webb, P.E.
Public Works Director

By: _____
Authorized Signature

Approved as to Legal Sufficiency

Title

By: _____
City Attorney

Date

Address:

City Commission Award Date:

Federal Taxpayer ID Number

July 21st, 2026

John Burrell
City of Oregon City
13895 Fir Street
Oregon City, Oregon 97045

Re: **Recommendation to Award Letter** for Clairmont Area Sanitary Sewer Rehabilitation Project
(CI 25-004)

Dear Mr. Burrell,

Century West Engineering reviewed the bid results submitted on **7/14/2026** for the above referenced project. A total of **3** bids were received for this project, ranging from **\$1,039,098.60 to \$1,341,541.00**.

Century West Engineering reviewed each bid for errors and deficiencies. The following issues were identified:

- (1) *Sewer Renewal Specialists – Base Bid Schedule, Total Cost Column* – Due to rounding errors associated with multiplying quantities by unit costs, most of the total cost values are slightly inaccurate. This results in an actual total base bid of **\$1,039,076.09**, which is a decrease of \$22.51 under the as-bid total of \$1,039,098.60.
- (2) *Landis and Landis Construction – Base Bid Schedule, Item 4 Total Cost* – An extra zero was mistakenly included at the end of the total cost for Erosion Control, which should show \$2,500, not \$2,5000. This discrepancy was identified by cross-referencing the itemized total costs against the total base bid.

State licensing requirements for all bidders were verified to be current and in good standing, except for Insituform Technologies, LLC, which received a BOLI warning letter in January 2025 for multiple violations of Oregon's Prevailing Wage Rate Law and Wage and Hour Law on a prior public works project. The investigation was closed with no further action taken at this time.

All bidders and their listed subcontractors were verified to not appear on the debarred or suspended contractors list and to have no outstanding liquidated damages.

All bids were also reviewed for completeness and accuracy of the required bid documents, as listed below:

- Bid Proposal and Bid Schedule
- Addenda Acknowledgement Form (if applicable)
- Compliance with Prevailing Wages Form
- Resident Bidder Status Form
- Certification of Drug Testing Program Form

- Non-Collusion Statement Form
- Asbestos Certification Form
- Registrations
- Business Licenses
- Certification of Non-Discrimination Form
- Certification of Compliance with Tax Laws Form
- State of Oregon First Tier Subcontractor Disclosure Requirements Form
- Bid Bond
- Customer Service Acknowledgement Form
- Qualification of Bidder Form
- WIFIA Funded Project Acknowledgement Form (if applicable)

The lowest responsive and responsible bid was submitted by **Sewer Renewal Specialists** from Tigard, OR, with a bid (corrected) of **one million thirty-nine thousand seventy-six dollars and nine cents (\$1,039,076.09)**. The Engineer's estimate for this project totaled \$1.2 million and the apparent low bid represents a 14.8% cost decrease under the estimated costs. Century West Engineering recommends that the City award the **Clairmont Area Sanitary Sewer Rehabilitation Project (CI 25-004)** to **Sewer Renewal Specialists**.

Based on the review of the bid submissions and verification of bid documents, Century West Engineering recommends the City award the public improvement contract to:

Sewer Renewal Specialists.

Sincerely,



Rawley Voorhies, PE
Project Manager

Client City of Oregon City
 Clairmont Sanitary Sewer Rehabilitation Project (CI 25-004)
 Bid Tabulation
 Date: July 15, 2026

Apparent Low

Other Bidders

Item	Description	Units	Quantity	Engineers Estimate		Sewer Renewal Specialist, LLC		Insituform Technologies, LLC DBA C & L Water Solutions		Landis & Landis Construction, LLC	
				Unit Price	Extended	Unit Price	Extended	Unit Price	Extended	Unit Price	Extended
1	Extra Work As Authorized	FA	1								
2	Mobilization	LS	1	\$ 120,000.00	\$ 120,000.00	\$ 48,107.04	\$ 48,107.04	\$ 97,525.00	\$ 97,525.00	\$ 145,000.00	\$ 145,000.00
3	Temporary Work Zone Traffic Control Complete for Clairmont Way	LS	1	\$ 20,000.00	\$ 20,000.00	\$ 32,071.36	\$ 32,071.36	\$ 57,465.00	\$ 57,465.00	\$ 50,000.00	\$ 50,000.00
4	Erosion Control	LS	1	\$ 15,000.00	\$ 15,000.00	\$ 8,017.84	\$ 8,017.84	\$ 3,195.00	\$ 3,195.00	\$ 2,500.00	\$ 2,500.00
5	Rock Excavation	CY	10	\$ 200.00	\$ 2,000.00	\$ 144.32	\$ 1,443.20	\$ 420.00	\$ 4,200.00	\$ 300.00	\$ 3,000.00
6	Boulder Excavation	CY	10	\$ 200.00	\$ 2,000.00	\$ 176.39	\$ 1,763.90	\$ 345.00	\$ 3,450.00	\$ 250.00	\$ 2,500.00
7	Trench Foundation	CY	5	\$ 100.00	\$ 500.00	\$ 112.25	\$ 561.25	\$ 210.00	\$ 1,050.00	\$ 150.00	\$ 750.00
8	CIPP Liner, 6-Inch	LF	194	\$ 120.00	\$ 23,280.00	\$ 70.82	\$ 13,739.08	\$ 127.00	\$ 24,638.00	\$ 146.00	\$ 28,324.00
9	CIPP Liner, 8-Inch	LF	1432	\$ 85.00	\$ 121,720.00	\$ 77.24	\$ 110,607.68	\$ 80.00	\$ 114,560.00	\$ 92.00	\$ 131,744.00
10	CIPP Liner, 10-Inch	LF	1370	\$ 85.00	\$ 116,450.00	\$ 83.65	\$ 114,600.50	\$ 82.00	\$ 112,340.00	\$ 94.00	\$ 128,780.00
11	Mainline Video Inspection	LF	5992	\$ 7.00	\$ 41,944.00	\$ 1.84	\$ 11,025.28	\$ 5.00	\$ 29,960.00	\$ 9.00	\$ 53,928.00
12	Service Line Lateral Video Inspection	EA	87	\$ 350.00	\$ 30,450.00	\$ 131.49	\$ 11,439.63	\$ 120.00	\$ 10,440.00	\$ 200.00	\$ 17,400.00
13	Additional Lateral Cleaning and Descaling	HR	20	\$ 275.00	\$ 5,500.00	\$ 376.84	\$ 7,536.80	\$ 660.00	\$ 13,200.00	\$ 665.00	\$ 13,300.00
14	Replace/Rehabilitate Existing Sewer Lateral (All Diameters, Depths, Backfill, Pipes & Fittings)	LF	1175	\$ 130.00	\$ 152,750.00	\$ 160.50	\$ 188,587.50	\$ 147.00	\$ 172,725.00	\$ 169.00	\$ 198,575.00
15	Sanitary Sewer Lateral Reconnection, CIPP Tophat	EA	47	\$ 3,000.00	\$ 141,000.00	\$ 2,886.42	\$ 135,661.74	\$ 2,705.00	\$ 127,135.00	\$ 3,100.00	\$ 145,700.00
16	Sanitary Sewer Lateral Reconnection, Inserta Tee	EA	1	\$ 6,500.00	\$ 6,500.00	\$ 2,886.42	\$ 2,886.42	\$ 11,090.00	\$ 11,090.00	\$ 7,950.00	\$ 7,950.00
17	Sanitary Sewer Lateral Point Repair, First 5 Feet	EA	4	\$ 3,000.00	\$ 12,000.00	\$ 5,612.49	\$ 22,449.96	\$ 5,230.00	\$ 20,920.00	\$ 3,750.00	\$ 15,000.00
18A	Sanitary Sewer Lateral Point Repair, Each Additional Foot	LF	20	\$ 200.00	\$ 4,000.00	\$ 481.07	\$ 9,621.40	\$ 1,045.00	\$ 20,900.00	\$ 750.00	\$ 15,000.00
18B	4-Inch Sanitary Sewer Lateral	LF	15	\$ 150.00	\$ 2,250.00	\$ 288.64	\$ 4,329.60	\$ 940.00	\$ 14,100.00	\$ 675.00	\$ 10,125.00
19	Sanitary Sewer Cleanouts, Two-Way Public	EA	44	\$ 2,000.00	\$ 88,000.00	\$ 2,886.42	\$ 127,002.48	\$ 3,835.00	\$ 168,740.00	\$ 2,750.00	\$ 121,000.00
20	Concrete Sanitary Sewer Manholes	EA	3	\$ 13,000.00	\$ 39,000.00	\$ 10,423.19	\$ 31,269.57	\$ 14,645.00	\$ 43,935.00	\$ 10,500.00	\$ 31,500.00
21	Manhole Base and/or Channel Rehabilitation	EA	2	\$ 2,000.00	\$ 4,000.00	\$ 4,008.92	\$ 8,017.84	\$ 5,785.00	\$ 11,570.00	\$ 4,150.00	\$ 8,300.00
22	Manhole Rehabilitation	SF	1100	\$ 60.00	\$ 66,000.00	\$ 44.90	\$ 49,390.00	\$ 75.00	\$ 82,500.00	\$ 63.00	\$ 69,300.00
23	Manhole Steps	EA	38	\$ 350.00	\$ 13,300.00	\$ 208.46	\$ 7,921.48	\$ 195.00	\$ 7,410.00	\$ 150.00	\$ 5,700.00
24	Concrete Driveways	SF	3045	\$ 50.00	\$ 152,250.00	\$ 27.26	\$ 83,006.70	\$ 25.00	\$ 76,125.00	\$ 37.00	\$ 112,665.00
25	Landscape Restoration, Complete	LS	1	\$ 40,000.00	\$ 40,000.00	\$ 8,017.84	\$ 8,017.84	\$ 13,950.00	\$ 13,950.00	\$ 23,500.00	\$ 23,500.00
TOTAL (ITEMS 1 TO 25)					\$ 1,219,894.00	-14.8%	\$ 1,039,076.09	1.9%	\$ 1,243,123.00	10.0%	\$ 1,341,541.00

Note: Cells highlighted in Yellow contained mathematical errors. Contract states that unit prices prevail and math errors are corrected. For Sewer Renewal Specialists there were many minor mathematical errors. Their Total Base Bid equaled \$1,039,098.60.

CLAIRMONT AREA SANITARY SEWER REHABILITATION

CITY OF OREGON CITY, OR

OC PROJECT #: CI 25-004

POTENTIAL
UNDERGROUND
FACILITY OWNERS
"ONE CALL"
UTILITY NOTIFICATION
CENTER
1-800-332-2344 OR 811

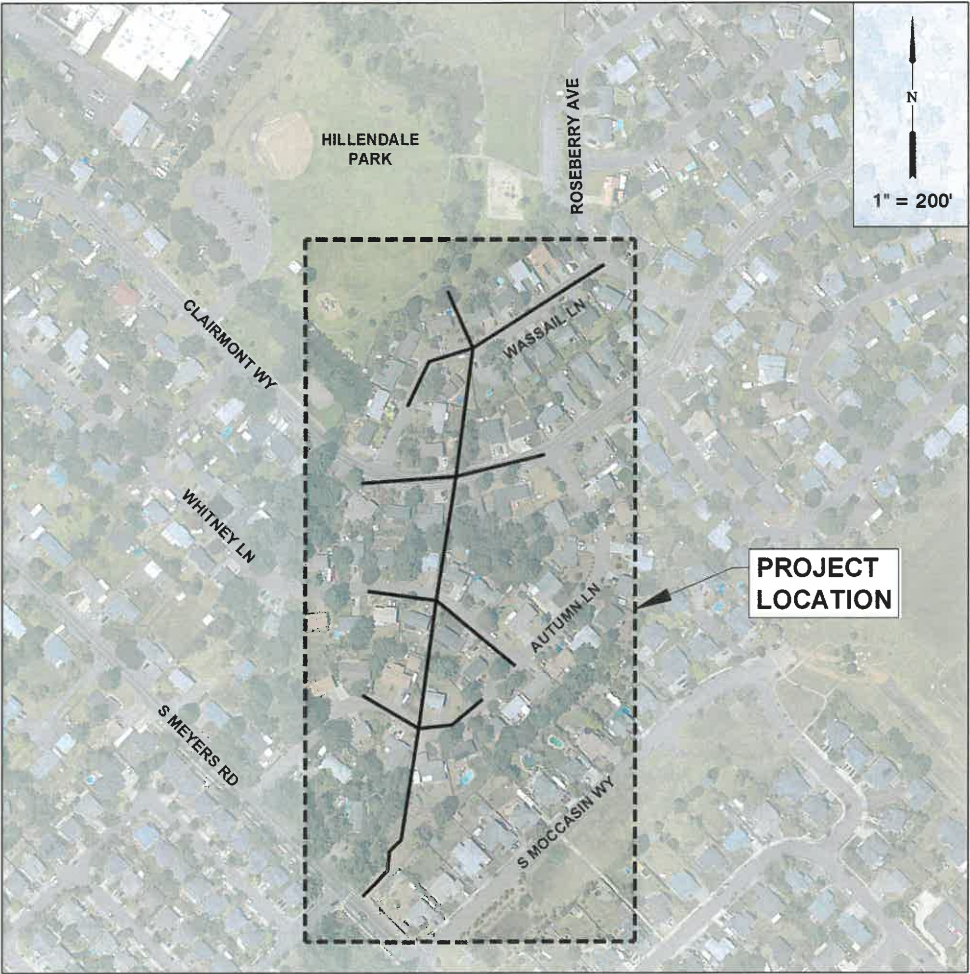


CENTURY WEST ENGINEERING
DESIGNED BY: ALFRED
DRAWN BY: JLF
PORTLAND OFFICE
1500 MEADOWS ROAD, SUITE 200
LAKE OSWEGO, OR 97035
503.493.2100 OFFICE
503.493.2110 FAX

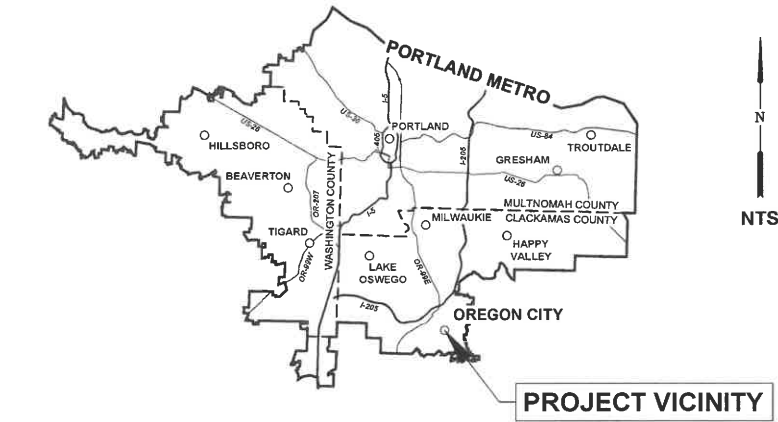
SHEET INDEX

SHT NO.	TITLE	DESCRIPTION
1	G1.1	COVER SHEET
2	G1.2	LEGEND, ABBREVIATIONS & SHEET LAYOUT
3	G1.3	GENERAL NOTES
4	C2.1	WASSAIL LN - STA 0+00 TO STA 2+90
5	C2.2	WASSAIL LN - STA 2+90 TO STA 5+45
6	C2.3	CLAIRMONT WY - STA 10+00 TO STA 14+25
7	C2.4	WHITNEY LN - STA 20+00 TO STA 23+85
8	C2.5	AUTUMN LN - STA 30+00 TO STA 33+01
9	C2.6	EASEMENT - STA 40+00 TO STA 44+50
10	C2.7	EASEMENT - STA 44+50 TO STA 48+85
11	C2.8	EASEMENT - STA 48+85 TO STA 53+70
12	C3.1	DETAILS - SANITARY SEWER
13	C3.2	DETAILS - MISCELLANEOUS
14	C4.1	EXISTING CONDITIONS / CLEANOUT LOCATION EXHIBITS
15	C4.2	EXISTING CONDITIONS / CLEANOUT LOCATION EXHIBITS
16	C4.3	EXISTING CONDITIONS / CLEANOUT LOCATION EXHIBITS
17	C4.4	EXISTING CONDITIONS / CLEANOUT LOCATION EXHIBITS

LOCATION MAP



VICINITY MAP



PROJECT CONTACTS

CITY OF OREGON CITY JOHN BURRELL 13895 FIR STREET OREGON CITY, OR 97045 T: 971.204.4623 E: jburrell@orcify.org	CENTURY WEST ENGINEERING RAWLEY VOORHIES, P.E. 5500 MEADOWS ROAD, #250 LAKE OSWEGO, OR 97035 T: 503.740.8444 E: rvoorhies@centurywest.com
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UTILITY CONTACTS

COMCAST SCOTT ANDERSON T: 503.351.9487 E: scott.anderson3@comcast.com	OREGON CITY STREET SYSTEM JAYSON THORNBERG T: 971.204.4680 E: jthornberg@orcify.org	NW NATURAL RYAN WINFREE T: 503.610.7765 E: ryan.winfree@nwnatural.com E: NWNShenwoodEngineering@nwnatural.com
LUMEN GREG TRAVIS T: 503.416.1507 E: greg.travis@lumen.com	OREGON CITY WATER SYSTEM KEVIN HANKS T: 971.204.4662 E: khanks@orcify.org	PORTLAND GENERAL ELECTRIC JAMES MIGIA T: 503.908.4394 E: james.migia@pgn.com
OREGON CITY SANITARY AND STORM CHAD RENHARD T: 971.204.4673 E: crenhard@orcify.org		

ATTENTION EXCAVATORS:
OREGON LAW REQUIRES THE CONTRACTOR TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. THE CONTRACTOR MAY OBTAIN COPIES OF THESE RULES FROM THE CENTER BY CALLING (503) 232-1987 OR BY ACCESSING THE INTERNET AT www.state.or.us/government.htm. THE CONTRACTOR MUST NOTIFY THE CENTER AT LEAST 2 BUSINESS DAYS, BUT NOT MORE THAN 10 BUSINESS DAYS, BEFORE COMMENCING AN EXCAVATION. CALL (503) 246-6699.

CITY OF OREGON CITY, OREGON
OC PROJECT #: CI 25-004
CLAIRMONT AREA SANITARY SEWER REHABILITATION
COVER SHEET

REV #	DATE	DESCRIPTION



CITY OF OREGON CITY
PUBLIC WORKS DEPARTMENT
APPROVAL FOR CONSTRUCTION
☐ APPROVED AS SUBMITTED

SIGNATURE

NAME:

DATE:

APPROVAL EXPIRES 6 MONTHS AFTER DATE ABOVE

PRINTED: 5/26/2026

OC RECORD DRAWING #:

DRAWING NUMBER:

G1.1

SHEET 1 OF 17



CITY OF OREGON CITY

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

To: City Commission **Agenda Date:** August 5, 2026
From: Scott Archer, Parks and Recreation Director

SUBJECT:

Item 7.b. - Public Improvement Contract with Paul Brothers, Inc for Construction Services at Wesley Lynn Park (PK26-301)

STAFF RECOMMENDATION:

Staff recommend awarding the bid and authorizing the City Manager to execute the Public Improvement Contract with Paul Brothers, Inc. in the amount of \$399,220.00 for construction of the Wesley Lynn Dog Park project (PK26-301)

EXECUTIVE SUMMARY:

The Wesley Lynn Dog Park Project (PK26-301) is one of the planned park capital improvements for FY25-27. This project is primarily funded from Metro Local Share funding, with a small portion of the project funded through Parks SDCs. This project will construct new amenities, infrastructure, and habitat on the site of the existing off-leash dog area at Wesley Lynn Park.

BACKGROUND:

Through the 2019 Metro Parks and Nature bond measure, each local parks provider receives a proportionate share of Local Share Bond funds for use in developing parks, natural areas, and related projects that meet the criteria of the bond. Oregon City has been allocated a total of \$1,914,446.00 of Local Share Bond funds. During the February 18th Regular Meeting, City Commission approved the first project under our Local Share IGA with Metro (PK26-301). The project restores and protects critical habitat at Wesley Lynn Park through development of new fencing, habitat, and stormwater infrastructure that prevents off-leash dogs and pet waste from entering sensitive wetlands and habitat areas. The total project area is approximately 2.7 acres and is currently utilized as an unfenced off-leash dog area. At the conclusion of this project, this site will be significantly improved with new fencing; accessible pathways and amenities; seating and shelters; and habitat restoration. Native plantings and trees will be incorporated throughout the project to increase shade and expand habitat, while reducing maintenance related to mowing this open field.

An open Invitation to Bid was posted for this work on June 19, 2026, with a bid opening date of July 8, 2026. Four companies submitted bids for this project. Following bid evaluation, Paul Brothers, Inc. was determined to be the lowest responsible bidder for a bid total of \$399,220.

\$455,518.00 was planned for this project (\$368,196.54 from Metro Local Share and \$87,321.46 from Parks SDCs). \$52,014.75 has been expended for related site amenities

(shelters and benches). This lowest responsible bid of \$399,220 is slightly higher than projected during the project estimation phase, but this bid is within reasonable market rates for the planned work.

If approved, this project is estimated to be substantially completed by November 2026.

OPTIONS:

1. Approve Public Improvement Contract with Paul Brothers, Inc for Construction Services at Wesley Lynn Park (PK26-301).
2. Approve Public Improvement Contract with Paul Brothers, Inc for Construction Services at Wesley Lynn Park (PK26-301) with Amendments.
3. Deny Public Improvement Contract with Paul Brothers, Inc for Construction Services at Wesley Lynn Park (PK26-301) and provide further direction.

BUDGET IMPACT:

Amount	\$399,220
Fiscal Year(s):	FY26-27
Funding Source(s):	Metro Local Share and Parks SDCs
Included in Approved Budget:	Yes

CONTRACT AGREEMENT

This Agreement, made and entered into this ____ day of _____, 20____, between the CITY OF OREGON CITY (“CITY”), acting by and through the City Commission and **Paul Brothers, Inc.** (“CONTRACTOR”).

Witnesseth, that the CONTRACTOR and the CITY, for the considerations stated herein, agree as follows:

ARTICLE I - Scope of Work

The CONTRACTOR hereby agrees to furnish all of the materials, equipment and labor necessary, and to perform all of the work for the project entitled: **Wesley Lynn Dog Park (PK26-301)** in accordance with the contract documents which are hereby made a part of this agreement.

The contract documents consist of:

Invitation to Bid Instructions to Bidders Bid Submittal Requirements and Forms Contract Agreement Oregon City Public Improvement Standard Conditions Statutory Conditions to Contract Agreement Payment Bond Performance Bond State of Oregon Statutory Public Works Bond	Prevailing Wage Rates for Public Works Contracts in Oregon, dated January 5, 2026 Amendments to the Prevailing Wage Rates for Public Works Contracts in Oregon dated April 5, 2026 Prevailing Wage Apprenticeship Rates dated April 5, 2026 Definitions of Covered Occupations for Public Works Contracts in Oregon dated October 5, 2024 2021 Oregon Standard Specifications for Construction (ODOT and APWA) as referenced by these documents General Conditions Special Provisions Contract Drawings Archaeological Inadvertent Discovery Plan (IDP) City of Oregon City Standard Details Addendum No. 1 on July 2, 2026 All items included within these Contract Documents.
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The order of items cited above does not constitute an order of precedence different than that established in the special or standard specifications. Equivalent titles, which may be substituted for the above listed items, are included as if specifically named.

ARTICLE II - Time of Completion

Completion date established on calendar day allowance: The project shall be complete within **(90)** days from the authorized start date for On-site work as identified in the Notice to Proceed.

ARTICLE III – Contract Amount

The Contract Amount for the work covered by this Agreement is estimated to be **\$399,220.00**.

ARTICLE IV - Warranty and Quality of Work

In addition to all other warranties, express or implied, that are part of this Agreement, the Contractor expressly warrants to the City for a period of one year from acceptance of the work by the City that all materials and equipment furnished under this contract will be new, unless otherwise specified, and that the work will be of good quality, free from faults and defects and in conformance with the City's specifications. Work that does not conform to these standards shall be considered defective.

Contractor shall, at its own expense, make good and repair any and all defects arising from faulty workmanship or materials, if the defective work is discovered within the one-year warranty period and notice thereof is given to the Contractor within 60 days after the expiration of the warranty period. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used to repair the defect.

In witness whereof, the parties hereto have executed this agreement, the day and year first above written.

CITY OF OREGON CITY

By: _____
Anthony J. Konkol III
City Manager

By: _____
Scott Archer
Parks and Recreation Director

Approved as to Legal Sufficiency

By: _____
City Attorney

City Commission Award Date

PAUL BROTHERS, INC.

By: _____
Peggy Paul
President

Address:

Federal Taxpayer ID Number

SECTION III B
PUBLIC IMPROVEMENT STANDARD CONDITIONS

1. Time of Completion. The City and the Contractor recognize that time is of the essence in this agreement, and the City may sustain damages if work is not completed within the contract time limit as stated or as adjusted during the life of the contract. It is agreed that the Contractor shall pay the City, as liquidated damages, but not as a penalty, the per diem amount listed in the Schedule of Liquidated Damages, as set forth in the contract documents, for each and every day elapsed in excess of the final contract time.

Permitting the Contractor to finish the work after the contract time has expired shall not be a waiver of any of the City's contract rights.

2. Payments, Statement of Compliance and Subcontractor Payments.

a. Contract Sum and City Payments.

The City shall pay to the Contractor, for the performance of this agreement, the amounts determined for the total supplied number of each of the specified units of work in the Schedule of Bid Items contained in the contract documents. The number of units contained in this schedule is understood to be approximate only, and that any item may be expanded, contracted, or eliminated by procedures contained in the contract documents.

b. Statement of Compliance.

Before any payment is made to the Contractor, the Contractor shall file with the City a statement, under oath, that it has complied with all provisions of state law governing contractors on a public contract. In addition, the Contractor shall file with the City a sworn statement by each of its subcontractors to the same effect.

c. Progress Payments and Retainage.

Partial payments may be made by the City on a monthly basis. Partial payments will be based on an estimate of the percentage of completion for the work. Progress payments shall not be considered an acceptance or approval of any of the work or a waiver of any defects therein. The

City may reserve, as retainage from progress payments, an amount not to exceed five percent of the payment. The Contractor shall have the right to have cash retainage deposited in an interest-bearing account, in accordance with ORS 279C.550. The City does not accept deposit bonds or securities in lieu of cash retainage. If the contract price exceeds \$500,000, the City will place amounts deducted as retainage into an interest-bearing escrow account. Interest on the retainage amount accrues from the date the payment request is approved until the date the retainage is paid to the contractor to which it is due.

d. Certified Payroll Statements.

The Contractor shall file certified payroll statements with the City at a minimum of once per month. Failure to do so shall result in the City withholding 25% of amounts due the Contractor, in addition to any other required retainage.

e. Final Payment.

The final payment shall be made for the actual number of units that are incorporated in or made necessary by the work covered by this agreement. Not more than 30 days after final completion of the Work and the City's final acceptance of the work, which shall include the taking of final measurements of quantities, the City shall make its final payment to the Contractor. Retainage held by the City shall be included in, and paid to the Contractor, as part of the final payment. If the final payment is made more than 30 days after final completion and final acceptance, the City shall pay the Contractor interest at the rate of one and one half (1 - 1/2%) per month on the final payment, commencing 30 days after completion of the work by the Contractor and final acceptance of the Work by the City. To facilitate the City's inspection, the Contractor shall notify the City in writing when the Contractor considers the work complete.

f. Subcontractor Payments.

The Contractor shall pay the subcontractor for satisfactory performance under the subcontract, out of amounts that are paid by the City to the Contractor, within 10 days of the Contractor's receipt of such payments from the City.

If the Contractor, or a first tier subcontractor, fails to make timely payment to the subcontractor then the Contractor or first tier subcontractor shall owe the person the amount due plus an interest penalty beginning on the day after the required payment date and ending on the date on which payment is made, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first tier subcontractor on the amount due shall equal three times the discount rate on 90 day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is 30 days after the date when the payment was received from the Contractor, a first tier subcontractor or City, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived.

The subcontractor must provide in all contracts with lower tier subcontractors or suppliers a clause requiring that the subcontractor shall pay the lower tier subcontractors and suppliers in accordance with the provisions of the immediately preceding two paragraphs above.

Pursuant to ORS 279C.515(C), if the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with the public contract as the claim becomes due, the proper officer or officers representing the City, may pay such claim to the person furnishing the labor or services and charge the amount of the

payment against funds due or to become due the Contractor by reason of the contract.

First tier subcontractors shall file certified payroll statements with the Contractor. Failure to do so shall result in the Contractor withholding 25% of amounts due the first tier subcontractor.

3. Insurance, Indemnity, Termination.

a. Insurance.

The Contractor shall maintain in force for the duration of this contract the insurance coverages specified below. Each policy required by these provisions shall be written as a primary policy, not contributing with or in excess of any coverage, which the City may carry. A copy of each policy or a certificate satisfactory to the City shall be delivered to the City prior to commencement of work.

Unless otherwise specified, each policy shall be written on an "occurrence" form with an admitted insurance carrier licensed to do business in the State of Oregon. Each policy shall contain an endorsement entitling the City to not less than 30 days prior written notice of any material change, nonrenewal or cancellation.

In the event statutory limits of liability of a public body for claims arising out of a single accident or occurrence is increased above the combined single limit coverage requirements specified below, the City shall have the right to require the Contractor to increase the Contractor's coverages to the statutory limit for such claims, and to increase the aggregate coverage to twice the amount of the statutory limit.

The adequacy of all insurance required by these provisions shall be subject to approval by the City. Failure to maintain any insurance coverage required by this contract shall be cause for immediate termination by the City.

i) Comprehensive General Liability.

The Contractor shall maintain a broad form comprehensive general liability insurance policy with coverage of not less than \$2,000,000 combined single limit per occurrence, with aggregate of \$4,000,000. Coverage shall be for

bodily injury, personal injury or property damage. Such policy shall contain a contractual liability endorsement to cover the Contractor's indemnification obligations under this contract. The policy shall also contain an endorsement naming the City, its officers, agents and employees as additional insureds, in a form satisfactory to the City, and expressly providing that the interest of the City shall not be affected by the Contractor's breach of policy provisions.

ii) Comprehensive Automobile Liability.

The Contractor shall maintain a comprehensive automobile liability insurance policy with coverage of not less than \$2,000,000 combined single limit per occurrence, with aggregate of \$4,000,000 for bodily injury, personal injury or property damage. The coverage shall include both hired and non-owned auto liability. The policy shall also contain an endorsement naming the City, its officers, agents and employees as additional insureds, in a form satisfactory to the City, and expressly providing that the interest of the City shall not be affected by the Contractor's breach of policy provisions.

iii) Workers' Compensation Insurance.

The Contractor shall comply with the Oregon Workers' Compensation law by qualifying as a carrier insured employer or as a self-insured employer and shall strictly comply with all other applicable provisions of such law. The Contractor shall provide the City with such further assurances as the City may require from time to time that the Contractor is in compliance with these Workers' Compensation coverage requirements and the Workers' Compensation law.

b. Indemnification.

The Contractor shall indemnify and hold the City, and its officers, agents and employees, harmless from and against all claims, actions, liabilities, costs (including attorney fees) and other costs of defense, arising out of or in any way related to the Work, the Contractor's failure to comply strictly with any provision of this contract, or any other actions or failure to act by the Contractor and the Contractor's employees, agents, officers, representatives and subcontractors.

In the event any such action or claim is brought against the City, the Contractor shall, if the City so elects and upon tender by the City, defend the same at the Contractor's sole cost and expense, promptly satisfy any judgment adverse to the City or to the City and the Contractor jointly, and reimburse the City for any loss, cost, damage, or expense, including attorney fees, suffered or incurred by the City.

c. Termination and Suspension.

The City may terminate this contract or suspend the work at any time for any reason considered by the City, in the exercise of its sole discretion, to be in the public interest.

In the event the Work's suspension is not the result of a labor dispute and this contract is not terminated, the Contractor shall be entitled to a reasonable extension of the time for completion, to be determined by the City, and shall be compensated for all actual verified costs incurred as a result of the suspension, plus the Contractor's standard overhead with respect to such costs.

In the event of a termination of this contract under these provisions, the Contractor shall be compensated for any preparatory work and actual, verified costs and expenses incurred as a result of the termination. In addition the Contractor shall be compensated for the Work performed on the basis of the Contract Sum in the case of any fully completed separate item or portion of the Work for which there is a separate or unit price, and with respect to any other portion of the Work shall be paid a percentage of the Contract Sum allocated to such other Work equal to the percentage of Work completed to the date of termination.

None of the foregoing provisions concerning compensation in the event of a suspension of Work or termination of this contract shall apply if such suspension or termination occurs as a result of the Contractor's violation of any Federal, State, or Local statutes, ordinances, rules or regulations, or as a result of any violation by the Contractor of the terms of this contract, including a determination by the City that the Contractor has not progressed

satisfactorily with the Work in accordance with specifications.

4. Liquidated Damages.

Unless provided elsewhere in the Contract documents, liquidated damages in the amount of \$500.00 per calendar day shall apply for every day after the completion time limit that the project is not Substantially Complete.

Permitting the Contractor to continue and finish the work after the contract time or adjusted contract time has expired shall not be a waiver of any of the City's contract rights.

Payment of liquidated damages shall not release the Contractor from any obligations to complete the work nor constitute a waiver of the City's right to collect any additional damages that the City may sustain by failure of the Contractor to fulfill the contract. Liquidated damages shall be full and complete payment only for failure of the Contractor to complete the work on time. The amount of liquidated damages accrued may be deducted from payments due or to become due to the Contractor.

A contractor who has been assessed liquidated damages in a contract with the City shall be ineligible to bid on contracts from the City for a period of five (5) years from the date that the liquidated damages have been assessed.

5. Work Schedule.

The Contractor shall notify the City Engineer a minimum of 48 hours prior to commencing work. The Contractor shall perform all work in an expeditious manner, minimizing delays and inconvenience to local businesses and/or residents.

6. Existing Utilities.

The Contractor shall be responsible for checking actual utility locations in the field and checking with appropriate agencies that may have underground facilities within the project limits. The Contractor shall notify utility companies at least 2 business days, but not more than 10 business days before commencing any excavations. The excavator shall notify a utilities notifications system of the date, location, and depth of the proposed excavation and the type of

work to be performed. Notifying a utilities notification system constitutes notice only to the participating members of that service. If no utilities notification system is available, or if the owner of the underground facilities is not a member of a utilities notification system, the excavator shall give the same notice to each owner of underground facilities who is known to the excavator or who can be identified and contacted by the excavator.

7. Materials.

All materials shall be as specified in the General Conditions, Special Provisions, Plans, noted or other technical descriptions included herewith, unless otherwise noted. The City reserves the right to sample and test all material according to specification requirements cited in this contract.

8. Traffic Control.

Maintenance of traffic and traffic control through the work area shall be the responsibility of Contractor. If Contractor fails at any time during the project to provide adequate access for local traffic, the City may, at the discretion of the City Engineer, and giving the Contractor four (4) hours' notice, perform the necessary work to restore traffic and deduct the cost of such work from the contract price. The provisions for traffic control shall perform the necessary work to restore traffic and deduct the costs of such work from the contract price. The following provisions shall be made for traffic control:

- a. All work done under this contract in the City's right of way shall conform to the Manual on Uniform Traffic Control Devices for Streets and Highways, as currently modified by the Oregon Department of Transportation.
- b. The Contractor shall insure that during non-work hours, that on-call staff is available to maintain all traffic control devices for the project. Both the City Engineer and the Chief of Police will be provided up to date contact information on these people. Failure to comply with this provision will cause the Contractor to be billed for any services required to be provided by City forces to

provide adequate protection to the traveling public during non-work hours.

- c. Traffic control and temporary protective and directional devices may be used outside the limits of the project when they have direct bearing on the work under contract.
- d. The Contractor shall consider at least the following factors in restricting traffic flow (consistent with notes above):
 - i) Emergency vehicle access.
 - ii) Sufficiency of traffic control personnel and devices.
 - iii) Prior warning to the public and residents.
 - iv) Notification to TriMet, School District, Post Office, garbage company, and City/County emergency dispatch agencies.
- e. At the pre-construction conference, the Contractor shall provide the name, address and telephone number of the individual responsible for project and construction traffic controls during non-working hours.
- f. The Contractor shall not interrupt access to any private driveway for more than three consecutive hours unless written permission has been given to the Contractor by the owner of the property affected. Advance notice of forty-eight hours shall be given by the Contractor to the affected landowners and residents.

9. Contractor's Use of Premises.

The Contractor shall exercise care to protect adjacent existing structures and property from damage. All debris and excess materials shall be removed and disposed at the direction of the City Engineer.

10. Control of Work.

All work done under this contract shall not be deemed complete until accepted by the City Engineer. The City Engineer shall decide any and all questions that may arise as to the quality

and/or acceptability of the materials used and/or work performed. Final approval and acceptance of any and all work performed under this contract shall be the responsibility of the City Engineer.

11. Contractor's Responsibility.

It is understood that the plans, specifications and other contract documents do not purport to control the method of preparing the work, but only the requirements as to the nature of the completed work. The Contractor assumes the entire responsibility for the method of performing and installing the work. Suggestions as to the method of performing and installing the work included in the contract documents shall be deemed advisory only and the feasibility of such methods, or the lack thereof, shall not affect the Contractor's liability or status as an independent Contractor under this contract.

12. Plans and Specifications.

If there is a conflict between contract documents, the document highest in precedence shall control. The precedence shall be:

- First: Permits as may be required by law
- Second: Contract Agreement
- Third: Bidder's Proposal
- Fourth: Specifications and Drawings
- Fifth: Special Provisions
- Sixth: General Conditions

Change orders, supplemental agreements, and approved revisions to plans and specifications will take precedence over documents listed above. Detailed plans shall have precedence over general plans as modified by the General Requirements and Technical Provisions applicable to this Project.

13. Control of Contractor Work.

It will be the direct responsibility of the Contractor to furnish every subcontractor a complete set of project plans and ensure that these plans are on the project site and in use when the subcontractor is performing that portion of the project.

The Contractor shall be responsible for any process control sampling, testing, measurement, and inspection needed to insure that the finished work complies with specifications. When

density testing is required for assurance and/or acceptance testing, the Contractor shall furnish and operate the nuclear gauge or shall retain an independent testing firm to perform the compaction testing. The testing shall be conducted under the observation of the engineer and performed on all surfaces regardless of density requirements unless otherwise directed by the engineer. All test results shall be provided in written report form to the engineer.

The Contractor shall give the attention necessary to keep the work progressing at a rate satisfactory to the engineer. The Contractor shall provide, at all times, a competent superintendent for all work on the project. The superintendent shall be readily accessible on a daily basis, have a set of plans, specifications, special provisions, and addenda, and be experienced in the type of work being performed. The superintendent shall have the authority to receive and carry out, without delay, the engineer's instructions and orders and to make arrangements for necessary materials, equipment, and labor.

The Contractor shall allow the engineer access at all times, during normal office hours, to books and records of the Contractor and the Contractor's subcontractors that pertain to the contract, and furnish the engineer facts necessary to determine actual cost of any part of all of the work. The engineer will consider a request for confidentiality to protect trade secrets.

If the engineer is not provided proper facilities by the Contractor for keeping strict accounting of cost, then the Contractor agrees to waive any claim for extra compensation.

Contractor shall schedule work Monday through Friday only. Contractor shall establish a standard daily work schedule for hours to begin and end work that is acceptable to the City.

Contractor shall not trespass on private property nor shall they use business or residential garden hoses or water faucets without the written approval of the property owner(s).

14. Protection of City Property.

It is the Contractor's responsibility to protect sidewalks, asphalt paving, concrete, trees, shrubs, and any lawn areas at all times from work related damage of any type. Costs for cleaning, restoration or repair shall be borne by the Contractor, as the City may deem appropriate.

Should, during the course of Contractor's work, Contractor observe or suspect the presence of asbestos fiber, Contractor shall immediately stop work and notify the City of its findings. Should the project's schedule be delayed because of such findings, the Contractor will remove itself from the project and wait the City's order to return to work, at no penalty to the City.

Debris shall not be permitted to remain on site and shall be disposed daily and/or as directed by City.

It is the Contractor's responsibility to manage a safe work environment and Contractor shall take any means necessary to secure a safe work site for both the safety of all personnel and the public.

15. Contractor Identification.

Contractor shall furnish to City its taxpayer identification number as designated by the IRS.

16. Assignment.

Contractor shall not assign any rights acquired hereunder, without obtaining prior written approval from City.

17. Access to Records.

City shall have access to all books, documents, papers and records of Contractor that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

18. Ownership of Work Product; License.

All work products of Contractor that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Contractor that is or could be protected by federal copyright, patent, or trademark laws, or

state trade secret laws, Contractor hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Contractor under this Agreement. The parties expressly agree that all works produced pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Contractor shall not publish, republish, display or otherwise use Work Products resulting from this Agreement without the prior written agreement of City.

19. Legal Expenses.

In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

20. Severability.

The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

21. Number and Gender.

In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

22. Captions and Headings.

The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

23. Calculation of Time.

All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in

the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

24. Notices.

Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

25. Nonwaiver.

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

26. Information and Reports.

Contractor shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Contractor shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but may remain with Contractor. Copies as requested shall be provided free of cost to City.

27. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

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SECTION III C
STATUTORY CONDITIONS TO CONTRACT AGREEMENT

ORS 279C.505(1)(a) CONTRACTOR shall make payment promptly, as due, to all persons supplying to such CONTRACTOR labor or material for the performance of the work provided for in such contract.

ORS 279C.505(1)(b) CONTRACTOR shall pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in the performance of the contract.

ORS 279C.505(1)(c) CONTRACTOR shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

ORS 279C.505(1)(d) CONTRACTOR shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

ORS 279C.505(2) CONTRACTOR shall demonstrate that an employee drug testing program is in place.

ORS 279C.510 CONTRACTOR shall salvage or recycle construction and demolition debris, if feasible and cost-effective. In a public improvement contract for lawn and landscape maintenance, CONTRACTOR shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

ORS 279C.515(1) If the CONTRACTOR fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the CONTRACTOR or a subcontractor in connection with the public contract as the claim becomes due, the proper officer that represents the state or a county, school district, municipality, or municipal corporation or a subdivision, of the state, county, school district, municipality or municipal corporation, may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds

due or to become due the CONTRACTOR by reason of the contract.

ORS 279C.515(2) If the CONTRACTOR or a first-tier subcontractor fails, neglects, or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the CONTRACTOR or first-tier subcontractor owes the person the amount due plus interest charges that begins at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

ORS 279C.515(3) If the CONTRACTOR or a subcontractor fails, neglects, or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

ORS 279C.520

(1) A contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires otherwise, and in such cases, the contractor shall pay the employee at least time and a half pay for:

(a)(i) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or

(ii) For all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and

(b) All work the employee performs on Saturday and on any legal holiday specified in ORS 279C.540.

(2) The CONTRACTOR shall comply with the

prohibition set forth in ORS 652.220, that compliance is a material element of the contract and that a failure to comply is a breach that entitles the contracting agency to terminate the contract for cause.

(c) The CONTRACTOR may not prohibit any of the contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(3) CONTRACTOR shall give notice in writing to employees who work on a public contract, either at the time of hire or before work begins on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

ORS 279C.525 In addition to any other laws, rules, and regulations dealing with the prevention of environmental pollution and the preservation of natural resources, the following environmental and natural resources, laws, rules and regulations affect the performance of the contract:

- City of Oregon City Erosion Control Ordinance (Ref. Oregon City Municipal Code Chapter 17.47 Erosion and Sediment Control).

ORS 279C.530 The CONTRACTOR shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical and hospital care, or other needed care and attention, incident to sickness or injury, to the employees of the CONTRACTOR, of all sums which the CONTRACTOR agrees to pay for such services and all moneys and sums which the CONTRACTOR collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

ORS 279C.530(2) All employers, including CONTRACTOR, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and

provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. CONTRACTOR shall ensure that each of its subcontractors comply with these requirements.

ORS 279C.545 Any worker employed by the CONTRACTOR shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the CONTRACTOR within 90 days from the completion of the contract, providing the CONTRACTOR has caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work and maintained the circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

ORS 279C.550 - 570 Retainage and payment under the terms of this Agreement shall be governed by the terms of ORS 279C.550 - 570.

ORS 279C.570 The CITY shall make progress payments on the contract monthly as work progresses on the contract. Payments shall be based upon estimates of work completed that are approved by the CITY. A progress payment is not considered acceptance or approval of any work or waiver of any defects therein. The CITY shall pay to the CONTRACTOR interest if any payment becomes overdue.

ORS 279C.580

(1) CONTRACTOR shall pay first-tier subcontractors for satisfactory performance under subcontract out of amounts that are paid by the CITY to the CONTRACTOR within 10 days of CONTRACTOR's receipt of such payments from the CITY.

(2) CONTRACTOR shall provide first-tier subcontractors with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from CONTRACTOR.

(3) CONTRACTOR, except as otherwise provided in this paragraph, shall use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. CONTRACTOR may change the form or the regular administrative procedures used for processing payments if CONTRACTOR:

(A) Notifies the subcontractor in writing at least 45 days before the date on which the change is made; and

(B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(4) If CONTRACTOR does not pay the first-tier subcontractor within 30 days after receiving payment from the contracting agency, the CONTRACTOR shall pay the first-tier subcontractor an interest penalty as provided in ORS 279C.580(3)(d).

(5) The CONTRACTOR shall include this requirement as further detailed in the Special Provisions in all subcontracts worded appropriately to require prompt payment of said subcontractors to lower tier subcontractors. In addition, CONTRACTOR shall require a first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of ORS 279C.580(3) in each of its subcontracts and CONTRACTOR shall require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

ORS 279C.605 A notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 120 days after the day the person last provided labor or furnished materials or 120 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the CONTRACTOR at any place the CONTRACTOR maintains an office or conducts business or at the residence of the CONTRACTOR. Notwithstanding the preceding, if the claim is for a required contribution to a fund of an employee benefit plan, the notice required by ORS 279C.600 must

be sent or delivered within 200 days after the employee last provided labor or materials.

ORS 279C.830(1) (1) The existing prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the CONTRACTOR or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract is included in **Section IX of** these contract documents. The workers shall be paid not less than the specified minimum hourly rate of wage and CONTRACTOR shall pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works and include this requirement in all subcontracts.

(2) CONTRACTOR shall pay all workers not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840, and CONTRACTOR shall require this provision be included in all subcontracts.

ORS 279C.830(2) The CONTRACTOR and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt. CONTRACTOR shall:

(a) Have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt.

(b) Include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt.

ORS 279C.845(7) If CONTRACTOR is required to file certified statements, the public agency **shall** retain 25 percent of any amount earned by the CONTRACTOR on the public works until the CONTRACTOR has filed with the public agency certified statements as required by ORS 279C.845. The public agency shall pay the CONTRACTOR the amount retained under this subsection within 14 days after the CONTRACTOR files the certified

statements as required by ORS 279C.845, regardless of whether a subcontractor has failed to file certified statements as required by this section.

no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

ORS 279C.845(8) CONTRACTOR shall retain 25 percent of any amount earned by a first-tier subcontractor on a public works until the subcontractor has filed with the public agency certified statements as required by ORS 279C.845. CONTRACTOR shall verify that the first-tier subcontractor has filed the certified statements before the CONTRACTOR may pay the subcontractor any amount retained under ORS 279C.845(7). CONTRACTOR shall pay the first-tier subcontractor the amount retained under this subsection within 14 days after the subcontractor files the certified statements as required by ORS 279C.845.

PDX_DOCS:449976.2

ORS 305.385(6) CONTRACTOR shall certify in writing, under penalty of perjury, that CONTRACTOR is, to the best of the person's knowledge, not in violation of any tax laws described in ORS 305.380 (4).

ORS Chapter 701 CONTRACTOR shall certify that all subcontractors performing work described in ORS 701.005(2), i.e., construction work, will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under this contract.

OAR 137-049-0200(2). CONTRACTOR shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the CITY's prior Written consent. Unless otherwise agreed by the CITY in Writing, such consent shall not relieve CONTRACTOR of any obligations under the Contract. Any assignee or transferee shall be considered the agent of CONTRACTOR and be bound to abide by all provisions of the Contract. If the CITY consents in Writing to an assignment, sale, disposal, or transfer of CONTRACTOR's rights or delegation of CONTRACTOR's duties, CONTRACTOR and its surety, if any, shall remain liable to the CITY for complete performance of the Contract as if

BID OPENING CHECKLIST

DATE: 07/08/2026

[illegible]

Wesley Lynn Dog Park (PK26-301)
Bid Opening Recording Sheet **07/08/2026 2:00 PM**

Bids	Company	Total Amount	Rank	First Tier
1	First Cascade Corp.	494,000 ⁰⁰	4	X
2	Paul Brothers, Inc.	399,220 ⁰⁰	1	X
3	Gallant Construction	473,361 ⁰⁰	3	
4	T Edge Construction, Inc	448,558 ⁰⁰	2	X
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				

Wesley Lynn Dog Park (PK26-301)

Bid Opening - 07/08/2026

Please Sign In

NAME	COMPANY
GRANT EDGERLY	T EDGE CONSTRUCTION INC.
Adam Hiscox	Gallant Construction
Ami Collins	First Cascade Corp
Kyla Matthews	Paul Brothers Inc.



KEY CALLOUTS

- 1 LARGE DOG AREA (1.65 AC)
- 2 SMALL/TIMID DOG AREA (0.23 AC)
- 3 EXISTING WETLAND (0.50 AC)
- 4 RESTORATION PLANTING (0.35 AC)
- 5 4' TALL CHAIN LINK FENCE
- 6 16' MAINTENANCE ACCESS GATES
- 7 HARD PIPED DRAINAGE CONNECTION
- 8 SHELTER (ADD ALTERNATE)
- 9 PICNIC TABLE (ADD ALTERNATE)
- 10 BENCH (ADD ALTERNATE)
- 11 DOG AGILITY COURSE (ADD ALTERNATE)

LEGEND

- SHELTER
- PICNIC TABLE
- PET WASTE DISPENSER
- DOG AGILITY COURSE
- CONCRETE PAVING
- GRAVEL PATH
- CHAIN LINK FENCE



CITY OF OREGON CITY

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

To: City Commission **Agenda Date:** August 5, 2026
From: Dayna Webb, Public Works Director

SUBJECT:

Item 7.c. - Amendment No. 1 to the Miscellaneous Contract and Agreement No. 73000-00019224 with the Oregon Department of Transportation for the Oregon City Quiet Zone

STAFF RECOMMENDATION:

Authorize approval of Amendment No. 1 to the Miscellaneous Contract and Agreement No. 73000-00019224 with the Oregon Department of Transportation (ODOT) for the Oregon City Quiet Zone Project (CI 22-015).

EXECUTIVE SUMMARY:

Oregon City was awarded the United States Department of Transportation (USDOT) Earmark 2022 for safety improvements. These federal funds will provide safety improvements and establish a quiet zone at the 10th Street/Singer Hill & 11th Street railroad crossings. The City has been working with the Oregon Department of Transportation to keep this project moving through the process of delivering a federally funded project.

BACKGROUND:

City staff have been working for several years to establish a railroad quiet zone in downtown Oregon City. Through this effort, two public at grade crossings, 10th Street/Singer Hill and 11th Street, were identified as potential quiet zone locations. A quiet zone is a designated area where routine train horn sounding at public crossings is eliminated, except in emergency situations. Crossings within a quiet zone must still include standard safety features such as flashing signals, gates, and audible bells. Under the Federal Railroad Administration Train Horn Rule, locomotive engineers are otherwise required to sound the horn 15 to 20 seconds in advance of all public grade crossings using a standardized pattern. The rule allows local governments to establish quiet zones to reduce horn noise, provided they implement measures to address the associated safety risks.

Project Scope

The project includes design and construction of a quiet zone, improving safety at railroad crossings for all modes of travel. It will also support downtown economic development, enhance quality of life through reduced noise impacts, and improve access to the Oregon City Transit Center. Because the City is not certified to deliver federally funded transportation projects, an intergovernmental agreement was executed authorizing the Oregon Department of Transportation to deliver the project. Federal participation is capped at \$2,000,000, with the City responsible for all remaining and non-participating costs. In 2022, the City Commission allocated \$600,000 in American Rescue Plan (ARPA) funding for the required local match. This funding is included in the City's 2025-2027 Adopted Biennial Budget.

Project Schedule

The project is currently advancing through right-of-way acquisition, as well as final plans and specifications. Railroad coordination continues as well. The project is scheduled to go out to bid in October 2026. Construction is anticipated to begin in early 2027. The schedule assumes timely completion of right-of-way acquisition, railroad coordination, and resolution of the identified funding gap. Delays in funding authorization or railroad approvals could affect the anticipated bid and construction timeline.

Project Budget

The attached Project Costs summary compares the current total project cost with the estimate provided to you in 2023, February 2026 and now a July 2026 update. Since the last update, the project estimate has increased as design has advanced and requirements have been further defined. The updated cost reflects refinements to consultant services (\$50,000) and Union Pacific Railroad Construction Expenses. As the project has progressed, additional detail regarding railroad signal modifications, safety improvements, and construction constraints has resulted in a more comprehensive and accurate cost estimate. In addition, railroad related work and state delivery requirements have contributed to higher anticipated construction and administrative costs. The project currently has a funding gap of \$2,720,000. Resources to address this funding gap will need to be identified to maintain the anticipated project schedule.

OPTIONS:

1. Approve Amendment No. 1 to the Miscellaneous Contract and Agreement No. 73000-00019224 with the Oregon Department of Transportation for the Oregon City Quiet Zone.
2. Approve Amendment No. 1 to the Miscellaneous Contract and Agreement No. 73000-00019224 with the Oregon Department of Transportation for the Oregon City Quiet Zone with Amendments.
3. Deny Amendment No. 1 to the Miscellaneous Contract and Agreement No. 73000-00019224 with the Oregon Department of Transportation for the Oregon City Quiet Zone and provide further direction.

BUDGET IMPACT:

Amount	\$2,720,000
Fiscal Year(s):	2026-27 & 2027-28
Funding Source(s):	Undetermined
Included in Approved Budget:	No

A156-G092921

**ODOT Delivered Federal Project
On Behalf of City of Oregon City
Project Name: Oregon City Quiet Zone
Key Number: 23491**

THIS AGREEMENT ("Agreement") is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and the City of Oregon City, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.
2. The 10th and 11th Street railroad crossings are a part of the city street system under the jurisdiction and control of Agency.
3. Agency has agreed that State will deliver this project on behalf of the Agency.
4. The Project was selected as a part of the USDOT Earmark 2022, and may include a combination of federal and state funds. "Project" is defined under Terms of Agreement, paragraph 1 of this Agreement.
5. The Stewardship and Oversight Agreement On Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation ("Stewardship Agreement") documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State's oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

NOW THEREFORE the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to State delivering the Oregon City Quiet Zone railroad crossing improvements at 10th street and 11th street in Oregon City on behalf of Agency, hereinafter referred to as "Project." Project includes improved pedestrian and traffic safety elements at two railroad crossings. The location of the Project is approximately as shown on the map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. Agency agrees that, if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.
3. Project Costs and Funding.
 - a. The total Project cost is estimated at \$2,600,000.00, which is subject to change. Federal funds for this Project shall be limited to \$2,000,000.00. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.
 - b. With the exception of Americans with Disabilities Act of 1990-related design standards and exceptions, State shall consult with Agency on Project decisions that impact Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency's concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget. However, State may award a construction contract up to ten (10) percent (%) over engineer's estimate without prior approval of Agency.
 - c. Federal funds under this Agreement are provided under Title 23, United States Code.
 - d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.
 - e. State will submit the requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon

approval of each funding request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.

- f. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
5. Termination.
 - a. This Agreement may be terminated by mutual written consent of both Parties.
 - b. State may terminate this Agreement upon 30 days' written notice to Agency.
 - c. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - i. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - iii. If Agency fails to provide payment of its share of the cost of the Project.
 - iv. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - v. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
 - d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. **Americans with Disabilities Act Compliance:**

- a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
 - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>; and
- b. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and

- v. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - c. Maintenance obligations in this section shall survive termination of this Agreement.
- 7. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
- 8. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
- 9. The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.
- 10. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are incorporated by this reference and made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
- 11. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement.
- 12. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 13. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be

affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

14. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in the following paragraphs of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive: Terms of Agreement Paragraphs 3.e (Funding), 5.d (Termination), 6.c (ADA maintenance), 9-14, 17 (Integration, Merger; Waiver); and Attachment 2, paragraphs 1 (Project Administration), 7, 9, 11, 13 (Finance), and 37-41 (Maintenance and Contribution).
15. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
16. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
17. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.
18. State's Project Manager for this Project is Mahasti Hastings, 123 Flanders Street, Portland, Oregon, Mahasti.V.HASTINGS@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
19. Agency's Project Manager for this Project is Dayna Webb, City Engineer, City of Oregon City, PO Box 3040, 13895 Fir Street, Oregon City, Oregon 97045; 971-204-4633, dwebb@orc.org, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Agency/State
Agreement No.73000-00019224

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2024-2027 Statewide Transportation Improvement Program (STIP), (Key #23491) that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

CITY OF OREGON CITY, by and through
its elected officials

By Autly J. K. [Signature]

Title City Manager

Date 12-6-23

By _____

Title _____

Date _____

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By _____

Agency Counsel

Date _____

Agency Contact:

Dayna Webb, City Engineer
City of Oregon City, PO Box 3040,
Oregon City, Oregon 97045
971.204.4633
dwebb@orc.org

State Contact:

Mahasti Hastings, Project Manager
123 Flanders Street
Portland, Oregon
503.731.8595
Mahasti.V.HASTINGS@odot.oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By MacGregor Lynde [Signature]
McGregor Lynde

Date 12/15/2023

By Rian Windsheimer [Signature]
Rian Windsheimer

Date 12/14/2023

APPROVAL RECOMMENDED

By Michael Kimlinger [Signature]
Michael KIMLINGER (Dec 14, 2023 12:11 PST)

State Traffic Roadway

Engineer

Date 12/14/2023

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Herbert Lovejoy via email
Assistant Attorney General (If Over
\$150,000)

Date 9/6/23

Oregon City Quiet Zone Agreement

Final Audit Report

2023-12-15

Created:	2023-12-14 (Pacific Standard Time)
By:	Dessia SCOTT-MYERS (Dessia.SCOTT-MYERS@odot.oregon.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAOSHvOeuqOPO-Tn5iH9X9CA_pQ2zlXfra

"Oregon City Quiet Zone Agreement" History

-  Document created by Dessia SCOTT-MYERS (Dessia.SCOTT-MYERS@odot.oregon.gov)
2023-12-14 - 9:29:46 AM PST
-  Document emailed to Michael KIMLINGER (Michael.J.KIMLINGER@odot.oregon.gov) for signature
2023-12-14 - 9:40:31 AM PST
-  Email viewed by Michael KIMLINGER (Michael.J.KIMLINGER@odot.oregon.gov)
2023-12-14 - 11:08:59 AM PST
-  Document e-signed by Michael KIMLINGER (Michael.J.KIMLINGER@odot.oregon.gov)
Signature Date: 2023-12-14 - 12:11:09 PM PST - Time Source: server
-  Document emailed to Heather LIVINGSTON (Heather.LIVINGSTON@odot.oregon.gov) for approval
2023-12-14 - 12:11:13 PM PST
-  Document approved by Heather LIVINGSTON (Heather.LIVINGSTON@odot.oregon.gov)
Approval Date: 2023-12-14 - 2:12:34 PM PST - Time Source: server
-  Document emailed to Rian WINDSHEIMER (Rian.M.WINDSHEIMER@odot.oregon.gov) for signature
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-  Document e-signed by Rian WINDSHEIMER (Rian.M.WINDSHEIMER@odot.oregon.gov)
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 Document e-signed by McGregor LYNDE (Mcgregor.LYNDE@odot.oregon.gov)

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 Agreement completed.

2023-12-15 - 12:37:34 PM PST

AMENDMENT NUMBER 01
ODOT Delivered Federal Project
On Behalf of City of Oregon City
Project name: Oregon City Quiet Zone
Key Number: 23491

This is Amendment No. 01 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as “State” or “ODOT,” and the **City of Oregon City**, acting by and through its elected officials, hereinafter referred to as “Agency,” entered into on 12/15/2023.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to physically attach the Exhibit and Attachments, increase the Total Project Cost estimate and update language and contact information.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.

2. **Amendment to Agreement.**

a. **TERMS OF AGREEMENT, Paragraph 1, Page 2**, references EXHIBIT A – Project Location Map, which was not attached, inadvertently, to the final version of the original Agreement and has been attached to this Amendment 01 and is incorporated by this reference and made a part hereof.

b. **TERMS OF AGREEMENT, Paragraph 3.a., Page 2, which reads:**

- a. The total Project cost is estimated at \$2,600,000.00, which is subject to change. Federal funds for this Project shall be limited to \$2,000,000.00. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects.
- “Total Project Cost” means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.

Shall be deleted in its entirety and replaced with the following:

- a. The total Project cost is estimated at \$5,313,142.00, which is subject to change. Federal funds for this Project shall be limited to \$2,000,000.00. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State, and will not be

available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.

c. TERMS OF AGREEMENT, Paragraph 3.d., Page 2, which reads:

- d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.

Shall be deleted in its entirety and replaced with the following:

- d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Assistance Listing Number (ALN) for this Project is 20.205, title Highway Planning and Construction. Agency is not eligible to be reimbursed for work performed under this Agreement.

d. TERMS OF AGREEMENT, Paragraph 10, Page 5, references Special and Standard Provisions, marked as Attachments No. 1 and 2, respectively, and were not attached, inadvertently, to the final version of the original Agreement and have been attached to this Amendment 01 and are incorporated by this reference and made a part hereof.

e. TERMS OF AGREEMENT, Paragraph 18, Page 6, which reads:

18. State's Project Manager for this Project is Mahasti Hastings, 123 Flanders Street, Portland, Oregon, Mahasti.V.HASTINGS@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Shall be deleted in its entirety and replaced with the following:

18. State's Project Manager for this Project is Mahasti Hastings, 123 Flanders Street, Portland, Oregon, 97209, 971.264.8253, Mahasti.V.HASTINGS@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

f. TERMS OF AGREEMENT, Paragraph 19, Page 6, which reads:

19. Agency's Project Manager for this Project is Dayna Webb, City Engineer, City of Oregon City, PO Box 3040, 13895 Fir Street, Oregon City, Oregon 97045; 971-204-4633, dwebb@orc.org, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Shall be deleted in its entirety and replaced with the following:

19. Agency's Project Manager for this Project is Dayna Webb, City Engineer, City of Oregon City, PO Box 3040, 13895 Fir Street, Oregon City, Oregon 97045; 971-204-4633 or 971.312.5648, dwebb@orc.org, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

g. Attachment No. 1, Special Provisions, was inadvertently not attached to the final version of the original Agreement and has been attached to this Amendment 01 and is incorporated by this reference and made a part hereof. Attachment No. 1 is modified to add paragraphs 4 and 5 as shown in Attachment No. 1 (new text is shown as **bold and underlined**).

h. Attachment No. 2, Federal Standard Provisions, was inadvertently not attached to the final version of the original Agreement and has been attached to this Amendment 01 and is incorporated by this reference and made a part hereof.

3. **Counterparts**. This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement**. Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.
5. **Electronic Signatures**. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Signature page to follow

State/Agency
Agreement No. 73000-00019224-01

This Project is in the 2024-2027 Statewide Transportation Improvement Program (STIP), (Key #23491) that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

CITY OF OREGON CITY, by and
through its elected officials

By _____

Title _____

**LEGAL REVIEW APPROVAL (If
required in Agency's process)**

By _____
Agency Counsel

Date _____

Agency Contact:

Dayna Webb, City Engineer
City of Oregon City
PO Box 3040,
13895 Fir Street
Oregon City, Oregon 97045
971.204.4633 Engineering
503.312.5648 Mobile
dwebb@orc.org

State Contact:

Mahasti Hastings, Project Manager
123 Flanders Street
Portland, Oregon 97209
503.731.8595 Work
971.264.8253 Mobile
Mahasti.V.HASTINGS@odot.oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____ N/A
State Traffic Engineer

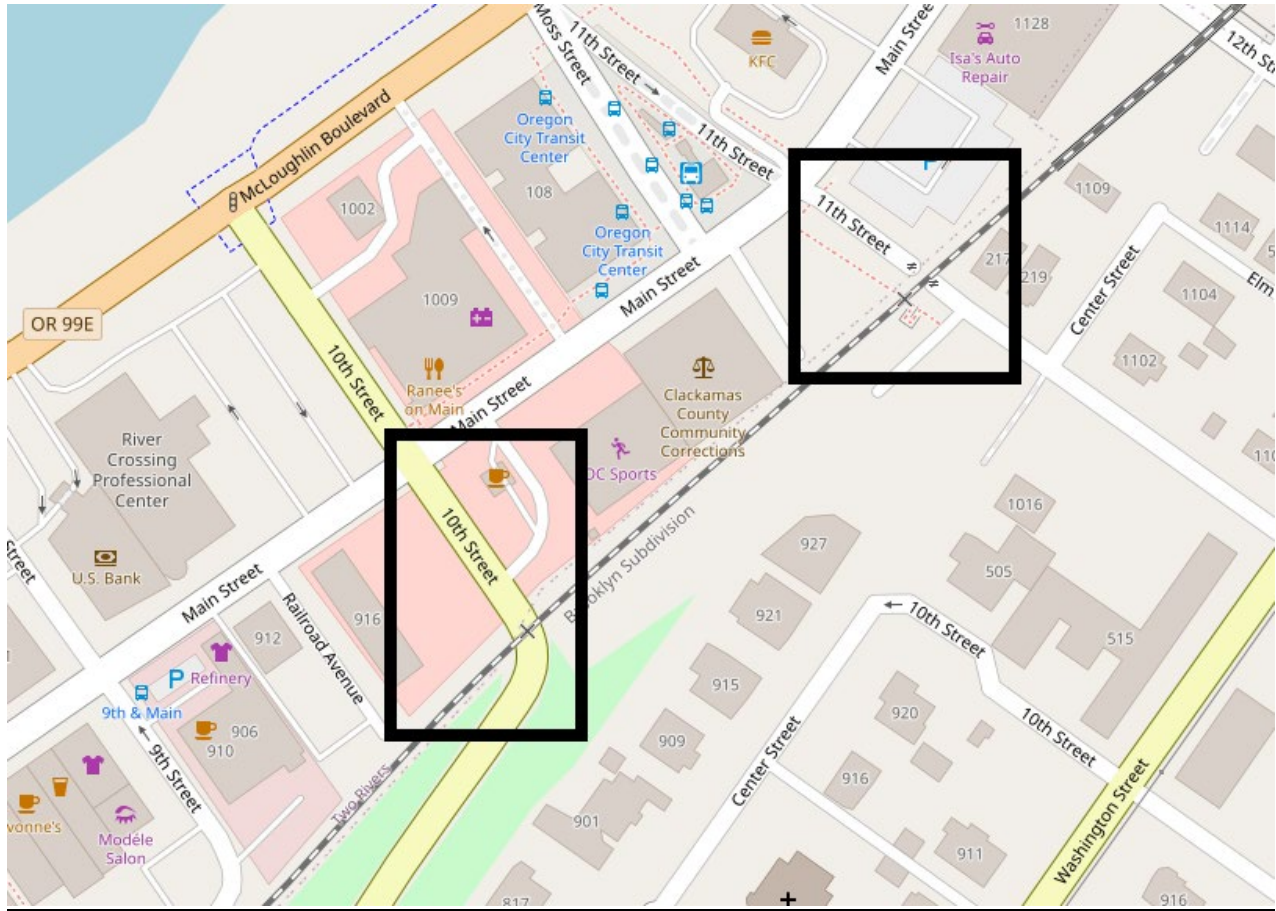
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Stacy Posegate
Assistant Attorney General

Date via email dated 05/29/26

EXHIBIT A – Project Location Map



**ATTACHMENT NO. 1 to AGREEMENT NO. 73000-00019224
SPECIAL PROVISIONS**

(new language is shown in bolded and underlined and deleted language is stuck through)

1. State **through its own forces** or **State's** ~~its~~ consultant shall conduct all work components necessary to complete the Project **as referenced below**, except for those responsibilities specifically assigned to Agency in this Agreement. **Any work components performed by State's consultant shall be overseen by the State.**
 - a. State ~~or its consultant~~ shall conduct preliminary engineering and design work required to produce final plans, specifications, and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; acquire necessary right of way and easements; and arrange for all utility relocations and adjustments.
 - b. State will advertise, bid, and award the construction contract. Upon State's award of the construction contract, ~~a consultant hired and overseen by the State~~ shall be responsible for contract administration and construction engineering & inspection, including all required materials testing and quality documentation. State shall make all contractor payments.
 - c. State will perform project management and oversight activities throughout the duration of the Project. The cost of such activities will be billed to the Project.
2. State and Agency agree that the useful life of this Project is defined as 10 years.
3. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
4. **Agency agrees to State acquiring all right of way needed for construction of the Project. Upon Project completion, State will transfer to Agency any real property interest that the State acquired for the Project that is no longer needed for the construction of the Project; however, all property transferred by the State to Agency shall include a reversionary interest by which the property automatically reverts back to the State if the Agency ceases to use the property for a public transportation purpose. Agency agrees to accept an instrument prepared by the State transferring the real property interest and waives any objection to the form of the instrument or the type of property interest transferred so long as the property interest transferred is equal to or less than the interest the State acquired for the Project.**
5. **To reflect the changes made to 23 U.S.C. 102 by the Infrastructure Investment and Jobs Act of 2021 (Public Law 117-58), Paragraph 11.b. of Attachment No. 2 Federal Standard Provisions is deleted in its entirety.**

**ATTACHMENT NO. 2 to AGREEMENT NO. 73000-00019224
FEDERAL STANDARD PROVISIONS**

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. State will provide or secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. A State-approved consultant may be used to perform preliminary engineering, right of way and construction engineering services.
4. Agency may perform only those elements of the Project identified in the special provisions.

PROJECT FUNDING REQUEST

5. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. State, its consultant or Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

6. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is

not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or contractor, using the criteria in 2 CFR 200.331.

7. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
 - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid, must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash or check submitted to the Oregon Department of Transportation.

9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
11. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
 - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
 - b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
12. State shall, on behalf of Agency, maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
13. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the final total cost of the Project has been computed, State shall furnish Agency with an itemized statement. Agency shall pay an amount which, when added to said advance deposit and federal

reimbursement payment, will equal one hundred (100) percent of the final total cost of the Project. Any portion of deposits made in excess of the final total cost of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the final total cost of the Project.

DESIGN STANDARDS

14. Agency and State agree that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with State's Oregon Bicycle & Pedestrian Design Guide (current version). State or its consultant shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. State or its consultant may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
15. Agency agrees that if the Project is on the Oregon State Highway System or a State-owned facility, that design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current Contract Plans Development Guide.
16. State and Agency agree that for all projects on the Oregon State Highway System or a State-owned facility, any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. State and Agency further agree that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retain authority for said approval. FHWA shall review any design exceptions for projects subject to Project of Division Interest and retains authority for their approval.
17. ODOT agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. State or its consultant shall, on behalf of Agency, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

PRELIMINARY & CONSTRUCTION ENGINEERING

18. Preliminary engineering and construction engineering may be performed by either a) State, or b) a State-approved consultant. Engineering work will be monitored by State

to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, or b) a State-approved consultant. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State shall offer Agency the opportunity to review the documents prior to advertising for bids.

19. Architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects must follow the State's processes to ensure federal reimbursement. State will award, execute, and administer the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 731-148-0130, OAR 731-148-0220(3), OAR 731-148-0260 and State Personal Services Contracting Procedures, as applicable and as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the state approved consultant prior to receiving authorization from State to proceed.
20. The State or its consultant responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
21. State shall prepare construction contract and bidding documents, advertise for bid proposals, award all construction contracts, and administer the construction contracts.
22. Upon State's award of a construction contract, State shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's Manual of Field Test Procedures, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
23. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

Disadvantaged Business Enterprises (DBE) Obligations

24. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).”

25. State and Agency agree to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
26. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; , 2 CFR 1201; Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

RIGHT OF WAY

27. Right of Way activities shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24.
28. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. State or its consultant may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project in accordance with the *ODOT Right of Way Manual*, and with the prior approval from State's Region Right of Way office.
29. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be entirely responsible for project acquisition and coordination of the right of way certification.
30. State or its consultant shall ensure that all project right of way monumentation will be conducted in conformance with ORS 209.155.

31. State and Agency grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

RAILROADS

32. State shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

UTILITIES

33. State or its consultant shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. State or its consultant shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility & Railroad Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

GRADE CHANGE LIABILITY

34. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
35. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
36. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, in connection with or arising out of the Project covered by the Project Agreement.

MAINTENANCE RESPONSIBILITIES

37. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

CONTRIBUTION

38. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

39. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

40. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses,

judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

ALTERNATIVE DISPUTE RESOLUTION

41. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

WORKERS' COMPENSATION COVERAGE

42. All employers, including Agency, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be included. State and Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

43. Agency certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER
COVERED TRANSACTIONS**

By signing this Agreement, Agency agrees to fulfill the responsibility imposed by 2 CFR Subpart C, including 2 CFR 180.300, 180.355, 180.360, and 180.365, regarding debarment, suspension, and other responsibility matters. For the purpose of this provision only, Agency is considered a participant in a covered transaction. Furthermore, by signing this Agreement, Agency is providing the certification for its principals required in Appendix to 2 CFR part 180 – Covered Transactions.

Downtown Oregon City Quiet Zone Project Costs

July 24, 2026

Item Description	2019 Estimate	Index Multiplier	2023 Adjusted Estimate	February 2026 Updated Estimate	July 2026 Updated Estimate
10th Street Total Construction Cost	\$924,050	141%	\$1,302,911	\$0	\$0
10th Street Additional Costs	\$161,000	132%	\$212,520	\$0	\$0
Total Construction Costs			\$1,515,431	\$0	\$0
10th Street 30% Contingency			\$454,629	\$0	\$0
10th Street Total Construction Costs + Contingency			\$1,970,060	\$0	\$0
11th Street Total Construction Cost	\$379,950	141%	\$535,730	\$0	\$0
11th Street Additional Costs	\$66,600	132%	\$87,912	\$0	\$0
Total Construction Costs			\$623,642	\$0	\$0
11th Street 30% Contingency			\$187,092	\$0	\$0
11th Street Total Construction Costs + Contingency			\$810,734	\$0	\$0
Consultant Services (Design to Bidding)				\$1,330,544	\$1,380,544
Consultant Services (Construction)				\$644,114	\$644,114
Construction Contract (Non-Rail)				\$816,989	\$816,989
Right-of-Way Acquisition			\$200,000	\$109,000	\$109,000
ODOT Federally Funded Project Delivery Cost			\$150,000	\$150,000	\$150,000
Additional year of 4% cost inflation			\$111,232		
Union Pacific Railroad Construction Expenses				\$1,235,000	\$2,212,494
Total Project Completion Cost	\$1,531,600		\$3,242,025	\$4,285,648	\$5,313,142
Federal Funding			\$2,000,000	\$2,000,000	\$2,000,000
City (ARPA) Funding Commitment			\$600,000	\$600,000	\$600,000
Project Funding Gap			\$650,000	\$1,690,000	\$2,720,000



CITY OF OREGON CITY CITY COMMISSION REGULAR MEETING DRAFT MEETING MINUTES

Hanlon Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City
Wednesday, December 3, 2025 at 7:00 PM

REGULAR MEETING OF THE CITY COMMISSION

1. CONVENE MEETING AND ROLL CALL

Mayor McGriff convened the meeting at 7:05 P.M.

PRESENT: 5 - Commissioner Adam Marl, Commissioner Mike Mitchell, Commissioner Rocky Smith, Commissioner Scott Wilson, Mayor McGriff

STAFFERS: 8 - City Manager Tony Konkol, Assistant City Manager Alex Rains, City Recorder Jakob Wiley, Police Chief Shaun Davis, Public Works Director Dayna Webb, Human Resources Director Patrick Foiles, Economic Development Manager James Graham

2. FLAG SALUTE

3. CEREMONIES AND PROCLAMATIONS

4. PUBLIC COMMENTS

Seth Henderson, Downtown Oregon City Association Executive Board Member, asked the Commission to address the four items they proposed in their letter regarding tree removals on Main Street. One was to have an arborist on contract for tree removal and appropriate replacement.

Amy Mitchell, resident of Oregon City, read comments from someone who lived in the County and felt targeted by ICE. They had to close their business and their son changed schools.

Betty Mumm, resident of Oregon City, stated Troop 220 was closing and there were ornaments that could be picked up at the VFW Hall that were specific to the troop.

Richard Piller, resident of Oregon City, asked the Commission to adopt a resolution to condemn the unconstitutional acts of ICE.

Jen Mess, resident of Oregon City, spoke about the Portland Immigrants Rights Coalition hotline report and how many families were afraid to leave their homes. Other jurisdictions had taken formal steps to respond, and she thought the Commission should pass a resolution declaring a state of emergency or reaffirming Oregon's sanctuary laws.

Rick Reynolds, resident of West Linn, gave a presentation on the Canyon's Edge Farm & Forest project by Newell Creek Canyon. He discussed the property's amenities, planned development, brownfield challenges, phases and timeline, Stream-N Center environmental learning, wildlife, and research.

5. PRESENTATIONS

6. ADOPTION OF THE AGENDA

Item 7a was removed from the Consent Agenda. An agenda item was added to General Business regarding a resolution on ICE activities. The agenda was adopted as amended.

7. CONSENT AGENDA

Motion by Commissioner Marl, seconded by Commissioner Mitchell, to approve the consent agenda except Item 7a. The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

- a. Resolution No. 25-37, Declaring an Emergency and Temporarily Exempting the Construction Activities Associated with the Oregon Department of Transportation I-205 Project Against Unlawful Noises

Mayor McGriff asked what the process was if the neighborhood adjacent to the project had an issue with the noise.

Dayna Webb, Public Works Director, said ODOT had an established phone number and email for complaints related to the project.

Motion by Commissioner Mitchell, seconded by Commissioner Wilson, to approve Resolution No. 25-37, declaring an emergency and temporarily exempting the construction activities associated with the Oregon Department of Transportation I-205 Project against unlawful noises. The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

- b. Metro Community Enhancement Grant Program Changes
- c. Microsoft License Agreement
- d. Purchase of Public Works Transportation Division Replacement Vehicle: 2027 Western Star 10-yd Dump Truck with Plow and Sander
- e. Purchase of Public Works Wastewater Division Replacement Vehicle: 2027 Freightliner Vactor Truck
- f. Minutes of the October 2, 2024 Special Meeting
- g. Minutes of the October 08, 2024, City Commission Work Session
- h. Minutes of the October 16, 2024, City Commission Work Session

8. PUBLIC HEARINGS

- a. First Reading of Ordinance No. 25-1014, Vacating 142 Square Feet of McLoughlin Promenade Property Located at 300 3rd Street

Ms. Webb said this was a request for a vacation of property on the McLoughlin Promenade. The Commission had approved a resolution initiating this vacation on November 05, 2025.

Mayor McGriff opened the public hearing.

There was no public testimony.

Mayor McGriff closed the public hearing.

Motion by Commissioner Smith, seconded by Mayor McGriff, to approve the first reading of Ordinance No. 25-1014, vacating 142 square feet of McLoughlin Promenade property located at 300 3rd Street. The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner

Smith

9. GENERAL BUSINESS

a. Resolution on ICE Activities

Commissioner Mitchell suggested directing staff to bring back a resolution on ICE activities as requested by the public.

Mayor McGriff said there had been a lot of calls for declaring an emergency. She had reviewed the Oregon Revised Statute that deals with emergency declarations and did not think the city was there at this point in time. She added that there would be a regional ally training in Beaverton that would be livestreamed. Those who were interested in the registration link could contact her.

Motion by Commissioner Mitchell, seconded by Mayor McGriff, to direct staff to bring back a resolution as discussed. The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

b. Selection of Candidates for Interviews for Planning Commission, Historic Review Board, and Urban Renewal Commission

The Commission discussed this item after hearing Item 9.c.

The Commission discussed the candidates for Urban Renewal Commission (URC). Current member Doug Neeley had asked for reappointment and there was one additional applicant.

The Commission discussed the candidates for Historic Review Board (HRB), which both had also asked for reappointment. There were no new applicants.

There was consensus not to do interviews for the HRB and URC but to reappoint the current members at the next Commission meeting.

There was discussion regarding the candidates for Planning Commission. There were three who asked to be reappointed and five new applicants. One new applicant preferred the Library Board. The Commission was in favor of interviewing the other four new applicants.

There was discussion about the application form and the length of interviews. Tony Konkol, City Manager, said each interview was currently assigned a 25-to-30-minute window. The Commission asked that this be reduced to a 20-minute window.

c. Second Reading of Ordinance 25-1016 - An ordinance of the City of Oregon City amending the Oregon City Municipal Code creating section 9.36 Civil Exclusion Zone applicable within the Downtown Core Area, establishing procedures and penalties.

Shaun Davis, Police Chief, noted that the first reading of the ordinance passed with amended language. The amended language had been adopted into Exhibit A of the ordinance for the second reading.

Motion by Commissioner Smith, seconded by Commissioner Mitchell, to approve the second reading and final adoption of Ordinance 25-1016, an ordinance of the City of Oregon City amending the Oregon City Municipal Code creating section 9.36 Civil Exclusion Zone applicable within the Downtown Core Area, establishing procedures and penalties. The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

d. Municipal Court Judge Merit Pay for Performance

Amy Lindgren, Municipal Court Judge, requested a one-time 5% merit payment for recent actions including

guiding Oregon City's Municipal Court to becoming a court of record and working with the County on a grant for the Community Court. This was the second year she had not requested an increase in her base salary.

Motion by Commissioner Smith, seconded by Mayor McGriff, to approve the Municipal Court Judge Merit Pay for Performance. The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

10. COMMUNICATIONS

City Manager

None

Commissioners

Commissioner Smith said the tree lighting would be on Saturday, December 6.

Commissioner Marl discussed the signature gathering petition regarding the transportation funding bill and that it looked like it would be going on the ballot.

Mayor

Mayor McGriff said the Willamette Falls Locks Authority had a partners meeting this afternoon. She gave a presentation on KOIN TV about the pool contest and birthday party, the If I Were Mayor contest, the North Gateway project, and the tree lighting. The Downtown Association was working on a well-lit trees project.

11. ADJOURNMENT

Mayor McGriff adjourned the meeting at 7:58 P.M.

Respectfully submitted,

Jakob S. Wiley, City Recorder

Date Approved: _____



CITY OF OREGON CITY CITY COMMISSION WORK SESSION DRAFT MEETING MINUTES

Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City
Tuesday, May 13, 2025 at 6:00 PM

1. CONVENE MEETING AND ROLL CALL

Mayor McGriff convened the meeting at 6:06 P.M.

PRESENT: 4 - Commissioner Adam Marl, Commissioner Mike Mitchell, Commissioner Rocky Smith, Mayor Denyse McGriff

EXCUSED: 1 - Commissioner Scott Wilson

STAFFERS: 7 - City Manager Tony Konkol, Assistant City Manager Alex Rains, Assistant City Recorder Evan Lee, Executive Assistant to the City Manager Kori Buth, Senior Planner Christina Robertson-Gardiner, Parks and Recreation Director Scott Archer, Parks and Recreation Deputy Director Tom Kissinger

2. GENERAL BUSINESS

a. Meeting with the Clackamas Heritage Partners Board of Directors

Corinne Lowenthal, Executive Director, presented on behalf of the Clackamas Heritage Partners (CHP) board. Board members Dan Fowler, Wade Byers, Frieda Biel, and Siobhan O'Connor, as well as Commissioner Rocky Smith, the non-voting city liaison, were also present.

Mrs. Lowenthal shared three- and six-year visions for the End of the Oregon Trail Interpretive Center (EOT), both starting with 2024 as year one. She also stated that the organization could receive somewhere between \$250,000 and \$1,000,000 in grant funding in December 2025, which would accelerate the timeline.

Mrs. Lowenthal then discussed the recent retreat that the CHP board had with some of the EOT staff. She noted that there would also be a retreat with all EOT staff on June 1, 2025. She said the retreat focused on promoting diversity, equity, and inclusion as well as revamping outdated programming. Mr. Fowler added that the retreat also focused a lot on expanding their view. Moving forward, the EOT would do more to highlight the roles of minority groups who helped shape the region.

There was discussion about a master plan for the EOT. The City had a master plan from the 1990s, and the proposed City budget for the next two fiscal years included \$150,000 for a new master plan. Mrs. Lowenthal added that the CHP could assist with community engagement during the master plan process. Tom Kissinger, Deputy Director of Parks and Recreation, said that the 1990s master plan took a broad view of what the EOT could be if it acquired new land. The new master plan would rein in the scope to focus only on existing land owned by the City.

There was discussion about bringing in school field trips as a revenue source. Mrs. Lowenthal mentioned that changing EOT policy to now allow purchase orders had significantly increased the amount of field trips. Dr. Zena, Director of Education, spoke about aligning the EOT's programming with Oregon Department of Education social sciences and tribal and shared histories standards. She had also worked to make more hands-on workshops and programming. The EOT had increased visitors high enough to necessitate hiring a new staff position.

There was also discussion about the Curtis Foundation handing many of its historical items. Mrs. Lowenthal said the CHP would receive 21 historically significant wagons. The rest would be put up for auction, and the proceeds would be seed money for construction at the EOT.

There was discussion about the need for the collaboration of museums in Oregon City, how the Destination

Management and Marketing Organization (DMMO) that the city was creating could help that collaboration, and the ability of Oregon City museums to individually and collectively accommodate large groups.

b. Local Street Volume Standards Study Street Identification

Christina Robertson -Gardiner, Senior Planner, presented a brief update on the Local Street Volume Standards Study. The idea was to provide data the City could use to create local street volume standards that would apply to land use applications. Staff, working with transportation consultants DKS Associates, identified 18 local streets geographically distributed across the city for 48-hour traffic count studies. The goal was to complete the counts before the end of the school year.

Commissioner Mitchell noted that he lived on one of the streets and had not asked for his street to be added to the list. Commissioner Marl said he supported the data collection but had broader concerns about the legal enforceability of any resulting standards given the current legislative environment. There was discussion about the utility of the data this would provide. The Commission agreed to move forward with the 18 streets proposed.

c. Discussion of Process to Adopt the Parks Master Plan into the Comprehensive Plan

Scott Archer, Parks and Recreation Director, Tom Kissinger briefed the Commission on the final adoption steps for the Parks Master Plan. The plan, developed over more than two years with extensive public engagement, was approved by the City Commission in June 2024. The final step was adoption of the Parks Master Plan into the OC2040 Comprehensive Plan. The Planning Commission recommended its adoption at a public hearing the previous evening. Staff wanted the City Commission to have a final look at the plan before it came up for a vote at a meeting on May 21, 2025.

Mr. Kissinger gave a presentation that covered the master plan process, highlights of this plan, current and recommended service levels, the influence the master plan would have on systems development charges (SDCs). He noted that the Parks Inventory, which contained existing parks and future proposals for park development, is what the Commission would be asked to adopt into the OC2040 Comprehensive Plan.

Mr. Kissinger said that staff were concurrently working with consultants Gilardi Rothstein to update the SDC methodology to align with the plan. Mr. Archer added that staff were anticipating bringing the SDC methodology to the City Commission during a public hearing on June 18, 2025.

There was discussion about how to set priorities for which projects on the SDC list to fund first. Mr. Archer said that the Parks and Recreation Advisory Committee (PRAC) would help prioritize the capital improvement list into a five-year implementation plan. There was also discussion about updating signage.

Commissioner Mitchell raised a concern regarding the language in the Parks Inventory related to the Buena Vista Club building, noting that the assumption of preserving the existing structure had not been formally decided by the Commission. There was discussion about the need to maintain city-owned structures. Mr. Konkol noted that this language could be discussed in more detail at the meeting on May 21, 2025.

3. FUTURE AGENDA ITEMS

a. List of Future Work Session Agenda Items

Mr. Konkol reviewed upcoming work session topics, including the McLoughlin Promenade encroachments, code enforcement amendments, the community diversity, equity, and inclusion taskforce, and a meeting with representatives from Confederated Tribes of Grand Ronde. Shuan Davis, Police Chief, gave a brief preview of the upcoming discussion around banning open fires.

4. CITY MANAGER'S REPORT

a. Update on City Projects

Mr. Konkol gave a brief update on the efforts to relocate decanting away from the old Center Street Public Works building, the quiet zone, charter parks, the Cayuse Five memorial, the county courthouse, and tumwata village.

5. COMMITTEE REPORTS

Commissioner Marl reported that the Citizen Involvement Committee (CIC) discussed the feasibility of establishing a land use subcommittee. Staff advised against this given the CIC's current bylaws, the existence of other established land use bodies, and ex-parte contact concerns arising from Planning Commission and Historic Review Board members serving on the CIC. Commissioner Marl indicated to the CIC that the City Commission shares similar constraints regarding influence over code-compliant land use applications.

Commissioner Marl said the Youth Advisory Commission recruitment is underway, with the Mayor and current members visiting schools to attract incoming freshmen. Several students would soon be travelling to the state capitol for the third time this year to advocate for a flavored tobacco ban.

Commissioner Mitchell said that South Fork Water Board adopted a new budget at its last meeting. The short-term priority was impactful construction projects. Residents would see a modest increase in their water bills.

Mayor McGriff said the Arts Commission was working on a contest called Art for Every Heart that was aimed at primary school students.

Commissioner Smith said the DMMO was getting started with discussions on financing and the search for an executive director.

6. ADJOURNMENT

Mayor McGriff adjourned the meeting at 8:14 P.M.

Respectfully submitted,

Jakob S. Wiley, City Recorder

Date Approved: _____



**CITY OF OREGON CITY
CITY COMMISSION REGULAR MEETING
- REVISED
DRAFT MEETING MINUTES**

Hanlon Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City
Wednesday, December 17, 2025 at 7:00 PM

REGULAR MEETING OF THE CITY COMMISSION

1. CONVENE MEETING AND ROLL CALL

Mayor McGriff convened the meeting at 7:12 P.M.

PRESENT: 5 - Commissioner Adam Marl, Commissioner Mike Mitchell, Commissioner Rocky Smith, Commissioner Scott Wilson, Mayor McGriff

STAFFERS: 9 - City Manager Tony Konkol, Assistant City Manager Alex Rains, Assistant City Recorder Evan Lee, Police Chief Shaun Davis, Community Development Director Kelly Hart, Senior Planner Christina Robertson-Gardiner, Public Works Director Dayna Webb, Human Resources Director Patrick Foiles, Parks and Recreation Director Scott Archer

2. FLAG SALUTE

3. CEREMONIES AND PROCLAMATIONS

Mayor McGriff thanked Greg Stoll and Dirk Schlagenhauer for their service on the Planning Commission.

4. PUBLIC COMMENTS

5. PRESENTATIONS

- a. Parks and Recreation Advisory Committee Annual Report

Tim Lainhart, Parks and Recreation Advisory Committee (PRAC) Chair, presented the annual report. He discussed what was covered at each monthly meeting, recommendations given to the City Commission, and initiatives for 2026.

There was discussion around future changes to Chapin Park, which had not yet been discussed by PRAC.

6. ADOPTION OF THE AGENDA

The agenda was adopted as presented.

7. CONSENT AGENDA

Motion by Commissioner Wilson, seconded by Commissioner Smith, to approve the consent agenda. The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

- a. Appointments to the Urban Renewal Commission (Doug Neeley) and Historic Review Board (Julia Sumrok Fulkerson and Robert Green)
- b. Personal Services Agreement with Downtown Oregon City Association (DOCA) for the City of Oregon City's Municipal Elevator Staffing and Downtown Restroom Services (PS 25-019)

- c. Amendment No. 1 to the Intergovernmental Agreement between Clackamas Water Environment Services and the City of Oregon City for Regional Inflow and Infiltration Reduction
- d. Contract with OMNIA Partners (dba Insight Public Sector) for Mark 43 Records and Evidence Management Software Subscription Services

8. PUBLIC HEARINGS

- a. First Reading of Ordinance No. 26-1001, Emergency Annexation for 19717 Leland Road (GLUA-25-00017, AN-25-0001)

Christina Robertson-Gardiner, Senior Planner, presented the staff reports for both Item 8.a. and 8.b. at the same time. This was a presentation for two emergency annexations for FU10 zoned properties that had septic failures in the spring of 2025. She discussed the annexation process, stated that no zone changes or development had been proposed, access to City sewer, and noted that staff and the Planning Commission recommended approving the annexation applications.

Mrs. Robertson-Gardiner also noted that the Commission could, as part of the Transportation System Plan (TSP) update, adopt automatic rezoning for annexations. Senate Bill 974 (SB 974) would start to take effect in the summer of 2026. One of the changes was that the rezoning of residential zones would be reviewed as a Type II staff-level review instead of the current Type IV quasi-judicial review.

Mayor McGriff opened the public hearing.

Commissioner Mitchell asked if the changes in SB 974 would apply to FU10 zoned properties like these two. Mrs. Robertson-Gardiner said the change would only apply to property that was already in the city. Also, unless changes were made when the city adopted a new TSP, the property owner would still have to make a transportation planning analysis.

There was also discussion about changes to land use noticing included in SB 974.

There was no public testimony.

Mayor McGriff closed the public hearing.

Motion by Commissioner Mitchell, seconded by Mayor McGriff, to approve the first reading of Ordinance No. 26-1001, Emergency Annexation for 19717 Leland Road (GLUA-25-00017, AN-25-0001). The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

- b. First Reading of Ordinance No. 26-1002, Emergency Annexation 19530 S Central Point Road (GLUA-25-00035, AN-25-0002)

Mayor McGriff opened the public hearing.

There was no public testimony.

Mayor McGriff closed the public hearing.

Motion by Commissioner Smith, seconded by Mayor McGriff, to approve the first reading of Ordinance No. 26-1002, Emergency Annexation 19530 S Central Point Road (GLUA-25-00035, AN-25-0002). The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

- c. First Reading of Ordinance No. 26-1003, Zone Change & Comprehensive Plan Amendment, 214 Tumwater Dr & 313 S 2nd St (GLUA 25-00042, CPA25-0001, ZC25-0003)

Mrs. Robertson-Gardiner presented the staff report. She explained the proposal to sell these two Urban Renewal Agency-owned residential properties, how the properties had been rezoned for a public project that was never developed and this would rezone the parcels back to their previous R-3.5 designation, the approval criteria, and that staff and the Planning Commission both recommended approval.

Mayor McGriff opened the public hearing.

There was no public testimony.

Mayor McGriff closed the public hearing.

Motion by Commissioner Wilson, seconded by Commissioner Smith, to approve the first reading of Ordinance No. 26-1003, Zone Change & Comprehensive Plan Amendment, 214 Tumwater Dr & 313 S 2nd St (GLUA 25-00042, CPA25-0001, ZC25-0003). The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

9. GENERAL BUSINESS

- a. Resolution 25-39, Reaffirming Compliance with Oregon Sanctuary Laws

Mayor McGriff and Commissioner Wilson read the resolution.

Motion by Commissioner Wilson, seconded by Commissioner Mitchell, to approve Resolution 25-39, Reaffirming Compliance with Oregon Sanctuary Laws. The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

- b. Second Reading of Ordinance No. 25-1014, Vacating 142 Square Feet of McLoughlin Promenade Property Located at 300 3rd Street

Motion by Commissioner Smith, seconded by Commissioner Wilson, to approve the second reading and final adoption of Ordinance No. 25-1014, vacating 142 square feet of McLoughlin Promenade Property located at 300 3rd Street. The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

- c. City Manager's Salary Adjustment and Merit Pay for Performance

Tony Konkol, City Manager, asked for a salary adjustment of a 2.5% salary step and one-time merit payment of 3% for his performance as a City Manager. He noted that the Commission went through his evaluation earlier in December and highlighted his achievements. He would reach 10 years as City Manager in February 2026 and 25 years as an Oregon City employee in July 2026.

The Commission thought it was a reasonable request based on the performance evaluation.

Motion by Commissioner Smith, seconded by Commissioner Mitchell, to approve the City Manager's Salary Adjustment and Merit Pay for Performance. The motion carried by the following vote:

YES: Mayor McGriff, Commissioner Mitchell, Commissioner Wilson, Commissioner Marl, and Commissioner Smith

10. COMMUNICATIONS

City Manager

Mr. Konkol mentioned possible flooding from the Clackamas River and closure of Clackamette Park. City staff had met with Clackamas County Emergency Management to prepare.

Commissioners

Commissioner Mitchell reported on the C4 Metro meeting where Metro announced a 50 year visioning process public meeting on January 15.

Commissioner Wilson suggested posting the sanctuary laws resolution on the City's website and translating it into Spanish.

Mayor

Mayor McGriff said Metro was proposing to change the way supportive housing services projects were implemented and reviewed. She had signed the City's Tree City USA application.

11. ADJOURNMENT

Mayor McGriff adjourned the meeting at 8:12 P.M.

Respectfully submitted,

Jakob S. Wiley, City Recorder

Date Approved: _____



CITY OF OREGON CITY

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

To: City Commission **Agenda Date:** August 5, 2026
From: Dayna Webb, Public Works Director

SUBJECT:

Item 9.a. - Stormwater Fee Appeal for 302 Bluff Street

STAFF RECOMMENDATION:

Staff seeks Commission direction on whether to maintain the denial of the exemption request, or to approve the exemption request and process a refund.

EXECUTIVE SUMMARY:

The property owner of 302 Bluff Street has requested an exemption from Oregon City's stormwater drainage service fees for its property. After review, the Public Works Director denied the exemption on June 12, 2026. The property owner has since requested an appeal of that decision, which is before you for review.

BACKGROUND:

On June 5, 2026, the City received a formal request from James Nicita for an exemption from Oregon City's monthly stormwater utility fee for the property located at 302 Bluff Street pursuant to OCMC 13.16.100. The applicant asserted that stormwater generated on the property does not discharge to the City's public storm drainage system and instead infiltrates on-site. The application also requested that any exemption be applied retroactively to the date the property was purchased in January 2007, with a corresponding refund of previously paid stormwater utility fees.

On June 12, 2026, the Public Works Director denied the request, finding that the applicant did not demonstrate that the City's public storm drainage system receives no stormwater from the property or provide evidence of legal disposal to a qualifying private stormwater system as required by former OCMC 13.16.100. Under former OCMC 13.16.100, the burden of demonstrating eligibility for an exemption rested with the applicant.

Staff reviewed the application, supporting documentation, and information submitted as part of the appeal. While the materials indicate that stormwater is generally retained on-site under typical conditions, staff concluded the applicant did not demonstrate that the City's storm drainage system receives no stormwater from the property based on the information provided or provide evidence of a qualifying private stormwater disposal system.

This item was originally scheduled for the July 1, 2026, City Commission meeting. At the applicant's request, consideration of the appeal was postponed to allow additional time to submit supporting documentation. On July 15, 2026, while the appeal was pending, the City

Commission adopted amendments to OCMC 13.16.100 that eliminated the exemption process for residential properties. Although July 15, 2026, was offered as an alternative meeting date, the applicant requested that the appeal instead be heard on August 5, 2026, to maintain continuity in the preparation and presentation of the application.

OPTIONS:

1. Approve Stormwater Fee Appeal for 302 Bluff Street.
2. Approve Stormwater Fee Appeal for 302 Bluff Street with Amendments.
3. Deny Stormwater Fee Appeal for 302 Bluff Street and provide further direction.

BUDGET IMPACT:

Amount	N/A
Fiscal Year(s):	N/A
Funding Source(s):	N/A
Included in Approved Budget:	N/A

NOTICE OF DIRECTOR'S DECISION ON STORMWATER EXEMPTION

Requestor: James Nicita
302 Bluff Street
Oregon City, OR 97045

Date: June 12, 2026

On June 5, 2026, Mr. Nicita requested an exemption from Oregon City's stormwater drainage service fees for their property located at 302 Bluff Street. Mr. Nicita explains that the property does not use the City storm drainage system, as evidenced by a topographic survey showing that the property drains in a direction away from the existing public storm lines located in 3rd Street and High Streets.

In order to qualify for an exemption or reduction in the storm drainage fee pursuant to OCMC 13.16.100, an applicant must demonstrate that (1) "the public storm drain service does not receive stormwater from property used or occupied by that person" and (2) provide "evidence of legal disposal of stormwater to a private retention system, private storm drain system, public water body, or other receiving facility."

Although the property slope does suggest that stormwater is primarily contained onsite, this difference in elevation is insufficient to conclusively establish that the City's public stormwater drainage system does not receive any stormwater from this property. Said differently, this property may be a "bowl" but in heavy rain events, this "bowl" will eventually overtop the "bowl" directing water into the City's system. Further, there is no evidence of a legally-approved private retention or storm drainage system onsite or receipt via a public water body that is providing disposal of stormwater.

These findings are further reaffirmed by a denial of a nearly identical request filed by Mr. Nicita in 2021. See attached.

For these reasons, this stormwater exemption and credit request is denied.



Dayna Webb, PE
Public Works Director

From: [James Nicita](#)
Sent: Tuesday, April 27, 2021 11:55 AM
To: John M. Lewis
Subject: Re: Request for exemption from stormwater utility fee

John,

Thanks for your email below. Sorry it has taken a few days to get back to you. I have been on deadline and submitted my materials yesterday.

I appreciate your taking the time to help work through both the exemption question and the Park runoff matter.

I will get with my neighbors and see if we can figure out how shallow the bedrock is in the area we want to put the rain garden.

Jim

On Thursday, April 22, 2021, John M. Lewis <jmlewis@orcity.org> wrote:

Hello Jim. It was good to meet today and discuss all the stormwater related topics we were able to discuss. I have reached out to a couple key staff to confirm better understanding of the public stormwater lines on 3rd Street and the Alley pipeline.

Regarding the stormwater exemption, it's my opinion that the City's public storm drainage system does receive stormwater from your property. Obviously as with many properties, there are rainfall amounts/intensities that may not accumulate to result in offsite flow, but I believe based on the area geology/topography that the City's storm drainage systems receive runoff from your property. However, OCMC provides you with an opportunity to demonstrate otherwise. As we discussed and based on our site walk today, there is some logic that there is no direct connection the public storm drainage system. And we will try to confirm if there is a gravity connection option to the existing storm drainage system on 3rd Street. There is also the option for you to pump your site water to the City's storm drainage system (like the phone company building) and I definitely think there are options for some of your street side roof drains to get to the City's storm drainage system.

The other part of the demonstration is that it include evidence of legal disposal. Depending on what you ultimately do in your back yard there may be an approvable low impact private system but that doesn't exist today and I'm not sure what that

might look like and I'm not aware of a qualifying residential solution. Maybe a storage and re-use system? Something like this would be unique and I'm not familiar with whether this would be a building code approved facility or something else?

13.16.100 - Exemptions, reductions and appeal.

Vacant and unimproved properties within the city are exempt from the charges in Section 13.16.050. Any other person seeking an exemption or reduction in the storm drainage fee, or appealing therefrom, may do so pursuant to a demonstration to the city manager or the manager's designee that the public storm drain service does not receive stormwater from property used or occupied by that person. Such demonstration shall include evidence of legal disposal of stormwater to a private retention system, private storm drain system, public water body, or other receiving facility.

(Ord. 93-1025 §4, 1993: prior code §8-9-10)

I'll check our history of bids for unit costs associated with a French drain in case you and your neighbors pursue a Promenade drainage system.

Hoping to get back to you next week.

Thanks again for your time.

John M. Lewis, P.E.
Public Works Director
City of Oregon City
PO Box 3040
625 Center Street
Oregon City, Oregon 97045
503.657.0891 phone
503.793.2255 cell
email: jmlewis@orccity.org
City web site: www.orccity.org
Bid/RFP site: <http://bids.orccity.org/>

The City of Oregon City is open for business and continues to offer services and programs online and virtually. Some City facilities are open to the public, find current openings [here](#), we encourage visitors to wear a mask, practice physical distancing, and reschedule in-person visits if you are feeling unwell.

The City has installed additional shielding and is providing hand sanitizer as well as occupancy limits to ensure our staff and visitors have a safe, no touch experience. Our goal is to be responsive to our community throughout this pandemic; we appreciate your understanding and cooperation.

***PUBLIC RECORDS LAW DISCLOSURE:** This e-mail is subject to the State Retention Schedule and may be made available to the public.*

From: James Nicita <james.nicita@gmail.com>

Sent: Friday, April 16, 2021 3:12 PM

To: Tony Konkol <tkonkol@orccity.org>; John M. Lewis <jmlewis@orccity.org>; Eric Hand <ehand@orccity.org>; Bill Kabeiseman <billkab@batemanseidel.com>

Subject: Re: Request for exemption from stormwater utility fee

Good Afternoon,

I am writing with a follow up reminder of my request for exemption from the City's stormwater utility fee.

Thank you for your consideration of this request.

James Nicita
302 Bluff Street

On Thu, Mar 25, 2021 at 12:39 PM James Nicita <james.nicita@gmail.com> wrote:

Good Afternoon:

Pursuant to OCMC 13.16.100, I write to request a full exemption from the City's stormwater utility fee for my property at [302 Bluff Street](#) in Oregon City.

As evidenced by the attached photograph and topographic survey, my property does not use the City storm drainage system. The attached photograph shows my two southern downspouts discharging between the sidewalk and my house. In turn, the attached topographic survey demonstrates that my southern property line is at the sidewalk. Therefore, all storm water runoff on the south side of my house is handled within my property.

The same is true on all other sides of my house. All rainfall onto my property collects at a low point in my backyard, and seeps into the ground. My backyard, in fact, is about 1.5 to 2 feet below the elevation of the sidewalk that runs along Third Street, so there is no possibility of any stormwater runoff flowing onto Third Street, or any other City property or right-of-way.

My house's building footprint sits at the boundary of the McLoughlin Promenade. From my foundation, the Promenade immediately slopes upward towards the

Promenade walk at the cliff above Highway 99E. Not only does my property not drain onto the Promenade, the opposite is true: the City's stormwater runoff off of the Promenade flows onto and into my property.

There is no City drainage along the Promenade, Bluff Street, or Promenade Street. Furthermore, there is no City drainage along Third Street along the south side of my house. The nearest catch basin is quite some distance away, at the northwest corner of High Street and Third Street.

Although I am making this request in the spirit of cooperation, as attorney, and in an abundance of caution, under an attorney's duty of professional responsibility I would be negligent if I did not close this email by noting that in making this request I am not waiving either my or any successor owner's right to seek recoupment of past payments of the stormwater utility fee nor redress or compensation for any possible damages caused by the City's failure to manage its Promenade runoff that flows onto my property, or preventing that runoff from flowing onto my property.

Thank you for considering this request.

James Nicita
[302 Bluff Street](#)
[Oregon City](#)

From: [James Nicita](#)
Sent: Wednesday, June 3, 2026 8:03 PM
To: [Dayna Webb](#)
Subject: Request for exemption from storm water utility fee pursuant to OCMC 13.16.100, and for refund
Attachments: [NICITA-TOPO.pdf](#)
[Downspouts.jpeg](#)
[2025-09-05 City Letter re Infiltration Rehabilitation Program.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Dana,

I hope this email finds you well. I am writing to submit my application per OCMC 13.16.100 for an exemption/adjustment to the stormwater utility fee described in chapter 13.16, and applied to my house at 302 Bluff Street. Pursuant to the precedent set by the City Commission in the request of "The Blue at Oregon City" on September 17, 2025, and prior to that a church up on Meyers Road, I respectfully request a full exemption of the fee retroactive to when I purchased my home. This was in January of 2007. Here is the link to the September 17, 2025 hearing:

<https://oregoncityor.portal.civicclerk.com/event/3199/overview>

If I may, I would like to open this application with an apology of sorts. I have a diagnosis of severe ADHD (for which I would be happy to supply you with the medical evidence), and as a result it can be very difficult for me to get things done without an external impulse like a deadline or an urgent situation. This is the case even for fairly simple tasks, like this application. The current City Commission proceedings to amend chapter 13.16 are obviously such a deadline / urgent situation. I want to submit my application under the rules as they currently stand.

That said, here is my situation. As evidenced by the attached photograph and topographic survey, my property does not use the City storm drainage system. The attached photograph shows my two southern downspouts discharging between the sidewalk and my house. In turn, the attached topographic survey demonstrates that my southern property line is at the sidewalk. Therefore, all storm water runoff on the south side of my house is handled within my property.

The same is true on all other sides of my house. All rainfall onto my property collects at a low point in my backyard, and seeps into the ground. My backyard, in fact, is

about 1.5 to 2 feet below the elevation of the sidewalk that runs along Third Street, so there is no possibility of any stormwater runoff flowing onto Third Street, or any other City property or right-of-way.

In other words, topographically I am in a bowl, and no stormwater flows out of the bowl. Depending on the severity of the storm, my backyard experiences ponding at various levels before the seepage into the ground occurs.

My house's building footprint sits at the boundary of the McLoughlin Promenade. From my foundation, the Promenade immediately slopes upward towards the Promenade walk at the cliff above Highway 99E. Not only does my property not drain onto the Promenade, the opposite is true: the City's stormwater runoff off of the Promenade flows towards my property. Prior to the City's repaving of Bluff Street (around 2021 or 2022, if my memory is serving me correctly), which finally included a curb/bump to deflect the runoff around my property and onto Third Street, the City runoff volume was such that in severe storm events my backyard turned into a virtual lake that threatened to intrude into the house. Since the repaving project, however, this has never occurred. Ponding itself is now rather rare.

There is no City pipe drainage along the Promenade, Bluff Street, or Promenade Street. Furthermore, there is no City drainage along Third Street along the south side of my house. The nearest catch basin is quite some distance away, at the northwest corner of High Street and Third Street.

In considering my request, I hope you will consider some equity issues. First, for nearly fifteen years of my ownership of 302 Bluff Street, the City runoff off of Bluff Street carried at least trace amounts of metals and chemicals leaked from the automobile traffic on Bluff Street. I am confident that at least some of that pollution remains in the soils.

Second, I am attaching the September 5, 2025 letter I received from the City regarding the City's offer to pay for replacement of deteriorated sewer laterals. Unfortunately, I had already paid about \$6,000 to have my lateral replaced in 2018 or 2019 I believe (the permits should be on file with the City). I don't think the amount I am requesting for a refund in the storm water utility fee going back to 2007 would come close to the \$6,000 I paid as a responsible citizen and which now apparently renders me ineligible for the City sewer lateral rehabilitation program. Of course, if the latter programs' rules and regulations have provisions for reimbursing someone who has already paid for the rehabilitation, I would be interested in exploring that as well; I feel like I have been inadvertently penalized for being a responsible homeowner.

If you need any additional information regarding this application, I would be happy to provide it to you.

Thank you for considering my application.

James Nicita
302 Bluff Street
Oregon City
503-799-0725

TOPOGRAPHIC SURVEY

TAX LOT 12400
N.E. 1/4 SECTION 31, T.2S., R.2E., W.M.,
CITY OF OREGON CITY, CLACKAMAS COUNTY, OREGON
JANUARY 24, 2013 SCALE 1"=10'

SURVEY NOTES:

THE DATUM FOR THIS SURVEY IS BASED UPON AN ASSUMED ELEVATION ON CONTROL POINT #1 LOCATED AT THE SOUTH-WEST CORNER OF THE INTERSECTION OF THIRD STREET AND HIGH STREET. THE ELEVATION IS 200.00'.

A TRIMBLE S6-SERIES ROBOTIC INSTRUMENT WAS USED TO COMPLETE A CLOSED LOOP FIELD TRAVERSE.

AREA OF SUBJECT PARCEL: 2,572 S.F. OR 0.06 ACRES

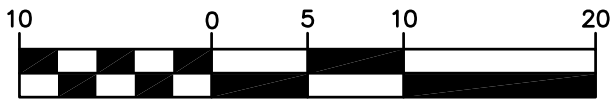
THE BASIS OF BEARINGS FOR THIS SURVEY IS PER RECORD OF SURVEY RECORDED UNDER PRIVATE SURVEY NUMBER 22063, RECORDS OF CLACKAMAS COUNTY. THE PROPERTY LINES SHOWN HEREON ARE PER RECORD DATA AND ARE APPROXIMATE IN NATURE. NO BOUNDARY RESOLUTION WAS PERFORMED.

LEGEND

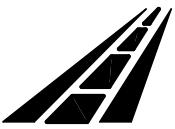
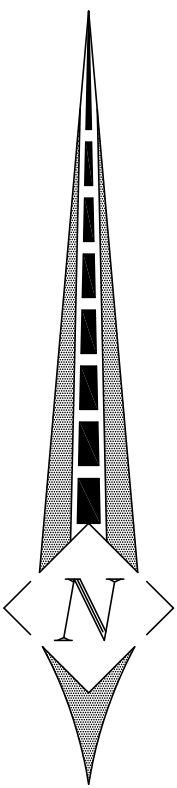
Some Symbols shown may not be used on map

	DECIDUOUS TREE		UTILITY AND LIGHT POLE
	EVERGREEN TREE		GUY WIRE
	STORM SEWER MANHOLE		TRAFFIC SIGNAL POLE
	SANITARY SEWER CLEANOUT		ELECTRICAL POWER PEDESTAL
	CATCH BASIN		COMMUNICATIONS PEDESTAL
	SANITARY SEWER MANHOLE		COMMUNICATIONS MANHOLE
	WATER VALVE		OVERHEAD LINE
	WATER METER		GAS LINE
	FIRE HYDRANT		ELECTRICAL LINE
	BOLLARD		COMMUNICATIONS LINE
	GAS VALVE		SANITARY SEWER LINE
	GAS METER		STORM DRAIN LINE
	SIGN		WATER LINE
	MAILBOX		FENCELINE
	UTILITY POLE		ELECTRIC RISER
	LIGHT POLE		UTILITY RISER
	ELECTRIC METER		HEAT PUMP

GRAPHIC SCALE



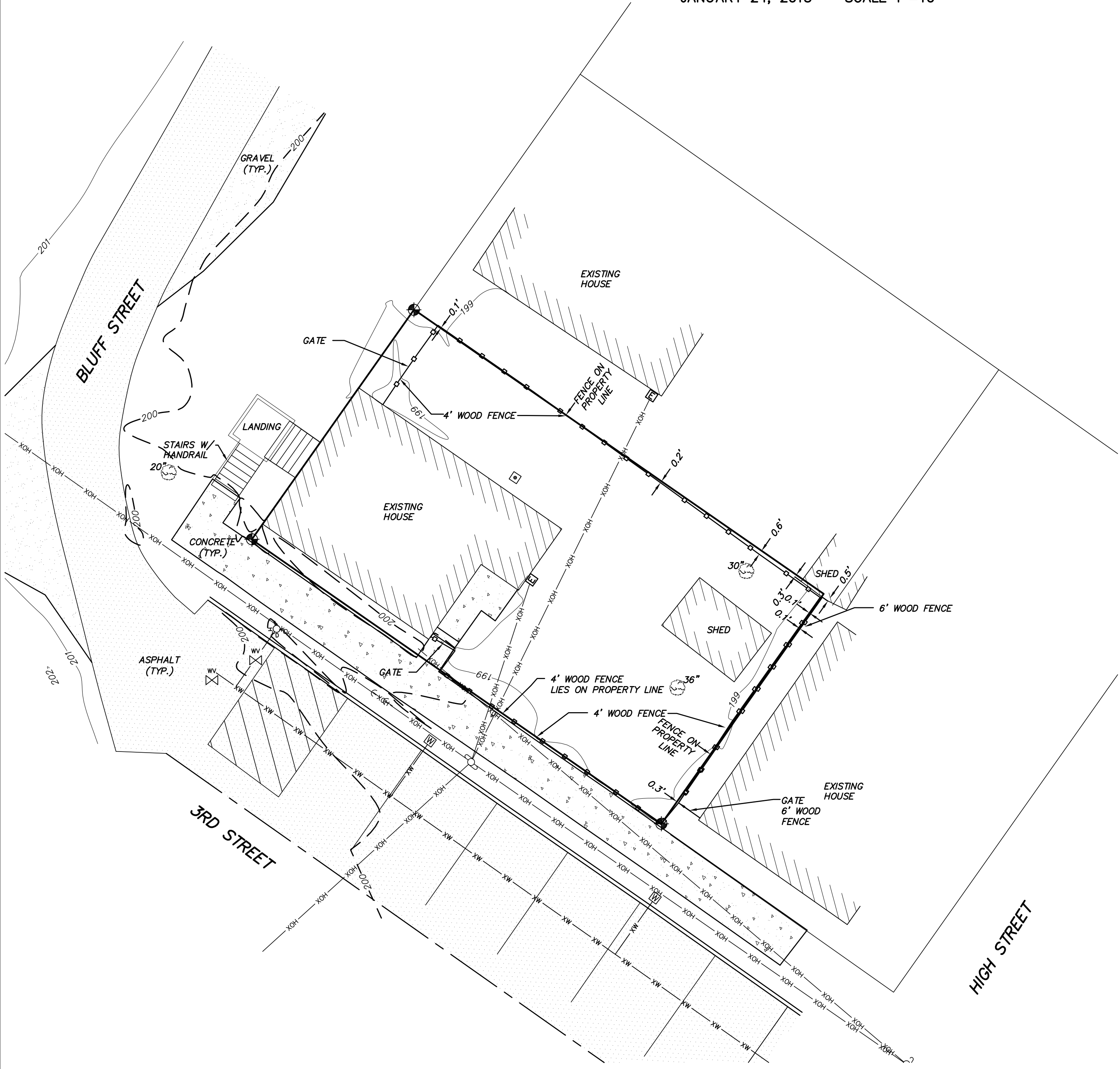
(IN FEET)
1 inch = 10 ft.



CENTERLINE CONCEPTS
LAND SURVEYING, INC.

729 MOLALLA AVE., SUITE 1 & 2
OREGON CITY, OREGON 97045
PHONE 503.650.0188 FAX 503.650.0189

DRAWN BY: CJB CHECKED BY: JBB CLIENT NAME: NICITA
M: \PROJECTS\NICITA-BLUFF STREET





From: [James Nicita](#)
Sent: Tuesday, April 27, 2021 11:55 AM
To: John M. Lewis
Subject: Re: Request for exemption from stormwater utility fee

John,

Thanks for your email below. Sorry it has taken a few days to get back to you. I have been on deadline and submitted my materials yesterday.

I appreciate your taking the time to help work through both the exemption question and the Park runoff matter.

I will get with my neighbors and see if we can figure out how shallow the bedrock is in the area we want to put the rain garden.

Jim

On Thursday, April 22, 2021, John M. Lewis <jmlewis@orcity.org> wrote:

Hello Jim. It was good to meet today and discuss all the stormwater related topics we were able to discuss. I have reached out to a couple key staff to confirm better understanding of the public stormwater lines on 3rd Street and the Alley pipeline.

Regarding the stormwater exemption, it's my opinion that the City's public storm drainage system does receive stormwater from your property. Obviously as with many properties, there are rainfall amounts/intensities that may not accumulate to result in offsite flow, but I believe based on the area geology/topography that the City's storm drainage systems receive runoff from your property. However, OCMC provides you with an opportunity to demonstrate otherwise. As we discussed and based on our site walk today, there is some logic that there is no direct connection the public storm drainage system. And we will try to confirm if there is a gravity connection option to the existing storm drainage system on 3rd Street. There is also the option for you to pump your site water to the City's storm drainage system (like the phone company building) and I definitely think there are options for some of your street side roof drains to get to the City's storm drainage system.

The other part of the demonstration is that it include evidence of legal disposal. Depending on what you ultimately do in your back yard there may be an approvable low impact private system but that doesn't exist today and I'm not sure what that

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(Ord. 93-1025 §4, 1993: prior code §8-9-10)

I'll check our history of bids for unit costs associated with a French drain in case you and your neighbors pursue a Promenade drainage system.

Hoping to get back to you next week.

Thanks again for your time.

John M. Lewis, P.E.
Public Works Director
City of Oregon City
PO Box 3040
625 Center Street
Oregon City, Oregon 97045
503.657.0891 phone
503.793.2255 cell
email: jmlewis@orccity.org
City web site: www.orccity.org
Bid/RFP site: <http://bids.orccity.org/>

The City of Oregon City is open for business and continues to offer services and programs online and virtually. Some City facilities are open to the public, find current openings [here](#), we encourage visitors to wear a mask, practice physical distancing, and reschedule in-person visits if you are feeling unwell.

The City has installed additional shielding and is providing hand sanitizer as well as occupancy limits to ensure our staff and visitors have a safe, no touch experience. Our goal is to be responsive to our community throughout this pandemic; we appreciate your understanding and cooperation.

[PUBLIC RECORDS LAW DISCLOSURE: This e-mail is subject to the State Retention Schedule and may be made available to the public.](#)

From: James Nicita <james.nicita@gmail.com>

Sent: Friday, April 16, 2021 3:12 PM

To: Tony Konkol <tkonkol@orccity.org>; John M. Lewis <jmlewis@orccity.org>; Eric Hand <ehand@orccity.org>; Bill Kabeiseman <billkab@batemanseidel.com>

Subject: Re: Request for exemption from stormwater utility fee

Good Afternoon,

I am writing with a follow up reminder of my request for exemption from the City's stormwater utility fee.

Thank you for your consideration of this request.

James Nicita
302 Bluff Street

On Thu, Mar 25, 2021 at 12:39 PM James Nicita <james.nicita@gmail.com> wrote:

Good Afternoon:

Pursuant to OCMC 13.16.100, I write to request a full exemption from the City's stormwater utility fee for my property at [302 Bluff Street](#) in Oregon City.

As evidenced by the attached photograph and topographic survey, my property does not use the City storm drainage system. The attached photograph shows my two southern downspouts discharging between the sidewalk and my house. In turn, the attached topographic survey demonstrates that my southern property line is at the sidewalk. Therefore, all storm water runoff on the south side of my house is handled within my property.

The same is true on all other sides of my house. All rainfall onto my property collects at a low point in my backyard, and seeps into the ground. My backyard, in fact, is about 1.5 to 2 feet below the elevation of the sidewalk that runs along Third Street, so there is no possibility of any stormwater runoff flowing onto Third Street, or any other City property or right-of-way.

My house's building footprint sits at the boundary of the McLoughlin Promenade. From my foundation, the Promenade immediately slopes upward towards the

Promenade walk at the cliff above Highway 99E. Not only does my property not drain onto the Promenade, the opposite is true: the City's stormwater runoff off of the Promenade flows onto and into my property.

There is no City drainage along the Promenade, Bluff Street, or Promenade Street. Furthermore, there is no City drainage along Third Street along the south side of my house. The nearest catch basin is quite some distance away, at the northwest corner of High Street and Third Street.

Although I am making this request in the spirit of cooperation, as attorney, and in an abundance of caution, under an attorney's duty of professional responsibility I would be negligent if I did not close this email by noting that in making this request I am not waiving either my or any successor owner's right to seek recoupment of past payments of the stormwater utility fee nor redress or compensation for any possible damages caused by the City's failure to manage its Promenade runoff that flows onto my property, or preventing that runoff from flowing onto my property.

Thank you for considering this request.

James Nicita
[302 Bluff Street](#)
[Oregon City](#)

**APPEAL AND MEMORANDUM BY JAMES NICITA FOR EXEMPTION FROM OREGON CITY
STORMWATER UTILITY FEE PURSUANT TO FORMER OCMC 13.16.100**

July 24, 2026

Decision(s) Appealed

I, James Nicita, 302 Bluff Street, Oregon City, respectfully appeal the June 12, 2026 denial (Ex. B) by the director of public works Dayna Webb, of my June 5, 2026 application (Ex. A) for an exemption from the Oregon City stormwater utility fee and a refund of amounts paid dating back to my purchase of my house in January 2007.

I submitted my application under the former OCMC 13.16.100, which has since been amended. Former OCMC 13.16.100 stated:

Vacant and unimproved properties within the city are exempt from the charges in Section 13.16.50. Any other person seeking an exemption or reduction in the storm drainage fee, or appealing therefrom, may do so pursuant to a demonstration to the city manager or the manager's designee that the public storm drain service does not receive stormwater from property used or occupied by that person. Such demonstration shall include evidence of legal disposal of stormwater to a private retention system, private storm drain system, public water body, or other receiving facility.

The June 12, 2026 denial incorporates by reference an April 22, 2021 email to me from former public works director John Lewis (Ex. B, pp. 2-3 of 5), and refers to the latter email as an earlier "denial." I respectfully disagree with this assertion. In one part of the email, Mr. Lewis wrote, "[I]t's my opinion that the City's public storm drainage system does receive stormwater from your property. However, in the same paragraph, he then said, "[T]here is some logic that there is no direct connection to the public storm drainage system." As the factual background of this memorandum will explain, the issue simply never came to a resolution at that time. Any fair read of Mr. Lewis's April 22, 2021 email, in its entirety, makes clear that it was not a "denial" but rather a helpful facilitation of an ongoing exemption request procedure and request for additional information.

But, even if Mr. Lewis's April 22, 2021 email to me did in fact constitute a "denial," I am not too late to file an appeal. Please find attached the staff report from the January 5, 2022 appeal by the Living Hope Church on the stormwater utility fee. (Ex. F.) On page 3, then- city attorney Mr. Kabeiseman opined that the stormwater utility fee represented a contractual relationship between the City and its customers, and therefore was subject to the six-year statute of limitations on contract claims set forth in ORS 12.080:

12.080 Action on certain contracts or liabilities. (1) An action upon a contract or liability... shall be commenced within six years.

So, if one were to argue that Mr. Lewis's April 22, 2021 email constituted a "denial," I could respond by saying that such a "denial" contravened the stormwater utility fee code contractual relationship -- it would represent a "breach" of contract -- and that I am still within the limitations period to seek redress against that breach. That limitations period would not expire until April 22, 2027.

If, on the other hand, the utility fee is not a contract, then the applicable statute of limitations would be even longer: namely the catch-all ten-year statute of limitations in ORS 12.140:

12.140 Actions not otherwise provided for. An action for any cause not otherwise provided for shall be commenced within 10 years.

Therefore, I am appealing Ms. Webb's June 12, 2026 denial, and Mr. Lewis's April 22, 2021 email if the City Commission decides that Mr. Lewis's email constitutes a "denial."

Finally, I have significant concerns about the selective inclusion in the June 12, 2026 denial of only one email from the 2021 proceedings. Those 2021 proceedings, actually involved a significant number of correspondences, between myself and the City, but also internal City emails. Because the June 12, 2026 denial effectively makes the 2021 proceedings part of the record of the current proceedings, I am including other documentation from the 2021 proceeding as part of this appeal.

Procedural Matters

This appeal is a quasi-judicial hearing. The Oregon Supreme Court has extended the procedural safeguards set forth in *Fasano v. Washington County* beyond the land use context. *Colclasure v. Washington County School Dist. No. 48-J*, 317 Or. 526, 535 (1993) (applying *Fasano* procedural protections to worker's compensation claim). Thus the *Fasano* protections apply to this case.

The *Fasano* case, as quoted by *Colclasure*, states: "Parties at the hearing before the...governing body are entitled to an opportunity to be heard, to an opportunity to present and rebut evidence, to a tribunal which is impartial in the matter...and to a record made and adequate findings executed." *Fasano v. Washington County Board of Commissioners*, 264 Or. 574, 588 (1973).

Factual Background

A. Existing Conditions

The rear of my house forms a "bowl" into which the stormwater runoff from the roofs of my house and shed drain. This bowl is both natural and constructed. My lot naturally slopes downward from my western property line (which borders the McLoughlin Promenade) to the

TOPOGRAPHIC SURVEY

TAX LOT 12400
N.E. 1/4 SECTION 31, T.25, R.2E., N.M.
CITY OF OREGON CITY, CLATSOP COUNTY, OREGON
JANUARY 24, 2013 SCALE 1"=10'

SURVEY NOTES:

THE DATA FOR THIS SURVEY IS BASED UPON AN ASSUMED ELEVATION ON CONTROL POINT #7 LOCATED AT THE SOUTH-WEST CORNER OF THE INTERSECTION OF THIRD STREET AND HIGH STREET. THE ELEVATION IS 50.00 FT.

A TRIMBLE 5600 SERIES ROBOTIC STATION WAS USED TO COMPLETE A CLOSED LOOP FIELD SURVEY.

AREA OF SURVEY PARCEL: 0.25 AC, OR 0.58 ACRES

THE BASIS OF MEASURES FOR THIS SURVEY IS PER RECORD OF SURVEY RECORDED UNDER PUBLIC SURVEY NUMBER 20084, RECORD OF CLATSOP COUNTY, THE PROPERTY LINES SHOWN HEREON ARE FOR RECORD ONLY AND ARE APPROXIMATE IN NATURE. NO BOUNDARY ADJUSTMENT WAS PERFORMED.

LEGEND
Some Symbols shown may not be used on map

○-○ ADJACENT TRAIL	○ UTILITY AND LIGHT POLE
○ CROWNED TRAIL	→ GUY WIRE
○ STORM SEWER MANHOLE	○ TRAFFIC SIGNAL POLE
○ SANITARY SEWER CLEAVAGE	○ ELECTRICAL POWER PEDESTAL
○ GUYON BASIN	○ COMMUNICATIONS PEDESTAL
○ SANITARY SEWER MANHOLE	○ COMMUNICATIONS MANHOLE
○ WATER VALVE	— OVERHEAD LINE
○ WATER METER	— GAS LINE
○ TREE PRESENT	— ELECTRICAL LINE
○ GAS VALVE	— COMMUNICATIONS LINE
○ GAS METER	— SANITARY SEWER LINE
○ GUY	— STORM SEWER LINE
○ HATCH	— WATER LINE
○ UTILITY POLE	○ FENCELINE
○ LIGHT POLE	○ ELECTRIC METER
○ ELECTRIC METER	○ HOT WATER PUMP

GRAPHIC SCALE

1" = 10'

1 inch = 10 feet

CENTERLINE CONCEPTS
LAND SURVEYING, INC.
7209 NOLAN AVE., SUITE 1 & 2
OREGON CITY, OREGON 97045
PHONE: 503-650-1010 FAX: 503-650-1011
WWW.CCLANDSURVEYING.COM

Page 92 of 173

The City itself in 2021 took specific measurements of my property that confirmed that my backyard is well below the grade and elevation of Third Street. (Ex. E, p. 5 of 5).

The larger-scale bowl demonstrates that runoff from the McLoughlin Promenade along the entire block from Third Street to Fourth Street has in the past burdened the four properties at 302 Bluff Street, 306 Promenade Street, 301 High Street, and 311 High Street. As will be discussed below, the 2021 Bluff Street repaving project greatly ameliorated this problem, by including a “bump” along the eastern edge to divert runoff around the four properties, into the north gutter of Third Street, and into the catch basin at the northwest corner of Third Street and High Street.

Nevertheless, a smaller amount of runoff from the Promenade still burdens the four properties, because there is still a smaller amount of Promenade property that is east of the “bump,” and this runoff is not captured by the “bump.” This includes Promenade property directly in front of my house.

Further, as will also be discussed below, neither the Third & High Street catch basin nor the catch basin within the alley between Third Street and Fourth Street serves or can serve my property. As will be described, the latter is essentially non-functional, as this catch basin was built too high (in 2018) to function as intended. (Ex. E, p. 2 of 5.)

B. History of Mitigation Efforts and Outreach to City

To the best of my ability, I have been diligent in addressing the stormwater management issues associated with my residence at 302 Bluff Street, which I purchased in January 2007. Living in my house over the years, I witnessed the pattern of ponding in my backyard during heavy rain events. This ponding would occur at variable levels, depending on the storm event. However, it never reached a level where it threatened to intrude into the ground floor of my house. And, because my back door is about 1.5 feet below the level of the Third Street sidewalk, the ponding therefore never even came close to “overtopping” the bowl and flowing into the Third Street gutter and catch basin.

It became clear to me that a significant, if not the primary, source of the ponding issue was the fact that my neighbors and I were receiving significant amounts of stormwater runoff from the Promenade and Bluff Street, both owned by the City. Therefore in 2012 I reached out to City staff to inquire regarding a solution. At that time, I was told that there was not really anything the City could or would do about the problem. (Ex. C, p. 2 of 4.) Note: I did not in 2012 apply for an exemption to the stormwater utility fee – I was simply requesting help with the stormwater runoff problem.

In the winter/spring of 2020, I had my highly-degraded sanitary sewer lateral replaced, at a cost of approximately \$6,000. A picture from that project is on the following page. When the contractors were reconstructing the sidewalk that had to be dug up for the sewer work, a very

heavy rainfall occurred. The picture is useful as evidence for this submission, because it shows the rising groundwater table that occurs in my backyard “bowl” during heavy rains.



The following year, in the winter of 2020/2021, Oregon City experienced a rain event that caused the most significant ponding I have ever experienced in my backyard. While the ponding did not intrude into my house, it came very close to the level of the foundation slab. It was very concerning.

After the event, on January 23, 2021 I again approached the City in order to find a solution, based on “changed circumstances.” (Ex. C. I must say, the response I received from then- public works director John Lewis was like night and day compared to the response I had received under his predecessor in 2012. In addition, as I researched the matter in 2021, I came across the stormwater utility fee exemption code in OCMC 13.16.100, and this time I did make an application for such an exemption, as it was clear that my property was not discharging into the City’s storm drainage system, but by contrast my property was basically serving as the storm drainage facility for the City’s Promenade runoff. (Ex. B, p. 4-5 of 5.) In other words, there were two parallel proceedings: 1) the runoff/drainage solution proceeding, and 2) the utility fee exemption application proceeding.

Regarding the runoff/drainage solution, the public works staff did a thorough analysis. Mr. Lewis in fact confirmed my opinion that my house is in a hydraulic “bowl.” (Ex. D, p. 1 of 2.) Eric Hand

came out to my property and measured the elevation of my backyard, as indicated by this graphic he generated (Ex. E, p. 5 of 5):



City staff determined that the catch basin at Third & High was too distant and too high to service my property without an extremely expensive subterranean connection that I would have to pay for. (Ex. D, p. 2 of 2) As for the catch basin in the alley between Third and Fourth Streets, the attached internal deliberations among City staff demonstrates that it is essentially non-functional: through an error, it was installed in 2018 at too high an elevation. (Ex. E, pp. 2-3 of 5.) As far as I know, that catch basin has never drained a drop of storm water runoff in its existence. And, as the deliberations show, it was intended to drain runoff from the upslope Riverside Apartments. It was not intended to service my property; and indeed, there are two private parcels between my property and that catch basin.

But, Mr. Lewis did come up with a solution that has essentially resolved most of the problem: that is, the Bluff Street repaving project. This was approved by the City Commission in September of 2021. I will note that during the deliberations on that matter, Commissioner Marl

did me the courtesy of coming to my house to observe the situation directly; the only commissioner to accept my invitation to do so (although Commissioner Smith likely did not need to, as he frequently passes by my house as he leads ghost tours, and is quite familiar with my property).

Since that project was completed, the major ponding in my backyard has never recurred. I have experienced some minor pooling in very heavy rains, but that is all. And even this pooling is still attributable, to some extent, to runoff from City property: there is still some City land area east of the bump edge that is not picked up by the bump edge, and still flows into the "bowl."

This solution has benefitted not just me, but my four neighbors in the larger-scale "bowl." We all expressed our appreciation to Mr. Lewis and to the City for undertaking the effort. And furthermore, the project benefitted the City and the community as a whole: Bluff Street was unsightly, had broken pavement and potholes, and had not been maintained in decades. It was an embarrassment to the City to have tourists walking along the Promenade see its condition. Now it is an amenity. To the extent that my efforts helped bring about that improvement, I did the City and the community a service.

As for the other proceeding, on my application for an exemption under OCMC 13.16.100, Mr. Lewis and I were in a disagreement. Notwithstanding the determination that it was not practical for me to connect to the catch basins at Third & High and in the alley between Third Street and Fourth Street, Mr. Lewis was nevertheless tentatively opining that somehow my property still discharged into the City's storm drainage system. In one part of the email he sent me on April 21, Mr. Lewis wrote, "[I]t's my opinion that the City's public storm drainage system does receive stormwater from your property. However, in the same paragraph, he then said, "[T]here is some logic that there is no direct connection to the public storm drainage system."

Mr. Lewis and I simply never came to a resolution of the matter. Because of my appreciation for Mr. Lewis's efforts, I suspended my pursuit of the stormwater utility fee exemption.¹ It was not in my interest, nor appropriate, to appear confrontational on the exemption request when at the same time Mr. Lewis was undertaking such a major effort on behalf of several property owners -- and on behalf of the City and its citizens. After the completion of the repaving project, I did not pick up the exemption request again, for the blunt and straightforward reason that I have pronounced ADHD.² I had no "gun to my head" to impel me to revive the exemption request until the recent code amendments to OCMC 13.16 were placed on the City Commission's agenda. (I have unfinished house projects that stretch back well before 2021.)

¹ I have a distinct memory of preparing an email to Mr. Lewis and Mr. Kabeiseman, in which I said I was withdrawing my application for the stormwater utility fee exemption "without prejudice." This is a legal term meaning that one is reserving the right to reapply or refile at a later time. I cannot find this email in my email archive. I made a public records request to Mr. Wiley in hopes that it might be in the City's email archive, but Mr. Wiley was unable to locate such an email.

² Once an individual's disability is known, the individual is entitled to reasonable accommodation. *Smith v Island Transit*, 98 F3d 1346 (9th Cir 1996), citing *Kimbrow v. Atlantic Richfield Co.*, 889 F2d 869, 874 (9th Cir. 1989)

Applicable Precedents Regarding Former OCMC 13.16.100

There are two precedents regarding OCMC 13.16.100 that are applicable to my application.

A. Living Hope Church

The proceeding on the Living Hope Church took place on January 5, 2022:

<https://meetings.municode.com/MeetingDetailsPage/index?clientCode=OREGONCITY&meetingId=5761ee98-49a9-4e8e-bf4d-93a5b2c65f69>

The applicable precedents emerging from this case:

- The applicant initially did not get cooperation from city staff, but persisted and revived / reapplied its application to get relief.
- The applicant persisted, and later on City staff actively engaged with the applicant, including requesting more information staff felt it needed.
- The applicant was allowed to speak during the agenda item on their appeal to the City Commission.
- The City Commission did not apply a statute of limitations to its “lookback.” Notwithstanding the six-year statute of limitations on contract claims raised during the proceeding, the Commission applied the “lookback” to the original purchase of the property, 13 years previously.

B. The Blue at Abernethy Creek

The proceedings on this application took place on September 17 and October 1, 2025:

<https://oregoncityor.portal.civicclerk.com/event/3199/overview>

<https://oregoncityor.portal.civicclerk.com/event/3224/overview>

The applicable precedents from this case:

- The applicant initially did not get what it wanted from city staff (lookback to property purchase), and appealed to the City Commission to get relief.
- City staff actively engaged with the applicant, including requesting more information staff felt it needed.
- The applicant was allowed to speak during the agenda item on their appeal to the City Commission.
- The City Commission applied the “lookback” to the original purchase of the property.
- The applicant’s full exemption and lookback was granted because the existing on-site private storm drains discharged into a “public water body” pursuant to OCMC 13.16.100

– namely . Although the existing storm drain did not provide any water quality treatment prior to discharge, the City Commission did not require such water quality treatment in granting the exemption.

Based on the precedents set by the City Commission in the Living Hope Church and The Blue at Abernethy Creek cases, the city manager Mr. Konkol announced a policy on October 1 for future applications for exemptions pursuant to OCMC 16.13.100. In particular, the “lookback” period would henceforth reach back to the date of purchase of the applicant’s property.

The videotape of the October 1, 2025 City Commission meeting is here:

https://www.youtube.com/watch?v=6KywXPc6V_0

At min. 48:50, Mr. Konkol stated:

I think if we got another one in next month, and we hadn’t changed the code, we would probably say, okay, now we know what the Commi...if, let’s just say, we went back to the date of purchase, right, it’d be like, okay, now we have two of them that go back to the date of purchase, we feel pretty comfortable going, okay, right now this is the interpretation. I hope that it’s not back to, like, 1940...

Also regarding precedent established by prior applications, during the September 17, 2025 discussion of The Blue at Abernethy Creek, City Attorney Carrie Richter declared that the U.S. Supreme Court’s case *Sheetz v. El Dorado County* is applicable to any analysis under former OCMC 13.16.100. Here is the YouTube video of that meeting:

<https://www.youtube.com/live/PzwaGB-lm20>

At min. 55:15, Ms. Richter stated, in relation to former OCMC 13.16.100:

“The code provides an exemption for a property owner to pursue, and the Sheetz decision from the U.S. Supreme Court does require a *rough proportionality* obligation when an applicant makes a request. And that’s part of why we are going through this and that is why the code is the way it is.” (Emphasis added.)

The *Sheetz* case actually had not one but two prongs. The Court held that even a legislative act like an ordinance was subject to the Court’s case precedents under the Takings Clause of the Fifth Amendment, and specifically the requirement that 1) the fee ordinance have an “essential nexus” to the government’s interest, and 2) the fees must have a “rough proportionality” to the impacts created by the development.

The *Sheetz* case actually incorporated prior Supreme Court rulings. The “essential nexus” test was established in *Nollan v. California Coastal Comm’n*, 483 U. S. 825, 837 (1987). The “rough proportionality” test comes from *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

The City has the burden of establishing essential nexus and rough proportionality. *Nollan v. California Coastal Commission*, 483 U.S. 825, 836; *Dolan v. City of Tigard*, 512 U.S. 374, 391.

Analysis

A. Former OCMC 13.16.100

As noted, former OCMC 13.16.100 states:

Vacant and unimproved properties within the city are exempt from the charges in Section 13.16.050. Any other person seeking an exemption or reduction in the storm drainage fee, or appealing therefrom, may do so pursuant to a demonstration to the city manager or the manager's designee that the public storm drain service does not receive stormwater from property used or occupied by that person. Such demonstration shall include evidence of legal disposal of stormwater to a private retention system, private storm drain system, public water body, or other receiving facility.

The last sentence in the paragraph uses the disjunctive “or.” This means that if I satisfy any one of the examples of “legal disposal,” I satisfy the requirement of former OCMC 13.16.100 and am entitled to the exemption.

I do not discharge into the City’s storm drain system. Period. As the evidence presented earlier in this memorandum demonstrates, city staff determined that I not discharge into either the catch basin and Third & High Streets or the catch basin in the alley between Third and Fourth Streets. Further it is impractical for me to try to connect to the former without expending large sums of money. The latter would require trespass across two neighboring properties, and it was constructed at too high an elevation.

Rather, I dispose of my stormwater legally into a “public water body” as set forth in former OCMC 13.16.100 – namely, the groundwater system. Specifically, ORS 468B.005(10) states:

“Water” or “the waters of the state” include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. (Emphasis added.)

In turn, ORS 531.110 states: **“Public ownership of waters. All water within the state from all sources of water supply belongs to the public.”**

My disposal of my stormwater into my backyard's groundwater is "legal:" no water quality treatment is required. Indeed, the City Commission found that the existing stormwater discharge from The Blue at Abernethy Creek into Abernethy Creek was "legal," even though it is not treated for water quality purposes.

I would further argue that I also meet two other examples of "legal disposal" pursuant to former OCMC 13.16.100:

Private retention system. My backyard is a private retention system. It is private, because I own it. It retains all of the rain that falls on my property. The system – the ecosystem, including the "bowl" – percolates the water through the soil and into the groundwater system.

Private storm drain system. My backyard is a private storm drain system. It is private, because I own it. The system – the ecosystem, including the "bowl" – drains the water through the soil and into the groundwater system, just like a kitchen sink "drains" the water into the kitchen pipes.

Based on the foregoing, I believe I have satisfied the requirements of former OCMC 13.16.100 for a full exemption from the stormwater utility fee. Based on the precedents of the Living Hope Church and The Blue at Abernethy Creek, I respectfully request that this exemption be applied back to the date I purchased my property in January 2007, and that this money be refunded to me.

B. Essential Nexus and Rough Proportionality

There is no essential nexus in this case. There is no nexus between the stormwater utility fee I am paying and the provision by the City of stormwater drainage, because my residential property does not discharge into the City's storm drain system. That lack of nexus is enshrined right into the city code. OCMC 13.16.030 states, "There is established and imposed on all persons occupying improved properties utilizing the city's storm drainage system, a just and equitable storm drainage utility service charge to implement the city's drainage master plan and pay for the city's storm drainage system." (And please note, a vehicle is not an "improved property;" OCMC 13.16.030 applies only to real property.)

The Supreme Court in *Dolan* stated that if there is no *Nollan* "essential nexus," the analysis does not have to proceed to establishing "rough proportionality." *Dolan v. City of Tigard*, 512 U.S. 374, 386. That is the case here.

Nor could the City charge me some "roughly proportional" reduction in the stormwater utility fee rather than grant me a complete exemption, based on the hypothetical argument that heavy rain events "will eventually overtop the 'bowl,'" thus "directing water into the City's system." (Ex. B, p. 1 of 5).

This is pure speculation, which is prohibited by *Dolan*, at 395 (speculative "could" hypothetical impermissible.) As I described above, in the nearly twenty years I have lived in my house, that

has never happened, even when my backyard was holding substantial runoff from the Promenade. After the 2021 Bluff repavement project, it has never even come close.

However, even if at some time in the future a storm of that Noah's Flood-like scale actually did happen, the water that would be overtopping the bowl would be the City's own stormwater, not mine: namely, the City's stormwater runoff into my backyard from the large bowl running from Third Street to Fourth Street – a quantifiably much larger catchment area than my small lot. The City would be asking that I suffer the incredible burden of the damage from its large-scale stormwater runoff onto my property, then turn around and charge me a stormwater utility fee because its stormwater runoff overtopped the smaller-scale bowl that is my backyard.

C. Lack of Engagement Regarding Current Application

Three prior precedents establish the necessity of engaging with an applicant regarding a request for exemption from the stormwater utility fee: my 2021 application, the Living Hope Church, and The Blue at Abernethy Creek. On my current application, however, there was no engagement whatsoever, just a cursory denial based on the conclusory and speculative (and therefore impermissible) “overtop the bowl” argument. The denial makes no effort to examine the extensive material from the 2021 proceeding, even though this information was readily available for examination in the City's own files; as demonstrated by the selective use of Mr. Lewis's April 22, 2021 email. The June 12, 2026 denial was a foregone conclusion, and not based on a fair analysis of the extensive factual record in the City's own files.

Conclusion

Based on the foregoing presentation, I respectfully request that the City Commission grant my request for an exemption to the stormwater utility fee retroactive to the date I purchased my property in January 2007 and a refund of my payment of said fee retroactive to that date.

Thank you for considering this appeal.

A handwritten signature in black ink, appearing to read "James Nicita", with a stylized flourish at the end.

James Nicita
302 Bluff Street
Oregon City



James Nicita <james.nicita@gmail.com>

Request for exemption from storm water utility fee pursuant to OCMC 13.16.100, and for refund

James Nicita <james.nicita@gmail.com>
To: dwebb@orccity.org
Bcc: james nicita <jim_nicita@hotmail.com>

Wed, Jun 3, 2026 at 8:03 PM

Hi Dana,

I hope this email finds you well. I am writing to submit my application per OCMC 13.16.100 for an exemption/adjustment to the stormwater utility fee described in chapter 13.16, and applied to my house at 302 Bluff Street. Pursuant to the precedent set by the City Commission in the request of "The Blue at Oregon City" on September 17, 2025, and prior to that a church up on Meyers Road, I respectfully request a full exemption of the fee retroactive to when I purchased my home. This was in January of 2007. Here is the link to the September 17, 2025 hearing:

<https://oregoncityor.portal.civicclerk.com/event/3199/overview>

If I may, I would like to open this application with an apology of sorts. I have a diagnosis of severe ADHD (for which I would be happy to supply you with the medical evidence), and as a result it can be very difficult for me to get things done without an external impulse like a deadline or an urgent situation. This is the case even for fairly simple tasks, like this application. The current City Commission proceedings to amend chapter 13.16 are obviously such a deadline / urgent situation. I want to submit my application under the rules as they currently stand.

That said, here is my situation. As evidenced by the attached photograph and topographic survey, my property does not use the City storm drainage system. The attached photograph shows my two southern downspouts discharging between the sidewalk and my house. In turn, the attached topographic survey demonstrates that my southern property line is at the sidewalk. Therefore, all storm water runoff on the south side of my house is handled within my property.

The same is true on all other sides of my house. All rainfall onto my property collects at a low point in my backyard, and seeps into the ground. My backyard, in fact, is about 1.5 to 2 feet below the elevation of the sidewalk that runs along Third Street, so there is no possibility of any stormwater runoff flowing onto Third Street, or any other City property or right-of-way.

In other words, topographically I am in a bowl, and no stormwater flows out of the bowl. Depending on the severity of the storm, my backyard experiences ponding at various levels before the seepage into the ground occurs.

My house's building footprint sits at the boundary of the McLoughlin Promenade. From my foundation, the Promenade immediately slopes upward towards the Promenade walk at the cliff above Highway 99E. Not only does my property not drain onto the Promenade, the opposite is true: the City's stormwater runoff off of the Promenade flows towards my property. Prior to the City's repaving of Bluff Street (around 2021 or 2022, if my memory is serving me correctly), which finally included a curb/bump to deflect the runoff around my property and onto Third Street, the City runoff volume was such that in severe storm events my backyard turned into a virtual lake that threatened to intrude into the house. Since the repaving project, however, this has never occurred. Ponding itself is now rather rare.

Ex. A
P. 1 of 4

There is no City pipe drainage along the Promenade, Bluff Street, or Promenade Street. Furthermore, there is no City drainage along Third Street along the south side of my house. The nearest catch basin is quite some distance away, at the northwest corner of High Street and Third Street.

In considering my request, I hope you will consider some equity issues. First, for nearly fifteen years of my ownership of 302 Bluff Street, the City runoff off of Bluff Street carried at least trace amounts of metals and chemicals leaked from the automobile traffic on Bluff Street. I am confident that at least some of that pollution remains in the soils.

Second, I am attaching the September 5, 2025 letter I received from the City regarding the City's offer to pay for replacement of deteriorated sewer laterals. Unfortunately, I had already paid about \$6,000 to have my lateral replaced in 2018 or 2019 I believe (the permits should be on file with the City). I don't think the amount I am requesting for a refund in the storm water utility fee going back to 2007 would come close to the \$6,000 I paid as a responsible citizen and which now apparently renders me ineligible for the City sewer lateral rehabilitation program. Of course, if the latter programs' rules and regulations have provisions for reimbursing someone who has already paid for the rehabilitation, I would be interested in exploring that as well; I feel like I have been inadvertently penalized for being a responsible homeowner.

If you need any additional information regarding this application, I would be happy to provide it to you.

Thank you for considering my application.

James Nicita
302 Bluff Street
Oregon City
503-799-0725

3 attachments



Downspouts.jpeg
3480K



NICITA-TOPO.pdf
223K



2025-09-05 City Letter re Infiltration Rehabilitation Program.pdf
1260K

Ex. A
P. 2 of 4



Ex. A
P. 3 of 4

TOPOGRAPHIC SURVEY

TAX LOT 12400
N.E. 1/4 SECTION 31, T.2S., R.2E., W.M.,
CITY OF OREGON CITY, CLACKAMAS COUNTY, OREGON
JANUARY 24, 2013 SCALE 1"=10'

SURVEY NOTES:

THE DATUM FOR THIS SURVEY IS BASED UPON AN ASSUMED ELEVATION ON CONTROL POINT #1 LOCATED AT THE SOUTH-WEST CORNER OF THE INTERSECTION OF THIRD STREET AND HIGH STREET. THE ELEVATION IS 200.00'.

A TRIMBLE S6-SERIES ROBOTIC INSTRUMENT WAS USED TO COMPLETE A CLOSED LOOP FIELD TRAVERSE.

AREA OF SUBJECT PARCEL: 2,572 S.F. OR 0.06 ACRES

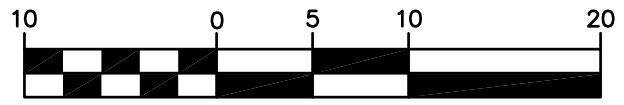
THE BASIS OF BEARINGS FOR THIS SURVEY IS PER RECORD OF SURVEY RECORDED UNDER PRIVATE SURVEY NUMBER 22063, RECORDS OF CLACKAMAS COUNTY. THE PROPERTY LINES SHOWN HEREON ARE PER RECORD DATA AND ARE APPROXIMATE IN NATURE. NO BOUNDARY RESOLUTION WAS PERFORMED.

LEGEND

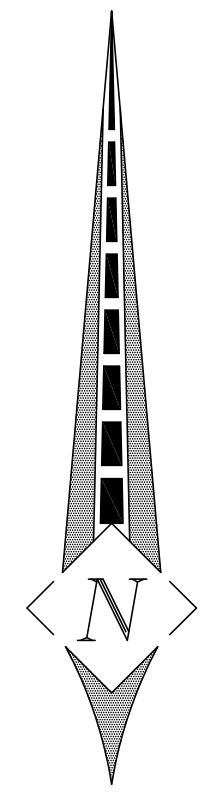
Some Symbols shown may not be used on map

- | | | | |
|--|-------------------------|--|---------------------------|
| | DECIDUOUS TREE | | UTILITY AND LIGHT POLE |
| | EVERGREEN TREE | | GUY WIRE |
| | STORM SEWER MANHOLE | | TRAFFIC SIGNAL POLE |
| | SANITARY SEWER CLEANOUT | | ELECTRICAL POWER PEDESTAL |
| | CATCH BASIN | | COMMUNICATIONS PEDESTAL |
| | SANITARY SEWER MANHOLE | | COMMUNICATIONS MANHOLE |
| | WATER VALVE | | OVERHEAD LINE |
| | WATER METER | | GAS LINE |
| | FIRE HYDRANT | | ELECTRICAL LINE |
| | BOLLARD | | COMMUNICATIONS LINE |
| | GAS VALVE | | SANITARY SEWER LINE |
| | GAS METER | | STORM DRAIN LINE |
| | SIGN | | WATER LINE |
| | MAILBOX | | FENCELINE |
| | UTILITY POLE | | ELECTRIC RISER |
| | LIGHT POLE | | UTILITY RISER |
| | ELECTRIC METER | | HEAT PUMP |

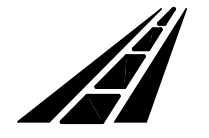
GRAPHIC SCALE



(IN FEET)
1 inch = 10 ft.



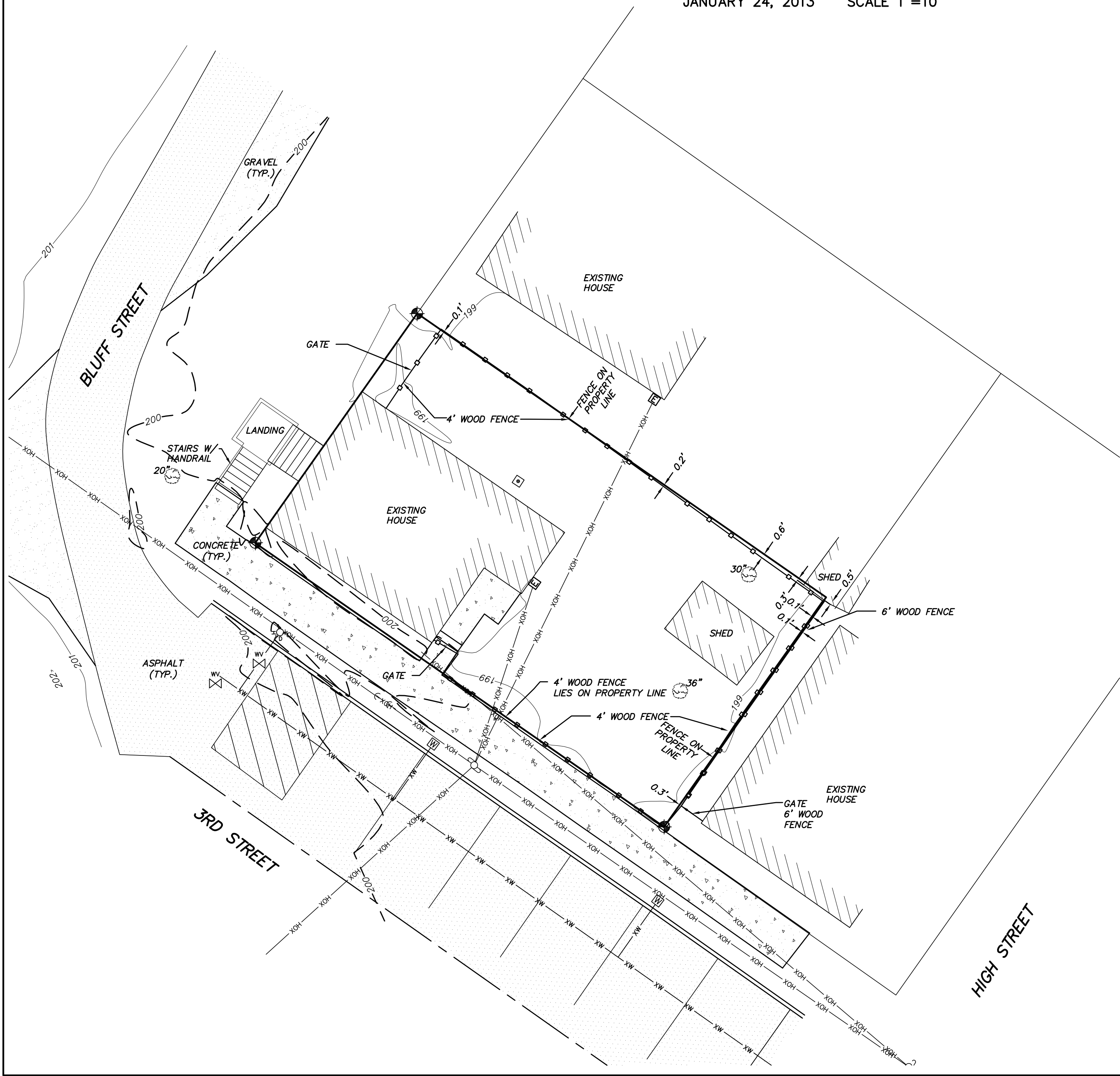
Ex. A
P. 4 of 4



CENTERLINE CONCEPTS
LAND SURVEYING, INC.

729 MOLALLA AVE., SUITE 1 & 2
OREGON CITY, OREGON 97045
PHONE 503.650.0188 FAX 503.650.0189

DRAWN BY: CJB CHECKED BY: JBB CLIENT NAME: NICITA
M: \PROJECTS\NICITA-BLUFF STREET



NOTICE OF DIRECTOR'S DECISION ON STORMWATER EXEMPTION

Requestor: James Nicita
302 Bluff Street
Oregon City, OR 97045

Date: June 12, 2026

On June 5, 2026, Mr. Nicita requested an exemption from Oregon City's stormwater drainage service fees for their property located at 302 Bluff Street. Mr. Nicita explains that the property does not use the City storm drainage system, as evidenced by a topographic survey showing that the property drains in a direction away from the existing public storm lines located in 3rd Street and High Streets.

In order to qualify for an exemption or reduction in the storm drainage fee pursuant to OCMC 13.16.100, an applicant must demonstrate that (1) "the public storm drain service does not receive stormwater from property used or occupied by that person" and (2) provide "evidence of legal disposal of stormwater to a private retention system, private storm drain system, public water body, or other receiving facility."

Although the property slope does suggest that stormwater is primarily contained onsite, this difference in elevation is insufficient to conclusively establish that the City's public stormwater drainage system does not receive any stormwater from this property. Said differently, this property may be a "bowl" but in heavy rain events, this "bowl" will eventually overtop the "bowl" directing water into the City's system. Further, there is no evidence of a legally-approved private retention or storm drainage system onsite or receipt via a public water body that is providing disposal of stormwater.

These findings are further reaffirmed by a denial of a nearly identical request filed by Mr. Nicita in 2021. See attached.

For these reasons, this stormwater exemption and credit request is denied.



Dayna Webb, PE
Public Works Director

Ex. B
P. 1 of 5

From: [James Nicita](#)
Sent: Tuesday, April 27, 2021 11:55 AM
To: John M. Lewis
Subject: Re: Request for exemption from stormwater utility fee

John,

Thanks for your email below. Sorry it has taken a few days to get back to you. I have been on deadline and submitted my materials yesterday.

I appreciate your taking the time to help work through both the exemption question and the Park runoff matter.

I will get with my neighbors and see if we can figure out how shallow the bedrock is in the area we want to put the rain garden.

Jim

On Thursday, April 22, 2021, John M. Lewis <jmlewis@orcity.org> wrote:

Hello Jim. It was good to meet today and discuss all the stormwater related topics we were able to discuss. I have reached out to a couple key staff to confirm better understanding of the public stormwater lines on 3rd Street and the Alley pipeline.

Regarding the stormwater exemption, it's my opinion that the City's public storm drainage system does receive stormwater from your property. Obviously as with many properties, there are rainfall amounts/intensities that may not accumulate to result in offsite flow, but I believe based on the area geology/topography that the City's storm drainage systems receive runoff from your property. However, OCMC provides you with an opportunity to demonstrate otherwise. As we discussed and based on our site walk today, there is some logic that there is no direct connection the public storm drainage system. And we will try to confirm if there is a gravity connection option to the existing storm drainage system on 3rd Street. There is also the option for you to pump your site water to the City's storm drainage system (like the phone company building) and I definitely think there are options for some of your street side roof drains to get to the City's storm drainage system.

The other part of the demonstration is that it include evidence of legal disposal. Depending on what you ultimately do in your back yard there may be an approvable low impact private system but that doesn't exist today and I'm not sure what that

Ex. B
P. 2 of 5

might look like and I'm not aware of a qualifying residential solution. Maybe a storage and re-use system? Something like this would be unique and I'm not familiar with whether this would be a building code approved facility or something else?

13.16.100 - Exemptions, reductions and appeal.

Vacant and unimproved properties within the city are exempt from the charges in Section 13.16.050. Any other person seeking an exemption or reduction in the storm drainage fee, or appealing therefrom, may do so pursuant to a demonstration to the city manager or the manager's designee that the public storm drain service does not receive stormwater from property used or occupied by that person. Such demonstration shall include evidence of legal disposal of stormwater to a private retention system, private storm drain system, public water body, or other receiving facility.

(Ord. 93-1025 §4, 1993: prior code §8-9-10)

I'll check our history of bids for unit costs associated with a French drain in case you and your neighbors pursue a Promenade drainage system.

Hoping to get back to you next week.

Thanks again for your time.

John M. Lewis, P.E.
Public Works Director
City of Oregon City
PO Box 3040
625 Center Street
Oregon City, Oregon 97045
503.657.0891 phone
503.793.2255 cell
email: jmlewis@orccity.org
City web site: www.orccity.org
Bid/RFP site: <http://bids.orccity.org/>

The City of Oregon City is open for business and continues to offer services and programs online and virtually. Some City facilities are open to the public, find current openings [here](#), we encourage visitors to wear a mask, practice physical distancing, and reschedule in-person visits if you are feeling unwell.

The City has installed additional shielding and is providing hand sanitizer as well as occupancy limits to ensure our staff and visitors have a safe, no touch experience. Our goal is to be responsive to our community throughout this pandemic; we appreciate your understanding and cooperation.

[PUBLIC RECORDS LAW DISCLOSURE: This e-mail is subject to the State Retention Schedule and may be made available to the public.](#)

From: James Nicita <james.nicita@gmail.com>

Sent: Friday, April 16, 2021 3:12 PM

To: Tony Konkol <tkonkol@orccity.org>; John M. Lewis <jmlewis@orccity.org>; Eric Hand <ehand@orccity.org>; Bill Kabeiseman <billkab@batemanseidel.com>

Subject: Re: Request for exemption from stormwater utility fee

Good Afternoon,

I am writing with a follow up reminder of my request for exemption from the City's stormwater utility fee.

Thank you for your consideration of this request.

James Nicita
302 Bluff Street

On Thu, Mar 25, 2021 at 12:39 PM James Nicita <james.nicita@gmail.com> wrote:

Good Afternoon:

Pursuant to OCMC 13.16.100, I write to request a full exemption from the City's stormwater utility fee for my property at [302 Bluff Street](#) in Oregon City.

As evidenced by the attached photograph and topographic survey, my property does not use the City storm drainage system. The attached photograph shows my two southern downspouts discharging between the sidewalk and my house. In turn, the attached topographic survey demonstrates that my southern property line is at the sidewalk. Therefore, all storm water runoff on the south side of my house is handled within my property.

The same is true on all other sides of my house. All rainfall onto my property collects at a low point in my backyard, and seeps into the ground. My backyard, in fact, is about 1.5 to 2 feet below the elevation of the sidewalk that runs along Third Street, so there is no possibility of any stormwater runoff flowing onto Third Street, or any other City property or right-of-way.

My house's building footprint sits at the boundary of the McLoughlin Promenade. From my foundation, the Promenade immediately slopes upward towards the

Promenade walk at the cliff above Highway 99E. Not only does my property not drain onto the Promenade, the opposite is true: the City's stormwater runoff off of the Promenade flows onto and into my property.

There is no City drainage along the Promenade, Bluff Street, or Promenade Street. Furthermore, there is no City drainage along Third Street along the south side of my house. The nearest catch basin is quite some distance away, at the northwest corner of High Street and Third Street.

Although I am making this request in the spirit of cooperation, as attorney, and in an abundance of caution, under an attorney's duty of professional responsibility I would be negligent if I did not close this email by noting that in making this request I am not waiving either my or any successor owner's right to seek recoupment of past payments of the stormwater utility fee nor redress or compensation for any possible damages caused by the City's failure to manage its Promenade runoff that flows onto my property, or preventing that runoff from flowing onto my property.

Thank you for considering this request.

James Nicita
[302 Bluff Street](#)
[Oregon City](#)



James Nicita <james.nicita@gmail.com>

302 Bluff St. - Storm Drainage Concerns and Issues

8 messages

James Nicita <james.nicita@gmail.com>

Sat, Jan 23, 2021 at 2:32 AM

To: jlewis@orcify.org, Eric Hand <ehand@orcify.org>

Cc: Bill Kabeiseman <billkab@batemanseidel.com>

Hi John and Eric,

I hope this email finds you well and safe during the pandemic.

I am writing as a follow up to conversations I had with Eric back in 2012, and the below email he sent me back during that time.

I had inquired about the possibility of the City installing storm drainage along Bluff Street and 3rd Street to the storm sewer catch basin and trunk line within High Street at its intersection with 3rd Street. Eric indicated at that time that the water problem had to do with the natural slope of the land, and that there was not a high prospect for the City to install storm drainage at my particular location.

I would like respectfully to revive the request I had made at that time, based on new circumstances.

The problem is this. My house at 302 Bluff Street, and that of my neighbor at 306 Promenade Street, are in an isolated geologic and hydrologic "bowl" that catches the runoff from the McLoughlin Promenade and Bluff/Promenade Street. In addition, the houses at 301 and 311 High Street are also in this bowl, but not to the same extent.

The "bowl" behind my house is in part a creation of the City's construction of 3rd Street, the grade of which is about 1.5 feet higher than the grade of my back yard. This prevents the water that flows from City property into my back yard from flowing out of my back yard. To a lesser extent, the construction of High Street also creates the bowl: prior to settlement, the water would drain down to a lake that used to be along Center Street.

When very severe rain events occur, the flow of water off City property and into the bowl generates correspondingly severe ponding.

During the severe rainstorm of about 10 days ago, the ponding in my backyard was perhaps the most severe it has been in the 14 years I have lived in this house. It was truly a nerve-wracking sight to behold, in the middle of the night. The water was lapping at my foundation footer in the backyard, something I can't remember happening in past storms. Photo #1 shows the track of the large volumes of water that had been flowing off of Bluff/Promenade Street towards my lot during that severe rainstorm.

I think that there is a possibility, even likelihood, that the added severity of the ponding can be attributed to a couple of factors that have arisen since Eric and I first discussed the matter in 2012.

The first has to do with sewer upgrades. Needless to say, I am in total agreement with, and appreciate, the City's efforts to regulate and enforce the abatement of "illicit discharges" into the City's sewer system. The four houses in the "bowl" are some of the oldest in Oregon City (mine is 1868), and had some of the correspondingly and characteristically old and decrepit sewer infrastructure. The houses at 302 Bluff, 306 Promenade, and 301 High Street were formerly on a party line; the lateral for 306 Promenade, in fact, used to run through my backyard towards 3rd Street.

Several years ago, the City directed the owner of 306 Promenade to disconnect from the sewer lateral that went through my backyard, and install a new sewer lateral directly to High Street. Last year, the former owner of 301 and High Street and I each paid out several thousand dollars to separate our two sewers and install new laterals as well.

These three respective sewer upgrades are no doubt good for the three properties, for the City and its sewer system, for the environment, and for the community as a whole.

However, in coming into compliance with the City's sewer regulations, it seems that there is a down side. I was never informed by prior owners of the condition of my sewer lateral, and when it became exposed its advanced state of deterioration became plain. I have little doubt that the three former laterals that formed the collective 3-party sewer were so deteriorated and porous that a fair amount of groundwater was continually seeping into them during high water table.

In other words, during severe rain events, the porous sewer laterals were likely relieving at least some of the ponding because the groundwater was seeping into the sewer laterals and preventing the ponding from becoming really severe. Now that the three houses have new PVC sewer laterals, that isn't happening any more: the groundwater is rising without a relief valve, and all this very likely contributed to the severity of the ponding in my back yard in the recent rainstorm.

A second new factor has to do with the High Street paving project a couple of years ago. As part of that project, the stub of 3rd Street was also paved. This raised the elevation of the pavement. As you can see from the attached Photo #2, there is now a "lip" at the west end of this new pavement. This "lip" effectively acts as a dam. It prevents water from the Bluff/Promenade pavement from flowing out towards High Street, and instead it directs the water right into my lot, and, by extension, into the bowl, and therefore also onto the 306 Promenade lot. In Photo #3, you can see the dark stain where the water was flowing over the sidewalk at the bottom of my front steps and towards the front of my house's foundation.

A third new factor is some type of relief drain outlet that the City recently installed at the top of the gravel drive that extends west from the foot of 3rd Street. This outlet is shown in Photo #4. Photo #5 shows the outline of the water flow that traveled down the gravel drive from this drain outlet to Bluff/Promenade Street. All that water in turn was obstructed by the new lip of pavement on 3rd Street and diverted right into my lot.

While the City has created new factors that add to the load that runs off its property onto my property and my neighbors' property, it has also invested recently in drainage projects to relieve the load of runoff from its property onto some of our neighbors' property. Photo #6 shows the storm drainage project on 2nd Street west of High Street, apparently installed to relieve the runoff problem for the property at 205 High Street, which is also in a hydrologic bowl. Photo #7 shows the storm drainage project the City recently installed in its alley between 311 High Street and the apartment building at 315 High Street.

Needless to say, if it were technically and financially feasible for the City to undertake those two projects, it would seem that a storm drainage project to manage the City's runoff off of the McLoughlin Promenade and Bluff/Promenade Streets onto the property of me and my three neighbors should also be technically and financially feasible.

Regarding Eric's below email from 2012, the reference to the leaky basement had to do with the leaks that I had onto my first floor slab-on-grade; I do not have a basement. I actually solved this problem back at that time. I purchased a brand of expanding cement/concrete and plugged the holes in my foundation footer. I have not experienced leaks onto my first floor slab-on-grade.

On the other hand, in 2019 I had a structural engineer take a look at my foundation and slab-on-grade. Per his attached letter, the cracks in my foundation are more severe than one would expect in a foundation / slab of a similar age. The letter suggests runoff as the likely source of the problem, and I can't imagine another cause of this other than the large volumes of water that my property receives from the runoff from the McLoughlin Promenade and Bluff/Promenade Street.

Eric in his email mentions the "natural slope" of the land towards our houses as the source of the runoff. I agree with this to an extent. On the other hand, the City's creation of imperviousness has a lot to do with the runoff. The Promenade walkway, the park's lawn, and the pavement on Bluff/Promenade Street keep the water from infiltrating; it instead turns into runoff, onto our properties. And, as mentioned above, the City's construction of 3rd Street and High Street contribute substantially to the "bowl" and prevent the City's own runoff from leaving our properties.

I am at the moment working to prepare my house and property for sale sometime this summer. I don't want to pass along a big problem to someone else. I would like to work constructively to see the problem resolved. In addition to the hole-plugging I mentioned, I will be installing a french drain to further protect the foundation. However, that will not resolve the matter. A french drain will only more efficiently send water into my backyard, and reinforce the ponding problem. The principal issue is the great volume of runoff off of the City's property and onto my property and that of my neighbors. I don't feel it appropriate that I invest in a drywell or some other expensive piece of infrastructure to manage the City's own runoff.

Thanks very much for reviewing this email and considering my request.

Jim Nicita
302 Bluff Street
Oregon City

----- Forwarded message -----

From: **Eric Hand** <ehand@ci.oregon-city.or.us>

Date: Fri, Jul 13, 2012 at 10:19 AM

Subject: 302 Bluff St. - Storm Drainage Concern & Leaky Basement

To: jim_nicita@hotmail.com <jim_nicita@hotmail.com>, james.nicita@gmail.com <james.nicita@gmail.com>

Cc: John M. Lewis <jmlewis@ci.oregon-city.or.us>, Tom Morisette <tmorisette@ci.oregon-city.or.us>

Jim:

It was good talking with you the other day and I hope things are going well.

On 7/6/12, I performed a field inspection of the rain drains at your home as well as the City storm drainage in the area. As you know your home sits low, (below the grade of the street), all our storm drainage pipes are at the intersection of 3rd & High St., so drainage options are limited. See map below.

The following is what I observed and some suggestions that might help with the leaky basement:

1. Bluff Street – Unfortunately there is no storm drainage of Bluff St. and the natural slope of the land is toward your home as well as your neighbors. Since this street acts more like a driveway for you and your neighbors the reality of a City installed storm drain project here is low. We will add it to our future project list for known drainage issues.
2. Downspouts near foundation - Your downspouts, (in front and back), empty onto splash blocks right at the base your home's foundation. This is probably fine for summer but, in fall and winter, you want to get as much water as you can away from your home. Suggestion – pipe water from downspouts into back yard away from your home. These could even be temporary above ground pipes used during the wet season and put away in the summer.
3. Rain Garden/Soakage Trench – Consider installing a rain garden/soakage trench in your side and back yard and pipe drainage to these facilities. Again, the object is to keep as much water away from your foundation as possible.
4. Water Proof Basement – I had similar problems with my home and I finally had to excavate along the outside of the foundation wall where the problem was and water proof the exterior of my foundation. Not cheap but, it worked. I can share with you the product I used, vendor etc., if you would like.

Jim, sorry we did not have a quick/easy fix for this issue. Please contact me when your schedule allows and let me know your thoughts on this issue.

Good luck with all your projects!

Eric Hand, Wastewater/Storm Supervisor, Oregon City Public Works

Ex. C
P. 2 of 4

503-657-8241 office
503-969-2311 cell
503-650-9590 fax
ehand@orcity.or



9 attachments

image001.gif
1K



Photo 1.jpg
1422K



Photo 2.jpg
1234K

Ex. C
P. 3 of 4

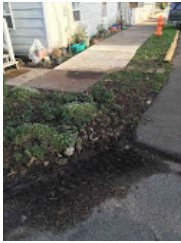


Photo 3.jpg
941K

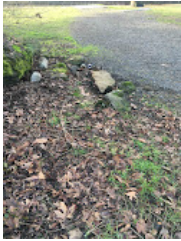


Photo 4.jpg
1273K



Photo 5.jpg
1001K

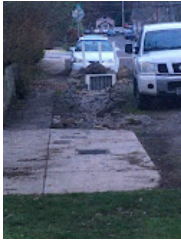


Photo 6.jpg
355K



Photo 7.jpg
656K



2019-10-28_Structural Engineer Observations.pdf
155K

James Nicita <james.nicita@gmail.com>
To: john.czernik82@gmail.com

Sat, Jan 23, 2021 at 7:19 PM

John,

Here is what I sent the Public Works Director and one of his managers last night.

Jim
[Quoted text hidden]

8 attachments

Ex. C
P. 4 of 4

John M. Lewis <jmlewis@orccity.org>

Mon, Jan 25, 2021 at 6:15 PM

To: James Nicita <james.nicita@gmail.com>

Cc: Bill Kabeiseman <billkab@batemanseidel.com>, Eric Hand <ehand@orccity.org>

Hello Jim.

Ex. D

P. 1 of 2

Your depiction of the drainage and the hydraulic "bowl" is correct. I also agree that the sewer work was the right thing for you and your neighbors to correct and as you have suggested likely sealed up the surface and subsurface water from entering the sewer system, so good job resolving this.

Your depiction of the drainage and the hydraulic "bowl" is correct. I also agree that the sewer work was the right thing for you and your neighbors to correct and as you have suggested likely sealed up the surface and subsurface water from entering the sewer system, so good job resolving this.

I spoke to Eric today and he is going to take a look at the site runoff from the Promenade Park and see what can be done with grading and asphalt to direct some of this surface runoff onto the paved street and concrete curbs. I actually think this can be done without much effort, although it will require dry weather. But lets see what Eric comes up with for a recommendation.

The new paving and new catch basins on Third Street were the improvement needed to better manage the street runoff along Third Street. We used our limited stormwater fund to help pay for some of these cost.

I also think the pipe outlets will be resolved with the grading designed to resolve the surface water from the park, but as far as I know these pipes discharge very little water.

Beyond local grading, the only solution to the bowl effect in your back yard would be for you to construct a drain and yet another pipe that could dewater the area into the new catch basin. This is a private property concern as we have actually improved the situation with the installation of the catch basin. According to the plans the catch basin is 4 feet deep so it seems the grade exists to dewater the bowl but I can't say for certain. This would require a plumber and a permit to work in the ROW and in order to get to the catch basin it will impact the sidewalk so sidewalk repairs. I don't know how deep the bowl is but there may be an option to drain some of the bowl (the upper part of the bowl to the curb through a pipe and weep hole in the curb?? I can't confirm given the limited accuracy of our records but both options might be something for a plumber to consider for you.

Anyway lets see what Eric comes up with for a surface water diversion recommendation. I should know more in a couple days.

Thanks again.

John.

From: James Nicita <james.nicita@gmail.com>
Sent: Saturday, January 23, 2021 2:32 AM
To: John M. Lewis <jmlewis@orccity.org>; Eric Hand <ehand@orccity.org>
Cc: Bill Kabeiseman <billkab@batemanseidel.com>
Subject: 302 Bluff St. - Storm Drainage Concerns and Issues

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[Quoted text hidden]

James Nicita <james.nicita@gmail.com>
To: "John M. Lewis" <jmlewis@orccity.org>
Cc: Bill Kabeiseman <billkab@batemanseidel.com>, Eric Hand <ehand@orccity.org>

Tue, Jan 26, 2021 at 8:59 AM

Thanks, John.

Attached is one idea that I have shared with my three neighbors. I haven't gotten a reaction yet. It is one idea, but I am sure there are others.

Jim

[Quoted text hidden]



2021-01-24 Bluff Street Drainage Concept.pdf
2613K



James Nicita <james.nicita@gmail.com>

Bluff Street drainage follow up

John M. Lewis <jmlewis@orcity.org>

Fri, Jun 4, 2021 at 9:27 AM

To: James Nicita <james.nicita@gmail.com>

Cc: Eric Hand <ehand@orcity.org>, Vance Walker <vwalker@orcity.org>

Thanks James. I have asked Vance Walker, Assistant Public Works Director to help coordinate this project. It's a bit odd given its in the park and also acts as a public access road. He has been working with the Parks Department and the Street Department to assemble a inhouse paving project, which would include any needed asphalt berms/curbs. I've copied Vance as he knows more about the coordination and timing. He is off today but can respond next week. I do not anticipate any plans or written graphic specs. These kinds of in-house repaving/retrofit projects are best when field designed and custom fit to the lay of the land. I also don't anticipate impacts to parking other than possibly when the work is going on.

In addition I've attached a graphic Eric sent me a while back about the storm pipe in the street and the proceeding emails. It's a little challenging but the numbers represent survey rod readings of ground shots and a shot on the storm pipe in 3rd Street. Bottom line is that there is a little over 4 feet of fall from the low point in your back yard to the flow line of the storm pipe in 3rd Street. So one solution to help with the drainage in your back yard would be to build a lateral. I recognize this is still complicated by the tough ground conditions required for a lateral and there may be conflicts with the water and sewer lines between your yard and the end of the storm line but we don't have much more information to gather without a fair amount of invasive and time consuming utility line verification.

From the recent waterline as-builts I do believe the water main would be deep enough to go over. And you may be most familiar with the sewer laterals that you recently had installed but I suspect the storm would fit under these lines. Anyway its an update.

Thanks.

[Quoted text hidden]

----- Forwarded message -----

From: Eric Hand <ehand@orcity.org>

To: "John M. Lewis" <jmlewis@orcity.org>, Vance Walker <vwalker@orcity.org>, John Burrell <jburrell@orcity.org>

Cc:

Bcc:

Date: Fri, 23 Apr 2021 22:17:44 +0000

Subject: RE: High Street Area Storm Drainage questions

All:

Ex. E
P. 1 of 5

2026-07-23, 22:59

Page 118 of 173

Took some grade shots today at 302 Bluff:

- Backyard
- Top of Asphalt @ C.O.
- Pipe IE at C.O.

See attached & hope they help!

Thank you;

Eric

From: John M. Lewis <jmlewis@orccity.org>

Sent: Friday, April 23, 2021 8:11 AM

To: Eric Hand <ehand@orccity.org>; Vance Walker <vwalker@orccity.org>; John Burrell <jburrell@orccity.org>

Subject: RE: High Street Area Storm Drainage questions

OK. Well the catch basin may meet the design, but it's a little high which didn't get caught during construction.

Eric the CB is a little bit too high to collect ponding in the alley and will need some modifications to resolve the area drainage. Take a look.

Next week I want to put out heads together around some concerns and ideas I have about Jim Nicita and the properties along Bluff Street.

Vance I'm including you because my ideas would involve the street division, coordination with Parks, and may need to be timed and coordinated with a possible grant. Several moving pieces that affect our approach. If you can set up a meeting that works for the three of us that would be great.

From: John Burrell <jburrell@orccity.org>

Sent: Friday, April 23, 2021 6:04 AM

To: John M. Lewis <jmlewis@orccity.org>; Eric Hand <ehand@orccity.org>

Subject: RE: High Street Area Storm Drainage questions

The catch basin in the alley was added per request from Eric – the roof drains from the apartments and the area behind the apartments had been causing flooding in the adjacent homes basement and back yard, the catch basin is supposed to collect the drainage. The catch basin is installed per design, I told Eric that he would need to install a rock channel to it to direct the flow.

JB

From: John M. Lewis <jmlewis@orccity.org>

Sent: Thursday, April 22, 2021 5:13 PM

Ex. E
P. 2 of 5

2026-07-23, 22:59

To: John Burrell <jburrell@orccity.org>; Eric Hand <ehand@orccity.org>

Subject: High Street Area Storm Drainage questions

I had a conversation with Jim Nicita this afternoon and we're curious about the purpose of the storm line that is in the alley and adjacent to the apartments. The catch basin sits high so I'm not sure it acts as an area drain and it's new so I don't know if it was done to replace an old line and has services on it or what. Can either of you shed any light on this line? CB-1A.

<< File: High Street composit utility 2.pdf >>

Also wanting some field confirmation that the 3rd Street storm line at the cleanout. The as-builts suggest its over 4 feed deep but the catch basin as-builts are wrong so I'm curious if we can determine the depth of the clean-out. I'm trying to figure out if there is a lateral option that might be deep enough to serve James Nicita? Drainage Construction Note 4.

<< File: 3rd and high storm 2.pdf >>

John M. Lewis, P.E.
Public Works Director
City of Oregon City
PO Box 3040
625 Center Street
Oregon City, Oregon 97045
503.657.0891 phone
503.793.2255 cell
email: jmlewis@orccity.org
City web site: www.orccity.org
Bid/RFP site: <http://bids.orccity.org/>

The City of Oregon City is open for business and continues to offer services and programs online and virtually. Some City facilities are open to the public, find current openings [here](#), we encourage visitors to wear a mask, practice physical distancing, and reschedule in-person visits if you are feeling unwell.

The City has installed additional shielding and is providing hand sanitizer as well as occupancy limits to ensure our staff and visitors have a safe, no touch experience. Our goal is to be responsive to our community throughout this pandemic; we appreciate your understanding and cooperation.

***PUBLIC RECORDS LAW DISCLOSURE:** This e-mail is subject to the State Retention Schedule and may be made available to the public.*

3 attachments



302 Bluff, Grade Shots, 4-23-21.pdf
2082K



302 Bluff, Grade Shots, 4-23-21.pdf
2082K

Ex. E
P. 3 of 5

2026-07-23, 22:59



RE: High Street Area Storm Drainage questions.eml
2871K

Ex. E
P. 4 of 5





CITY OF OREGON CITY

Staff Report

625 Center Street
Oregon City, OR 97045
503-657-0891

To: City Commission
From: Public Works Director John M. Lewis, PE

Agenda Date: 1/5/2021

SUBJECT:

Living Hope Church Monthly Stormwater Fee Reduction and Overpayment Reimbursement

STAFF RECOMMENDATION:

In accordance with the November 1, 2021, Director Lewis memo, authorizing the City's Finance Department to issue a 30-month lookback reimbursement in the sum of \$12,909.60, Staff recommends that the City Commission support the analysis and staff determination for an overpayment reimbursement.

EXECUTIVE SUMMARY:

On July 26, 2021, the City was notified that the Living Hope Church had been charged by the City a stormwater fee that was based on 78 Equivalent Residential Units (ERU) and that this amount was not calculated correctly. The notice suggested that the City had been using an inappropriate Development Intensity Factor (DIF) instead of factor more indicative of the land. The Church requested that their monthly stormwater fee be adjusted to reflect the correct ERU. As per a November 1, 2021, memo from Public Works Director John Lewis, this adjustment request has been verified as valid and honored. The Church is now being charged a stormwater utility bill based on 38.4 ERUs.

In addition to the monthly bill correction, church members Mr. Kim Foster and Mr. Larry Marl along with correspondence from the church Paster Mr. Dwight Walker have indicated they expect the City to provide the Church with a lookback reimbursement for the 13 years and 6 months (March 2008 to September 2021) of overbilling and overpayment. Mr. Lewis, within his authority as the Department Director has approved a 30-month lookback in the amount of \$12,909.60.

Before the City Commission is a question of whether the City is wishing or obligated to apply a longer lookback period and pay the Church something in addition to the 30-month reimbursement.

BACKGROUND:

The Living Hope Church property has a stormwater billing history that goes back over 32 years. During that time (July 1989 to September 2021) the utility bill has been either under billed or overbilled by the City using incorrect Equivalent Unit Rate (ERU) multipliers. In total the account has overpaid a total of \$44,002.45.

Billing Period	Amount billed	What should have been billed	Overpayment/(Underpayment)
July 1989 to February 2008	\$591.74	\$11,302.23	(\$10,710.49)
March 2008 to September 2021	\$107,767.92	\$53,054.98	\$54,712.94
		Total	\$44,002.45

The City's Stormwater Utility started in July 1989 at which time the Living Hope Church included a smaller building and impervious footprint, however the ERU used for the account from July 1989 to February 2008 was 1. The correct ERU should have been calculated at 19.1. In 2008 the church completed a significant redevelopment adding on to the building and developing a paved parking lot as well as the associated stormwater and other utility improvements. This change is what triggered the application of a new ERU; however, at the time the church's ERU was calculated based on the entire area of the property being impervious rather than completing the ERU calculation using the appropriate surface type development intensity factors. As such, the stormwater fee was calculated based on 78 ERU instead of the actual ERU calculation applicable for the property which has since been established to be 38.4 ERU (2021) using runoff coefficients appropriate for the land types (Exhibit B).

On July 26, 2021, Brian Lee with Pace Engineers sent Tony Konkol an email sharing concerns about the current stormwater fee for the Living Hope Church located at 19691 Meyers Road. Brian went on to explain his finding that the ERU of 78 was not indicative of the pervious and impervious coverage of the property and he also pointed out that based on his review of OCMC 13.16.020, the City should be charging the Living Hope Church something less based on a OCMC provision that allows Conditional Use development to be charged a reduced rate by applying a Conditional Use Development Intensity Factor.

In Oregon City, church use is a conditional use development and as such working further with Brian resulted in a graphic (Exhibit A; plot date 8/12/21) which depicts four surface categories and the associated area measurements. This information was used in determining an updated Stormwater Rate for the Living Hope Church using a varied composite runoff factor calculation (Exhibit B).

Overpayment Reimbursement and the Overcharge Lookback Evaluation

The City has a longstanding practice of looking back 6 months when over billing errors are reported. Based on the City's typical lookback practice, the Living Hope Stormwater Utility Account would be credited for the maximum six months or \$2,582.28 (\$430.38 x 6 months).

The church member and pastor request was to look back 13 years. The OCMC does not address lookback provisions and the City Attorney was not able to find a statute or rule that directly addressed the Living Hope Church situation. However, he did offer the following, which was considered in the November 1, 2021, memo, and conclusion from Mr. Lewis:

Mr. Kabeiseman wrote:

"I was not able to find a statute or rule that directly addressed your question below, regarding the statute of limitations, but there are three that could be applicable:

- 2 years, based on ORS 12.110, which generally governs "tort" claims for injury to persons or property. This seems like the least likely outcome, as it really doesn't seem like a tort.*
- 3 years, based on ORS 12.100, which provides the limitation period for "official act or penalty," but (1) appears to be directed at "sheriffs or constable" and the language in subsection (2) doesn't seem quite on point either. However, the PUC has also adopted a three year period as the maximum refund when a large telecom utility overcharges a customer. OAR 860-21-0135(1)(b).*
- 6 years based on ORS 12.080, which is the general statute of limitations on contract claims, which I assume we have with our clients.*

Having said that, OCMC 13.16.100 provides an express opportunity to seek a reduction or to appeal a charge, and the church never pursued that, so we would at least have an argument that they've waived any chance for a refund."

To date, the church has yet to submit records supporting their lookback claim. However, we did seek out email correspondence from the City's Deputy Finance Director, Ryan Bredehoeft, who had documentation of correspondence on Church topics that traces back to February 7, 2019. In 2019, church member Dean Brown was inquiring about the City's stormwater charges and was seeking a reduction in charges. His reasoning did not bring forth the ERU overage but instead was based on his concern that the church should not need to pay a stormwater fee because in 2008 they were required to build stormwater facilities that reduced or eliminated stormwater from reaching the City's stormwater system. The ERU rate value was not raised as a concern and was not a focus by staff, nor was it raised as a concern or question until July 26, 2021. OCMC 13.16.100 provides an express opportunity to seek a reduction or to appeal a charge, however, the church had not pursued a reduction due to their ERU

rate until July 2021. As such, essentially this code provision is not perfectly applicable.

Despite the details of the church's 2019 inquiry, and to rectify what is a real overcharge, rather than using the City's lookback practice of six months, it was determined that the lookback period should be extended to include 30 months. This includes stormwater fee overcharges back to and including March 2019, which is the first billing period after the church representative Dean Brown broached the topic of excessive stormwater charges with the City. This 30-month lookback includes stormwater fees collected in the amount of \$25,428 using the 78 ERU multiplier, and then applying the 38.4 ERU multiplier resulting in the corrected stormwater fees which would have been \$12,518.40. The difference of \$12,909.60 is the total amount of the lookback overcharge and will be paid via reimbursement check.

The Church is pressing for a full refund looking back to 2008 as the Living Hope Church congregation is made up of young families through retirees, with everyday occupations such as our teachers, nurses, electricians, produce managers, business owners, executives, technicians, maintenance workers, bus drivers, and engineers, among many other such professions. The assertion is members were freely giving their hard-earned money for the benefit of the Oregon City community, with the expectation that their donations were going to serve residents or homeless, houseless, and food insecure teens to women's health care, and that money owed can best support making Oregon City a better place to live, and work.

OPTIONS:

1. Move to approve an amount in addition to the \$12,909.60 already paid.
2. Move to approve the amount requested by the church using a 13 year and 6 month lookback for a total reimbursement of approximately \$54,712.94; the actual amount will need to be validated by the Finance Department.
3. Defer the decision and continue the matter to a future meeting to address concerns beyond what the City Commission feels can be addressed tonight. If this option is selected, direct staff on the kind of information of interest for further consideration.

Jakob Wiley

From: James Nicita <james.nicita@gmail.com>
Sent: Monday, August 3, 2026 4:02 PM
To: Denyse McGriff; Adam Marl; Mike Mitchell; Rocky Smith, Jr.; Scott Wilson
Cc: Tony Konkol; Dayna Webb; Jakob Wiley; City Recorder Team; crichter
Subject: Reply Memorandum Agenda Item 9(a) City Commission Regular Meeting August 5, 2026 Stormwater Utility Fee Exemption Request 302 Bluff Street
Attachments: Ex. A Nicita-Webb Email Correspondences.pdf; Ex. C The Blue at Abernethy Creek Exemption Application.pdf; Ex D 1996 Flood The Blue at Abernethy Creek.pdf; Ex. B 2026-06-22 Bridgetown Invoice Dog Attack.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Commissioners:

I respectfully submit this reply and supplemental memorandum regarding my above-referenced request for exemption from the stormwater utility fee under former OCMC 13.16.100. I request that these comments and exhibits be added to the record of this proceeding.

I write after reading the staff report, which contains some statements that require a reply, and has some omissions. Please note that I do not attribute my concerns to Ms. Webb. I attribute the perfunctory denial of my application to the city manager. Furthermore, I anticipate that the city manager will be making every effort, particularly through the city attorney, his agent and employee under the charter, to convince the Commission to deny my appeal.

I will take the statements that I feel require a reply in sequence.

Burden of Demonstrating Eligibility

The staff report states, "Under former OCMC 13.16.100, the burden of demonstrating eligibility for an exemption rested with the applicant." The implied message here seems to be that my original application was simply inadequate, and therefore merited rejection.

I believe my original application satisfied the demonstration. It is a very simple matter that my stormwater drains into my backyard, and no evidence has been presented to contradict that.

Furthermore, however, under the City's own precedents, if an initial application has been deemed insufficient, the practice has been to request further information, not to reject the application out of hand.

Here is the link to the first hearing on The Blue at Abernethy Creek:

<https://oregoncityor.portal.civicclerk.com/event/3199/overview>

Excerpts from this hearing are included in Ex. C, attached to this email.

As Ex. C, pp. 3-4 of 7 demonstrates, whereas my application included a survey from a registered surveyor, the initial application of The Blue at Abernethy Creek only included aerial Google Earth photographs, with no topographic information, but rather with some barely-discernable orange-colored arrows superimposed on the parking lot and pointing to Abernethy Creek.

This application was found to be deficient, the staff report in that case stating, “offering only Google imagery noting the approximate location of storm drains is insufficient.” (Ex. C, p. 5 of 7.) But unlike my application, in that case the applicant was not issued a peremptory, perfunctory denial, but rather was requested to provide further information. That could have been done in my case as well. The city manager is clearly discriminating against me in this proceeding.

Amendment to OCMC 13.16.100

The last paragraph of the staff report for this proceeding includes this statement: “On July 15, 2026, while the appeal was pending, the City Commission adopted amendments to OCMC 13.16.100 that eliminated the exemption process for residential properties.”

This certainly seems to be a set-up by the city manager to try, through the city attorney, to convince the Commission that my appeal should be denied based on the change in the ordinance.

Here's where the problem of the incomplete record presented to the Commission comes into play. The record in fact is very incomplete, and does not include Ms. Webb's statement to me that the appeal would be heard under the language of the ordinance that was in effect at the time I commenced my appeal.

Ex. A consists of email correspondences between Ms. Webb and myself on this matter, and which have not been provided to the Commission as part of the record of this appeal proceeding.

I commenced my appeal on June 12, 2026, while the former version of OCMC 16.13.100 was in effect. (Ex. A, p. 1 of 31.) On June 15, 2026, Ms. Webb informed me that the appeal would be scheduled for the City Commission meeting of July 1, 2026, and she requested that I submit my memorandum by Monday, June 22, at 8 am. (Ex. A, p. 4 of 31.)

The former version of OCMC 13.16.100 was in effect on June 12, June 15, and July 1, 2026.

Shortly after 8 am on June 22, I submitted the substantive draft of my appeal memorandum to Ms. Webb, and indicated that I was still working on preparation of my exhibits. (Ex. A, p. 6 of 31.) Shortly thereafter, I submitted some of the exhibits for informational purposes. (Ex. A, p. 18 of 31.) The appeal memorandum itself was therefore also submitted when the prior code was in effect.

Approximately two hours later, my cat was attacked in my yard by a young off-leash pit bull terrier. (Ex. B.) I wrote Ms. Webb at about 10:33 am indicating that I was taking my cat to the ER vet, and requested a setover of my appeal proceeding. (Ex. A, p. 22 of 31.) (Fortunately, my cat has recovered from the attack, and the dog's owner paid the veterinary bill.)

Ms. Webb offered July 15 as an alternative date, but indicated she would be out of town on that date. (Ex. A, p. 24 of 31.) I replied that my preference would be, for the purposes of continuity, to have her present at a later commission meeting, as long as I had the assurance that my appeal would be heard under the version of the code that was in effect at the time I had filed my application. (Ex. A, p. 26 of 31.) Ms. Webb replied, **“Yes, the appeal will be processed under the code that was in effect at the time of the appeal.”** Ms. Webb requested that my materials be submitted by July 24. (Ex. A, p. 27 of 31.) I submitted my updated materials on that date. (Ex. A., p. 29 of 31.)

Additional Evidence of Disparate Treatment

In addition to the concerning statements in, and evidentiary omissions from, the staff report, there are other indications of the city manager's disparate treatment of my application and denial of information to the Commission in order to steer it into denying my application.

In the initial application for The Blue at Abernethy Creek, the applicant did not provide any information on what the total amount of the refund would be dating back to the original property purchase. The City, however, did

generate that schedule, and entered it into the record of the proceeding as part of the deliberations. (Ex. C, p. 7 of 7.)

The city manager has prepared no such schedule for this proceeding. The Commission should therefore set this hearing over to the next regular Commission meeting and require the city manager to prepare a schedule of the refund that would be due to me should the Commission grant my request. It does not have to be by month, as in the case of The Blue at Abernethy Creek. It could be done by year, and would likely still fit onto one page.

Finally, as another example of disparate treatment, I would like to illustrate again how my application is being treated differently than other past applications, and particularly The Blue at Abernethy Creek.

As part of the perfunctory, peremptory denial of my application, the June 12 denial states,

Although the property slope does suggest that stormwater is primarily contained onsite, this difference in elevation is insufficient to conclusively establish that the City's public stormwater drainage system does not receive any stormwater from this property. Said differently, this property may be a "bowl" but in heavy rain events, this "bowl" will eventually overtop the "bowl" directing water into the City's system.

As I stated in my July 24 memorandum, there is no evidence that this has ever happened or ever will happen on my property, and that if it ever did, it would be because of the City's own stormwater runoff intruding onto my property.

By the logic of the denial letter in my case, Mr. Konkol should also have recommended denial of the application of The Blue at Abernethy Creek. Concrete evidence, namely the 1996 flood, shows that in that torrential rain event Abernethy Creek overtopped its banks, flooded, and pushed all of the rainwater falling on The Blue at Abernethy Creek north past Abernethy Road. As that rainwater/floodwater receded, it went into the City's storm drain system along Abernethy Road, thus invalidating its eligibility for an exemption. (Ex. D.)

As the Commission nevertheless granted the exemption for The Blue at Abernethy Creek, it cannot turn around and deny my application based on some unsubstantiated "overtopping the bowl" argument, again since there is no evidence that "overtopping the bowl" has ever, or will ever, occur.

Thank you for your consideration of these comments.

James Nicita
Oregon City



James Nicita <james.nicita@gmail.com>

Appeal Request: Exemption from storm water utility fee pursuant to OCMC 13.16.100, and for refund

James Nicita <james.nicita@gmail.com>
To: Dayna Webb <dwebb@orcity.org>

Fri, Jun 12, 2026 at 3:18 PM

Hi Dana,

Thanks very much for your response below. I appreciate your getting back to me in a timely manner.

I would like to make an appeal to the City Commission on this matter. Looking back to the appeal of The Blue at Abernethy Creek, the City's slide presentation would suggest that such appeals are made pursuant to OCMC 13.16.100:

<https://oregoncityor.portal.civicclerk.com/event/3199/files/attachment/2703>

I don't see an application form for such an appeal, so if you could enlighten me on how to initiate such an appeal, I would appreciate it.

Thanks, and please stay cool this weekend.

James

On Fri, Jun 12, 2026 at 9:38 AM Dayna Webb <dwebb@orcity.org> wrote:

James-

Attached you will find my decision on your request for exemption from the stormwater utility fee.

In regard to the Sanitary Sewer Lateral Program, the work on private laterals occurs with a city project, when we are addressing the main sewer line. Work done prior to the city project coming through, is not eligible for reimbursement.

Thanks,

Dayna

Dayna Webb, P.E.

Public Works Director

City of Oregon City

Ex. A
P. 1 of 31

2026-08-02, 18:12

PO Box 3040
13895 Fir Street
Oregon City, Oregon 97045
dwebb@orccity.org

971.204.4633 Direct
503.312.5648 Mobile

From: James Nicita <james.nicita@gmail.com>

Sent: Wednesday, June 3, 2026 8:03 PM

To: Dayna Webb <dwebb@orccity.org>

Subject: Request for exemption from storm water utility fee pursuant to OCMC 13.16.100, and for refund

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Dana,

I hope this email finds you well. I am writing to submit my application per OCMC 13.16.100 for an exemption/adjustment to the stormwater utility fee described in chapter 13.16, and applied to my house at 302 Bluff Street. Pursuant to the precedent set by the City Commission in the request of "The Blue at Oregon City" on September 17, 2025, and prior to that a church up on Meyers Road, I respectfully request a full exemption of the fee retroactive to when I purchased my home. This was in January of 2007. Here is the link to the September 17, 2025 hearing:

<https://oregoncityor.portal.civicclerk.com/event/3199/overview>

If I may, I would like to open this application with an apology of sorts. I have a diagnosis of severe ADHD (for which I would be happy to supply you with the medical evidence), and as a result it can be very difficult for me to get things done without an external impulse like a deadline or an urgent situation. This is the case even for fairly simple tasks, like this application. The current City Commission proceedings to amend chapter 13.16 are obviously such a deadline / urgent situation. I want to submit my application under the rules as they currently stand.

That said, here is my situation. As evidenced by the attached photograph and topographic survey, my property does not use the City storm drainage system. The attached photograph shows my two southern downspouts discharging between the sidewalk and my house. In turn, the attached topographic survey demonstrates that my southern property line is at the sidewalk. Therefore, all storm water runoff on the south side of my house is handled within my property.

The same is true on all other sides of my house. All rainfall onto my property collects at a low point in my backyard, and seeps into the ground. My backyard, in fact, is about 1.5 to 2 feet below the elevation of the sidewalk that runs along Third Street, so there is no possibility of any stormwater runoff flowing onto Third

Street, or any other City property or right-of-way.

In other words, topographically I am in a bowl, and no stormwater flows out of the bowl. Depending on the severity of the storm, my backyard experiences ponding at various levels before the seepage into the ground occurs.

My house's building footprint sits at the boundary of the McLoughlin Promenade. From my foundation, the Promenade immediately slopes upward towards the Promenade walk at the cliff above Highway 99E. Not only does my property not drain onto the Promenade, the opposite is true: the City's stormwater runoff off of the Promenade flows towards my property. Prior to the City's repaving of Bluff Street (around 2021 or 2022, if my memory is serving me correctly), which finally included a curb/bump to deflect the runoff around my property and onto Third Street, the City runoff volume was such that in severe storm events my backyard turned into a virtual lake that threatened to intrude into the house. Since the repaving project, however, this has never occurred. Ponding itself is now rather rare.

There is no City pipe drainage along the Promenade, Bluff Street, or Promenade Street. Furthermore, there is no City drainage along Third Street along the south side of my house. The nearest catch basin is quite some distance away, at the northwest corner of High Street and Third Street.

In considering my request, I hope you will consider some equity issues. First, for nearly fifteen years of my ownership of 302 Bluff Street, the City runoff off of Bluff Street carried at least trace amounts of metals and chemicals leaked from the automobile traffic on Bluff Street. I am confident that at least some of that pollution remains in the soils.

Second, I am attaching the September 5, 2025 letter I received from the City regarding the City's offer to pay for replacement of deteriorated sewer laterals. Unfortunately, I had already paid about \$6,000 to have my lateral replaced in 2018 or 2019 I believe (the permits should be on file with the City). I don't think the amount I am requesting for a refund in the storm water utility fee going back to 2007 would come close to the \$6,000 I paid as a responsible citizen and which now apparently renders me ineligible for the City sewer lateral rehabilitation program. Of course, if the latter programs' rules and regulations have provisions for reimbursing someone who has already paid for the rehabilitation, I would be interested in exploring that as well; I feel like I have been inadvertently penalized for being a responsible homeowner.

If you need any additional information regarding this application, I would be happy to provide it to you.

Thank you for considering my application.

James Nicita
302 Bluff Street
Oregon City
503-799-0725

Ex. A
P. 3 of 31

2026-08-02, 18:12



James Nicita <james.nicita@gmail.com>

Appeal Request: Exemption from storm water utility fee pursuant to OCMC 13.16.100, and for refund

Dayna Webb <dwebb@orccity.org>
To: James Nicita <james.nicita@gmail.com>

Mon, Jun 15, 2026 at 12:19 PM

James-

I will use the email string below as the original request, and as the request for appeal. This will be included in the packet to City Commission. The item is scheduled for July 1, 2026 at the Regular City Commission Meeting.

In the original email, you share some personal medical information. The email is a public record, but before I prepare the commission packet, please confirm if you would like one of the options below related to the paragraph, where the yellow highlighted section would be redacted:

- **Option 1:** If I may, I would like to open this application with an apology of sorts. I have a diagnosis of severe ADHD (for which I would be happy to supply you with the medical evidence), and as a result it can be very difficult for me to get things done without an external impulse like a deadline or an urgent situation. This is the case even for fairly simple tasks, like this application. The current City Commission proceedings to amend chapter 13.16 are obviously such a deadline / urgent situation. I want to submit my application under the rules as they currently stand.
- **Option 2:** Redact the full paragraph.
- **Option 3:** Redaction suggested by you.
- **Option 4:** No Redaction.

My staff report & attachments need to be completed on Monday 6/22 for the packet. Please provide a response by Monday, June 22 @ 8am, to allow time to prepare the document appropriately for the packet.

[Quoted text hidden]



James Nicita <james.nicita@gmail.com>

Appeal Request: Exemption from storm water utility fee pursuant to OCMC 13.16.100, and for refund

James Nicita <james.nicita@gmail.com>
To: Dayna Webb <dwebb@orccity.org>

Mon, Jun 15, 2026 at 1:28 PM

Hi Dayna,

Thank you very much for the courtesy. I have always been quite open about my various diagnoses; no redaction will be necessary.

Best regards,

James

[Quoted text hidden]



James Nicita <james.nicita@gmail.com>

Draft SUF Appeal

James Nicita <james.nicita@gmail.com>
To: Dayna Webb <dwebb@orccity.org>

Mon, Jun 22, 2026 at 8:19 AM

Hi Dayna,

Here is the draft version of my appeal.

This is the essential text of the appeal.

I am still working on assembling the attachments, which I have to organize and number. My aim is to get the final draft with attachments to you by noon.

Thanks,

Jim Nicita
302 Bluff Street

 **Nicita SUF Appeal.pdf.pdf**
2639K

DRAFT

APPEAL MEMORANDUM

I, James Nicita, 302 Bluff Street, Oregon City, respectfully appeal the June 12, 2026 denial by the director of public works Dayna Webb of my June 5, 2026 application for an exemption from the Oregon City stormwater utility fee pursuant to OCMC 13.16.100.

The June 12, 2026 denial incorporates by reference an April 22, 2026 email to me from former public works director John Lewis, and refers to the latter email as an earlier "denial." I respectfully disagree with this assertion. In one part of the email, Mr. Lewis wrote, "[I]t's my opinion that the City's public storm drainage system does receive stormwater from your property. However, in the same paragraph, he then said, "[T]here is some logic that there is no direct connection to the public storm drainage system." As the factual background of this memorandum will explain, the issue simply never came to a resolution at that time.

But, even if Mr. Lewis's April 22, 2021 email to me did in fact constitute a "denial," I am not too late to file an appeal. Please find attached the staff report from the January 5, 2022 appeal by the Living Hope Church on the stormwater utility fee. On page 3, then- city attorney Mr. Kabeiseman opined that the stormwater utility fee represented a contractual relationship between the City and its customers, and therefore was subject to the six-year statute of limitations on contract claims set forth in ORS 12.080:

12.080 Action on certain contracts or liabilities. (1) An action upon a contract or liability... shall be commenced within six years.

So, if one were to argue that Mr. Lewis's April 22, 2021 email constituted a "denial," I could respond by saying that such a "denial" contravened the stormwater utility fee code contractual relationship -- it would represent a "breach" of contract -- and that I am still within the limitations period to seek redress against that breach. That limitations period would not expire until April 22, 2027.

If, on the other hand, the utility fee is not a contract, then the applicable statute of limitations would be even longer: namely the catch-all ten-year statute of limitations in ORS 12.140:

12.140 Actions not otherwise provided for. An action for any cause not otherwise provided for shall be commenced within 10 years.

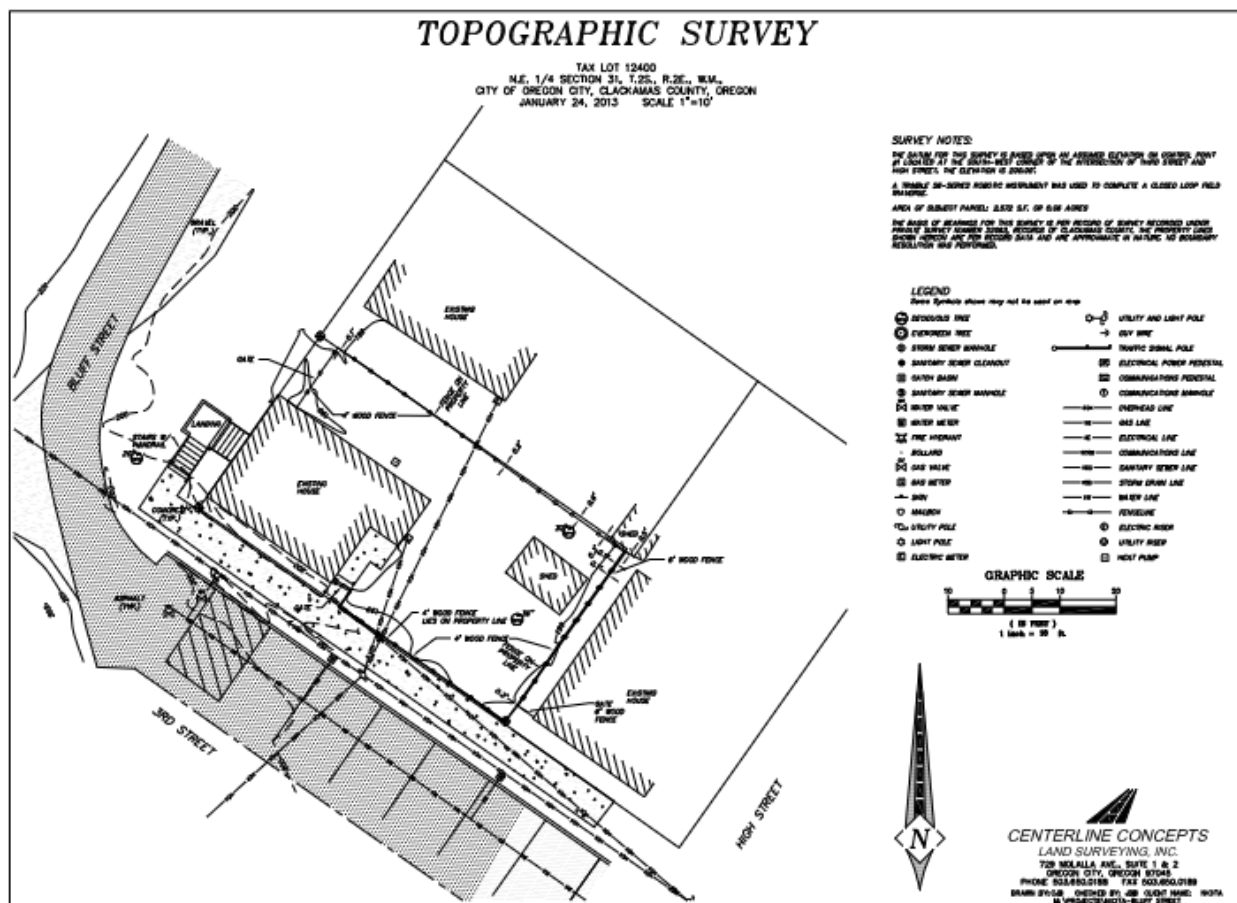
Factual Background

A. Existing Conditions

The rear of my house forms a "bowl" into which the stormwater runoff from the roofs of my house and shed drain. This bowl is both natural and constructed. My lot naturally slopes downward from my western property line (which borders the McLoughlin Promenade) to the

DRAFT

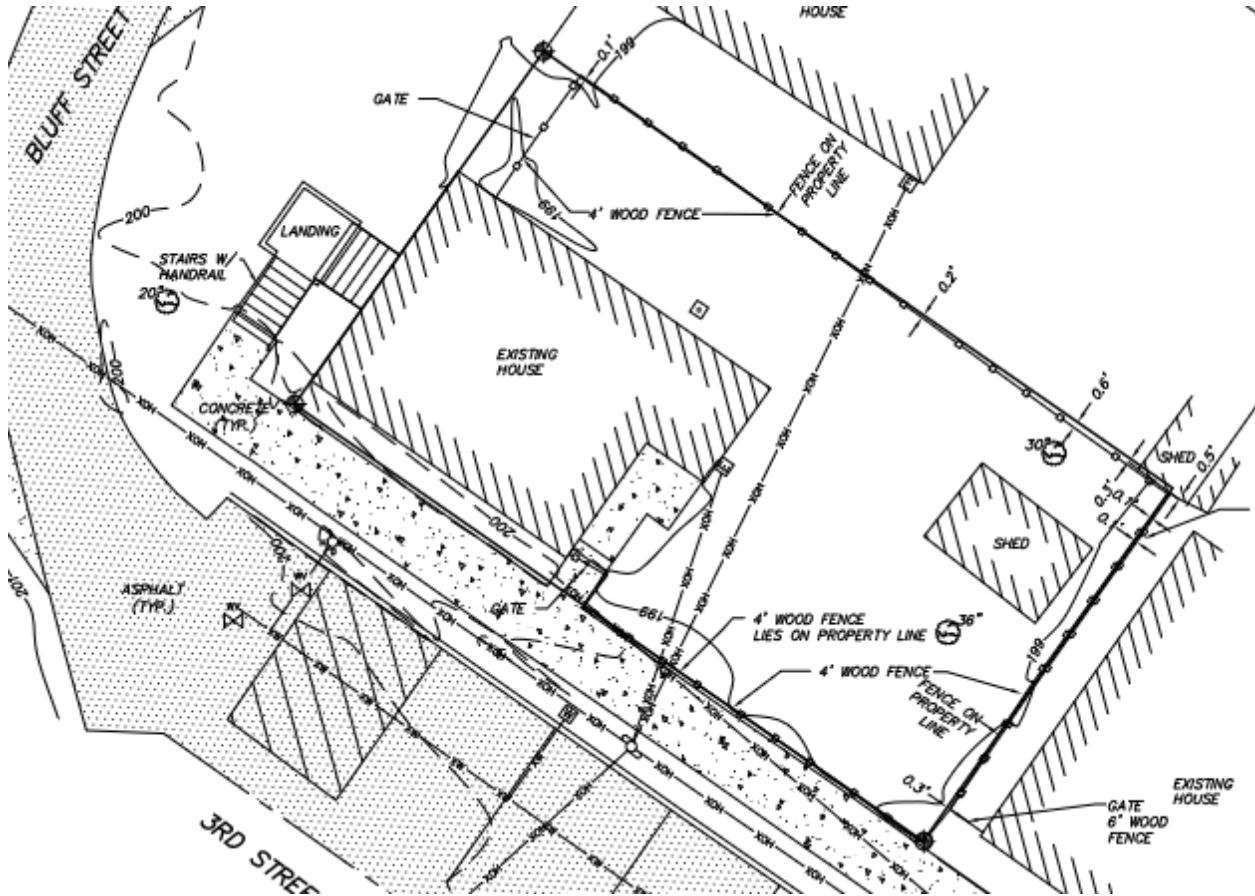
backyard. To the north, there is a wooden fence installed by my neighbors at 306 Promenade, as well as their house, which is built on a foundation of stone basalt. To the east is the house of my neighbor at 3 High Street. This house includes a full basement. The compacted grade of High Street also forms a constructed part of the bowl. To the south, along my backyard, the compacted grade of Third Street forms part of the bowl. There is a grade differential of approximately 1.5 feet between my backyard and the compacted subsurface of the Third Street sidewalk. The differential becomes greater as one moves towards the center of the backyard, in front of the shed in particular. Also on the south side, there is an approximately 3-foot setback of permeable soil/gravel between the sidewalk and my house, into which my two southern gutters discharge. The sidewalk is fully within the right-of-way of Third Street. The foregoing is generally illustrated by this property survey I commissioned:



A close-up of the survey is on the next page. It shows my sidewalk at level 200, and the perimeter of my back yard at level 199:

Ex. A
P. 8 of 31

DRAFT



The surrounding topography also forms a bowl, on a larger scale. I generated the below graphic off of OC Webmaps. The graphic includes two layers: 2-foot topographic lines and storm sewer infrastructure:



Ex. A
P. 9 of 31

DRAFT

This larger-scale bowl demonstrates that runoff from the McLoughlin Promenade along the entire block from Third Street to Fourth Street has in the past burdened the four properties at 302 Bluff Street, 306 Promenade Street, 301 High Street, and 311 High Street. As will be discussed below, the 2021 Bluff Street repaving project greatly ameliorated this problem, by including a “bump” along the eastern edge to divert runoff around the four properties, into the north gutter of Third Street, and into the catch basin at the northwest corner of Third Street and High Street.

Nevertheless, a smaller amount of runoff from the Promenade still burdens the four properties, because there is still a smaller amount of Promenade property that is east of the “bump,” and this runoff is not captured by the “bump.” This includes Promenade property directly in front of my house.

Further, as will also be discussed below, neither the Third & High Street catch basin nor the catch basin within the alley between Third Street and Fourth Street serves or can serve my property. As will be described, the latter is essentially non-functional, as this catch basin was built too high (in 2018) to function as intended.

B. History of Mitigation Efforts and Outreach to City

To the best of my ability, I have been diligent in addressing the stormwater management issues associated with my residence at 302 Bluff Street, which I purchased in January 2007. Living in my house over the years, I witnessed the pattern of ponding in my backyard during heavy rain events. This ponding would occur at variable levels, depending on the storm event. However, it never reached a level where it threatened to intrude into the ground floor of my house. And, because my back door is about 1.5 feet below the level of the Third Street sidewalk, the ponding therefore never even came close to “overtopping” the bowl and flowing into the Third Street gutter and catch basin.

It became clear to me that a significant, if not the primary, source of the ponding issue was the fact that my neighbors and I were receiving significant amounts of stormwater runoff from the Promenade and Bluff Street. Therefore in 2012 I reached out to City staff to inquire regarding a solution. At that time, I was told that there was not really anything the City could or would do about the problem. () Note: I did not in 2012 apply for an exemption to the stormwater utility fee – I was simply requesting help with the stormwater runoff problem.

In the winter/spring of 2020, I had my highly-degraded sanitary sewer lateral replaced, at a cost of approximately \$6,000. A picture from that project is on the following page. When the contractors were reconstructing the sidewalk that had to be dug up for the sewer work, a very heavy rainfall occurred. The picture is useful as evidence for this submittal, because it shows the rising groundwater table that occurs in my backyard “bowl” during heavy rains.



The following year, in the winter of 2020/2021, Oregon City experienced a rain event that caused the most significant ponding I have ever experienced in my backyard. While the ponding did not intrude into my house, it came very close to the level of the foundation slab. It was very concerning.

After the event, on January 23, 2021 I again approached the City in order to find a solution, based on “changed circumstances.” I must say, the response I received from then- public works director John Lewis was like night and day compared to the response I had received under his predecessor in 2012. In addition, as I researched the matter in 2021, I came across the stormwater utility fee exemption code in OCMC 13.16.100, and this time I did make an application for such an exemption, as it was clear that my property was not discharging into the City’s storm drainage system, but by contrast my property was basically serving as the storm drainage facility for the City’s Promenade runoff. In other words, there were two parallel proceedings: 1) the runoff/drainage solution proceeding, and 2) the utility fee exemption application proceeding.

Regarding the runoff/drainage solution, the public works staff did a thorough analysis. Eric Hand came out to my property and measured the elevation of my backyard, as indicated by this graphic he generated:

DRAFT



City staff determined that the catch basin at Third & High was too distant and too high to service my property without an extremely expensive subterranean connection that I would have to pay for. As for the catch basin in the alley between Third and Fourth Streets, the attached internal deliberations among City staff demonstrates that it is essentially non-functional: through an error, it was installed in 2018 at too high an elevation. As far as I know, that catch basin has never drained a drop of storm water runoff in its existence. And, as the deliberations show, it was intended to drain runoff from the upslope Riverside Apartments. It was not intended to service my property; and indeed, there are two private parcels between my property and that catch basin.

But, Mr. Lewis did come up with a solution that has essentially resolved most of the problem: that is, the Bluff Street repaving project. This was approved by the City Commission in September of 2021. I will note that during the deliberations on that matter, Commissioner Marl did me the courtesy of coming to my house to observe the situation directly; the only commissioner to accept my invitation to do so – although Commissioner Smith likely did not need to, as he frequently passes by my house as he leads ghost tours, and is quite familiar with my property.

DRAFT

Since that project was completed, the major ponding in my backyard has never recurred. I have experienced some minor pooling in very heavy rains, but that is all. And even this pooling is still attributable, to some extent, to runoff from City property: there is still some City land area east of the bump edge that are not picked up by the bump edge, and still flows into the "bowl."

This solution has benefitted not just me, but my four neighbors in the larger-scale "bowl." We all expressed our appreciation to Mr. Lewis and to the City for undertaking the effort. And furthermore, the project benefitted the City and the community as a whole: Bluff Street was unsightly, had broken pavement and potholes, and had not been maintained in decades. It was an embarrassment to the City to have tourists walking along the Promenade see its condition. Now it is an amenity. To the extent that my efforts helped bring about that improvement, I did the City and the community a service.

As for the other proceeding, on my application for an exemption under OCMC 13.16.100, Mr. Lewis and I were in a disagreement. Notwithstanding the determination that it was not practical for me to connect to the catch basins at Third & High and in the alley between Third Street and Fourth Street, Mr. Lewis was nevertheless tentatively opining that somehow my property still discharged into the City's storm drainage system. In one part of the email he sent me on April 21, Mr. Lewis wrote, "[I]t's my opinion that the City's public storm drainage system does receive stormwater from your property. However, in the same paragraph, he then said, "[T]here is some logic that there is no direct connection to the public storm drainage system."

Mr. Lewis and I simply never came to a resolution of the matter. Because of my appreciation for Mr. Lewis's efforts, I suspended my pursuit of the stormwater utility fee exemption.¹ It was not in my interest, or appropriate, to appear confrontational on the exemption request when at the same time Mr. Lewis was undertaking such a major effort on behalf of several property owners -- and on behalf of the City and its citizens. After the completion of the repaving project, I did not pick up the exemption request again, for the blunt and straightforward reason that I have pronounced ADHD.² I had no "gun to my head" to impel me to revive the exemption request until the current code amendments to OCMC 13.16 were placed on the City Commission's agenda. (I have unfinished house projects that stretch back well before 2021.)

Applicable Precedents Regarding OCMC 13.16.100

There are two precedents regarding OCMC 13.16.100 that are applicable to my application.

¹ I have a distinct memory of preparing an email to Mr. Lewis and Mr. Kabeiseman, in which I said I was withdrawing my application for the stormwater utility fee exemption "without prejudice." This is a legal term meaning that one is reserving the right to reapply or refile at a later time. I cannot find this email in my email archive. I made a public records request to Mr. Wiley in hopes that it might be in the City's email archive, but Mr. Wiley was unable to locate such an email.

² Once an individual's disability is known, the individual is entitled to reasonable accommodation. *Smith v Island Transit*, 98 F3d 1346 (9th Cir 1996), citing *Kimbrow v. Atlantic Richfield Co.*, 889 F2d 869, 874 (9th Cir. 1989)

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A. Living Hope Church

The proceeding on the Living Hope Church took place on January 5, 2022:

<https://meetings.municode.com/MeetingDetailsPage/index?clientCode=OREGONCITY&meetingId=5761ee98-49a9-4e8e-bf4d-93a5b2c65f69>

The applicable precedents emerging from this case:

- The applicant initially did not get cooperation from city staff, but persisted and revived / reapplied its application to get relief.
- The applicant was allowed to speak during the agenda item on their appeal to the City Commission.
- The City Commission did not apply a statute of limitations to its “lookback.” Notwithstanding the six-year statute of limitations on contract claims raised during the proceeding, the Commission applied the “lookback” to the original purchase of the property, 13 years previously.

B. The Blue at Abernethy Creek

The proceedings on this application took place on September 17 and October 1, 2025:

<https://oregoncityor.portal.civicclerk.com/event/3199/overview>

<https://oregoncityor.portal.civicclerk.com/event/3224/overview>

The applicable precedents from this case:

- The applicant initially did not get what it wanted from city staff (lookback to property purchase), and appealed to the City Commission to get relief.
- The applicant was allowed to speak during the agenda item on their appeal to the City Commission.
- The City Commission applied the “lookback” to the original purchase of the property.
- The applicant’s full exemption and lookback was granted because the existing on-site private storm drains discharged into a “public water body” pursuant to OCMC 13.16.100 – namely . Although the existing storm drain did not provide any water quality treatment prior to discharge, the City Commission did not require such water quality treatment in granting the exemption.

Based on the precedents set by the City Commission in the Living Hope Church and The Blue at Abernethy Creek cases, the city manager Mr. Konkol announced a policy on October 1 for future applications for exemptions pursuant to OCMC 16.13.100. The videotape of the October 1, 2025 City Commission meeting is here:

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https://www.youtube.com/watch?v=6KywXPc6V_0

At min. 48:50, Mr. Konkol stated:

I think if we got another one in next month, and we hadn't changed the code, we would probably say, okay, now we know what the Commi...if, let's just say, we went back to the date of purchase, right, it'd be like, okay, now we have two of them that go back to the date of purchase, we feel pretty comfortable going, okay, right now this is the interpretation. I hope that it's not back to, like, 1940...

Analysis

A. OCMC 13.16.100

OCMC 13.16.100 states:

Vacant and unimproved properties within the city are exempt from the charges in Section 13.16.050. Any other person seeking an exemption or reduction in the storm drainage fee, or appealing therefrom, may do so pursuant to a demonstration to the city manager or the manager's designee that the public storm drain service does not receive stormwater from property used or occupied by that person. Such demonstration shall include evidence of legal disposal of stormwater to a private retention system, private storm drain system, public water body, or other receiving facility.

The last sentence in the paragraph uses the disjunctive "or." This means that if I satisfy any one of the examples of "legal disposal," I satisfy the requirement of OCMC 13.16.100 and am entitled to the exemption.

I do not discharge into the City's storm drain system. As the evidence presented earlier demonstrates, city staff determined that I not discharge into either the catch basin and Third & High Streets or the catch basin in the alley between Third and Fourth Streets. Further it is impractical for me to try to connect to the former without expending large sums of money. The latter would require trespass across two neighboring properties, and it was constructed at too high an elevation.

Rather, I dispose of my stormwater legally into a "public water body" as set forth in OCMC 13.16.100 – namely, the groundwater system. Specifically, ORS 468B.005(10) states:

"Water" or "the waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other

DRAFT

bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. (Emphasis added.)

In turn, ORS 531.110 states: ***“Public ownership of waters. All water within the state from all sources of water supply belongs to the public.”***

My disposal of my stormwater into my backyard’s groundwater is “legal:” no water quality treatment is required. Indeed, the City Commission found that the existing stormwater discharge from The Blue at Abernethy Creek into Abernethy Creek was “legal,” even though it is not treated for water quality purposes.

I would further argue that I also meet two other examples of “legal disposal” pursuant to OCMC 13.16.100:

Private retention system. My backyard is a private retention system. It is private, because I own it. It retains all of the rain that falls on my property. The system – the ecosystem, including the “bowl” – percolates the water through the soil and into the groundwater system.

Private storm drain system. My backyard is a private storm drain system. It is private, because I own it. The system – the ecosystem, including the “bowl” – drains the water through the soil and into the groundwater system, just like a kitchen sink “drains” the water into the kitchen pipes.

Based on the foregoing, I believe I have satisfied the requirements of OCMC 13.16.100 for a full exemption from the stormwater utility fee. Based on the precedents of the Living Hope Church and The Blue at Abernethy Creek, I respectfully request that this exemption be applied back to the date I purchased my property in January 2007, and that this money be refunded to me.

B. Essential Nexus and Rough Proportionality

In 2013, the U.S. Supreme Court extended the *Nollan* “essential nexus” test and the *Dolan* “rough proportionality” test regarding real property exactions to government demands for exactions that are *money* exactions, like the stormwater utility fee in this case. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013).

The City has the burden of establishing essential nexus and rough proportionality. *Nollan v. California Coastal Commission*, 483 U.S. 825, 836 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

There is no essential nexus in this case. There is no nexus between the stormwater utility fee I am paying and the provision by the City of stormwater drainage, because my residential property does not discharge into the City’s storm drain system. That lack of nexus is enshrined right into the city code. OCMC 13.16.030 states, “There is established and imposed on all persons occupying improved properties utilizing the city's storm drainage system, a just and

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equitable storm drainage utility service charge to implement the city's drainage master plan and pay for the city's storm drainage system.” (And please note, a vehicle is not an “improved property;” the code as it stands today attaches only to real property.)

The Supreme Court in *Dolan* stated that if there is no *Nollan* “essential nexus,” the analysis does not have to proceed to establishing “rough proportionality.” That is the case here.

Nor could the City charge me some “proportional” reduction in the stormwater utility fee rather than grant me a complete exemption, based on the hypothetical argument that heavy rain events “will eventually overtop the ‘bowl,’” thus “directing water into the City’s system.” (Denial letter dated June 12, 2026.

This is pure speculation, which is prohibited by *Dolan*, at 395 (speculative “could” hypothetical impermissible.) As I described above, in the nearly twenty years I have lived in my house, that has never happened, even when my backyard was holding substantial runoff from the Promenade. After the 2021 Bluff repavement project, it has never even come close. If at some time in the future a storm of that Noah’s Flood-like scale actually did happen, the City would be in a challenging spot, because it would have to take into account its own contribution of stormwater runoff into my backyard from the large bowl running from Third Street to Fourth Street – a quantifiably much larger catchment area than my small lot. The City would be asking that I suffer the incredible burden of the damage from its large-scale stormwater runoff onto my property, then turn around and charge me a stormwater utility fee because its stormwater runoff overtopped the smaller-scale bowl that is my backyard.

I hope the current incumbent City Commissioners are more reasonable than that.

Thank you for considering this appeal.

James Nicita
302 Bluff Street
Oregon City



James Nicita <james.nicita@gmail.com>

City Staff Email exchange re catch basin in alley between Third & Fourth Streets

James Nicita <james.nicita@gmail.com>Mon, Jun 22, 2026 at 8:34 AM

To: Dayna Webb <dwebb@orccity.org>

Dayna,

While I am working on the attachments, here is the email exchange re the catch basin in the alley between Third and Fourth Streets.

Jim

3 attachments

Subject: FID High Street Area Storm Drainage (2/2/26)

File Attachment(s)

Alley Catch Basin #1.png

Download

Alley Catch Basin #2.png

Alley Catch Basin #3.png

Download

Alley Catch Basin #1.png

Download

Alley Catch Basin #2.png

Download

Alley Catch Basin #3.png

Alley Catch Basin #1.png
83K

Alley Catch Basin #2.png
102K

Alley Catch Basin #3.png
92K

Ex. A
P. 18 of 31

Subject: RE: High Street Area Storm Drainage questions



Eric Hand <ehand@orcity.org>

to John M. Lewis, Vance Walker, John Burrell

📧 Apr 23, 2021, 3:17 PM

All:

Took some grade shots today at 302 Bluff:

- Backyard
- Top of Asphalt @ C.O.
- Pipe IE at C.O.

See attached & hope they help!

Thank you;

Eric

From: John M. Lewis <jmlewis@orcity.org>

Sent: Friday, April 23, 2021 8:11 AM

To: Eric Hand <ehand@orcity.org>; Vance Walker <vwalker@orcity.org>; John Burrell <jburrell@orcity.org>

Subject: RE: High Street Area Storm Drainage questions

OK. Well the catch basin may meet the design, but it's a little high which didn't get caught during construction.

Eric the CB is a little bit too high to collect ponding in the alley and will need some modifications to resolve the area drainage.
Take a look.

Ex. A
P. 19 of 31

Next week I want to put out heads together around some concerns and ideas I have about Jim Nicita and the properties along

Next week I want to put out heads together around some concerns and ideas I have about Jim Nicita and the properties along Bluff Street.

Vance I'm including you because my ideas would involve the street division, coordination with Parks, and may need to be timed and coordinated with a possible grant. Several moving pieces that affect our approach. If you can set up a meeting that works for the three of us that would be great.

From: John Burrell <jburrell@orccity.org>

Sent: Friday, April 23, 2021 6:04 AM

To: John M. Lewis <jmlewis@orccity.org>; Eric Hand <ehand@orccity.org>

Subject: RE: High Street Area Storm Drainage questions

The catch basin in the alley was added per request from Eric – the roof drains from the apartments and the area behind the apartments had been causing flooding in the adjacent homes basement and back yard, the catch basin is supposed to collect the drainage. The catch basin is installed per design, I told Eric that he would need to install a rocked channel to it to direct the flow.

JB

From: John M. Lewis <jmlewis@orccity.org>

Sent: Thursday, April 22, 2021 5:13 PM

To: John Burrell <jburrell@orccity.org>; Eric Hand <ehand@orccity.org>

Subject: High Street Area Storm Drainage questions

Ex. A
P. 20 of 31

I had a conversation with Jim Nicita this afternoon and we're curious about the purpose of the storm line that is in the alley and adjacent to the apartments. The catch basin sits high so I'm not sure it acts as an area drain and it's new so I don't know if it was done to replace an old line and has services on it or what. Can either of you shed any light on this line? CB-1A.

I had a conversation with Jim Nicita this afternoon and we're curious about the purpose of the storm line that is in the alley and adjacent to the apartments. The catch basin sits high so I'm not sure it acts as an area drain and it's new so I don't know if it was done to replace an old line and has services on it or what. Can either of you shed any light on this line? CB-1A.

<< File: High Street composit utility 2.pdf >>

Also wanting some field confirmation that the 3rd Street storm line at the cleanout. The as-builts suggest its over 4 feed deep but the catch basin as-builts are wrong so I'm curious if we can determine the depth of the clean-out. I'm trying to figure out if there is a lateral option that might be deep enough to serve James Nicita? Drainage Construction Note 4.

<< File: 3rd and high storm 2.pdf >>

John M. Lewis, P.E.
Public Works Director
City of Oregon City
PO Box 3040
625 Center Street
Oregon City, Oregon 97045
503.657.0891 phone
503.793.2255 cell
email: jmlewis@orc.org
City web site: www.orcity.org
Bid/RFP site: <http://bids.orcity.org/>

The City of Oregon City is open for business and continues to offer services and programs online and virtually. Some City facilities are open to the public, find current openings [here](#), we encourage visitors to wear a mask, practice physical distancing, and reschedule in-person visits if you are feeling unwell.

The City has installed additional shielding and is providing hand sanitizer as well as occupancy limits to ensure our staff and visitors have a safe, no touch experience. Our goal is to be responsive to our community throughout this pandemic; we appreciate your understanding and cooperation.

PUBLIC RECORDS LAW DISCLOSURE: This e-mail is subject to the State Retention Schedule and may be made available to the public.



James Nicita <james.nicita@gmail.com>

Dog attack

James Nicita <james.nicita@gmail.com>
To: Dayna Webb <dwebb@orcite.org>

Mon, Jun 22, 2026 at 10:33 AM

Dayna,

My cat just got attacked by an off-leash pit bull that came into my yard. Her left front paw is wounded and may be broken.

I am taking her to the ER vet. I'd like to request a rover of my appeal.

Jim

Ex. A
P. 22 of 31





James Nicita <james.nicita@gmail.com>

Dog attack

Dayna Webb <dwebb@orcity.org>
To: James Nicita <james.nicita@gmail.com>

Mon, Jun 22, 2026 at 3:04 PM

Jim-

Sorry to hear about this. Are you wanting to push this out to another meeting, instead of the July 1 meeting?

I'm out July 15, but may be able to find someone else to present this topic to the City Commission on July 15.

Please let me know if that is what you are requesting.

Thanks,

Dayna

Dayna Webb, P.E.

Public Works Director

City of Oregon City
PO Box 3040
13895 Fir Street
Oregon City, Oregon 97045
dwebb@orcity.org

971.204.4633 Direct
503.312.5648 Mobile

From: James Nicita <james.nicita@gmail.com>
Sent: Monday, June 22, 2026 10:33 AM
To: Dayna Webb <dwebb@orcity.org>
Subject: Dog attack

Ex. A
P. 24 of 31

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[Quoted text hidden]

Ex. A
P. 25 of 31



James Nicita <james.nicita@gmail.com>

Dog attack

James Nicita <james.nicita@gmail.com>

Mon, Jun 22, 2026 at 3:42 PM

To: Dayna Webb <dwebb@orcite.org>

Hi Dayna,

I'm still at the vet.

If I can get back home by 6 pm. I think I can wrap up my memo and exhibits by midnight.

If your seeing it by 8 am tomorrow morning allows you to still do what you need to do for the July 1 meeting, we can keep that date.

If not, I can do either July 15 or the following commission meeting. I'd prefer to have you present, to have consistency in the proceeding.

My assumption is that since I applied under the current code, the application will be considered under the current code, no matter what date the commission hears the appeal.

Thanks for your patience and understanding and this.

Jim

[Quoted text hidden]

Ex. A
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James Nicita <james.nicita@gmail.com>

Dog attack

Dayna Webb <dwebb@orccity.org>

Tue, Jun 23, 2026 at 11:02 AM

To: James Nicita <james.nicita@gmail.com>

Jim-

I didn't see any files as of this morning. I'm going to move this to August 5, when I'm back.

Yes, the appeal will be processed under the code that was in effect at the time of the appeal.

In order to review your document and include them in the staff report, I will need them by July 24.

[Quoted text hidden]

Ex. A
P. 27 of 31



James Nicita <james.nicita@gmail.com>

Dog attack

James Nicita <james.nicita@gmail.com>

Tue, Jun 23, 2026 at 11:48 AM

To: Dayna Webb <dwebb@orcite.org>

Thanks, Dayna.

I was at the ER vet 8 hours yesterday, from 11 am to 7 pm. I was pretty wiped by the time we got home. Still am this morning.

Thanks for your understanding and patience on all of this.

Jim

[Quoted text hidden]

Ex. A
P. 28 of 31



James Nicita <james.nicita@gmail.com>

Stormwater Utility Fee Appeal & Memorandum

James Nicita <james.nicita@gmail.com>

Fri, Jul 24, 2026 at 3:35 PM

To: Dayna Webb <dwebb@orc.org>

Hi Dayna,

Per your request below, please find attached my appeal & memorandum (including exhibits) regarding my request for an exemption from the stormwater utility fee pursuant to former OCMC 13.16.100, and for a refund retroactive to the date I purchased my house in January 2007.

Please let me know if the information presented allows you to reconsider the June 12 denial and instead grant the request.

If not, I am comfortable in proceeding with the appeal hearing on August 5.

Thanks,

Jim Nicita
Oregon City

PS: Kitty has for the most part recovered from the dog attack, except for a slight limp that seems to be progressively decreasing. Her biggest issue right now is fleas.

On Tue, Jun 23, 2026 at 11:02 AM Dayna Webb <dwebb@orc.org> wrote:

Jim-

I didn't see any files as of this morning. I'm going to move this to August 5, when I'm back.

Yes, the appeal will be processed under the code that was in effect at the time of the appeal.

In order to review your document and include them in the staff report, I will need them by July 24.

Thanks,

Dayna

Dayna Webb, P.E.

Ex. A
P. 29 of 31

2026-08-02, 18:31

Public Works Director

City of Oregon City
PO Box 3040
13895 Fir Street
Oregon City, Oregon 97045
dwebb@orccity.org

971.204.4633 Direct
503.312.5648 Mobile

From: James Nicita <james.nicita@gmail.com>

Sent: Monday, June 22, 2026 3:43 PM

To: Dayna Webb <dwebb@orccity.org>

Subject: Re: Dog attack

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Dayna,

I'm still at the vet.

If I can get back home by 6 pm. I think I can wrap up my memo and exhibits by midnight.

If your seeing it by 8 am tomorrow morning allows you to still do what you need to do for the July 1 meeting, we can keep that date.

If not, I can do either July 15 or the following commission meeting. I'd prefer to have you present, to have consistency in the proceeding.

My assumption is that since I applied under the current code, the application will be considered under the current code, no matter what date the commission hears the appeal.

Thanks for your patience and understanding and this.

Ex. A
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2026-08-02, 18:31

Jim



2026-07-26 Nicita SUF Appeal & Memorandum.pdf

8971K

Ex. A
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2026-08-02, 18:31

INVOICE

Invoice date:
22nd June 2026

Invoice number:
#496651

Customer name:
Nicita, James

Customer number:
231976

Customer address:
**302 Bluff St
McLoughlin
Oregon City, Oregon, 97045**

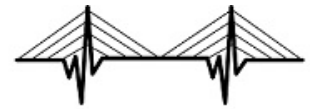
Phone:
503-489-9535

Fax:
15034899540

Email:
info@bridgetownvet.com

Animal name:
Kitty

Animal DOB:
15th July 2010



**BRIDGETOWN
VETERINARY**
EMERGENCY + REFERRAL

Description	Staff Member	Qty	Total
Emergency Examination	Katya Schuster-Barber	1	\$196.00
Methadone 10mg/ml inj (per ml)	Katya Schuster-Barber	0.13	\$54.61
Procedural Catheter	Katya Schuster-Barber	1	\$67.50
Radiographs 3 view	Katya Schuster-Barber	1	\$315.00
Thorax Radiograph Interpretation	Katya Schuster-Barber	1	\$200.00
Extremity Radiograph Interpretation	Katya Schuster-Barber	1	\$200.00
Methadone 10mg/ml inj (per ml)	Katya Schuster-Barber	0.13	\$54.61
Midazolam 5mg/ml inj (per ml)	Katya Schuster-Barber	0.25	\$41.75
Alfaxalone 10mg/ml (per ml)	Katya Schuster-Barber	0.8	\$57.30
Wound Clip/Clean- minor	Katya Schuster-Barber	1	\$77.50
Buprenorphine 0.5mg/ml Oral (per ml)	Katya Schuster-Barber	4.48	\$57.02
Cefovecin sodium (Solovecin) Inj 80mg/mL Per mL	Katya Schuster-Barber	0.64	\$101.11
E-collar Rite Fit Velcro 12"	Katya Schuster-Barber	1	\$22.50
Total:			\$1444.90
Payment method:			Scratch Payment : -1444.90
Amount paid:			\$1444.90
Balance:			\$0.00

Thank you for allowing us to care for your pet.

15333 Southwest Sequoia Parkway Portland, Oregon, 97224 • 503-489-9535 • info@bridgetownvet.com



Email Letter
John Miller, Manager
PO Box 230698
Portland, Oregon 97281
P. 503.969.3640
E. johnm@greenwayig.com

DELIVERY BY EMAIL

dwebb@orccity.org

November 22, 2024

Dayna Webb
Public Works Director
Oregon City Public Works Department
13895 Fir Street
Oregon City, OR 97045
Phone: 971-204-4633
Email: dwebb@orccity.org

Subject: Request for Stormwater Fee Exemption under OCMC 13.16.100

I am writing on behalf of The Blue at Abernethy Creek, LLC (the “**Company**”), to formally request an exemption from Oregon City’s stormwater drainage service fees for our properties, generally located at 1000, 1010, 1020, 1030, 1040, 1050, 1060, 1070, 1080, 1090, 1102, and 1110 Abernethy Rd., Oregon City, Oregon (the “**Properties**”). This request is based on specific exemption provisions outlined in Oregon City Municipal Code (OCMC) Sections 13.16.100.

Background:

The Company recently purchased these Properties in June of 2023 from Clackamas County. The zoning falls under the Type Non-Conforming Use Designation as of November 3, 2023, where the legally established use was M1 - Light Industrial. Combined, the properties consist of approximately 718,000 square feet, of which 437,000 square feet is impervious surface (e.g., paving, rooftops). All stormwater generated on-site is managed through private conveyance facilities that discharge directly into Abernethy Creek (See attached “**Exhibit A**”).

Basis for Exemption:

1. **Exemption from Stormwater Fees under OCMC 13.16.100:** OCMC 13.16.100 provides an exemption for properties where stormwater does not enter the city’s public storm drainage system. Specifically, the code states:

“Any other person seeking an exemption or reduction in the storm drainage fee... may do so pursuant to a demonstration to the city manager or the manager’s designee that the public storm drain service does not receive stormwater from property used or occupied by that person. Such demonstration shall include evidence of legal disposal of stormwater to a private retention system, private storm drain system, public water body, or other receiving facility.”

The Properties qualify for this exemption, as their stormwater is managed on-site and discharged directly into Abernethy Creek, a public water body. This ensures that no stormwater from these Properties enters or utilizes the city’s storm drainage infrastructure.

Ex. C
P. 1 of 7

Request for Individual Property Evaluation:

We recognize that stormwater management may vary slightly between individual addresses across the Properties. We respectfully request that the exemption application be evaluated on an address-by-address basis, allowing for exemptions to be granted for those properties that meet the criteria outlined in OCMC 13.16.100, even if an exemption is not applicable to a specific address.

This approach ensures that each property is assessed fairly and independently, in accordance with the Code's intent to exempt properties where the City's stormwater system is not impacted.

Additional Considerations:

While we understand the City may have concerns about potential impacts to City infrastructure in extreme or hypothetical scenarios, such as flooding, or minor interactions, such as stormwater passing through a culvert or simple public facility downstream, it is important to emphasize that government-imposed fees must be based on actual, measurable impacts. The recent Supreme Court decision in *Sheetz v. County of El Dorado* reaffirmed that such fees must be proportional to direct impacts and cannot rely on speculative or minimal scenarios.

In this case, even if some stormwater from the Properties were to flow through minor City infrastructure downstream, such as a culvert, the impact would be negligible in the grand scheme of the City's stormwater management. These minimal interactions do not rise to the level of a direct or meaningful burden on the City's stormwater system, particularly given that the majority of stormwater from the Properties is managed independently on-site and discharged directly into Abernethy Creek.

We trust that this application will be evaluated in alignment with these principles, ensuring that any fees or exemptions are grounded in actual, proportional impacts rather than remote or low-impact contingencies.

We respectfully request that the City consider this application and grant exemptions for those properties that meet the criteria under OCMC 13.16.100. Please let us know if further information is necessary to facilitate your review. I am available at your convenience to discuss the details of this request.

Thank you for considering this request. We look forward to your response.

Sincerely,

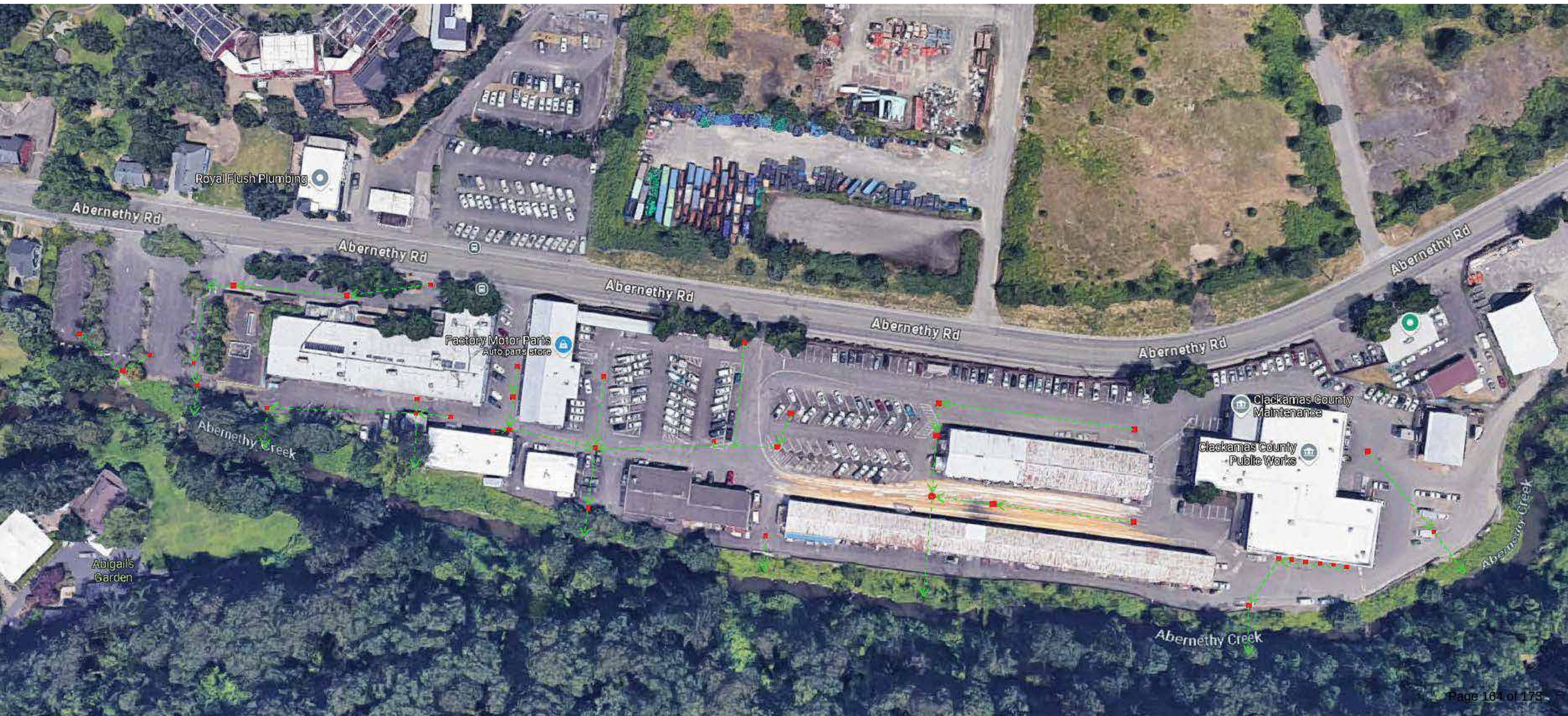


John Miller, Manager

Cc: Josh Wheeler, Oregon City Public Works, Assistant City Engineer
(jwheeler@orc.org)
Dan Fowler, The Blue at Abernethy Creek, LLC
(danf@fandfstructures.com)

Ex. C
P. 2 of 7

■ Catch Basin
- - - - Storm Line



Ex. C
P. 4 of 7

- Catch Basin
- Storm Line





CITY OF OREGON CITY

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

To: City Commission **Agenda Date:** September 17, 2025
From: Dayna Webb, Public Works Director

SUBJECT:

Item 9.a. - Monthly Stormwater Fee Exemption Request for The Blue at Abernethy Creek

STAFF RECOMMENDATION:

Staff seeks Commission direction on whether to maintain the exemption effective November 22, 2024, or extend it back to the requested acquisition date of the property.

EXECUTIVE SUMMARY:

The Blue at Abernethy Creek, LLC requested an exemption from Oregon City's stormwater drainage service fees for its properties along Abernethy Road. After review, the Public Works Director approved the exemption effective November 22, 2024, the date the request was submitted, following certification that stormwater infrastructure discharges directly to Abernethy Creek. The property owner has since asked the City to reconsider and apply the exemption retroactively to June 6, 2023, when they acquired the property.

BACKGROUND:

On November 22, 2024, the City received a formal request from The Blue at Abernethy Creek, LLC for an exemption from Oregon City's monthly stormwater fees for multiple properties along Abernethy Road, as outlined in Oregon City Municipal Code 13.16.100.

In response, staff reviewed past exemption requests for comparable sites and consulted with the City Attorney. Staff sent a response back to the property owner on January 3, 2025. The response stated "The non-conforming status of the development and uses occurring on these properties suggests that the stormwater conveyance system may also pre-date compliance with current stormwater standards. Given these thresholds, offering only Google imagery noting the approximate location of storm drains is insufficient." To move forward, the property owner would need to submit engineer-stamped drawings documenting the existing stormwater conveyance system, topography, and flow calculations to confirm that no site-generated stormwater discharged into the public system.

On June 3, 2025, the City received a letter from Superior Excavation, dated May 30, 2025, certifying that all onsite stormwater infrastructure drains directly to Abernethy Creek. Based on this documentation, the City issued a letter on July 11, 2025, granting the exemption effective as of the original request date, November 22, 2024, and requesting payment of all outstanding fees. On July 15, 2025, a representative of The Blue at Abernethy Creek responded, accepting the exemption as applied from November 22, 2024, but requesting reconsideration of charges assessed between their acquisition of the property on June 6,

2023, and the exemption application date.

Before the exemption request was submitted, City Engineering and Utility Customer Service staff met with the property owner on multiple occasions between April to October 2024, to establish a mutually agreed upon framework for separating stormwater fees into four billing accounts for the property, as shown on the Stormwater Fee Map and Fee Summary. City staff dedicated considerable time in 2024 to work with the owner on structuring these fees. However, shortly after the billing separation was finalized and implemented, the City received the exemption request. Staff applied the exemption back to the date of the request, November 22, 2024.

Following is a summary of the Stormwater Fees for the 4 accounts. More details are provided in the attached Stormwater Fee Summary:

- Area A: If the additional exemption is granted the City will not owe any money to The Blue at Abernethy Creek. If the additional exemption is not granted The Blue at Abernethy Creek will owe the City \$1,243.46.
- Area B: If the additional exemption is not granted The Blue at Abernethy Creek will owe the City \$21,847.44. If the additional exemption is granted the City will owe The Blue at Abernethy Creek \$23,575.57.
- Area C: If the additional exemption is granted the City will owe Classic Collision \$3,490.11. If the additional exemption is not granted the City will owe Classic Collision \$2,765.72.
- Area D: If the additional exemption is not granted the City will owe Classic Collision \$13,104.66. If the additional exemption is granted the City will owe Classic Collision \$17,306.84.

Since the property owner does not consider the issued exemption sufficient, staff is seeking feedback from the City Commission on whether fees should instead be exempted retroactively to June 6, 2023, the date the property was acquired.

OPTIONS:

1. Approve Monthly Stormwater Fee Exemption Request for The Blue at Abernethy Creek.
2. Approve Monthly Stormwater Fee Exemption Request for The Blue at Abernethy Creek with Amendments.
3. Deny Monthly Stormwater Fee Exemption Request for The Blue at Abernethy Creek and provide further direction.

BUDGET IMPACT:

Amount \$

Fiscal Year(s):

Funding Source(s):

Abernethy Properties Stormwater Fee Summary

Stopped billing Storm on all accounts as of 5/31/25

				Area A The Blue at Abernethy Creek (Owner)	Area B The Blue at Abernethy Creek (Owner)	Area C Classic Collision (Tenant)	Area D Classic Collision (Tenant)
				1010 Abernethy Rd Acct #07-664655-00 52.44 ERU	1030 Abernethy Rd Acct #07-663300-06 71.27 ERU	1080.5 Abernethy Rd Acct #07-663611-00 152.74 ERU	1090 Abernethy Rd Acct #07-663301-03 30.55 ERU
Bill Date	Rate Code	Service Start Date	Service End Date	Total Dollars	Total Dollars	Total Dollars	Total Dollars
06/30/2025	Storm - per ERU	04/30/2025	05/31/2025	\$ 774.54	\$ 1,052.66	\$ 2,255.97	\$ 451.22
05/31/2025	Storm - per ERU	03/31/2025	04/30/2025	774.54	1,052.66	2,255.97	451.22
04/30/2025	Storm - per ERU	02/28/2025	03/31/2025	774.54	1,052.66	2,255.97	451.22
03/31/2025	Storm - per ERU	01/31/2025	02/28/2025	774.54	1,052.66	2,255.97	451.22
02/28/2025	Storm - per ERU	12/31/2024	01/31/2025	774.54	1,052.66	2,255.97	451.22
01/31/2025	Storm - per ERU	11/30/2024	12/31/2024	717.38	974.97	2,089.48	417.92
12/31/2024	Storm - per ERU	11/22/2024	11/30/2024	191.30	259.99	557.19	111.45
Approved Exemption back to 11/22/24				\$ 4,781.38	\$ 6,498.26	\$ 13,926.52	\$ 2,785.47
12/31/2024	Storm - per ERU	10/31/2024	11/22/2024	\$ 526.08	\$ 714.98	\$ 1,532.29	\$ 306.47
11/30/2024	Storm - per ERU	09/30/2024	10/31/2024	717.38	974.97	2,089.48	417.92
10/31/2024	Storm - per ERU	08/31/2024	09/30/2024	-	2,881.97	580.41	-
09/30/2024	Storm - per ERU	07/31/2024	08/31/2024	-	3,378.96	-	-
08/31/2024	Storm - per ERU	06/30/2024	07/31/2024	-	3,378.96	-	-
07/31/2024	Storm - per ERU	05/31/2024	06/30/2024	-	3,378.96	-	-
06/30/2024	Storm - per ERU	04/30/2024	05/31/2024	-	3,378.96	-	-
05/31/2024	Storm - per ERU	03/31/2024	04/30/2024	-	3,378.96	-	-
04/30/2024	Storm - per ERU	02/29/2024	03/31/2024	-	3,378.96	-	-
03/31/2024	Storm - per ERU	01/31/2024	02/29/2024	-	3,378.96	-	-
02/29/2024	Storm - per ERU	12/31/2023	01/31/2024	-	3,378.96	-	-
01/31/2024	Storm - per ERU	11/30/2023	12/31/2023	-	3,127.02	-	-
12/31/2023	Storm - per ERU	10/31/2023	11/30/2023	-	3,127.02	-	-
11/30/2023	Storm - per ERU	09/30/2023	10/31/2023	-	3,127.02	-	-
10/31/2023	Storm - per ERU	08/31/2023	09/30/2023	-	3,127.02	-	-
09/30/2023	Storm - per ERU	08/18/2023	08/31/2023	-	1,311.33	-	-
Additional Exemption Requested (prior to 11/22/24)				\$ 1,243.46	\$ 45,423.01	\$ 4,202.18	\$ 724.39
Account Balance as of 8/8/25				\$ 6,024.84	\$ 28,345.70	\$ 821.86	\$ 19.75
Total storm credit with full exemption request				6,024.84	51,921.27	18,128.70	3,509.86
Refund to customer				\$ -	\$ (23,575.57)	\$ (17,306.84)	\$ (3,490.11)
Account Balance as of 8/8/25				\$ 6,024.84	\$ 28,345.70	\$ 821.86	\$ 19.75
Storm credit exemption already approved				4,781.38	6,498.26	13,926.52	2,785.47
Remaining account balance (refund to customer)				\$ 1,243.46	\$ 21,847.44	\$ (13,104.66)	\$ (2,765.72)
Pro rated per day				\$ 23.91	\$ 32.50	\$ 69.65	\$ 13.93
From 11/1 - 11/22				\$ 526.08	\$ 714.98	\$ 1,532.29	\$ 306.47
From 11/22 - 11/30				191.30	259.99	557.19	111.45
				\$ 717.38	\$ 974.97	\$ 2,089.48	\$ 417.92

Summary:

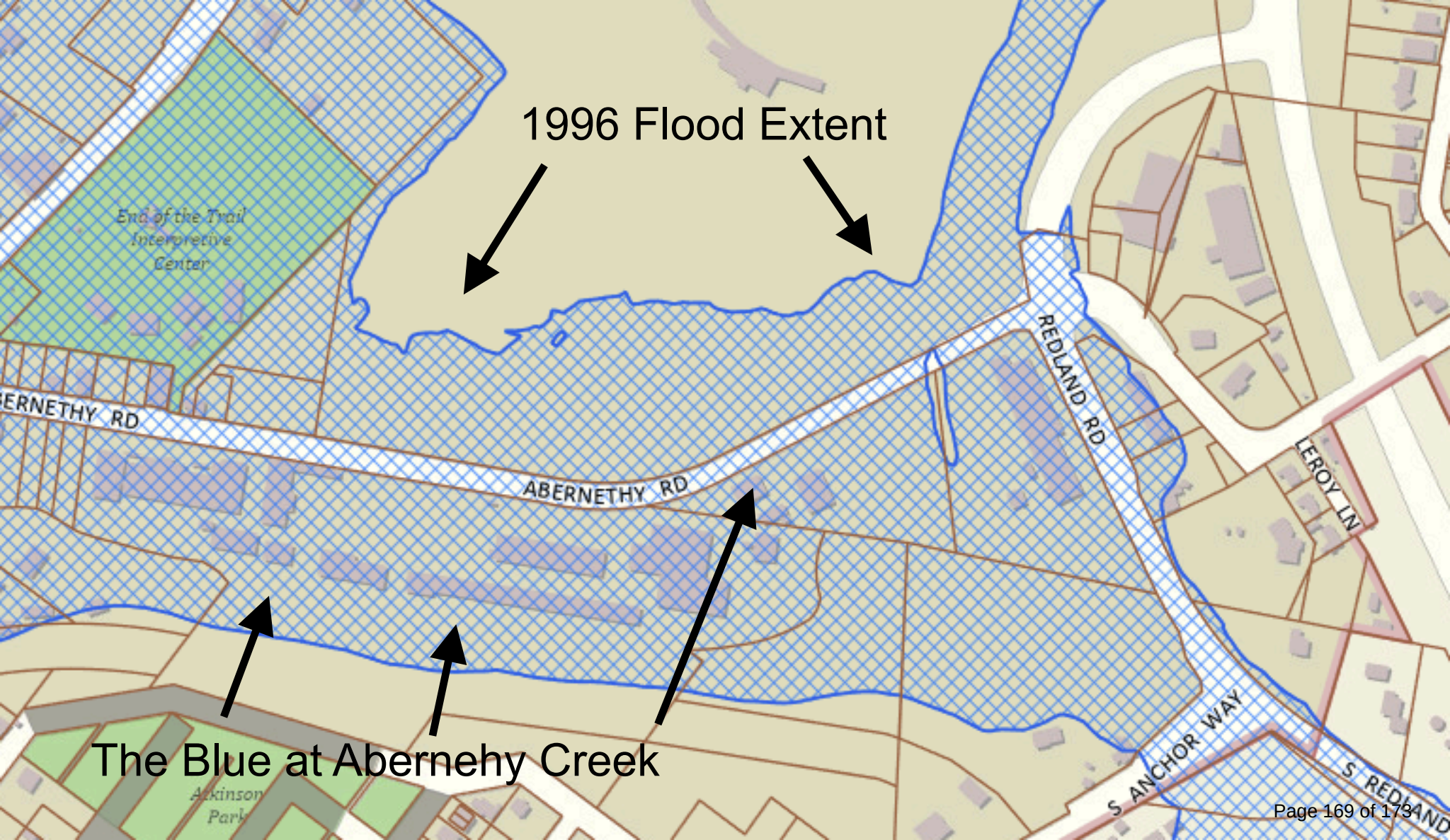
Area A: If the additional exemption is granted the City will not owe any money to The Blue at Abernethy Creek, if the additional exemption is not granted The Blue at Abernethy Creek will owe the City \$1,243.46.

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Area D: If the additional exemption is not granted the City will owe Classic Collision \$13,104.66 if the additional exemption is granted the City will owe Classic Collision \$17,306.84.

Ex. C
P. 7 of 7



1996 Flood Extent

End of the Trail
Interpretive
Center

ABERNETHY RD

ABERNETHY RD

REDLAND RD

LEROY LN

S ANCHOR WAY

S REDLAND

The Blue at Abernethy Creek

Atkinson
Park



CITY OF OREGON CITY

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

To: City Commission **Agenda Date:** August 5, 2026
From: Jarrod Lyman, Communications Manager

SUBJECT:

Item 9.b. - First Reading of Ordinance 26-1011 Adoption Of A New Flag

STAFF RECOMMENDATION:

EXECUTIVE SUMMARY:

The City Commission has requested a new flag be designed to represent Oregon City. After two rounds of public input and three design reviews, the Commission has chosen a design they wished to see made official. The passing of the attached ordinance will make the new design the official flag of Oregon City.

BACKGROUND:

In September of 2025, the City Commission directed staff to begin the process of creating a new City flag.

Staff worked with the North American Vexillological Association (NAVA) to determine the process for adopting a new banner.

In February, the city conducted the "Flag Poll" asking residents what elements of the City which be easily represented on a flag, and which colors the thought most represented the community.

The more than 200 responses to that survey were given to NAVA to start creating design options. About two dozen options were submitted, which were reviewed both by staff and by a representative with the Confederated Tribes of the Grand Ronde. Five designs were presented to the Commission, who then narrowed that down further to three.

Those three designs were shared on Social Media for twelve days. The feedback was presented to the Commission, who after additional reviews, chose the design presented today.

OPTIONS:

1. Approve [The First Reading of Ordinance 26-1011 Adoption Of A New Flag].
2. Deny [The First Reading of Ordinance 26-1011 Adoption Of A New Flag] and provide further direction.

BUDGET IMPACT:

N/A

ORDINANCE NO. 26-1011

AN ORDINANCE OF THE CITY OF OREGON CITY ADOPTING A NEW CITY FLAG

WHEREAS, the current City Flag was adopted in 1989 and the City Commission desires to revise and update the flag design; and

WHEREAS, the City has worked with experts in flag design, conducted public outreach, consulted with tribal organizations, and reviewed several variations of the final design; and

WHEREAS, the new City Flag incorporates several symbolic elements of Oregon City and meets the standards provided by the North American Vexillological Association.

NOW, THEREFORE, THE CITY COMMISSION ORDAINS AS FOLLOWS:

Section 1. The current Oregon City Municipal Code Chapter 1.12 is repealed and replaced with the new Chapter 1.12 attached as Exhibit A.

Read for the first time at a regular meeting of the City Commission held on the 5th day of August, 2026 and the City Commission finally enacted the foregoing ordinance this 19th day of August 2026.

DENYSE C. MCGRUFF
Mayor

Attested to this 19th day of August 2026,

Approved as to legal sufficiency:

Jakob Wiley, City Recorder

City Attorney

Exhibit A

Chapter 1.12 - CITY FLAG

1.12.010 - Adopted.

A. The Oregon City Flag is officially adopted as described in this chapter. It shall be referred to as the “City of Oregon City Flag.”

1.12.020 - Description.

A. The official flag shall consist of a horizontal white stripe ending at an angle intersecting a vertical white line representing the Municipal Elevator and fishing platforms used by indigenous tribes. A second horizontal white stripe will meet the vertical one at the bottom and extend to the right, representing Willamette Falls. Below the lower white stripe is a green stripe of equal thickness representing the McLoughlin Promenade. This green stripe meets a green square in the lower left corner representing our parks, which were initially identified as “public squares” in the City’s original plat. A field of blue will represent the sky and the waters of the two rivers where Oregon City is situated.

The color blue shall be:

hex code: 0668bb,

RGB: 6,104,187

CMYK: 89-60-0-0

Pantone 285c

The colors for green shall be:

Hex Code: 08801a

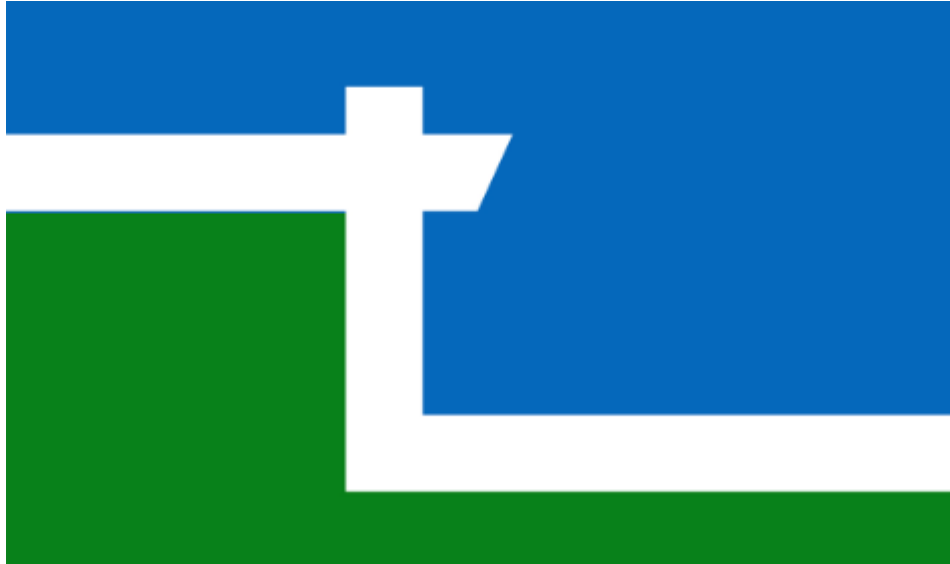
RGB: 8,128,26

CMYK: 87,25,100,13

Pantone 2258c

1.12.030 – Design

A. The official flag shall appear as below:



1.12.040 - Display.

A. The official city flag shall be displayed in the manner of the national and state flags. When flown alongside or near the US and Oregon flag, it shall be flown in a manner consistent with US Flag Code.