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Rules of Conduct for Public Meetings

No person shall be disorderly, abusive, or disruptive of the orderly conduct of the meeting. Microphones will be muted and webcams will be turned off for remote participants unless called upon to speak or during public comment period.

Persons shall not comment or testify without first receiving recognition from the presiding officer and stating their full name and city of residence.

During public hearings no person shall present irrelevant, immaterial, or repetitious testimony or evidence.

There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the meeting. If online participant(s) disrupt the meeting, the participant(s) microphone and webcam will be turned off. If disruption continues, the participant(s) will be removed from the meeting.

CITY COUNCIL PUBLIC HEARING & REGULAR MEETING

In-Person Meeting with Remote Access Available

Millersburg City Hall

4222 NE Old Salem Road, Millersburg OR 97321

September 12, 2023 @ 6:30 p.m.

Agenda

Remote access for the meeting is available. Instructions for joining the meeting can be found at <https://www.cityofmillersburg.org/citycouncil/page/city-council-regular-meeting-33>. If you do not have access to a phone or computer, or need additional support, please contact City Hall prior to 5:00 p.m. on Monday, September 11, 2023.

Meeting link to join via computer:

<https://aspenuc.accessionmeeting.com/j/11597014359>

Phone number to join meeting: 503-212-9900

Meeting ID: 115 9701 4359

- A. CALL TO ORDER
- B. ROLL CALL
- C. PLEDGE OF ALLEGIANCE
- D. CHANGES AND ADDITIONS TO THE AGENDA
- E. CONSENT AGENDA
 - 1) Approval of August 8, 2023, City Council Meeting Minutes
- F. GUEST PRESENTATIONS
 - 1) Linn County Sheriff's Office Monthly Report
- G. PUBLIC HEARINGS
 - 1) Wilbur-Ellis Seventh Amendment and PSA
Action: _____
 - 2) Right-of-Way Vacation
Action: _____

H. PUBLIC COMMENT

The public has the opportunity to address the Council during "Public Comment" while in the virtual meeting by virtually signaling by unmuting first, then those who call in will be acknowledged, or if the public prefers, may send written comments by email to cityclerk@cityofmillersburg.org. Please limit comments to one page and include your name and address. Emails received before 5:00 p.m. on the day of the meeting will be included and read into the record for comments by the Council.

I. COUNCIL MEMBER AND STAFF COMMENTS

J. CITY MANAGER'S REPORT

- 1) Project Updates
- 2) 50 Year Celebration Logo
- 3) Transition Parkway Design Update
- 4) Urban Renewal Update
- 5) Curfew Ordinance – Minors

K. CITY ATTORNEY'S REPORT

L. UNFINISHED BUSINESS

- 1) Resolution to Accept Grant for Sewer Feasibility Study
Action: _____

M. NEW BUSINESS

- 1) Selmet Enterprise Zone
Action: _____
- 2) Right-of-Way Dedication
Action: _____
- 3) Old Salem Road Guardrail Project
Action: _____
- 4) Street Sweeping Contract
Action: _____

N. CLOSING COUNCIL COMMENT

O. ADJOURNMENT

Upcoming Meetings & Events:

For a schedule of meetings and events, visit the City's website calendar at <https://www.cityofmillersburg.org/meetings>

The meeting is accessible to the disabled. If you have a disability that requires accommodation to attend or participate, please notify the Millersburg City Hall in advance by calling 458-233-6300.



CITY COUNCIL PUBLIC HEARING & REGULAR MEETING MINUTES

August 8, 2023 @ 6:30 p.m.

A. CALL TO ORDER Meeting called to order by Council President Mark Raum at 6:30 p.m.

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

Councilors Present: Council President Mark Raum and Councilors Dave Harms, Mike Hickam, and John Sullivan

Councilor Absent: Mayor Scott Cowan

Staff Present: Kevin Kreitman, City Manager; Janelle Booth, Assistant City Manager/City Engineer; Matt Straite, Community Development Director; Alan Sorem, City Attorney; Sheena Dickerman, City Recorder

D. CHANGES AND ADDITIONS TO THE AGENDA **6:30 p.m.**

E. CONSENT AGENDA **6:31 p.m.**

City Recorder Sheena Dickerman said that on the last page it should say her title as "City Recorder and not Billing/Collections Specialist".

1) Approval of July 11, 2023, City Council Meeting Minutes

Action: **Motion to approve the Consent Agenda as amended made by Councilor Mike Hickam; seconded by Councilor Dave Harms**

Council President Mark Raum: Aye

Councilor Dave Harms: Aye

Councilor Mike Hickam: Aye

Councilor John Sullivan: Aye

Motion PASSED:4/0

F. GUEST PRESENTATIONS **6:32 p.m.**

1.) Linn County Sheriff's Office Monthly Report

Deputy Steven Frambes, LCSO, reviewed the monthly LCSO report. Frambes shared that property crimes are down. He highlighted a few of the crimes. He commented that 62 calls were self-initiated by the deputies.

Council President Mark Raum asked if there was a professional standard for initiated calls. Frambes replied no, but he does see the numbers go up in winter due to staffing. City Manager Kevin Kreitman appreciated seeing the initiative of the deputies. Frambes added that with increasing law changes it has become harder for them to do their jobs.

Wendy Joy, Millersburg- asked for clarification on the boundaries of the City on Old Salem Road by Albany. Frambes replied it is south of the Village Estates Mobile Home Park.

Joy asked about the transient complaints listed in the calls. Frambes replied those were calls created by deputies.

G. PUBLIC HEARING

6:39 p.m.

HI-23-01

The proposal consists of adding a Historical Property Overlay Zone (HPO) to the historic structure/property at 38794 NE Morningstar Road, also known as the Morningstar Grange.

Council President Mark Raum opened the public hearing at 6:39 p.m.

Dickerman read the disclosure statement.

Community Development Director Matt Staite said the project is located in the northern part of the City, on Morningstar Road. The project is proposing a Historic Zoning Overlay. Currently, the only one in the City is the Millersburg Cemetery.

Staite explained that the overlay would add extra processes and criteria for any demolition, exterior alterations, and new construction. The Morningstar Grange (Grange) needs the local historic designation to have access to grants.

Staite shared that the Grange was purchased in 1901 for \$85. The Grange hosts many community and seasonal events. The grange was organized to assist the agricultural community.

Staite explained that it is reviewed under Article 2 of the Development Code. Article 2 does not require that every criteria be met. He highlighted each criteria from the staff report and if it was or was not met. He ended saying that the Historic Committee recommends approval.

City Manager Kevin Kreitman asked Staite to explain who the Historic Committee is. Staite explained that a previous Millersburg City Council had decided that the Planning Commission would act as the Historic Committee if and when needed.

Staff will be proposing a code update to change it from Historic Committee to Historic Commission in the future.

Raum asked if there were definitions in Goal 5 that would pertain to the criteria that would direct towards specific area. He said since it was Millersburg City Code and overlay why the criteria wouldn't be restricted to the immediate area. Straite replied that Goal 5 is vague and only says cities need to preserve their historic heritage. Raum pointed out that if it was focused on Millersburg, it would allow that criterion to be met. Straite agreed.

Councilor Hickam asked if this made the City have any responsibility or requirements to maintain the building, while it is marked as historical. Straite replied no to maintaining it, but the City does play a role if the Grange wanted to tear down the building. If they want to tear it down the Code goes into detail in what is required, such as the applicants needing to find a buyer for it. The City would have to advertise it and there would be more staff time. There are no obligations for the City to maintain the building.

Raum asked if there would be any obligations if the building was destroyed in a fire. Straite explained that it would depend on if the Grange wanted to rebuild. Raum asked what would happen if the applicant abandoned the building. Straite was unsure and said he would look into it.

Applicant Testimony-

Robert Richardson, Grange Secretary, explained that should the Grange close the property would be transferred to the Oregon State Grange. The Oregon State Grange would have custody for seven years and if they couldn't get it started again, they would have the option to sell or tear it down.

No public wanted to speak in favor or against.

No Councilors had a conflict of interest, ex parte contact, or abstained from participating.

No one challenged the Council.

Council President Raum closed the Public Hearing at 6:59 p.m.

Action: **Motion that the City Council approve application HI-23-01 and adopt Ordinance 204-23 made by Dave Harms; seconded by Councilor John Sullivan**

Council President Mark Raum:	Aye
Councilor Dave Harms:	Aye
Councilor Mike Hickam:	Aye

Councilor John Sullivan:
Motion PASSED:4/0

Aye

H. COUNCIL MEMBER AND STAFF COMMENTS

7: 00 p.m.

None

I. CITY MANAGER'S REPORT

7:00 p.m.

1) Project Updates

Booth gave an update on the City Hall Drop Box area and Sidewalk. A postal employee recently replaced the mailbox. The replacement is part of a national program. The mailbox has been changed to allow only one envelope and no drive-up for security reasons. Staff is modifying the project. Staff still want a drop-off for the ballot box before elections. The concrete area will be a little smaller. It will accommodate ADA ramps. Staff has contracted with a concrete contractor to do the work. Kreitman added that the postal employee informed staff that people with parcels could contact the postal service and they would come pick them up or they would need to take them to a post office.

Booth said that the Old Salem Guard Rail had a small change. Oregon Department of Transportation's (ODOT) maintenance division will be doing the project. Their design group decided that there needed to be some shoulder widening. This will increase the cost but it will not change what was budgeted.

Booth mentioned the Industrial Park Subdivision creating parcels the City needs for the road project. This is a Type II level decision, a staff decision. Agency and neighbors can provide comment.

2) Transition Parkway Design Update

Booth said the design is going according to schedule. She showed some pictures*. She mentioned retaining walls and park lighting. There was an open house and a Parks Commission meeting early in the process of what type of feel people would want in a park and the information has been used for these choices. She showed three retaining wall concepts*. The intent of the base bid is it is the highest and the other two deductive. The costs shown were relative costs. She described the various stones. Other stones were looked at but cost and aesthetics were considered.

Booth moved on to park lighting. She explained this was different than street lighting. There are a lot of options but staff narrowed it down based on the feedback and overall theme. The samples displayed in the presentation were the same wattage and spacing*. The base bid is the Bega, it is a more modern fixture. The alternatives are more traditional industrial. She added the Luminis can have a color changing option. The cost does go up significantly. One thought for doing color is around the plaza and not the whole path. This can be revisited. She said the cost for

the color changing was around \$300,000 but there would be additional costs of \$100,000 for the controllers plus a cost per foot of wiring.

Councilor Harms asked if there were different finishes. Booth affirmed.

Hickam commented that he would prefer not to have design 5 (as shown)*. Booth explained that all the lights are shown to provide the same type of coverage. She shared that there were some options to direct the lights. Kreitman added that staff don't want light to be directed north towards the residential area.

Harms asked about the maintenance cost associated with the lights. Booth explained that it would not be replacing a light bulb but be replacing a fixture. Straite added that the longevity of the fixture was considered. Staff wanted something that was low maintenance and that would last. Kreitman shared that Albany Timber Linn Park had fiberglass poles and they were continually being broken. Staff does not want that to happen here.

Joy asked how many fixtures it would take. Booth said it's estimated to be approximately 61 or 62 fixtures.

3) Urban Renewal

Kreitman said there was a discussion with Elaine Howard Consulting. City Attorney Alan Sorem shared the purpose of the meeting was to ask basic questions. They are a highly recommended consulting group in the state. City staff will be working on this but need outside help to work on the necessary reports. The City would need to create an Urban Renewal Area Agency (URA). This is an additional governmental entity. Most jurisdictions have the URA members be City Councilors. A typical URA meeting would be scheduled 15 minutes prior to a Council meeting. It does come with long term procedural regulations. The agency, along with the consultants, would be creating the plan.

The criteria for creating an urban renewal area is a 25 percent rule. No more than 25 percent of an area of municipality be subject to an urban renewal area and no more than 25 percent of the value. The City has no land in an URA currently. Another element is "blight" or underdeveloped property. Property that has never been developed can qualify or has development constraints, such as radon. It takes 6 to 8 months to go through the process. They would assist with all the staff reports, presentations, and notices. The economical way is to incorporate the notice with utility billing.

The tax assessor certifies the tax base every October which is based on the value of the land in January. The timeline would be the City would be getting certified in October 2024.

With the benefit of tax increment financing, which is what the URA is about, you create a particular area. Then the City is able to retain the tax distribution through the URA and use those expenditures on improvements that have been identified in the Urban Renewal Plan.

The consultants would help create the Urban Renewal Plan, the City would hold the public hearings and meetings and adoption. This plan would identify and document on why the City wants an URA and what the City is saving for; public investment, infrastructure, or creating grants to incentivize development. There is no direct way to use URA funds for life safety services. The City will be mindful of how much is taken out in order not to jeopardize funding for other obligations. The URA monies could be used towards projects such as Transition Parkway.

Sorem stated that analysis had been done and the contract could be entered into through direct contracting. Kreitman said the cost is approximately \$35,000 to \$40,000. Sorem added there may be additional cost for surveys. Kreitman said the commercial area would be an area to look at, as having an Urban Renewal is attractive for some that have been looking for public and private partnerships.

Raum asked if there could be pockets or zones as long as it was not greater than 25 percent. Kreitman affirmed. Sorem explained that it is a funding district. Kreitman added that properties being looked at are currently vacant properties.

Kreitman shared that the City has a lot of industrial property and this is why the City has a low tax rate. As additional industry comes in, some of the funds will be used to enhance services. The goal is a four-person engine company, a medic unit staffed and increasing law enforcement patrol. The cost is \$500,000 to \$600,000 to have additional staffing.

Sorem explained that with an URA the funds stay within the City's budget rather than dispersed to other taxing districts. It is a benefit for the City to save for capital projects within the URA. Consultants and staff look at what long term infrastructure the City would need.

J. CITY ATTORNEY'S REPORT

7:31 p.m.

a. Report from Executive Session

Sorem said there is an acquisition of an easement to access property that the City owns west of the railroad tracks and is currently leased to Wilbur-Ellis. The City is trying to negotiate amendments to the lease so Wilbur-Ellis will have an option to purchase. He hopes to bring it to a public hearing at next the Council meeting. There must be 30 days' notice to ODOT.

K. UNFINISHED BUSINESS

7:33 p.m.

None

L. NEW BUSINESS

7:33 p.m.

1) Events Committee Appointment

Kreitman stated that there was an Events Committee application from Wendy Joy. She was heavily involved with National Night Out (NNO) and had presented at the last Council meeting. He thanked Joy for all her work on the NNO event. Joy thanked everyone for their support and hopes next year will be bigger and better.

Raum also thanked her for all her hard work.

Action: **Motion to appoint Wendy Joy to the Events Committee made by Council President Mark Raum; seconded by Councilor Dave Harms;**

Council President Mark Raum: Aye
Councilor Dave Harms: Aye
Councilor Mike Hickam: Aye
Councilor John Sullivan: Aye

Motion PASSED:4/0

2) Parks Commission Appointment

Kreitman stated that Chuck Withrow applied for the Parks Commission. Harms asked for clarification if Withrow indicated which Commission he wanted to be on, as it wasn't clear on the application. Kreitman explained that Dickerman had clarified Withrow.

Action: **Motion to appoint Chuck Withrow to the Parks Commission made by Councilor John Sullivan; seconded by Councilor Mike Hickam;**

Council President Mark Raum: Aye
Councilor Dave Harms: Aye
Councilor Mike Hickam: Aye
Councilor John Sullivan: Aye

Motion PASSED:4/0

3) Council Rules and Procedure Update

Kreitman said the Council Rules and Procedure policy has been updated by Council's request to go from two public comment periods to one public comment period at the beginning of the Council meetings.

Action: **Motion that the Council adopt the update to the Council Rules and Procedures made by Councilor Dave Hickam; seconded by Councilor John Sullivan;**

Council President Mark Raum:	Aye
Councilor Dave Harms:	Aye
Councilor Mike Hickam:	Aye
Councilor John Sullivan:	Aye

Motion PASSED:4/0

M. PUBLIC COMMENT

7:39 p.m.

Eric William, Conser Road-He said he found out that his property is out of City limits. He had a fire two days ago on his property. He said he heard that Jefferson Fire had come but that no one from the new Fire station, which is closer had come. He wanted to know who makes the decision, as minutes make a difference.

Kreitman expressed his sympathy. He shared that he had worked with Albany Fire (AFD). He had contacted AFD, and Engines 13 and 15 were both on scene, and were either the first or second engines to be on scene. He explained that Linn County dispatch would have received the call but because he was in Jefferson's Fire District the call is transferred to the Woodburn Dispatch Center. They would then call upon mutual aid with Albany. There would be a delay in the dispatch, but he confirmed that Engine 15 did respond to this fire.

Raum also expressed his sympathy for William's property loss.

N. CLOSING COUNCIL COMMENT

7:50 p.m.

Raum shared that former City Attorney Forrest Reid had written an appreciation note to Council*.

O. ADJOURNMENT Mayor Cowan adjourned the regular meeting at **7:50 p.m.**

Respectfully submitted:

Reviewed by:

Sheena Dickerman
City Recorder

Janelle Booth
Assistant City Manager

*Presentation materials or documents discussed at the meeting that are not in the agenda packet are archived in the record. Documents from staff are posted to the website after the meeting. Documents submitted by the public are available by emailing info@cityofmillersburg.org.



TO: Millersburg City Council
FROM: Kevin Kreitman, City Manager
DATE: August 10, 2023, for the September 12, 2023, City Council Meeting
SUBJECT: 7th Amendment to the Lease Agreement and a Purchase and Sale Agreement with Wilbur-Ellis Company LLC

Action Requested: Approval of proposed 7th amendment to the lease agreement with Wilbur-Ellis Company LLC for approximately 25.32 acres of City-owned property, which will set the date for the option period for the attached Purchase and Sales Agreement.

Discussion: On January 28, 2021, the City entered into a Letter of Intent (LOI) for the lease of approximately 25 acres of land with the Wilbur-Ellis Company LLC. With direction from Council, staff, legal counsel, and Wilbur-Ellis finalized a lease agreement on June 8, 2021. The leased property is identified as the southern 25.32 acres, known as a portion of that certain tract of land as conveyed to City of Millersburg, an Oregon non-profit municipal corporation per deed Document No 2014-16933, Linn County Deed Records located in the East One-half of Section 29, Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon. Staff and legal counsel at City Council direction have offered the property for sale to Wilbur-Ellis LLC.

As identified in the 7th amendment to the lease (Attachment 1), upon the City securing the access easement from Conser Road to the site, Wilbur-Ellis will begin paying under the Operating Term Phase of the Lease and will have a 180 day option to purchase the property, pursuant to the Purchase and Sale Agreement (Attachment 2).

Both the lease and purchase prices are exclusive of costs associated with roadway and infrastructure (sewer and water) construction which will be required of Wilbur-Ellis for the development of the parcel. The City will participate in costs associated with oversizing of needed infrastructure and will credit Wilbur-Ellis system development charges for eligible infrastructure.

Budget Impact:

Upon activation of the Operating Term Phase of the lease, Wilbur-Ellis will pay a lease rate of \$500 per acre monthly (\$12,660). If the option to purchase is exercised the sale of the 25.32 acres will be for \$3,061,500.

Recommendation:

Staff recommends Council approve the 7th Amendment to the Lease and the attached Order (Attachment 3) authorizing the sale of a 25.32 acres of City of Millersburg, Oregon, real property, known as a portion of that certain tract of land as conveyed to City of Millersburg, an Oregon non-profit municipal corporation per deed Document No 2014-16933, Linn County Deed Records located in the East One-half of Section 29, Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon, to Wilbur-Ellis Company LLC, a California limited liability company; and authorize the City Manager to sign all

documents on behalf of the City of Millersburg necessary to convey said property to Wilbur-Ellis Company LLC, a California limited liability company and to conduct business and sign documents necessary to implement and fulfill terms of this lease in the future.

Attachment(s):

7th Amendment to the Lease Agreement
Purchase and Sale Agreement
Order Authorizing Sale
Public Hearing Notice

**SEVENTH AMENDMENT TO LEASE
AGREEMENT**

This SEVENTH AMENDMENT TO LEASE AGREEMENT (the "**Amendment**"), made and executed as of September 30, 2023 (the "**Amendment Effective Date**"), is by and between the **City of Millersburg, Oregon**, hereinafter referred to as "**Lessor**," and **Wilbur-Ellis Company LLC**, a California limited liability company with its principal place of business at 345 California Street, 27th Floor, San Francisco, California 94104, hereinafter referred to as "**Lessee**." Lessor and Lessee are collectively referred to herein as the "**Parties**" and individually as a "**Party**."

RECITALS:

- A.** This Amendment is made and entered into by Lessor and Lessee as an amendment to the Lease Agreement (as amended, the "**Lease Agreement**") with an effective date of June 8, 2021 (the "**Effective Date**"), for the area of land commonly known as the southern 25 acres of Zone C of Millersburg Industrial Park, located within the real property commonly known as tax lot 203 of Linn County Assessor Map 10 South, Range 3 West, Section 29 (the "**Property**").
- B.** This Amendment is the seventh amendment executed by the Parties to the Lease Agreement.
- C.** The Parties desire to make certain amendments to the Lease Agreement, as further set forth below.

AGREEMENT:

In consideration of the mutual covenants, terms, and conditions set forth herein, the Parties agree as follows:

1. Amendment to Section 2.1

This Amendment is for Section 2.1 of the Lease Agreement. Section 2.1 of the Lease Agreement is hereby amended and shall read as follows: "**Initial Term**. The initial term of this Lease shall commence on June 8, 2021 (the "**Initial Rent Commencement Date**") and continue until the later of July 8, 2023 and the date that is thirty (30) days after the Parties have received notice that the following two events have occurred: (i) execution and recordation of the final partition plat creating the Property as a legal unit of land, and (ii) execution and recordation of a public access and utility easement providing ingress and egress to the Property from Conser Road substantially consistent with the description provided on Exhibit B and depicted on Exhibit C (the "**Operating Term Commencement Date**")."

2. Amendment to Section 4.1

This Amendment is for Section 4.1 of the Lease Agreement. Section 4.1 of the Lease Agreement is hereby amended by replacing "first day of the Operating Term (the "Operating Term Commencement Date")" with "Operating Term Commencement Date".

3. Amendment to Section 12

This Amendment is for Section 12 of the Lease Agreement. Section 12 of the Lease Agreement is hereby amended and restated in its entirety to read as set forth in Exhibit A attached hereto.

4. Addition of Exhibit D

Addition of Exhibit D to the Lease Agreement. The Lease Agreement is hereby amended by adding Exhibit D attached hereto as Exhibit D to the Lease Agreement.

5. Tenant Acknowledgements

Tenant acknowledges and agrees to the following:

- a. Due to the inability to secure the needed easements for secondary access, Tenant shall be obligated to modify its design to comply with Oregon Fire Code standards in lieu of the previously required secondary means of access (Oregon Fire Code-OFC Appendix D104.1 and D104.2). Linn County Building and Albany Fire Department has stated to the parties it will accept a single access where all buildings are equipped throughout with an approved automatic sprinkler system, without exclusion (OFC D104.2 exception).
- b. Tenant has had an opportunity to review a proposed primary access easement to Conser Road; however, Tenant acknowledges that such easement has not been granted to the Parties.
- c. Under Section 3 of the Lease it is Tenant’s obligation to complete Tenant’s due diligence, and nothing in this amendment, any other amendment, or the parties prior dealings had modified Section 6.6 As-Is of the Lease. Failure of any condition precedent, such as the execution of an access easement agreement, shall not be a breach of any obligation or covenant of Landlord, express or implied.

6. Existing Lease Binding

Except as amended herein, the Lease Agreement shall remain in full force and effect and be binding upon the Parties in all respects, including, but not limited to, its provisions providing for recovery of attorney’s fees in the event of a breach, which shall apply to any breach of this Amendment.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Amendment Effective Date.

LESSOR:
CITY OF MILLERSBURG, OREGON

LESSEE:
WILBUR-ELLIS COMPANY LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A to Amendment
AMENDMENT TO SECTION 12

12. Purchase Option; Right of First Offer.

12.1 **Purchase Option.** During the period between the Effective Date and the date that is one hundred eighty (180) days after the Operating Term Commencement Date (the “**Option Period**”), Lessor grants to Lessee an exclusive and irrevocable option to purchase the Property and any portion of Lessor’s property in which the Property is located subject to the terms and conditions set forth in this Section 12.1 (the “**Option**”). At any time during the Option Period, Lessee may exercise the Option by sending Lessor a written notice of Lessee’s intention to exercise the Option (the “**Exercise Notice**”) accompanied by an executed copy of the Purchase and Sale Agreement in the form attached hereto as **Exhibit D** (the “**Purchase Agreement**”). Lessor shall promptly execute the Purchase Agreement and return a fully executed copy to Lessee. Notwithstanding anything to the contrary set forth in Section 12.3, during the Option Period, Lessor shall not list the Property (or any portion of Lessor’s property that includes the Property) with a broker or otherwise market the Property (or any portion of Lessor’s property that includes the Property) for sale, accept any unsolicited offer, or, subject to the Option granted to Lessee set forth in this Section 12.1, sell all or any portion of the Property (or any portion of Lessor’s property that includes the Property).

12.2 **ROFO.** From the date the Option Period expires through the expiration of termination of this Lease, so long as Lessee is not then in default under this Lease, Lessor grants to Lessee, and Lessee hereby accepts from Lessor, a right of first offer to purchase the Property and any portion of Lessor’s property in which the Property is located subject to the terms and conditions set forth in Sections 12.3 and 12.4 (collectively the “**ROFO**”).

12.3 **Restrictions on Listing and Sale.** Except as provided below (which is subject to Section 12.1), Lessor shall not list the Property (or any portion of Lessor’s property that includes the Property) with a broker or otherwise market the Property (or any portion of Lessor’s property that includes the Property) for sale, accept any unsolicited offer, or sell all or a portion of the Property (or any portion of Lessor’s property that includes the Property) without first making an offer (“**Lessor’s Offer**”) to Lessee for a price and on terms and conditions acceptable to Lessor and allowing Lessee 60 days from the date Lessee receives Lessor’s Offer to respond. If Lessee accepts Lessor’s Offer in writing, then the Parties will be bound by the contract formed by such offer and acceptance. If Lessee fails to accept Lessor’s Offer in writing within such 60-day period, then Lessor may market and sell the Property (or any portion of Lessor’s property that includes the Property) to any person for such price and pursuant to terms substantially similar to those set forth in Lessor’s Offer without further notice to Lessee for a period of 365 days following the date of Lessor’s Offer. If Lessee makes a counteroffer within 60 days of receipt of Lessor’s Offer (“**Lessee’s Counteroffer**”), Lessor will have the option of accepting or rejecting Lessee’s Counteroffer at any time during the 90 days after it is delivered to Lessor. Lessee may not withdraw Lessee’s Counteroffer during such 90-day period. If Lessor does not accept Lessee’s Counteroffer, then for a period of 365 days following the date of Lessee’s Counteroffer, Lessor may market and sell the Property (or any portion of Lessor’s property that includes the Property) to a third party at a price (net of any broker commissions or other similar fees) and such other terms as are no more favorable to the purchaser than those set forth in Lessor’s Offer. Notwithstanding anything to the contrary in this Section 12.3, Lessor shall have the right to structure Lessor’s Offer to include the Property as a separate legal lot or include the Property in a larger portion of Lessor’s property.

12.4 **Termination of ROFO.** If Lessor does not sell the Property (or any portion of Lessor's property that includes the Property) to a third party within either of the 365-day periods set forth in Section 12.3, then Lessee's ROFO will be reinstated upon the expiration of the applicable 365-day period. As used in this Section 12, the term "sell" means actually conveying Lessor's interest in the Property (or any portion of Lessor's property that includes the Property) to a third party, any agreement between Lessor and a third party for a future conveyance of Lessor's interest in the Property (or any portion of Lessor's property that includes the Property), or any transaction that is the substantial equivalent of such a conveyance or agreement for such a conveyance. Upon the sale of the Property (or any portion of Lessor's property that includes the Property) to a party other than Lessee pursuant to Section 12.3, Lessee's ROFO shall expire and Lessee shall have no further right to purchase the Property (or any portion of Lessor's property that includes the Property) under Section 12.3.

**Exhibit B to Amendment
Legal Description of Easement**

June 19, 2023

Tax Map No.
10S03W200000402
10S03W290000106

ACCESS EASEMENT

A strip of land of varying width for ingress and egress purposes lying in Section 20, Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon and being a portion of those properties conveyed to Willamette Valley Land, LLC in Parcels 1 and 2 of Document No. 2014-01001, recorded January 29, 2014 in the Linn County Book of Records. The centerline of said strip being more particularly described as follows:

BEGINNING at a point on the Southerly right-of-way line of Conser Road (Market Road #34), said point being N 77°27'45" W, 1386.32 feet, along the centerline of Conser Road, and S 12°32'15" W, 30.00 feet from the Southwest corner of the Christian Farlow D.L.C. #54, at which point said strip is 100 feet in width, 50 feet on each side of the centerline; thence along said centerline S 12°32'15" W, 36.56 feet to a point at which said easement has tapered to 60 feet in width, 30 feet either side of the centerline; thence continuing along the centerline of said 60 foot wide strip the following courses: S 12°32'15" W, 50.25 feet; thence 336.15 feet along the arc of a 214.00 foot radius curve to the left (long chord bears S 32°27'45" E, 302.64 feet); thence S 77°27'45" E, 137.27 feet; thence 501.01 feet along the arc of a 486.00 radius curve to the right (long chord bears S 47°55'47" E, 479.12 feet); thence parallel with and 40.00 feet Westerly of the Westerly right-of-way line of the Oregon Electric Railroad, S 18°23'49" E, 117.95 feet to the Southerly line of said Parcel 1 of said Willamette Valley Land property and the TERMINUS of this description.

The sidelines of said strip shall be shortened or extended to intersect the Southerly boundary of said Parcel 1 of said Willamette Valley Land property.

The parcel of land to which this description applies contains 71,483 square feet (1.64 acre), more or less.

The Basis of Bearings for this description is related to County Survey 14449 by holding the record location of two 1/2" iron rods on the West line of said property recorded in Document No. 2014-16933.

This description is not based upon a monumented land survey. The boundary locations were determined using record information only. No field boundary surveying was performed.

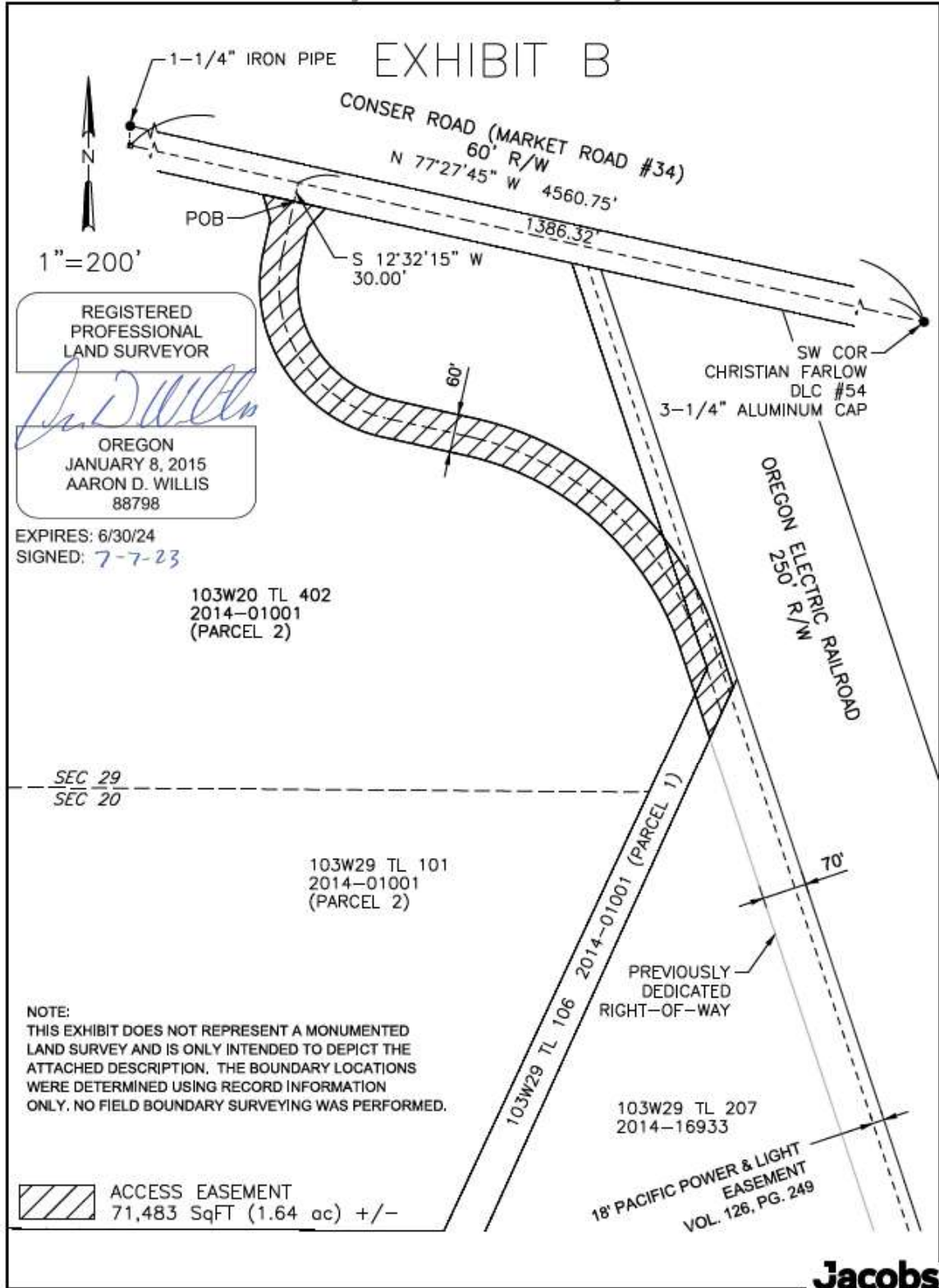


PAGE 1 OF 1

EXPIRES: 6/30/24
SIGNED: 7-7-23

**Exhibit C to Amendment
Depiction of Easement**

19-JUN-2023 Millersburg Access Easement Exhibit.dgn



4877-5540-0824, v. 7

**EXHIBIT D to LEASE AGREEMENT
(Purchase and Sale Agreement Form)**

See attached.

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this “Agreement”) is made and entered into as of _____, 202_ (the “Effective Date”) by and between the City of Millersburg, Oregon, an Oregon municipal corporation (“Seller”), whose address is 4222 NE Old Salem Road, Albany OR 97321, and Wilbur-Ellis Company LLC, a California limited liability company (“Buyer”), whose address is 345 California Street, 27th Floor, San Francisco, California 94104.

RECITAL:

- A. Seller and Buyer are parties to that certain Lease Agreement dated June 8, 2021 (as amended, the “Lease”) concerning the that certain parcel of real property identified as Parcel 2 on the legal description in Exhibit A-1 and depicted on Exhibit A-2 attached hereto (the “Leased Property”).
- B. Pursuant to the terms of the Lease, Seller granted an option to purchase the Lease Property, together with any and all improvements, rights, privileges and easements appurtenant thereto owned by Seller (the “Property”).
- C. Subject to the terms and conditions contained in this Agreement, Buyer now desires to purchase the Property from Seller and Seller agrees to sell the Property to Buyer.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. DEFINITIONS

Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement have the meanings assigned to them in the attached Appendix A.

2. SALE OF PROPERTY

2.1 Sale; Purchase Price. Subject to the terms and conditions contained in this Agreement, Seller will sell the Property to Buyer and Buyer will purchase the Property from Seller. The purchase price for the Property is Three Million Sixty-One Thousand Five Hundred Dollars (\$3,061,500) (the “Purchase Price”). At or before Closing, Buyer shall deposit the Purchase Price by wire transfer of immediately available funds into an escrow (“Escrow”) established with Title Company.

2.2 Property Sold AS-IS. Except for those representations and warranties made by Seller in this Agreement, (a) Seller expressly excludes all warranties with respect to the Property, express and implied, promises, statements, estimates, of any nature whatsoever, whether oral or written, expressed or implied, have been or will be made by Seller, or any agent of Seller, including, but not limited to, the completeness, accuracy, or veracity of the seller’s documents, if any, the physical condition of the Property, latent defects, patent defects, personal property, structure, use, drainage, mold or rot issues, pests, construction or building defects, zoning and land use restrictions, title, habitability, suitability, fitness, merchantability, size, compliance with building codes, government laws, rules and regulations, availability of utility rights or the existence of hazardous substances, wetlands, easements or encroachments, whether or not disclosed by inspection, and (b) Seller will sell the Property to Buyer AS-

IS and WITH ALL FAULTS AND DEFECTS,” if any. Buyer is currently in possession of the Property. Buyer represents and warrants that (a) Buyer has entered into this Agreement on the basis of its own examination and personal knowledge of the Property, (b) Buyer has conducted an investigation and all due diligence Buyer deems necessary regarding the Property, and (c) Buyer has not relied on any representations, warranties, promises, statements, estimates, of any nature whatsoever, made by Seller other than those expressly provided in this Agreement, and (d) Seller is not in default with all material the terms of the Lease. Subject to the terms and conditions contained in this Agreement, Buyer will accept the Property in its AS-IS condition as of the Closing Date.

3. SELLER REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer, on the Effective Date and as of the Closing Date, as follows:

3.1 Authority. Seller has full power and authority to sign and deliver this Agreement and to perform all of Seller’s obligations under this Agreement.

3.2 Enforceability. Each of this Agreement and the other agreements contemplated herein to which Seller is a party has been duly executed and delivered by Seller, and assuming due authorization, execution and delivery by Buyer to the extent Buyer is a party, constitutes the valid and binding agreement of Seller, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforceability of creditors’ rights generally or by principles of equity.

3.3 Title. Seller has good and marketable title to the Property and will transfer and convey good and indefeasible title to the Property to Buyer free and clear of any and all Encumbrances except for the Permitted Closing Encumbrances.

3.4 Brokers; Non-foreign Person. Seller has not incurred any liability or obligation – whether contingent or otherwise – for a brokerage commission, a finder’s fee, or any other similar payment in connection with this Agreement or the Transaction. Seller is not a “foreign person” for purposes of Section 1445 of the Internal Revenue Code.

4. BUYER’S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller, on the Effective Date and as of the Closing Date, as follows:

4.1 Authority. Buyer has full power and authority to sign and deliver this Agreement and to perform all of Buyer’s obligations under this Agreement.

4.2 Enforceability. Each of this Agreement and the other agreements contemplated herein to which Buyer is a party has been duly executed and delivered by Buyer, and assuming due authorization, execution and delivery by Seller to the extent Seller is a party, constitutes the valid and binding agreement of Buyer, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforceability of creditors’ rights generally or by principles of equity.

4.3 No Third-Party Consents. The execution of this Agreement by Buyer (including the undersigned signing on behalf of Buyer if signing in a representational capacity) and Buyer’s performance of all its obligations hereunder are not subject to any approval or consent of any person,

board, committee, or third party.

4.4 No Litigation. Buyer is not a party to any litigation or civil or criminal proceedings which would prevent the consummation or Buyer's performance of the transactions contemplated herein; no petitions in bankruptcy have been filed by or against Buyer; and none of Buyer's assets are currently subject to any insolvency, receivership, or foreclosure proceedings.

4.5 No Breach of Agreements. This Agreement does not breach or violate any term or provision of any other agreement or contract to which Buyer is a party.

4.6 Adequate Funds. Buyer has adequate funds available or that can be made available without any financial assistance from any third party to perform under this Agreement.

5. PRELIMINARY TITLE REPORT; CONDITIONS TO CLOSING

5.1 Preliminary Title Report. Within ten (10) days after the Effective Date, Seller will order from the Title Company and cause the Title Company to deliver to Buyer; a preliminary title report showing the condition of title to the Property, together with complete and legible copies of all exceptions listed therein (the "Preliminary Commitment"). Buyer will have ten (10) days after Buyer's receipt of the Preliminary Commitment within which to give notice in writing to Seller (the "Notice of Unpermitted Exceptions") of Buyer's disapproval of any exceptions shown in the Preliminary Commitment. If Buyer fails to provide Seller the Notice of Unpermitted Exceptions within the ten-day period, all exceptions set forth in the Preliminary Commitment will be Permitted Closing Encumbrances. If Buyer timely provides Seller the Notice of Unpermitted Exceptions, Seller will notify Buyer within ten (10) days after receipt of the Notice of Unpermitted Exceptions (the "Notice of Removal") whether Seller is willing and able to remove the unpermitted exceptions identified in the Notice of Unpermitted Exceptions. If Seller is willing and able to remove such unpermitted exceptions, Seller will do so at or prior to Closing. If Seller is not willing or unable to remove such unpermitted exceptions and/or fails to provide a Notice of Removal, Buyer may, by written notice to Seller within ten (10) days after Buyer's receipt of the Notice of Removal, exercise any of the following rights or remedies: (a) Buyer may terminate this Agreement, and thereafter neither party will have any further rights, remedies, and/or obligations with respect to the Property except for the Lease which remains in full force and effect; (b) Buyer may approve the Preliminary Commitment subject to the unpermitted exceptions; or (c) Buyer may attempt to remove the unpermitted exceptions or any of them with Seller's cooperation and assistance at no cost to Seller.

5.2 Restriction on Transfer; Notification. Until the Closing or the termination of this Agreement, Seller will not Transfer the Property or any interest in the Property without the prior written consent of Buyer.

5.3 Closing Conditions. The following are expressly required conditions of Seller's and Buyer's obligations to close the Transaction (the "Closing Conditions"): (a) satisfaction of the conditions set forth in Section 6.2 and (b) all necessary approvals to enter into this Agreement and transfer the Property to Buyer on the terms and conditions contained herein must be received, including, but not limited to, recordation (at Buyer's sole cost and expense) of a final partition plat creating the Property as a legal unit of land (the "Final Plat Recordation").

6. ESCROW INSTRUCTIONS; CLOSING; PRORATIONS

6.1 Escrow Instructions. Upon execution of this Agreement, the parties hereto shall deposit a copy of this Agreement with the Title Company, and this instrument shall serve as the instructions to the Title

Company as the escrow holder for consummation of the Transaction. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

6.2 Deposit of Documents.

(a) At or before the Closing, Seller shall deposit into Escrow the following items (collectively, "Seller's Closing Documents"):

(1) the duly executed and acknowledged Deed conveying the Property to Buyer;

(2) the duly executed and acknowledged Easement; and

(3) an affidavit pursuant to Section 1445(b)(2) of the Federal Code, and on which Buyer is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Code.

(b) At or before Closing, Buyer shall deposit into Escrow the following items:

(1) the funds (including the Balance) necessary to close the Transaction by wire transfer of immediately available funds.

(c) Seller and Buyer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof.

6.3 Closing. As soon as:

(a) The parties have satisfied the conditions set forth in Sections 5.3(b);

(b) Seller has delivered into Escrow Seller's Closing Documents and Buyer has approved each of the same as satisfying the requirements of this Agreement;

(c) Buyer has delivered into Escrow the funds required to effect Closing hereunder; and

(d) The Title Company is prepared to record the Deed and the Easement in the Official Records of Linn County, Oregon, and to issue to Buyer the Title Insurance in the amount of the Purchase Price, subject only to the Permitted Closing Encumbrances;

(e) Then, and only then,

(1) the Title Company shall: (a) record the Deed and the Easement; (b) disburse to Seller's account the Purchase Price, net of any applicable prorations as set forth in Section 6.4 below; (c) Deliver to Buyer a conformed copy of the Deed and the Easement showing all recording information, a buyer's closing statement, and the rest of Seller's Closing Documents; and (d) Deliver to Seller a seller's closing statement; and

(2) Seller shall deliver exclusive possession of the Property to Buyer, subject to the Permitted Closing Encumbrances.

(e) The parties acknowledge and agree that immediately upon Closing, the Lease shall terminate and be of no further force and effect.

6.4 Prorations. Taxes for the current year and any expenses of the operation and maintenance of the Property incurred by Seller shall all be prorated as of 12:01 a.m. on the date the Deed is recorded, on the basis of a 365-day year. Seller shall receive credits at Closing for the amount of any utility or other deposits with respect to the Property. To the extent necessary, Buyer shall cause all utilities to be transferred into

Buyer's name and account at the time of Closing. Seller and Buyer hereby agree that if any of the aforesaid prorations and credits cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date and either party owing the other party a sum of money based on such subsequent proration(s) or credits shall promptly pay said sum to the other party. Any taxes or additional penalties that would be due as a result of removal of the Property from any tax deferral or special use assessment program will be charged to Buyer as though the Property were removed from such program on the Closing Date. The provisions of this Section 6.4 shall survive the Closing

6.5 Costs and Expenses. All deeds will be recorded at Buyer's expense, and all other escrow fees and closing costs (other than the fees and expenses of legal counsel, accountants and other advisors) associated with the Transfer shall be divided equally between Seller and Buyer. Except as expressly set forth herein, each party hereto shall pay its own expenses incurred in connection with this Agreement and the Transaction, including, without limitation, the fees and expenses of its legal counsel, accountants and other advisors.

6.6 Title Insurance. Within ten (10) days after the Closing Date, Title Company will furnish Buyer with an ALTA Owner's Policy of Title Insurance or an equivalent insurance policy (the "Title Insurance") in the amount of the Purchase Price, insuring Buyer as the owner of the Property subject only to Title Company's standard preprinted exceptions and the Permitted Closing Encumbrances. The premium for the standard Title Insurance shall be shared equally by the parties, and any additional premiums attributable to extended ALTA coverage shall be the responsibility of Buyer.

7. TERMINATION; DEFAULT; AND RELEASE

7.1 Termination. This Agreement will terminate upon the earliest to occur of the following: (a) upon notice from either party if Closing has not occurred by the Closing Deadline; or (b) upon written notice from the non-breaching party if the breaching party has failed to cure the defaults alleged in a Default Notice (as defined below) within ten (10) days after the breaching party's receipt of the Default Notice to. Upon termination pursuant to this Section 7.1, neither party thereafter will have any further rights, remedies, and/or obligations with respect to this Agreement.

7.2 Notice of Default. Prior to declaring a party in default under this Agreement, the non-defaulting party will provide the defaulting party ten (10) days' prior written notice (the "Default Notice") specifying with reasonable particularity all defaults under this Agreement that the non-defaulting party believes exist. The defaulting party will have the right to cure the alleged defaults within ten (10) days after receipt of the Default Notice to avoid any breach under this Agreement. This section will not be construed as extending the time by which any notice or contingency waiver must be given under this Agreement or under the Lease.

7.3 Remedies. Seller acknowledges that the remedies available at law for any breach of this Agreement by Seller will, by their nature, be inadequate. Accordingly, Buyer may obtain injunctive relief or other equitable relief to restrain a breach or threatened breach of this Agreement or to specifically enforce this Agreement, without proving that any monetary damages have been sustained. In the event Buyer makes a claim for damages, Buyer's claim shall be limited to actual damages incurred at a cap of \$25,000.00; provided that such cap of \$25,000 will not apply to a breach of Section 3.3. In the event Buyer breaches this Agreement, Seller shall be entitled to all remedies available at law or equity. Election of remedies shall be exclusive.

7.4 Condemnation; Risk of Loss. If, prior to the Closing, all or any material portion of the Property is taken by condemnation, eminent domain, or is the subject of a pending or contemplated taking which has not been consummated, Seller will notify Buyer of such fact in writing. In such event, Buyer will have the option to terminate this Agreement upon written notice to Seller. Upon such

termination, neither party will have any further rights or obligations hereunder, other than pursuant to any provision hereof that expressly survives the termination of this Agreement. If Buyer elects not to terminate this Agreement, Seller will assign and turn over to Buyer, and Buyer will be entitled to receive and keep, all awards for the taking by condemnation or insurance proceeds and Buyer will be deemed to have accepted the Property subject to the taking or loss without reduction in Purchase Price.

8. POST-CLOSING COVENANT; GENERAL PROVISIONS

8.1 Post-Closing Covenant.

(a) By no later than the Construction Deadline, Buyer shall cause the Access Road to be substantially completed. Construction of the Access Road shall be constructed on the land that is currently owned by the City of Millersburg and to be dedicated as right-of-way according to the City's adopted engineering standards for a local access road or as otherwise approved by the City Engineer, and on the land that is to be subject to the Easement according to the County's minimum standards for a private driveway and substantially consistent with Buyer's site plan review application design with the City of Millersburg SP 22-04. Substantial completion shall mean the date that the Buyer has received final inspection from the City as to that portion of the road within the to be dedicated right-of-way and from the County as to the portion of the road within the Easement.

(b) If the Access Road is not substantially completed by the Construction Deadline, Buyer shall pay to Seller the Liquidated Damages Amount within thirty (30) days of the Construction Deadline. The parties intend that payment of the Liquidated Damages Amount constitutes compensation, and not a penalty. The parties acknowledge and agree that the Seller's harm caused by Buyer's breach of Section 8.1(a) would be impossible or very difficult to accurately estimate as of the Effective Date, and that the Liquidated Damages Amount is a reasonable estimate of the anticipated or actual harm that might arise from such breach. The Buyer's payment of the Liquidated Damages Amount is the Buyer's sole liability and entire obligation and the Seller's exclusive remedy for Buyer's breach of Section 8.1(a).

8.2 Survival; Time of Essence; Attorney Fees. Each party's representations, warranties, covenants, and indemnity obligations arising under or made in the Lease shall terminate with Closing. Each party's representations, warranties, covenants, and indemnity obligations arising under or made in this Agreement will survive the closing of the Transaction and will not merge into the Deed for a period of one (1) year with the exception of Buyer's post-closing obligations under Section 8.1, which shall survive closing with no express limitation. Thereafter, all representations, warranties, covenants, and indemnity obligations arising under or made in this Agreement shall be deemed merged into the Deed. Time is of the essence with respect to each and every obligation of the parties hereunder. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

8.3 Binding Effect; Notices. Subject to Section 8.6, this Agreement will be binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses first set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered

personally, by fax, or by a nationally recognized overnight delivery service or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

8.4 Entire Agreement; Applicable Law; Severability. This Agreement sets forth the entire understanding of the parties with respect to the Transaction. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties with respect to the Transaction. This Agreement may not be modified or amended except by written agreement executed by the parties to this Agreement. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Linn County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Linn County, Oregon. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

8.5 Execution; Counterparts; Time. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile, email, or electronic transmission of any signed original document will be the same as delivery of an original.

8.6 Further Assurances; Assignment; Waiver; Expenses. The parties will sign other documents and take all other actions reasonably necessary to further effect and evidence this Agreement. Neither party may assign or delegate any of the party's rights or obligations under this Agreement to any person without the prior written consent of the other party, which the other party may not unreasonably withhold, delay, or condition. No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision in this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. Except as otherwise provided in this Agreement, each party will bear the party's own fees, costs, and expenses incurred in connection with the Transaction, including, without limitation, the performance of this Agreement and the other agreements and documents relating to the Transaction.

8.7 Venue; Applicable Law. In any action brought to interpret or enforce any of the provisions of this Agreement, the venue will be in Linn County Circuit Court. This Agreement will be construed, applied, and enforced in accordance with the laws of the state of Oregon. All sums referred to in this Agreement will be calculated by and payable in the lawful currency of the United States.

8.8 Statutory Disclaimer. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES

AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

8.9 Saturdays, Sundays, and Legal Holidays. If the time for performance of any of the terms, conditions, and provisions hereof falls on a Saturday, Sunday, or legal holiday, then the time of the performance will be extended to the next business day thereafter. If the final day of any period of time set out in any provision of this Agreement falls on a Saturday, Sunday or federal holiday, such period shall be deemed extended to the next day which is not a Saturday, Sunday or federal holiday.

8.10 Confidentiality. The Parties agree that the terms of Section 25 of the Lease, Confidentiality, are incorporated herein and shall apply to this Agreement is if fully set forth herein.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and effective as of the Effective Date.

THE CITY OF MILLERSBURG, OREGON

WILBUR-ELLIS COMPANY LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

Appendix A
Definitions

“Access Road” means a road to be constructed in part within the to be created right-of-way on the owned by Seller and in the remaining part where the Easement is located in order to provide access to the Property.

“Agreement” has the meaning assigned to such term in the preamble.

“Buyer” has the meaning assigned to such term in the preamble.

“Closing” means the closing of the Transaction.

“Closing Conditions” has the meaning assigned to such term under Section 5.3.

“Closing Date” means the date on which the Closing takes place.

“Closing Deadline” means the date that is sixty (60) days after the Effective Date or such other date that the parties may agree upon in writing.

“Construction Deadline” means the date that is five hundred forty-eight (548) days from the Closing Date.

“Deed” means a warranty deed conveying the Property to Buyer free and clear of any and all Encumbrances except the Permitted Closing Encumbrances, which deed will be in form and substance satisfactory to Buyer.

“Default Notice” has the meaning assigned to such term under Section 7.2.

“Easement” means the Easement in the form attached as Exhibit B.

“Effective Date” has the meaning assigned to such term in the preamble.

“Encumbrance(s)” means any lien, mortgage, pledge, security interest, reservation, restriction, adverse claim, or other encumbrance.

“Lease” has the meaning assigned to such term under Recital A.

“Liquidated Damages Amount” means Seven Hundred Fifty Thousand Dollar (\$750,000.00).

“Notice of Removal” has the meaning assigned to such term under Section 5.1.

“Notice of Unpermitted Exceptions” has the meaning assigned to such term under Section 5.1.

“Permitted Closing Encumbrance(s)” means with respect to the Property any exception that is disclosed on the Preliminary Commitment and accepted by Buyer in accordance with Section 5.1.

“Preliminary Commitment” has the meaning assigned to such term under Section 5.1.

“Property” has the meaning set forth in the Recital and includes the following: (a) Seller’s plans and specifications, building permits, and other permits concerning the Property; (b) Seller’s licenses,

permits, registrations, and other governmental authorizations concerning the Property, together with all applications for governmental authorizations; and (c) all built-in appliances, floor coverings, window and door screens, storm doors and windows, irrigation, plumbing, ventilation, cooling and heating fixtures and equipment, water heaters, attached electrical fixtures, window coverings, awnings, attached television antenna, planted shrubs, plants, and trees, if any.

“Purchase Price” has the meaning assigned to such term under Section 2.1.

“Seller” has the meaning assigned to such term in the preamble.

“Title Company” means Ticor Title, Salem Oregon.

“Title Insurance” has the meaning assigned to such term under Section 6.3.

“Transaction” means the purchase and sale of the Property as provided under this Agreement.

“Transfer” means (a) any transfer, including, without limitation, any sale, exchange, gift, assignment, encumbrance, foreclosure of an Encumbrance, or attachment, regardless of whether the transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence, and (b) any contract involving the lease or use of the Property.

Exhibit A
Legal Description

The Property is as legally described in the attached survey.

Exhibit B
Easement

See attached.

4888-0168-4288, v. 13

**AN ORDER AUTHORIZING THE SALE OF 25.32 ACRES OF
CITY OF MILLERSBURG, OREGON,
A PORTION OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO CITY OF
MILLERSBURG, AN OREGON NON-PROFIT MUNICIPAL CORPORATION PER
DEED DOCUMENT NO 2014-16933, LINN COUNTY DEED RECORDS LOCATED IN
THE EAST ONE-HALF OF SECTION 29, TOWNSHIP 10 SOUTH, RANGE 3 WEST,
WILLAMETTE MERIDIAN, LINN COUNTY, OREGON, TO WILBUR-ELLIS
COMPANY LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY, AND FURTHER
AUTHORIZING THE CITY MANAGER TO SIGN ALL DOCUMENTS ON
BEHALF OF THE CITY OF MILLERSBURG NECESSARY TO CONVEY SAID
PROPERTY VIA OPTION TO PURCHASE AND SALE TO WILBUR-ELLIS
COMPANY LLC, A CALIFORNIA LIMITED LIABILITY COMPANY AND TO
CONDUCT BUSINESS AND SIGN DOCUMENTS NECESSARY TO IMPLEMENT AND
FULFILL TERMS OF THIS OPTION TO PURCHASE AND SALE IN THE FUTURE**

WHEREAS, this matter coming before the Millersburg City Council on September 12, 2023, for a public hearing to determine whether the City should sell the following City of Millersburg owned real-property known as a portion of that certain tract of land as conveyed to City of Millersburg, an Oregon non-profit municipal corporation per deed Document No 2014-16933, Linn County Deed Records located in the East One-half of Section 29, Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon, to Wilbur-Ellis Company LLC, a California Limited Liability Company; and,

WHEREAS, testimony was presented to the Council by any person or party that desired to present, and questions were asked by Councilors of presenters; and,

WHEREAS, after the closure of public testimony the Councilors deliberated and asked questions of staff; and,

WHEREAS, the Council and public had Exhibit #1, also known as the Purchase Sales Agreement, available to them for review, prior to the hearing;

THE COUNCIL HAVING VOTED, MAKES THE FOLLOWING FINDINGS:

A public hearing was held before the Millersburg City Council on September 12, 2023, to determine whether to grant an option to purchase and sell City of Millersburg owned real property known as a portion of that certain tract of land as conveyed to City of Millersburg, an Oregon non-profit municipal corporation per deed Document No 2014-16933, Linn County Deed Records located in the East One-half of Section 29, Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon, to Wilbur-Ellis Company LLC, a California Limited Liability Company.

- 1) Testimony was presented by any person or party that desired to present, and questions were asked by Councilors of presenters.
- 2) After the closure of public testimony, the Councilors deliberated and asked questions of

staff.

- 3) The Council and public had Exhibit #1, also known as the Seventh Amendment to an existing lease between the parties, and Exhibit #2, also known as the Purchase Sales Agreement, available to them for review prior to the hearing.
- 4) Said property is not needed for public use.
- 5) The sale of said property to Wilbur-Ellis will generate revenue to the City of Millersburg and may provide jobs to local residents.
- 6) The sale of said property to Wilbur-Ellis is in the best interest of the City of Millersburg.
- 7) The Millersburg City Manager is tasked with day to day operations of running the City of Millersburg.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- 1) The above FINDINGS are hereby adopted.

The Millersburg City Council will sell the following City of Millersburg owned real property known as a portion of that certain tract of land as conveyed to City of Millersburg, an Oregon non-profit municipal corporation per deed Document No 2014-16933, Linn County Deed Records located in the East One-half of Section 29, Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon., to Wilbur-Ellis Company LLC, a California Limited Liability Company, pursuant to the terms of attached Exhibit #2, also known as the Purchase Sales Agreement.

- 2) The Millersburg City Manager is authorized to sign all documents on behalf of the City of Millersburg necessary to convey said property via sale to Wilbur-Ellis Company LLC, a California Limited Liability Company, and to conduct business and sign documents necessary to implement and fulfill terms of this sale in the future.

IT IS HEREBY ORDERED by the Council this 12th day of September, 2023.

Scott Cowan
Mayor

ATTEST:

Sheena Dickerman
City Recorder

DRAFT

**Notice of proposed sale of Millersburg, Oregon, City-owned real property
and public hearing concerning such sale**

Pursuant to ORS 221.725, notice is hereby given regarding a public hearing occurring Tuesday, September 12, 2023, 6:30 PM, at the Millersburg City Hall, Millersburg, Oregon. The purpose of the public hearing concerns the granting of an option to purchase and sale to **Wilbur Ellis, LLC**, a California limited liability company, or its successors or assigns of City of Millersburg owned real property located in Millersburg, Oregon, of **25.32 acres of land known as a portion of that certain tract of land as conveyed to City of Millersburg, an Oregon non-profit municipal corporation per deed Document No 2014-16933, Linn County Deed Records located in the East One-half of Section 29, Township 10 South, Range 3 West, Willamette Meridian, Linn County, Oregon.**

This property is in General Industrial (GI) zoning.

The Millersburg City Council considers this sale convenient, necessary, and beneficial to the local and regional residents in that new jobs will be created and additional revenue generated to the City from real property taxes on increased property valuations and Wilbur-Ellis, LLC's reoccurring payments of additional utility franchise fees to the City. City staff indicates the sales price of this land to **Wilbur-Ellis, LLC**, is well justified considering the benefits to the City, its residents, and the local and regional economy.



File No: VA 23-01 Street Right-Of-Way Vacations- NE Woods Road and NE Millersburg Drive

Proposal: The City is proposing four distinct, but related street right-of-way (ROW) modifications. Two are proposed street ROW vacations, two are street dedications. This Land Use action is specific to the vacations, the dedications are being processed at the same time, but are not considered Land-Use actions and therefore require a different process. The dedications are being processed with a separate staff report/action.

The two ROW vacations proposed are one on NE Woods Road and one on NE Millersburg Drive. Both streets will remain fully functional, and no physical changes or construction are planned. More specifically the vacations include:

1. NE Woods Road on the east side of the street, a piece of property about 10 feet wide and 314.74 feet long, starting at the corner with NE Millersburg Dr. will be vacated.
2. A portion of the ROW for NE Millersburg Drive, on the south side of the street spanning the full length of the Miller Cemetery, about 10 feet deep, will be vacated.

I. BACKGROUND

- A. Applicant: City of Millersburg
- B. Location: See map. Near the intersection of NE Woods Road and NE Millersburg Drive. At the time this was published the area included portions of the following tax lots: 10S-03W-17DD-01000, 01100, 01200, 01300, and 10S-03W-17D-02700.
- C. Review Type: The proposal is a street vacation. The Millersburg Development Code is silent on street vacations, therefore the State requirements for vacations guided this action. Street vacations are regulated by Oregon Revised Statutes (ORS) 271.080 through 230. This section specifies that a hearing before the City Council is required. This is considered a legislative action. Any appeal of the City Council's decision relating to this matter should be made with the circuit court (ORS 271.130(4)).
- D. Public Notice and Hearing: Pursuant to ORS 271.110 a notice was posted twice in the Democrat Herald, notices were sent to surrounding property owners on August 29, and signs were posted in 4 locations near the site of the vacations on August 29. Information related to the hearing is posted on the City's website here <https://www.cityofmillersburg.org/planning/page/va-23->

[01-ne-woods-road-and-ne-millersburg-drive-street-right-way-vacations](#)

- E. Review Criteria: Street vacations are regulated by Oregon Revised Statutes (ORS) 271.080 through 230. There are no criteria for the proposed Land Use action, only laws. These regulations are used in place of criteria because the City has no criteria for street vacations.
- F. Current Zoning: Residential Low (RL) and Public Facilities (PF)
- G. Proposed Zoning: N/A
- H. Background: The property lines surrounding the Miller Cemetery have needed corrected for some time. The lot lines for the Cemetery show that ½ of NE Woods Road is within the Cemetery property, and on the north side, there are grave sites within the City ROW.

The Cemetery Board and the City are cooperatively addressing these issues. The City hired a survey company to do research on the historical lot lines and street ROW and determine the best path forward to correct these lines. The proposed vacations and dedications (dedications are under a separate staff report/action), will correct the lines. This staff report represents just the vacations, because they require a separate Land Use action, dedications do not.

In the course of doing the research the surveyor found that the street ROW, for a portion of NE Woods Road, includes area within residential back yards on the east side of NE Woods Road. Previous surveys had not identified this as street ROW and current taxlot maps show it as part of the residential lots. One of the vacations will address this by removing this area from the street ROW. This will not change the currently understood property size of the residential lots. Because current tax lots do not identify the ROW, vacating the ROW will not alter the taxes for the property owners.

On the north, NE Millersburg Drive was constructed, and future improvements are designed, to reduce in width adjacent to the Cemetery to avoid possible interments near the street. The street ROW, however, was wider and included area within the Cemetery, including grave sites. In conjunction with the dedication, the revised ROW limits will assure that all Cemetery property is outside the street ROW. Additionally, the vacation will clarify the gravel area near the street intersection. This was part of the original Woods Road but is now a make-shift parking area for the Cemetery. This vacation will

clarify that the gravel area is actually part of the Cemetery, which will assure a long-term parking solution. The Cemetery is not full. The Cemetery Board plans to sell additional plots within the grounds, thus allowing for funerals on the site. This parking area will help that happen.

Lastly, it is important to clarify, these changes will not result in any changes to the physical streets or neighboring properties. No construction or physical changes of any kind are proposed. This is a paper exercise intended to address boundary issues. NE Woods Road nor NE Millersburg Drive will change in any way, and no road closures will result from this action.

II. REGULATIONS

ORS 271.080-230

The State requirements for street vacations are structured in two parts- private petitions to vacate, and public agency sponsored vacations. The private vacations are regulated by ORS 271.080 through 271.120. Public vacations are regulated by ORS 271.130, though the text of this section continually references the private vacations. Sections 271.140 through 170 apply to both public and private vacations. The remainder of the ORS section (271.180 through 230) apply only to port districts and are not applicable. All applicable regulations are reviewed below.

ORS 271.130

- (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 (Vacation in incorporated cities) and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110 (Notice of hearing), but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080 (Vacation in incorporated cities), object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.**

ANALYSIS: The vacations were noticed using the requirements of ORS 271.110 which requires posting in a newspaper, two consecutive weeks, it requires signs to be posted at the site of the vacation, and it requires notices to be mailed to surrounding property owners. The property owners were identified using the process identified in ORS 271.080. Maps of these areas are attached to show

conformance. Regarding the consent of the neighboring property owners, the City did not seek direct written consent because the vacations will not 'substantially affect the market value' of the properties. The regulations explain that if the property value is not affected, the requirement for their consent does not apply. Staff did talk to each property owner along NE Woods Road and all seemed content with this vacation. The vacations along NE Woods Road will simply remove any confusion caused by the ROW, and the vacation on NE Millersburg Drive will assure that the fence line of the Cemetery is also the true property line of the Cemetery.

FINDING: Based on the analysis above, the project meets these regulations.

- (2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.**

ANALYSIS: The proposal includes two vacations. Consistent with this regulation. The two proposed street ROW vacations have been bundled into this one Land Use action.

FINDING: Based on the analysis above, the project meets this regulation.

- (3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.**

ANALYSIS: Based on a review by staff at the time this staff report was drafted, all residential lots affected by the NE Woods Road vacation have all taxes paid. City staff used the Linn County Assessor website to check the taxes due for each property.¹ The Cemetery has all taxes paid as well. As such, this regulation is satisfied.

FINDING: Based on the analysis above, the project meets this regulation.

¹ <https://gis.co.linn.or.us/portal/apps/webappviewer/>

- (4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases.

ANALYSIS: This section simply explains the process for an appeal.

FINDING: This regulation is informational only.

ORS 271.140

The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city.

ANALYSIS: In this case the neighboring property owners will not be getting any property they did not already own. The sale of each residential lot already included the ROW area that is to be vacated. As mentioned before, the tax maps already include this area as well. The actual amount of property for the residential lots along NE Woods Road will not change, simply because this ROW action is establishing the boundaries in the locations they had been understood to be by previous surveys. The vacation will not expand, or add to, any existing lot.

FINDING: Based on the analysis above, this regulation is met.

ORS 271.150

A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

FINDING: The City will record all required documents with the County Clerk after the City Council adopts the Ordinance.

ORS 271.160

No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.

FINDING: This regulation does not apply. The area vacated will not be used to rededicate ROW to the City.

ORS 271.170

The provisions of ORS 271.080 (Vacation in incorporated cities) to 271.160 (Vacations for purposes of rededication) are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

ANALYSIS: This section allows the City to adopt regulations to use in place of the ORS street vacation regulations. The City has not, to date, adopted any regulations for street vacations. As such, the State regulations are used.

FINDING: Based on the analysis above, the appropriate regulations have been used for this proposed Land Use action.

III. STAFF RECOMMENDATION

Staff recommends the City Council approve VA 23-01 and adopt Ordinance 206-23.

IV. EXHIBITS

A. DRAFT Ordinance 206-23

- B. NE Woods Road ORS 271.080 200'x400' Map
- C. NE Millersburg Drive ORS 271.080 200'x400' Map
- D. Map showing NE Woods Road Street ROW Vacation
- E. Map showing NE Millersburg Drive Street ROW Vacation
- F. Map showing both vacations in color
- G. Map showing all four street ROW changes in color
- H. Public Hearing Notice

ORDINANCE NO. 206-23

AN ORDINANCE VACATING RIGHT-OF-WAY ON A PORTION OF NE WOODS ROAD AND NE MILLERSBURG DRIVE

WHEREAS, the City wishes to vacate portions of the right-of-way (ROW) on NE Woods Road and NE Millersburg Drive as shown on Exhibits 1 and 2; and,

WHEREAS, both areas of ROW proposed to be vacated appear to have been mapping errors and will be adding actual land to any neighboring property, nor will taxes change because the vacated areas are already included in the tax lots for neighboring properties; and,

WHEREAS, the vacations will have no substantial affect to the market value of each property abutting the vacation; and,

WHEREAS, the vacations will not require any physical changes to the streets, rather they would vacate areas that already feature private property improvements of different kinds including fences, structures and historical internments; and,

WHEREAS, all taxes are current on all affected properties; and,

WHEREAS, all public hearing notice requirements from ORS 271.110 have been met, including a notices published in the Albany Democrat Herold twice on consecutive weeks, notices sent to all surrounding addresses on August 29, 2023 as required in ORS 271.080, and a total of four signs placed (2 on each vacation area) on site on August 29, 2023; and,

WHEREAS, the proposal was reviewed by City staff for consistency with ORS 271.080 through 271.120 and found to be compliant; and,

WHEREAS, the Millersburg City Council held a fully noticed hearing on September 12, 2023; and,

WHEREAS, the City Council finds that all regulations are met and all findings are included in the staff report dated September 5, 2023;

NOW, THEREFORE, THE PEOPLE OF THE CITY OF MILLERSBURG DO ORDAIN AS FOLLOWS: the portions of ROW shown on Exhibits 1 and 2 are hereby vacated:

PASSED by the Council and signed by the Mayor this 12th day of September, 2023.

This ordinance takes effect 30 days from the date of adoption.


Scott Cowen,
Mayor

ATTEST:

Sheena Dickerman,
City Recorder

Woods Road Vacation 200x400 buffer



 200'x400' Buffer

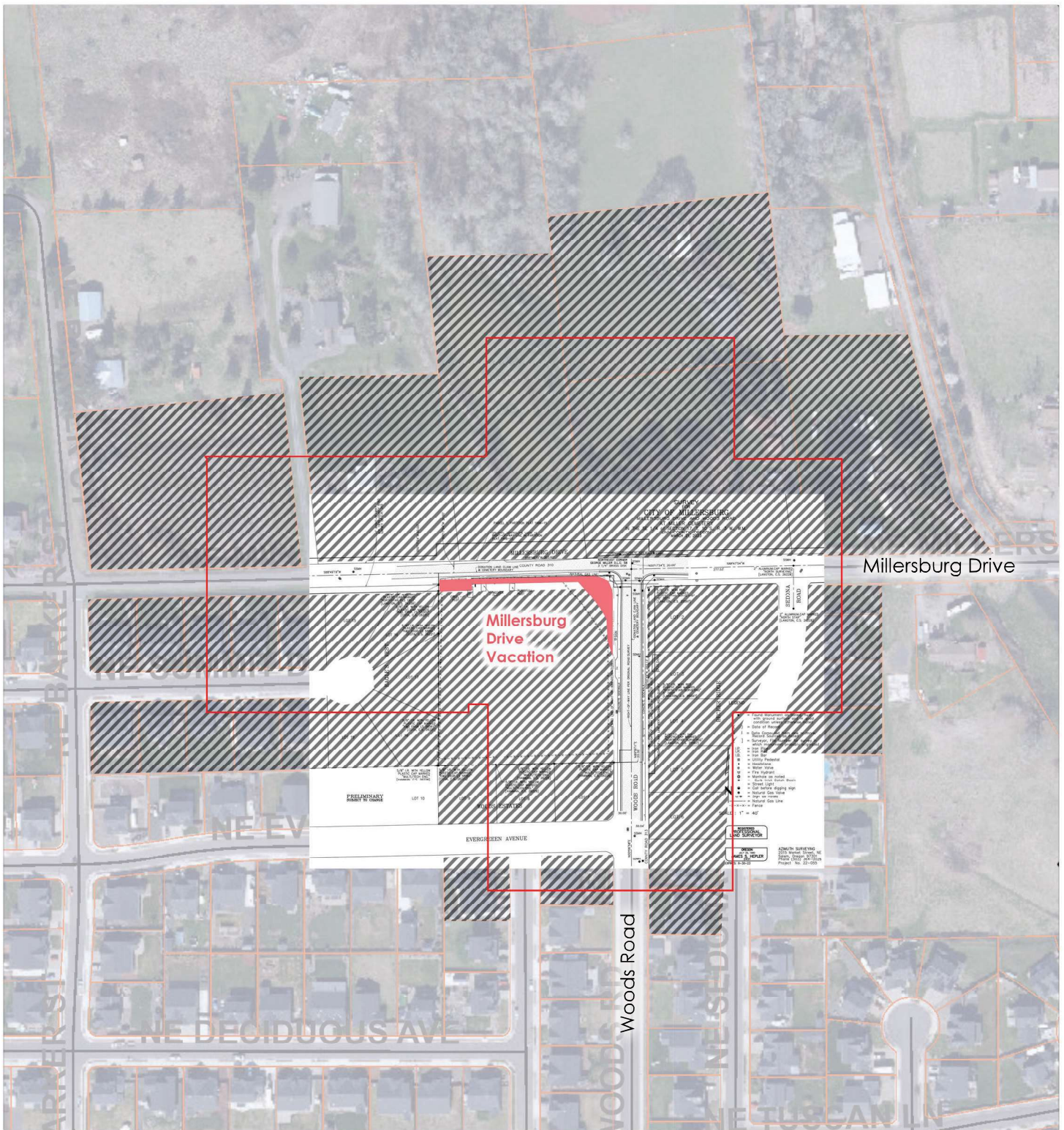
 Selected Lots


 Tax Lots



Linn County GIS, City of Albany, County of Benton, County of Linn, Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, METI/ NASA, EPA, USDA, GeoTerra, 2021

Millersburg Drive Vacation 200x400 buffer



 200'x400' Buffer

 Selected Lots

 Tax Lots



Linn County GIS, City of Albany, County of Benton, County of Linn, Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA, GeoTerra, 2021

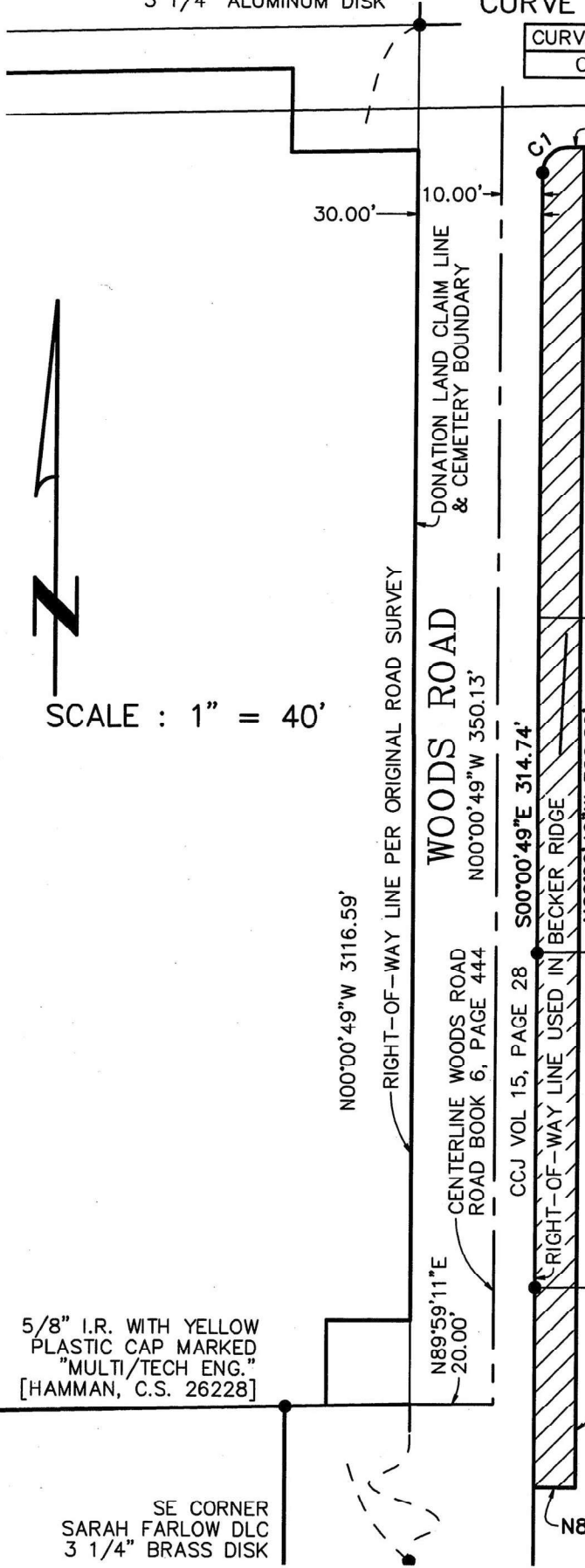
RIGHT-OF-WAY VACATION FOR CITY OF MILLERSBURG

A PORTION OF WOODS ROAD
IN THE SE 1/4 of SECTION 17, T. 10 S., R. 3 W., W.M.
LINN COUNTY, OREGON
MAY 5, 2023

NORTHEAST CORNER
GEORGE MILLER D.L.C. 58
3 1/4" ALUMINUM DISK

CURVE DATA

CURVE	ARC	RADIUS	DELTA	CHORD BEARING	CHORD
C1	9.30'	6.00'	88°48'35"	S44°23'03"W	8.40'



**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

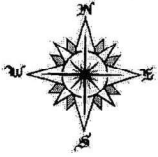
James S. Hepler

OREGON
JULY 25, 1990
JAMES S. HEPLER
2451

EXPIRES: 6-30-25

NOTE:
BASIS OF BEARINGS: OREGON COORDINATE
REFERENCE SYSTEM SALEM ZONE - NAD 83
(2011), EPOCH 2010.00

AZIMUTH SURVEYING
2015 Market Street, NE
Salem, Oregon 97301
Phone (503) 264-0026
Project No. 22-055



AZIMUTH SURVEYING

2015 Market Street NE Salem, Oregon 97301

Phone (503) 364-0026

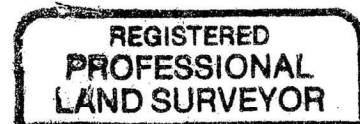
May 5, 2023

Legal Description for City of Millersburg

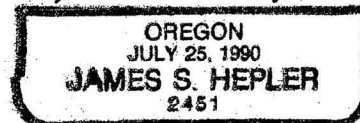
Woods Road Vacation

Beginning at a 5/8" iron rod at the westerly northwest corner of Lot 2, Becker Ridge, Linn County, Oregon, which point is 30.00 feet easterly from and at right angle to the west line of the Sarah Farlow Donation Land Claim in Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon, and running thence South 00°00'49" East, parallel with the west line of said Farlow Donation Land Claim, a distance of 314.74 feet to a re-entrant corner in the east line of Woods Road; thence North 89°59'11" East, along the most easterly south line of said Woods Road, a distance of 10.00 feet to an ell corner in the east line of said Woods Road; thence North 00°00'49" West, along the most northerly east line of said Woods Road, a distance of 320.82 feet to a point on the north line of Lot 2 of said Becker Ridge; thence South 88°47'54" West, along the north line of said Lot 2, a distance of 4.13 feet to the beginning of a 6.00 foot radius curve to the left; thence along the northwest line of said Lot 2 and along said curve to the left, the chord of which bears South 44°23'03" West 8.40 feet, and having a central angle of 88°48'35", a distance of 9.30 feet to the point of beginning.

Basis of Bearings: Oregon Coordinate Reference System - Salem Zone - NAD 83 (2011), Epoch 2010.00



James S. Hepler



Expires: 6-30-25

RIGHT-OF-WAY VACATION FOR CITY OF MILLERSBURG

MILLERSBURG DRIVE
IN THE SE 1/4 OF SECTION 17, T. 10 S., R. 3 W., W.M.
LINN COUNTY, OREGON
MAY 5, 2023

NOTES:

BASIS OF BEARINGS: OREGON COORDINATE
REFERENCE SYSTEM SALEM ZONE - NAD 83
(2011), EPOCH 2010.00

BECAUSE OF AMBIGUOUS EVIDENCE THIS MAP
IS TO INDICATE THE GENERAL LOCATION OF
THE VACATION, WHICH SHOULD BE CONSTRUED
ACCORDING TO THE LEGAL DESCRIPTION

ORIGINAL CENTERLINE PER
ORIGINAL SURVEY NO WIDTH
GIVEN; 60' WIDTH BY STATUTE

MILLERSBURG DRIVE

NORTHEAST CORNER
GEORGE MILLER D.L.C. 58
3 1/4" ALUMINUM DISK

40' RIGHT-OF-WAY
PER 1976 COUNTY ROAD
SURVEY OF C.R. 310

WOODS ROAD

DONATION LAND CLAIM LINE
& CEMETERY BOUNDARY

GRAVEL

AZIMUTH SURVEYING
2015 Market Street, NE
Salem, Oregon 97301
Phone (503) 364-0026
Project No. 22-055

MILLER CEMETERY ASSOCIATION
VOLUME 86, PAGE 86
MILLER CEMETERY ASSOCIATION OF MILLERSBURG
INSTRUMENT No. 2022-02878

**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

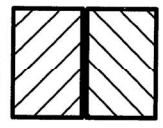
James S. Hepler

OREGON
JULY 25, 1990
JAMES S. HEPLER
2451

EXPIRES: 6-30-25

LEGEND

- = Found Monument as noted, flush with ground surface and in good condition unless otherwise noted
- = Surveyor, File Number for survey in which monument probably originated
- = Iron Rod
- = Right-of-way Dedication
- = Right-of-way Vacation (see notes)



SCALE : 1" = 40'



SW CORNER JOHN FENN DLC
3 1/4" ALUMINUM DISC

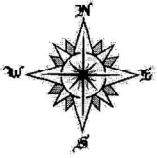
N00°00'49"W 10.00'

5/8" I.R. WITH RED
PLASTIC CAP MARKED
"NORTHSTAR PLS 1823"
[LANGTON, C.S. 24338]

5/8" I.R. WITH YELLOW
PLASTIC CAP MARKED
"K&D ENGR LS 58561"
[COTA, C.S. 26221]

5/8" I.R. WITH YELLOW
PLASTIC CAP MARKED
"K&D ENGR LS 58561"
[COTA, C.S. 26221]

LOT 16



AZIMUTH SURVEYING

2015 Market Street NE Salem, Oregon 97301

Phone (503) 364-0026

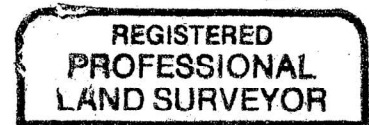
May 5, 2023

Legal Description for City of Millersburg

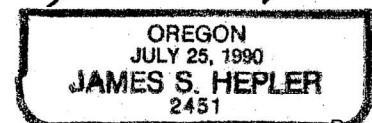
Millersburg Drive Vacation

That portion of Millersburg Drive and the transition to Woods Road, whether acquired by road proceedings or prescription, which lies within that certain tract of land conveyed to Miller Cemetery Association of Millersburg by Instrument No. 2022-02878 of the deed records for Linn County, Oregon, **Save and Except** the following: Beginning at the northeast corner of that certain tract of land conveyed to Miller Cemetery Association of Millersburg by Instrument No. 2022-02878 of the deed records for Linn County, Oregon which northeast corner is northeast corner of the donation land claim of George Miller Sr. and wife, Notification No. 1674 and Claim No. 58 in Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon, and running thence South 00°00'49" East, along the east line of said Miller Donation Land Claim, a distance of 41.22 feet; thence South 89°59'11" West, a distance of 30.00 feet to the beginning of a 30.00 foot radius curve to the left; thence along said curve to the left, the chord of which bears North 45°35'45" West 42.86 feet, and having a central angle of 91°09'45", a distance of 47.73 feet; thence South 88°49'19" West, a distance of 269.38 feet to the west line of said Miller Cemetery Association of Millersburg tract; thence North 00°00'49" West, along the west line of said Miller Cemetery Association of Millersburg tract, a distance of 10.00 feet to the northwest corner of said Miller Cemetery Association of Millersburg tract; thence North 88°49'19" East, along the north line of said Miller Donation Land Claim a distance of 330.00 feet to the point of beginning; **Further Save and Except** the following: Beginning at a point on the east line of that certain tract of land conveyed to Miller Cemetery Association of Millersburg by Instrument No. 2022-02878 of the deed records for Linn County, Oregon that is South 0°00'49" East 41.22 feet from the northeast corner of the donation land claim of George Miller Sr. and wife, Notification No. 1674 and Claim No. 58 in Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon, and running thence South 89°59'11" West, a distance of 30.00 feet; thence South 00°00'49" East, parallel with the east line of said Miller Donation Land claim, a distance of 289.39 feet to the south line of said Miller Cemetery Association of Millersburg tract; thence North 88°49'19" East, along the south line of said Miller Cemetery Association of Millersburg tract, a distance of 10.00 feet to the west line of Woods Road; thence North 00°00'49" West, along the west line of said Woods Road, a distance of 20.41 feet; thence North 89°59'11" East, along the north line of said Woods Road, a distance of 20.00 feet; thence North 00°00'49" West, along the west line of said Woods Road, a distance of 268.78 feet to the point of beginning.

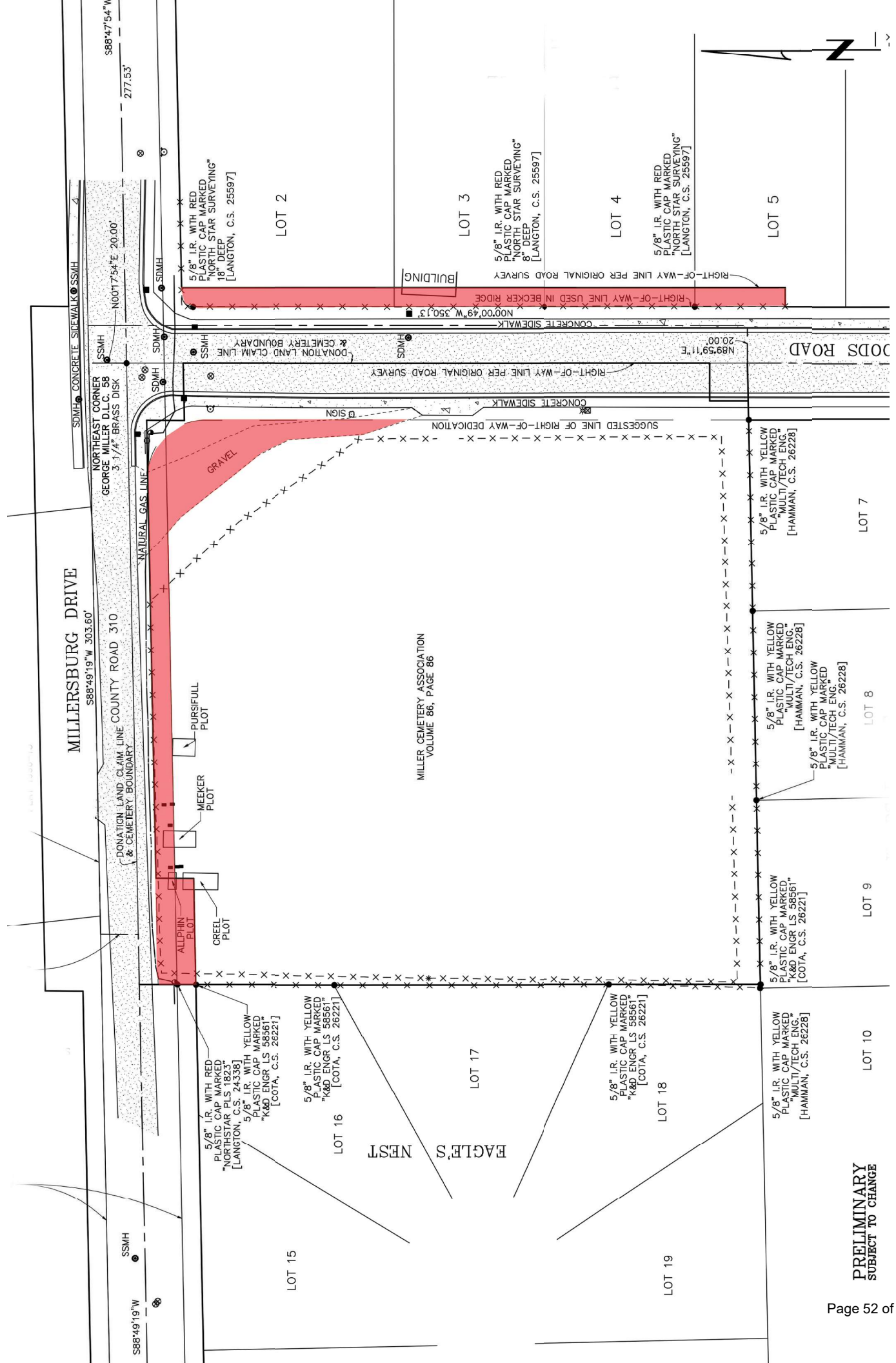
Basis of Bearings: Oregon Coordinate Reference System - Salem Zone - NAD 83 (2011), Epoch 2010.00



James S. Hepler



Expires: 6-30-25



**PRELIMINARY
SUBJECT TO CHANGE**

4" RIGHT-OF-WAY
FOR 1976 COUNTY ROAD
SURVEY OF C.R. 310

S007'54"W 20.00'

S007'54"W 20.00'

S007'54"W 20.00'

ORIGINAL CENTERLINE USED AS
RIGHT-OF-WAY LINE N PARTITION
PLAT 1996-15

PARCEL 1, PARTITION PLAT 1996-15

MILLERSBURG DRIVE

DEDICATION

MILLERSBURG DRIVE AND WOODS ROAD

AT MILLER CEMETERY

IN THE SE 1/4 OF SECTION 17, T. 10 S., R. 3 W., W.M.

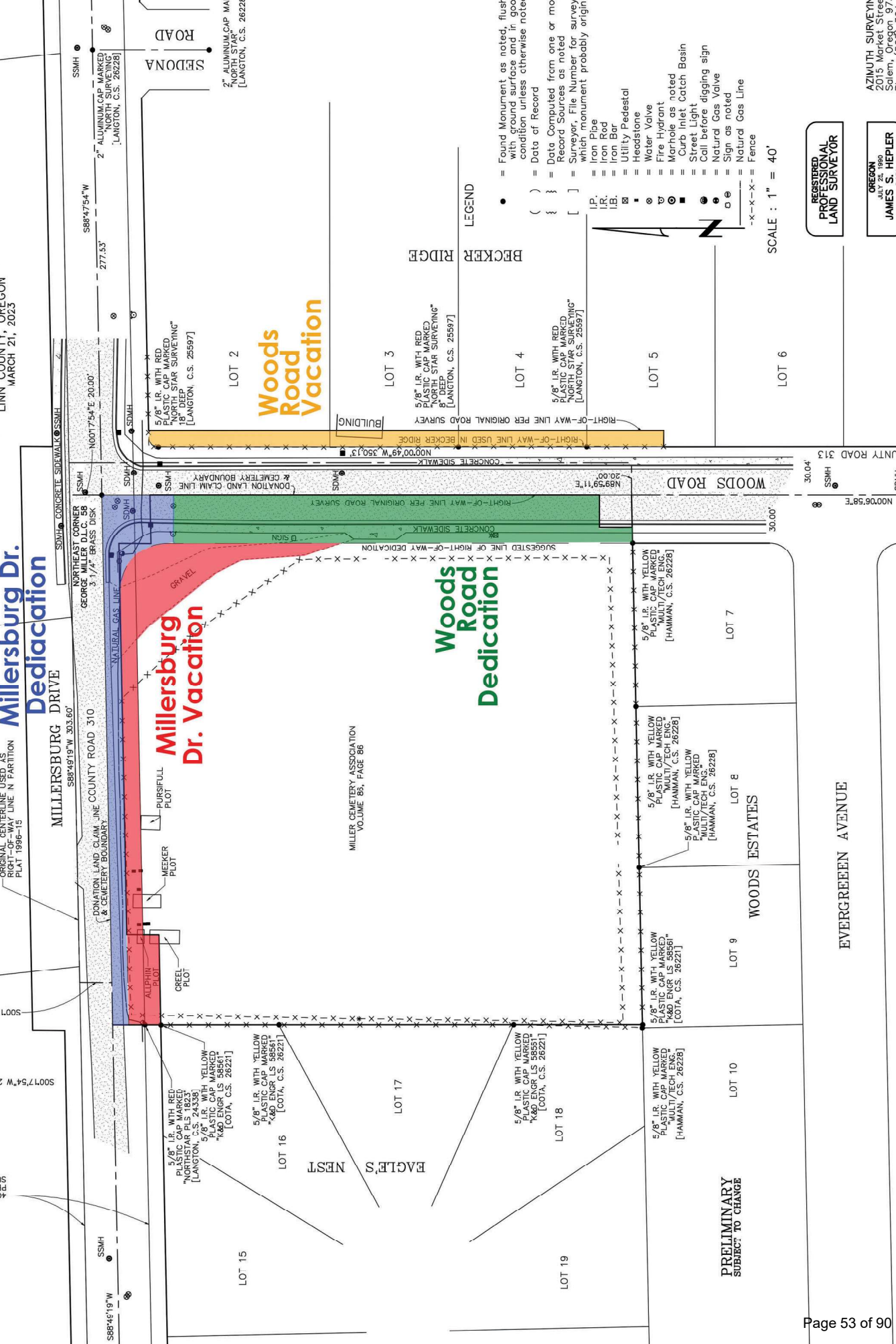
LINN COUNTY, OREGON

MARCH 21, 2023

WOODS ROAD

SEDAONA ROAD

2" ALUMINUM CAP MARKED
NORTH STAR
[LANGTON, C.S. 26228]



LOT 2
Woods Road Vacation

LOT 3
BUILDING

LOT 4

LOT 5

LOT 6

LOT 7

LOT 8
WOODS ESTATES

LOT 9

LOT 10

LOT 11

LOT 12
EAGLE'S NEST

LOT 13
EAGLE'S NEST

LOT 14
EAGLE'S NEST

LOT 15

LOT 16

LOT 17

LOT 18

LOT 1
Millersburg Dr. Vacation

LEGEND

- Found Monument as noted, flush with ground surface and in good condition unless otherwise noted
- () = Data of Record
- { } = Data Computed from one or more Record Sources as noted
- [] = Surveyor, File Number for survey in which monument probably originated
- I.P. = Iron Pipe
- IR. = Iron Rod
- I.B. = Iron Bar
- Utility Pedestal = Utility Pedestal
- Headstone = Headstone
- Water Valve = Water Valve
- Fire Hydrant = Fire Hydrant
- Marhole as noted = Marhole as noted
- Street Inlet Catch Basin = Street Inlet Catch Basin
- Street Light = Street Light
- Call before digging sign = Call before digging sign
- Natural Gas Valve = Natural Gas Valve
- Sign as noted = Sign as noted
- Natural Gas Line = Natural Gas Line
- x-x-x- = Fence

WOODS ROAD

SEDAONA ROAD

EVERGREEN AVENUE

COUNTY ROAD 313

SCALE : 1" = 40'

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JAMES S. HEPLER
2451

EXPRESSES: 6-30-23

Page 53 of 90

ASINUM SURVEYING
2015 Market Street, NE
Salem, Oregon 97301
Phone: (503) 364-0026
Project No. 22-055



NOTICE OF PUBLIC REVIEW
September 12, 2023, 6:30 p.m.
The hearing will be in person and
by phone/computer.
See Agenda on the City website for details.

The City of Millersburg will hold a **CITY COUNCIL** hearing on September 12, 2023 at the above time and place to consider the action described below. The action may be heard later than the time indicated, depending on the agenda schedule. Interested parties are invited to send written comment or attend the hearing. A staff report relating to the proposal will be available seven (7) days prior to the first public hearing. For further information, contact Millersburg City Hall at (458) 233-6306.

The location of the meeting is accessible to the disabled. If you need any special accommodations to attend or participate in the meeting, please notify City Hall twenty-four (24) hours before the meeting.

APPLICANT: City initiated
LOCATION: Near the intersection of NE Woods Road and NE Millersburg Drive
CRITERIA: The City has no criteria for a street right of way vacation, thus the Oregon Administrative Rules (OAR) 271.120 and 130 are applicable.
FILE No.: VA 23-01 (Street Right of Way Vacation)
REQUEST: The City is proposing two distinct, but related street right of way vacations. The two changes are proposed on NE Woods Road and on NE Millersburg Drive. **Both streets will remain fully functional, and no physical changes or construction are planned.** More specifically the vacations include:

1. NE Woods Road on the east side of the street, a piece of property about 10 feet wide and 314.74 feet long, starting at the corner with NE Millersburg Dr. will be vacated.
2. NE Millersburg Drive again, on the south side of the street, a piece of property located southerly and adjacent to the property listed in number 3 above, about 10 feet deep and about as wide as the existing fence line of the cemetery, will be vacated.

See the map on opposite side for areas to be vacated.
For more information see:

<https://www.cityofmillersburg.org/planning/page/va-23-01-wood-road-and-millersburg-drive-street-right-way-vacations>

MILLERSBURG DRIVE

588'49.19" W 303.60'

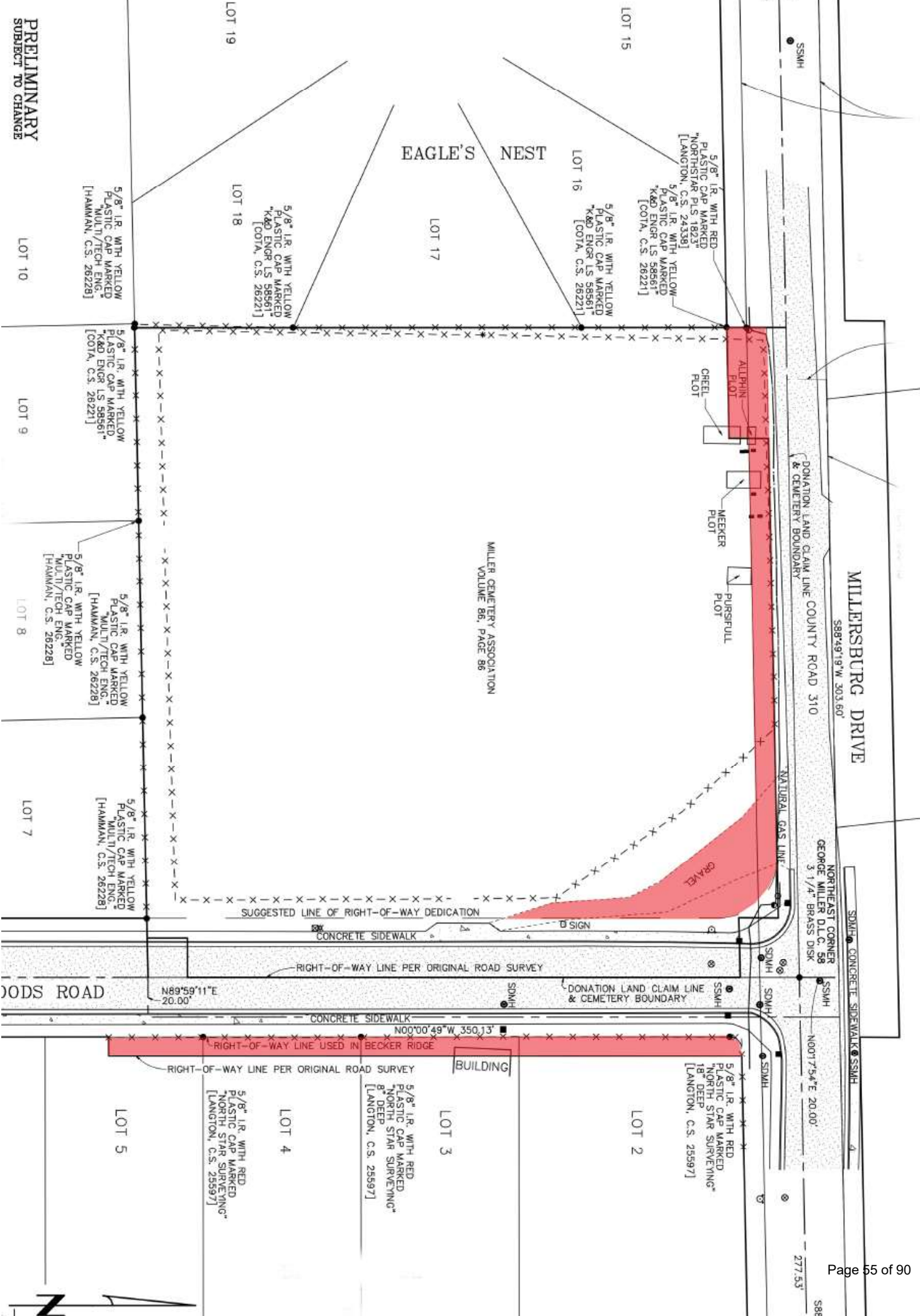
DONATION LAND CLAIM LINE COUNTY ROAD 310 & CEMETERY BOUNDARY

NORTHEAST CORNER GEORGE MILLER D.L.C. 58 3 1/4" BRASS DISK

N0017°54'E 20.00'

277.53'

EAGLE'S NEST



PRELIMINARY SUBJECT TO CHANGE

WOODS ROAD

N89°59'11"E 20.00'

N00°00'49"W 350.13'

RIGHT-OF-WAY LINE PER ORIGINAL ROAD SURVEY

5/8" I.R. WITH RED PLASTIC CAP MARKED "NORTH STAR SURVEYING" [LANGTON, C.S. 25597]

LOT 4

LOT 3

LOT 2

LOT 5

5/8" I.R. WITH RED PLASTIC CAP MARKED "NORTH STAR SURVEYING" 18" DEEP [LANGTON, C.S. 25597]

5/8" I.R. WITH RED PLASTIC CAP MARKED "NORTH STAR PLS 1823" [LANGTON, C.S. 24338]

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED "K&D ENGR LS 58561" [COITA, C.S. 26221]

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED "K&D ENGR LS 58561" [COITA, C.S. 26221]

LOT 17

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED "K&D ENGR LS 58561" [COITA, C.S. 26221]

LOT 18

LOT 19

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED "MULTI/TECH ENG." [HAMMAN, C.S. 26228]

LOT 10

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED "K&D ENGR LS 58561" [COITA, C.S. 26221]

LOT 9

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED "MULTI/TECH ENG." [HAMMAN, C.S. 26228]

LOT 8

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED "MULTI/TECH ENG." [HAMMAN, C.S. 26228]

LOT 7

5/8" I.R. WITH YELLOW PLASTIC CAP MARKED "MULTI/TECH ENG." [HAMMAN, C.S. 26228]

MILLER CEMETERY ASSOCIATION VOLUME 86, PAGE 86

SUGGESTED LINE OF RIGHT-OF-WAY DEDICATION

CONCRETE SIDEWALK

RIGHT-OF-WAY LINE PER ORIGINAL ROAD SURVEY

CONCRETE SIDEWALK

RIGHT-OF-WAY LINE USED IN BECKER RIDGE

BUILDING

5/8" I.R. WITH RED PLASTIC CAP MARKED "NORTH STAR SURVEYING" 8" DEEP [LANGTON, C.S. 25597]





TO: Millersburg City Council
VIA: Kevin Kreitman, City Manager
FROM: City Staff
DATE: September 7, 2023, for Council Meeting September 12, 2023
SUBJECT: Project Updates Memo

Monthly Update on Projects:

Staff are currently in the process of implementing many projects and activities in the City to address objectives of the Strategic Plan, direction from Council, and needs staff have identified.

An overview of several specific tasks and projects is provided below.

Stormwater Permit Update

Millersburg has spent the last several years developing our stormwater program to achieve compliance with the current MS4 Phase II General Permit. Our deadline for full compliance is February 2024. Over the next several months, staff will complete the remaining required tasks, including revisions to our engineering standards, revisions to our erosion and sediment control permit, documenting escalating enforcement processes, and finalizing our Stormwater Management Plan. We contracted with David Evans and Associates for support in this work and they have been instrumental in helping us develop our program.

The current general permit term ends in February of 2024. In August, as required under the permit, staff submitted our renewal application for the next MS4 Phase II General Permit more than 180 days before expiration of the current permit. DEQ staff are now working on the next Phase II General Permit and will be holding public meetings to receive input over the next several months. Staff will participate in this process to provide input and monitor any impacts the new permit will have on our program.

North Millersburg Park

The parks survey has been completed and a Parks Commission meeting is scheduled for Thursday, September 14 to review the results. The existing concrete slab (old shop foundation) at the site will be demolished and removed beginning September 11.

AM-WRF Compost Product

City maintenance staff have spread mulch in the flower beds at City Hall. This material is the Class A compost produced at the Albany-Millersburg Water Reclamation Facility. The compost is approved for all uses and applications; it could be sold to the public in the future. At this time it is being offered at no cost to both Albany and Millersburg city departments, as well as to other agencies, such as the school district.



2





CITY OF
Millersburg

3.1



CITY OF
Millersburg



4.1

CITY OF Millersburg





5.1



CITY OF
Millersburg





TO: Millersburg City Council
VIA: Kevin Kreitman, City Manager
FROM: Janelle Booth, Assistant City Manager/City Engineer
DATE: September 5, 2023, for the September 12, 2023, City Council Meeting
SUBJECT: Industrial Wastewater Conveyance System Feasibility Study Grants Acceptance

Action Requested:

Approval of Resolution 2023-14 to accept grants for Industrial Wastewater Conveyance System Feasibility Study.

Discussion:

In April Millersburg applied for a technical assistance grant through Business Oregon to fund a wastewater conveyance feasibility study. Millersburg's current conveyance system to the wastewater plant is not sized to accommodate large flows that can be associated with industrial customers. The purpose of the study is to evaluate alternative routes and needed infrastructure to convey wastewater from developable industrial properties to the wastewater treatment plant. The anticipated study amount is \$88,000 and the grant amount requested was \$80,000, with Millersburg providing a 10% match.

In August we were informed that the grant had been awarded using a combination of Special Public Works Fund (SPWF) and Strategic Reserve Fund (SRF). To satisfy the grant award requirements, we must adopt a resolution authorizing acceptance of grant funds.

Budget Impact:

The grant funds and cost of the study were included in the current fiscal year budget.

Recommendation:

Staff recommends Council approve the attached resolution.

Attachment(s):

Resolution 2023-14 Accepting Grants for Industrial Wastewater Conveyance System Feasibility Study

RESOLUTION NO. 2023-14

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT AND EXECUTE INDUSTRIAL WASTEWATER CONVEYANCE SYSTEM FEASIBILITY STUDY SPECIAL PUBLIC WORKS FUND AND STRATEGIC RESERVE FUND GRANT AGREEMENTS

WHEREAS, with Council approval, staff applied for and were awarded grant funds to conduct an industrial wastewater conveyance system feasibility study; and,

WHEREAS, the City wishes to accept grant funding for an industrial wastewater conveyance system feasibility study; and,

WHEREAS, the acceptance of the grants is in the best interest of the City;

NOW, THEREFORE BE IT RESOLVED that the Millersburg City Council authorizes the City Manager to negotiate, finalize, accept, and sign all documents required for execution of Industrial Wastewater Conveyance System Feasibility Study Special Public Works Fund and Strategic Reserve Fund grant agreements.

Approved by the City Council and effective this 12th day of September 2023.

Scott Cowan
Mayor

ATTEST:

Sheena Dickerman
City Recorder



Memo

Date: August 22, 2023

To: Linn County Enterprise Zone Co-Sponsors
Roger Nyquist Linn County
Kevin Kreitman City of Millersburg

From: John Pascone, President

Subject: Selmet Inc Enterprise Zone Application
And Extended Abatement Agreement

Selmet is planning on making an investment of \$20 million to increase capacity by installing new equipment and hiring 65 new employees. They have completed an Enterprise Zone Authorization Application dated August 18, 2023.

Under regular enterprise zone exemption rules the company is required to add 10% to their existing workforce in the zone so they would need to hire 65 employees. The company plans on hiring at least 65 new employees which would satisfy the job creation requirement. The regular property tax exemption is for 3 years.

For companies that agree to hire and pay wages and benefits in excess of 150% of Linn County's Average Annual Wage, the firm can qualify for an additional 2 years. The current required number can be found in the agreement.

Attached is a draft resolution which needs to be passed by each co-sponsor. The zone manager (me) and the county assessor's representative (Mark Wilkinson) cannot officially approve the company's application until the extended resolution is approved by the co-sponsors.

Please contact me if you have any questions. When you have the matter scheduled let me know and I will attend to present it on behalf of the company.

Thank you,

John

Agreement for Oregon Enterprise Zone Extended Abatement

AGREEMENT WITH THE LINN COUNTY ENTERPRISE ZONE SPONSORS TO EXTEND PROPERTY TAX EXEMPTION TO FIVE CONSECUTIVE YEARS IN TOTAL FOR CAPITAL INVESTMENT BY SELMET, INC.

The sponsors of the LINN COUNTY Enterprise Zone comprising the governing bodies of Linn County and the City Millersburg and (hereinafter "The Zone Sponsor") and Selmet, Inc. (hereinafter "The Firm") do hereby enter into an agreement for extending the period of time in which The Firm shall receive an exemption on its investment in qualified property in the LINN COUNTY Enterprise Zone contingent on certain special requirements, under ORS 285C.160 (2003).

The Zone Sponsor and The Firm jointly acknowledge: that subject to submission and approval of an application for authorization and the satisfaction of other requirements under ORS 285C.050 to 285C.250, The Firm is eligible for three years of complete exemption on its qualified property; that nothing in this agreement shall modify or infringe on this three-year exemption or the requirements thereof, and that this agreement becomes null and void if The Firm does not qualify for these three years of the exemption.

The Zone Sponsor extends The Firm's property tax exemption an additional two years on all property that initially qualifies in the LINN COUNTY Enterprise Zone in the assessment year beginning on January 1, 2024 and, thus, sets a total period of exemption of five consecutive years during which statutory requirements for the standard three-year enterprise zone exemption must also be satisfied and maintained.

CONFIRMATION OF STATUTORY PROVISIONS

In order to receive the additional two years of enterprise zone exemption granted herein, The Firm agrees herewith under 285C.160(3)(a)(A) that for each year of the entire exemption period, all of The Firm's new employees shall receive an average level of compensation equal to or greater than 150 percent of the county average annual wage, in accordance with the specific definitions and guidelines in Oregon Administrative Rules (OAR), Chapter 123, Division 65 (123-065-41##), which provides that:

1. Such compensation may include non-mandatory benefits that can be monetized;
2. The county average annual wage is set at the time of authorization, except as pursuant to ORS 285C.160(4), according to the 2021* Linn County average annual wage rate of \$ 48,986 for which 150 percent equals \$ 73,479.

* Note: this is the year of the study, the rate applies until November 2023; it is published by the Oregon Employment Dept. as Average Annual Wage by County- 12/6/2022.

3. Only employees working at jobs filled for the first time after the application for authorization but by December 31 of the first full year of the initial exemption and performed within the current boundaries of the LINN COUNTY Enterprise Zone are counted; and
4. Only full-time, year-round and non-temporary employees engaged a majority of their time in The Firm's eligible operations consistent with ORS 285C.135 & 285C.200(3) are counted, regardless if such employees are leased, contracted for or otherwise obtained through an external agency or are employed directly by The Firm.

LOCAL ADDITIONAL REQUIREMENTS

For The Firm to receive the additional two years of enterprise zone exemption granted herein, Linn County, a Zone Sponsor and The Firm agree that no additional requirements in addition to statutory requirements are being requested by The Zone Sponsor under ORS 285C.160(a)(B).

**ACCEPTING FOR LINN COUNTY, A ZONE SPONSOR OF
THE LINN COUNTY ENTERPRISE ZONE:**

ACCEPTING FOR SELMET, INC.:

The other Zone Sponsor; City of Millersburg approved this Agreement by passing a separate Resolution. Copies of which are attached.

RESOLUTION NO. 2023-15

A RESOLUTION APPROVING AN EXTENDED PROPERTY TAX ABATEMENT AGREEMENT BETWEEN LINN COUNTY, A COSPONSOR OF THE LINN COUNTY ENTERPRISE ZONE AND SELMET INC.

WHEREAS, SELMET INC. is expanding capacity by investing equipment; and

WHEREAS, SELMET INC. intends to add 65 new employees; and

WHEREAS, SELMET INC. anticipates providing average pay and benefits to these employees equal to or greater than 150% of the Linn County average, as required under ORS 285C.160; and

WHEREAS, SELMET INC., which is located in Linn County, has applied to extend the property tax abatement for which it qualifies through its inclusion in the Linn County Enterprise Zone; and

WHEREAS, Linn County has requested support of this agreement from the other cosponsor of the Linn County Enterprise Zone; and

WHEREAS, the City of Millersburg is a cosponsor of the Linn County Enterprise Zone.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MILLERSBURG, OREGON that the attached Extended Abatement Agreement is hereby approved by the City of Millersburg.

This Resolution shall be effective upon its approval and passage.

Duly approved and passed by the Council this 12th day of September, 2023.

Scott Cowan
Mayor

ATTEST:

Sheena Dickerman
City Recorder



TO: Millersburg City Council
VIA: Kevin Kreitman, City Manager
FROM: Matt Straite, Community Development Director
DATE: September 5, 2023, for the September 12, 2023, City Council Meeting
SUBJECT: Street Right-Of-Way dedication for NE Woods Road and NE Millersburg Drive

Action Requested:

Accept dedication of Right-Of-Way (ROW) along the north and east edge of the Miller Cemetery.

Discussion:

The property lines surrounding the Miller Cemetery have needed corrected for some time. The Cemetery Board and the City are cooperatively addressing these. The City hired a survey company to do research on the historical lot lines and street ROW and determine the best path forward to correct these lines. The proposed vacations and dedications (vacations are under a separate staff report/action), will correct the lines. This staff report represents just the dedications, because the vacations require a separate Land Use action, dedications do not.

The attached exhibits show the proposed street dedications. The survey results showed that the Cemetery lot actually extended well into the street on both the north and the east side of the property, into NE Woods Road and NE Millersburg Drive. The dedications would place an area of 0.10 acres or 4,429 square feet of area into the street ROW for NE Millersburg Drive and 0.19 acres or 8,268 square feet into NE Woods Road ROW.

On NE Millersburg Drive this dedication would include street paved area and some shoulder area, but nothing that would contain any internments (as far as we know) and would be outside the fence line of the existing Cemetery. On NE Woods Road this would put pavement, curbs, and sidewalks into the street ROW.

See attached exhibits for specific locations of the street dedications.

Budget Impact:

The surveyor that did the research and created the exhibits represents a cost to the City. That has already been previously addressed. Some additional costs will be incurred in recording the documents with the County. These costs should be minimal and were included in the scope of the work previously approved by the Council.

Recommendation:

Staff recommends Council accept the street dedication and direct staff to have said dedications recorded with the County.

Millersburg City Council

Page 2

September 12, 2023

Attachment(s):

Resolution 2023-16 Right of Way Near Miller Cemetery

Quitclaim Deed

Millersburg Drive Dedication Map

Woods Road Dedication Map

RESOLUTION NO. 2023-16

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A QUITCLAIM DEED FOR RIGHT-OF-WAY NEAR MILLER CEMETERY

WHEREAS, the City wishes to accept the dedication of additional right of way on NE Millersburg Drive and NE Woods Road; and,

WHEREAS, the dedications will not require any physical changes to the streets, rather they will add areas to the right of way that already feature public improvements, including street paving, gutters, and sidewalks; and,

WHEREAS, the representative for the Miller Cemetery has signed a quitclaim deed offering the property to the City for right of way; and,

WHEREAS, the City Manager has the authority to accept such right of way dedications; and,

WHEREAS, the acceptance of the dedication is in the best interest of the City because it would assure that all street public improvements are within the street right of way;

NOW, THEREFORE BE IT RESOLVED that the Millersburg City Council authorizes the City Manager to accept and sign the quitclaim deed for a right of way dedication for NE Millersburg Drive and NE Woods Road as outlined in the attached documents Exhibits A, B, and C.

Approved by the City Council and effective this 12th day of September 2023.

Scott Cowan
Mayor

ATTEST:

Sheena Dickerman
City Recorder

MAIL TAX STATEMENTS TO:
City of Millersburg
4222 NE Old Salem Road
Albany, OR 97321

AFTER RECORDING RETURN TO:
Alan M. Sorem, Attorney
Saalfeld Griggs PC
PO Box 470
Salem, OR 97308

STATUTORY QUITCLAIM DEED
(Dedication of Right-of-Way)

The Miller Cemetery Association of Millersburg, an Oregon non-profit corporation, "**Grantor**," releases and quitclaims to the *City of Millersburg*, an Oregon municipal corporation, "**Grantee**," the real property legally described in *Exhibit A* and *Exhibit B*, which are attached hereto and incorporated herein.

For good and valuable consideration, which in terms of dollars is Zero (\$0.00), but the receipt and sufficiency of which is hereby acknowledged.

The following is the notice as required by Oregon law: "BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

[Signature Pages Follow]

Dated this 5 day of September, 2023.

GRANTOR:
THE MILLER CEMETERY ASSOCIATION OF MILLERSBURG

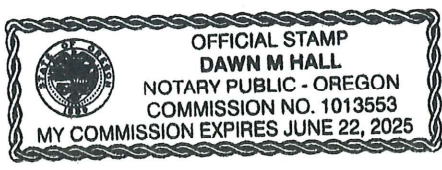
By: Timothy P. Walter
Timothy P. Walter, President

State of Oregon)
) ss.
County of Linn)

This instrument was acknowledged before me on September 5, 2023, by Timothy P. Walter, President of the Miller Cemetery Association of Millersburg, an Oregon non-profit corporation.

Before me:

Dawn M. Hall
Notary Public for Oregon
My Commission Expires: June 22, 2025



ACCEPTANCE

The City of Millersburg, Grantee, hereby accepts this Statutory Quitclaim Deed (Dedication of Right-of-Way) by and through its City Manager as signed below.

GRANTEE:
CITY OF MILLERSBURG

By: _____
Kevin Kreitman, City Manager

Date: _____

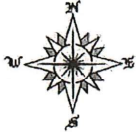
State of Oregon)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 2023, by Kevin Kreitman, City Manager of the City of Millersburg, an Oregon municipal corporation.

Before me:

Notary Public for Oregon
My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE MILLERSBURG DRIVE DEDICATION PROPERTY



AZIMUTH SURVEYING
2015 Market Street NE Salem, Oregon 97301

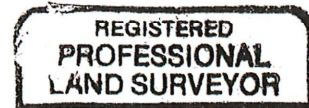
Phone (503) 364-0026
May 5, 2023

Legal Description for City of Millersburg

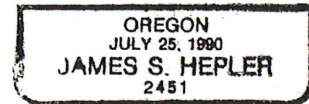
Millersburg Drive Dedication

Beginning at the northeast corner of that certain tract of land conveyed to Miller Cemetery Association of Millersburg by Instrument No. 2022-02878 of the deed records for Linn County, Oregon which northeast corner is northeast corner of the donation land claim of George Miller Sr. and wife, Notification No. 1674 and Claim No. 58 in Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon, and running thence South 00°00'49" East, along the east line of said Miller Donation Land Claim, a distance of 41.22 feet; thence South 89°59'11" West, a distance of 30.00 feet to the beginning of a 30.00 foot radius curve to the left; thence along said curve to the left, the chord of which bears North 45°35'45" West 42.86 feet, and having a central angle of 91°09'45", a distance of 47.73 feet; thence South 88°49'19" West, a distance of 269.38 feet to the west line of said Miller Cemetery Association of Millersburg tract; thence North 00°00'49" West, along the west line of said Miller Cemetery Association of Millersburg tract, a distance of 10.00 feet to the northwest corner of said Miller Cemetery Association of Millersburg tract; thence North 88°49'19" East, along the north line of said Miller Donation Land Claim a distance of 330.00 feet to the point of beginning.

Basis of Bearings: Oregon Coordinate Reference System - Salem Zone - NAD 83 (2011), Epoch 2010.00



James S. Hepler



Expires: 6-30-25

EXHIBIT B
LEGAL DESCRIPTION OF THE WOODS ROAD DEDICATION PROPERTY



AZIMUTH SURVEYING

2015 Market Street NE Salem, Oregon 97301

Phone (503) 364-0026

May 5, 2023

Legal Description for City of Millersburg

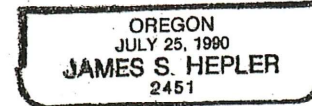
Woods Road Dedication

Beginning at a point on the east line of that certain tract of land conveyed to Miller Cemetery Association of Millersburg by Instrument No. 2022-02878 of the deed records for Linn County, Oregon that is South 0°00'49" East 41.22 feet from the northeast corner of the donation land claim of George Miller Sr. and wife, Notification No. 1674 and Claim No. 58 in Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon, and running thence South 89°59'11" West, a distance of 30.00 feet; thence South 00°00'49" East, parallel with the east line of said Miller Donation Land claim, a distance of 289.39 feet to the south line of said Miller Cemetery Association of Millersburg tract; thence North 88°49'19" East, along the south line of said Miller Cemetery Association of Millersburg tract, a distance of 10.00 feet to the west line of Woods Road; thence North 00°00'49" West, along the west line of said Woods Road, a distance of 20.41 feet; thence North 89°59'11" East, along the north line of said Woods Road, a distance of 20.00 feet; thence North 00°00'49" West, along the west line of said Woods Road, a distance of 268.78 feet to the point of beginning.

Basis of Bearings: Oregon Coordinate Reference System - Salem Zone - NAD 83 (2011), Epoch 2010.00



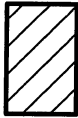
James S. Hepler



Expires: 6-30-25

4889-3057-9556, v. 7

LEGEND

- = Found Monument as noted, flush with ground surface and in good condition unless otherwise noted
- [] = Surveyor, File Number for survey in which monument probably originated
- I.R. = Iron Rod
-  = Right-of-way Dedication

SCALE : 1" = 40'

**RIGHT-OF-WAY DEDICATION
FOR
CITY OF MILLERSBURG**
MILLERSBURG DRIVE
IN THE SE 1/4 of SECTION 17, T. 10 S., R. 3 W., W.M.
LINN COUNTY, OREGON
MAY 5, 2023

**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

James S. Hepler

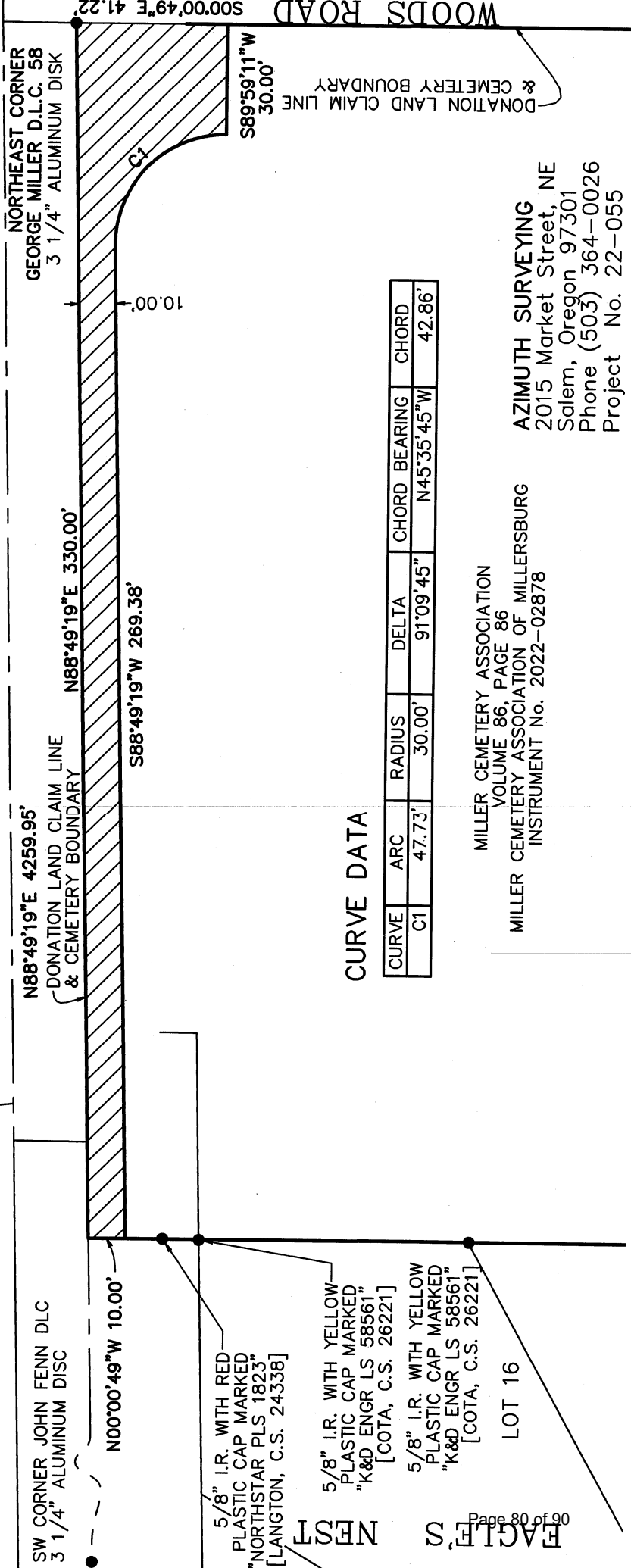
OREGON
JULY 25, 1990
JAMES S. HEPLER
2451

EXPIRES: 6-30-25

NOTE:

BASIS OF BEARINGS: OREGON COORDINATE
REFERENCE SYSTEM SALEM ZONE - NAD 83
(2011), EPOCH 2010.00

MILLERSBURG DRIVE



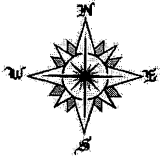
CURVE DATA

CURVE	ARC	RADIUS	DELTA	CHORD BEARING	CHORD
C1	47.73°	30.00'	91°09'45"	N45°35'45"W	42.86'

MILLER CEMETERY ASSOCIATION
VOLUME 86, PAGE 86
MILLER CEMETERY ASSOCIATION OF MILLERSBURG
INSTRUMENT No. 2022-02878

AZIMUTH SURVEYING
2015 Market Street, NE
Salem, Oregon 97301
Phone (503) 364-0026
Project No. 22-055

LOT 16



AZIMUTH SURVEYING

2015 Market Street NE Salem, Oregon 97301

Phone (503) 364-0026

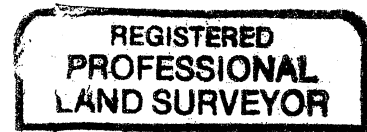
May 5, 2023

Legal Description for City of Millersburg

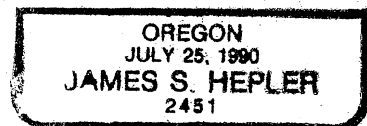
Millersburg Drive Dedication

Beginning at the northeast corner of that certain tract of land conveyed to Miller Cemetery Association of Millersburg by Instrument No. 2022-02878 of the deed records for Linn County, Oregon which northeast corner is northeast corner of the donation land claim of George Miller Sr. and wife, Notification No. 1674 and Claim No. 58 in Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon, and running thence South 00°00'49" East, along the east line of said Miller Donation Land Claim, a distance of 41.22 feet; thence South 89°59'11" West, a distance of 30.00 feet to the beginning of a 30.00 foot radius curve to the left; thence along said curve to the left, the chord of which bears North 45°35'45" West 42.86 feet, and having a central angle of 91°09'45", a distance of 47.73 feet; thence South 88°49'19" West, a distance of 269.38 feet to the west line of said Miller Cemetery Association of Millersburg tract; thence North 00°00'49" West, along the west line of said Miller Cemetery Association of Millersburg tract, a distance of 10.00 feet to the northwest corner of said Miller Cemetery Association of Millersburg tract; thence North 88°49'19" East, along the north line of said Miller Donation Land Claim a distance of 330.00 feet to the point of beginning.

Basis of Bearings: Oregon Coordinate Reference System - Salem Zone - NAD 83 (2011), Epoch 2010.00



James S. Hepler



Expires: 6-30-25

RIGHT-OF-WAY DEDICATION

FOR

CITY OF MILLERSBURG

A PORTION OF WOODS ROAD

IN THE SE 1/4 of SECTION 17, T. 10 S., R. 3 W., W.M.

LINN COUNTY, OREGON

MAY 5, 2023

SCALE : 1" = 40'

NORTHEAST CORNER
GEORGE MILLER D.L.C. 58
3 1/4" ALUMINUM DISK

S89°59'11"W 30.00'

S00°00'49"E
41.22'

DONATION LAND CLAIM LINE
& CEMETERY BOUNDARY

5/8" I.R. WITH RED
PLASTIC CAP MARKED
"NORTH STAR SURVEYING"
18" DEEP
[LANGTON, C.S. 25597]

LEGEND

LOT 2

- = Found Monument as noted, flush with ground surface and in good condition unless otherwise noted
- [] = Surveyor, File Number for survey in which monument probably originated
- I.R. = Iron Rod



= Right-of-way Dedication

WOODS ROAD

MILLER CEMETERY ASSOCIATION
VOLUME 86, PAGE 86
MILLER CEMETERY ASSOCIATION OF MILLERSBURG
INSTRUMENT No. 2022-02878

S00°00'49"E 289.39'

N00°00'49"W 3116.58'

RIGHT-OF-WAY LINE PER ORIGINAL ROAD SURVEY

N00°00'49"W 268.78'

WOODS ROAD
N00°00'49"W 350.13'

CENTERLINE WOODS ROAD
ROAD BOOK 6, PAGE 444

CCJ VOL 15, PAGE 28

RIGHT-OF-WAY LINE USED IN BECKER RIDGE

BUILDING

LOT 3

5/8" I.R. WITH RED
PLASTIC CAP MARKED
"NORTH STAR SURVEYING"
18" DEEP
[LANGTON, C.S. 25597]

BECKER RIDGE

REGISTERED
PROFESSIONAL
LAND SURVEYOR

James S. Hepler

OREGON
JULY 25, 1990
JAMES S. HEPLER
2451

EXPIRES: 6-30-25

LOT 4

5/8" I.R. WITH RED
PLASTIC CAP MARKED
"NORTH STAR SURVEYING"
[LANGTON, C.S. 25597]

NOTE:

BASIS OF BEARINGS: OREGON COORDINATE
REFERENCE SYSTEM SALEM ZONE - NAD 83
(2011), EPOCH 2010.00

LOT 5

AZIMUTH SURVEYING
2015 Market Street, NE
Salem, Oregon 97301
Phone (503) 364-0026
Project No. 22-055

5/8" I.R. WITH YELLOW
PLASTIC CAP MARKED
"MULTI/TECH ENG."
[HAMMAN, C.S. 26228]

N88°49'19"E
10.00'

N00°00'49"W
20.41'

N89°59'11"E
20.00'

N89°59'11"E
20.00'

SE CORNER
SARAH FARLOW DLC
3 1/4" BRASS DISK





AZIMUTH SURVEYING

2015 Market Street NE Salem, Oregon 97301

Phone (503) 364-0026

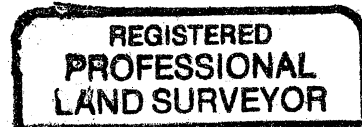
May 5, 2023

Legal Description for City of Millersburg

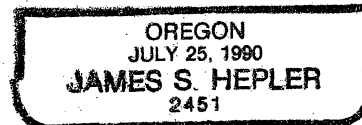
Woods Road Dedication

Beginning at a point on the east line of that certain tract of land conveyed to Miller Cemetery Association of Millersburg by Instrument No. 2022-02878 of the deed records for Linn County, Oregon that is South 0°00'49" East 41.22 feet from the northeast corner of the donation land claim of George Miller Sr. and wife, Notification No. 1674 and Claim No. 58 in Township 10 South, Range 3 West of the Willamette Meridian, Linn County, Oregon, and running thence South 89°59'11" West, a distance of 30.00 feet; thence South 00°00'49" East, parallel with the east line of said Miller Donation Land claim, a distance of 289.39 feet to the south line of said Miller Cemetery Association of Millersburg tract; thence North 88°49'19" East, along the south line of said Miller Cemetery Association of Millersburg tract, a distance of 10.00 feet to the west line of Woods Road; thence North 00°00'49" West, along the west line of said Woods Road, a distance of 20.41 feet; thence North 89°59'11" East, along the north line of said Woods Road, a distance of 20.00 feet; thence North 00°00'49" West, along the west line of said Woods Road, a distance of 268.78 feet to the point of beginning.

Basis of Bearings: Oregon Coordinate Reference System - Salem Zone - NAD 83 (2011), Epoch 2010.00



James S. Hepler



Expires: 6-30-25



TO: Millersburg City Council
VIA: Kevin Kreitman, City Manager
FROM: Janelle Booth, Assistant City Manager/City Engineer
DATE: September 5, 2023, for the September 12, 2023, City Council Meeting
SUBJECT: Old Salem Road Guardrail Project

Action Requested:

Approval of increased cost for installation of guardrail between Old Salem Road and I-5.

Discussion:

For many years the City of Millersburg has requested ODOT install guardrail between I-5 and Old Salem Road in the where they are adjacent to each other in the south part of Millersburg. In 2020 Millersburg was awarded a grant through AAMPO for \$99,000 to complete this project. The amount requested was based on ODOT's estimates of the construction cost if the work is accomplished through their existing maintenance agreements.

The awarded funding became available in FFY 2022. When ODOT re-verified the project scope in anticipation of construction, additional shoulder paving work was required. This additional work brings the total project cost to \$136,309.67. Due to timing of other work in the area, time of year, and availability of the contractor, the shoulder paving work was completed in August 2023 for \$69,785.92. The remaining work to install the guardrail will cost \$66,543.75.

Budget Impact:

The 2023-24 fiscal year budget included \$100,000 for this project, of which \$99,000 is from grant funds. The additional \$36,309.67 to complete this project is available in the street fund.

Recommendation:

Staff recommends Council approve the increased cost for the Old Salem Road Guardrail Project.

Attachment(s):

NSP invoice for shoulder work
Guardrail cost

Progress Bill

From: NORTH SANTIAM PAVING CO
P.O. BOX 516
STAYTON, OR 97383

Invoice: 23136
Date: 08/29/23
Application #: 1

To: ODOT Region 2
455 Airport Rd SE, Bldg E
Salem, OR 97301

Invoice Due Date: 08/29/23
Payment Terms: Due On Receipt

Contract: 23061- I-5 SB Shoulder Grading/Paving

Item	Description	Contract Amount	Contract Quantity	U/M	Quantity JTD	Unit Price	Materials On-Site	Total		Amount Previous	Quantity This Period	Amount This Period
								Completed And Stored To Date	%			
1	Mobilization	15,000.00	1.000	Ls	1.000	15,000.000000	0.00	15,000.00	100.00%	0.00	1.000	15,000.00
2	Temporary Work Zone Traffic Control, Complete	17,000.00	1.000	Ls	1.000	17,000.000000	0.00	17,000.00	100.00%	0.00	1.000	17,000.00
3	Level 3 1/2" Dense ACP Mixture	28,280.00	70.000	TON	93.480	404.000000	0.00	37,765.92	133.54%	0.00	93.480	37,765.92
4	Aggregate Base	3,000.00	100.000	TON	0.000	30.000000	0.00	0.00	0.00%	0.00	0.000	0.00

Total Billed To Date: 69,765.92
Less Retainage: 0.00
Less Previous Applications: 0.00
Total Due This Invoice: 69,765.92

PA ORDER FORM
Region 2 On-Call Guardrail Repairs
2/8/2023 Prices

THIS WORK ORDER IS PLACED AGAINST THE ODOT PRICE AGREEMENT IDENTIFIED BELOW. ALL TERMS AND CONDITIONS CONTAINED IN THE PRICE AGREEMENT APPLY TO THIS ORDER AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESSED OR IMPLIED.

Date: District: 1 3 4 5

Contractor: PA No: CAO No:

Project Name: I-5 City of Millersburg Guardrail Upgrade

Project description (include milepoint locations): I-5 south bound shoulder MP 235 - 234.62

ODOT Project Manager/Contract Administrator:	Mike Metz
Address: 445 Airport Rd Bldg. E Salem, Or 97301	Phone: 503-509-0015
	Email: michael.metz@odot.oregon.gov

ODOT Site Representative (if different than ODOT Project Manager):
 Phone:

Completion Date:

ANTICIPATED WORK ITEMS (PAY ITEMS)

This PA Order Form indicates an estimate of services/quantities required. Payment to Contractor will be made based on actual quantities provided/performed. Contractor shall not exceed the listed estimated quantities without written authorization from ODOT's Project Manager/Contract Administrator.

x	Item	Description	Unit	Est. Qty.	Unit Price	Total Price
	1a	Mobilization District 1	EACH		\$ 2,925.00	\$ -
	1b	Mobilization District 3	EACH		\$ 3,500.00	\$ -
x	1c	Mobilization District 4	EACH	1.00	\$ 3,500.00	\$ 3,500.00
	1d	Mobilization District 5	EACH		\$ 4,100.00	\$ -
	2	Flaggers	HOURL		\$ 71.00	\$ -
	3	Removal of Guardrail (Rails Only)	FOOT		\$ 2.60	\$ -
x	4	Removal of Guardrail	FOOT	62.50	\$ 5.50	\$ 343.75
	5	Metal Beam Rails	EACH		\$ 150.00	\$ -
	6	Guardrail Posts, Wood	EACH		\$ 91.50	\$ -
	7	Guardrail Posts, Steel	EACH		\$ 117.00	\$ -
	8	Extra for 8 Foot Posts, Wood	EACH		\$ 42.00	\$ -
	9	Extra for 8 Foot Posts. Steel	EACH		\$ 42.00	\$ -
	10	Guardrail Blocks, Wood	EACH		\$ 24.30	\$ -
	11	Guardrail Blocks, Plastic	EACH		\$ 15.00	\$ -
	12	Adjusting Guardrail	FOOT		\$ 4.30	\$ -
	13	Guardrail Type 2A	FOOT		\$ 30.00	\$ -
	14	Guardrail Type 3	FOOT		\$ 85.00	\$ -
	15	Guardrail Type 4 Thrie Beam	FOOT		\$ 85.00	\$ -

x	Item	Description	Unit	Est. Qty.	Unit Price	Total Price
	16	Guardrail End Piece Type B	EACH		\$ 100.00	\$ -
	17	Guardrail End Piece Type C	EACH		\$ 150.00	\$ -
	18	Guardrail Anchors, Type 1	EACH		\$ 1,100.00	\$ -
	19	Guardrail Anchors, Type 1 Modified	EACH		\$ 900.00	\$ -
	20	Guardrail Transition	EACH		\$ 3,100.00	\$ -
	21	Guardrail Terminal Flared FLEAT	EACH		\$ 3,000.00	\$ -
	22	Guardrail Terminal Flared MFLEAT	EACH		\$ 3,600.00	\$ -
	23	Guardrail Terminal Non-Flared SKT	EACH		\$ 3,200.00	\$ -
	24	Guardrail Terminal Non-Flared MSKT	EACH		\$ 3,500.00	\$ -
	25	Midwest Guardrail Type 2A, Wood Post	FOOT		\$ 31.00	\$ -
x	26	Midwest Guardrail Type 2A, Steel Post	FOOT	1,900.00	\$ 33.00	\$ 62,700.00
	27	Extra for Hand Dug GR Post Holes	EACH		\$ 175.00	\$ -
	28	Delineators, Type 1, 1U	EACH		\$ 75.00	\$ -
	29	Delineators, Type 4 Alternate 2	EACH		\$ 45.00	\$ -
						\$ -
						\$ -
						\$ -
Total:						\$ 66,543.75

COMMENTS & SPECIAL INSTRUCTIONS:

Contractor Signature: _____ Date: _____

ODOT Authorized Signature: _____ Date: _____



TO: Millersburg City Council
 VIA: Kevin Kreitman, City Manager
 FROM: Janelle Booth, Assistant City Manager/City Engineer
 DATE: September 7, 2023, for the September 12, 2023, City Council Meeting
 SUBJECT: Street Sweeping Contract

Action Requested:
 Approval of contract amendment for street sweeping services.

Discussion:
 Millersburg's current street sweeping contract expired at the end of July 2023. New street sweeping quotes were solicited, in accordance with the City's purchasing code for intermediate procurements. A table summarizing the results is included below.

	Wheat LLC	Mid-State Industrial	Emerald Valley	Al's Sweeping Service
Cost per swept mile	\$44.78	Did not quote	\$70.00	Did not quote
Swept miles per month	66.8		66.8	
Total per month	\$2,991.30		\$4,676.00	
Annual cost	\$35,895.65		\$56,112.00	

Budget Impact:
 The 2023-24 fiscal year budget included \$30,000 for street sweeping services based on prior years costs. The additional sweeping costs can be accommodated within the street program materials and services budget.

Recommendation:
 Staff recommends Council approve the attached contract amendment.

Attachment(s):
 Street sweeping Contract Amendment 2.



AMENDMENT 2
to
PROFESSIONAL SERVICES CONTRACT
for
STREET SWEEPING

This Professional Services Contract Amendment ("Contract Amendment") is entered into between **Wheat, LLC** ("Contractor"), and the **City of Millersburg**, Linn County, State of Oregon ("City").

1. Contract Modifications:

- a. City shall pay Contractor \$44.78 per swept mile to account for increases in fuel, labor, and disposal costs.
- b. Swept miles include approximately
 - i. Woods Road, Conser Road, Alexander Lane, Morningstar Road, and Millersburg Drive at two sweeps per month 9.3 miles @ \$44.78 per curb mile.
 - ii. Remainder of Millersburg at one sweep per month 48.3 miles @ \$44.78 per curb mile.
- c. Contract expiration date is extended to July 31, 2025.
- d. Upon mutual consent of the parties, this agreement may be renewed for two additional two (2) year terms upon agreement of price adjustments, as submitted or negotiated.

2. Justification:

- a. Quotes solicited in August 2023 per City's procurement policy. Wheat LLC remained lowest quoter.

3. Effective Date and Duration. This Contract Amendment shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract Amendment extends the contract expiration to July 31, 2025. However, such expiration shall not extinguish or prejudice the City's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

4. All other terms and conditions of the original contract apply.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Authorized Signature	Date	City of Millersburg	Date
Name / Title (Printed)		Title	
Oregon Business Registry #		Approved as to Form:	

Entity Type / State of Formation

City Attorney

Date