



## MARION COUNTY BOARD OF COMMISSIONERS

*"Delivering Excellence Everyday"*

Wednesday, August 12, 2026  
Board Session 9:00 a.m.

Senator Hearing Room  
555 Court Street NE, Salem

### PUBLIC COMMENT

#### CONSENT

##### BOARD OF COMMISSIONERS

1. Approve an order appointing Troy Gregg as the Marion County Health and Human Services (MCHHS) Administrator to include various titles and roles as outlined in the board order effective August 12, 2026.

##### BUSINESS SERVICES

2. Approve an Invoice with Brown and Brown Insurance Services, Inc. in the amount of \$1,002,331.14 for the renewal of a Property Insurance Policy with National Fire and Marine Insurance Company retroactive to July 1, 2026, through July 1, 2027.

##### COMMUNITY AND ECONOMIC DEVELOPMENT

3. Approve an order delegating authority to the Marion County Board of Commissioners (BOC) Chair, the BOC Vice-Chair, or the Chief Administrative Officer (CAO) to execute and authorize payments under the Marion County Home Buyer Assistance (HBA) Program in the not-to-exceed amount of \$125,000 for each application, retroactive to July 1, 2026, through June 30, 2027.

##### HEALTH AND HUMAN SERVICES

4. Approve orders appointing Nai Saechao as the primary Intergovernmental Agreement (IGA) manager, and Ricarda Hargrove as the backup IGA manager, authorized to accept Service Element Prior Authorizations (SEPAs) in the Express Payment and Reporting System (eXPRS) for the Intellectual and Developmental Disabilities (IDD) program effective August 12, 2026.

## PUBLIC WORKS

5. Approve the Supplemental Project Agreement between the Oregon Department of Transportation (ODOT), Marion County, and Polk County, in the amount of \$3,828,500, of which an estimated \$3,435,313.05 will utilize federal funding, an estimated \$393,186.95 will utilize Polk County funding, and zero funds will be provided by Marion County, to deliver the Helmick Road: Luckiamute River Bridge Rehabilitation Project on behalf of Polk County through December 31, 2032.

6. Approve the Engineering and Related Services Contract with David Evans and Associates, Inc. in the amount of \$399,569.24 to provide land surveying and engineering services for the design of a mitigation plan and robust geotechnical solution for a slow-moving landslide that is occurring at North Fork Park through March 31, 2029.

## **ACTION**

None.

## **PUBLIC HEARINGS** **Starting no earlier than 9:00 a.m.**

### PUBLIC WORKS

A. Public hearing to consider an application for Noise Variance, Case #26-002 / Rue 3, LLC.  
–John Speckman

B. Public hearing to consider a Land Use Board of Appeals (LUBA) remand for Partition / Variance, Case #25-013 / Francisco Villalobos. –Austin Barnes.

Members of the public may submit written testimony by email to [PublicHearings@co.marion.or.us](mailto:PublicHearings@co.marion.or.us) For agenda items where in-person testimony is allowed, the public may sign up to provide testimony by telephone by emailing [PublicHearings@co.marion.or.us](mailto:PublicHearings@co.marion.or.us) at least 24 hours before the meeting. The email must specify the meeting date/time and agenda topic for which testimony is being submitted. For telephone testimony requests, the email must also include your name and the phone number that staff should use to call you at the appropriate time.

If you require interpreter assistance, an assistive listening device, large print material or other accommodations, call 503-588-5212 at least 48 hours in advance of the meeting. TTY 503-588-5168 Si necesita servicios de interprete, equipo auditivo, material copiado en letra grande, o cualquier otra acomodacion, por favor llame al 503-588-5212 por lo menos 48 horas con anticipacion a la reunion. TTY 503-588-5168 Marion County is on the Internet at: [www.co.marion.or.us](http://www.co.marion.or.us)





MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: 8/12/2026

Department: Board of Commissioners ☐

Title: Appointment of Troy Gregg as Marion County Health and Human Services Administrator

Management Update/Work Session Date: N/A Audio/Visual aids ☐

Time Required: 5 min Contact: Jan Fritz Phone: 5212

Requested Action: Consider appointing Troy Gregg as Marion County Health and Human Services Administrator and appointment to various roles as the Marion County Health and Human Services Administrator

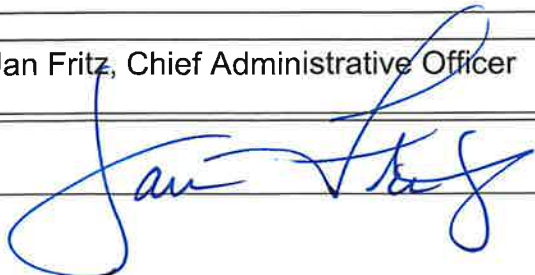
Issue, Description & Background:

Financial Impacts:

Impacts to Department & External Agencies:

List of attachments: 1 Board Order

Presenter: Jan Fritz, Chief Administrative Officer

Department Head Signature: 

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the matter of the appointing Troy Gregg    )  
to Various Roles as Marion County            )  
Health and Human Services Administrator    )

**Department of Health and Human Services**

**ORDER #:** \_\_\_\_\_

This matter comes before the Marion County Board of Commissioners at a scheduled public meeting on August 12, 2026, to consider appointing Troy Gregg to various roles associated with appointment as Marion County Department of Health and Human Services Administrator.

**WHEREAS**, the Marion County Department of Health and Human Services Administrator may also serve as:

- Local Public Health Administrator (LPHA) for the Marion County Local Public Health Authority pursuant to ORS 431.418(1);
- Marion County Community Mental Health Program (CMHP) Director pursuant to OAR 309-014-0020 and ORS 430.620;
- Area Plan Administrator of the Marion County Ambulance Services pursuant to Marion County Ordinance 5.20.060;
- Authorizing Official for the purposes of the Federal 340B Drug Pricing Program pursuant to § 340B(a)(4) of the Public Health Service Act;
- Authorizing Agent for purposes of administering Marion County Health Department access to electronic medical record systems (EPIC) of Salem Health; and
- Financial Administrator with the authority to sign Oregon Health Authority (OHA) intergovernmental agreements, within the authority allowed by Marion County Public Contracting Rules; and
- 

**WHEREAS**, Troy Gregg will serve as Administrator of the Marion County Health and Human Services Department and is qualified and willing to serve in additional roles; now, therefore,

**IT IS HEREBY ORDERED** that Troy Gregg, is the Marion County Health and Human Services Administrator and is appointed to all positions listed above, effective August 12, 2026, to serve at the pleasure of the Marion County Board of Commissioners.

**DATED** at Salem, Oregon, this 12th day of August, 2026.

**MARION COUNTY  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

Meeting date: 8/12/2026

Department: Business Services

Title: Property Insurance Premium Invoice Approval

Management Update/Work Session Date: July 28, 2026 Audio/Visual aids ☐

Time Required: Consent Contact: William W. White Phone: 503.373.4423

**Requested Action:**

Risk Management requests Board approval of our invoice for Property insurance premium in the amount of \$1,002,331.14.

**Issue, Description  
& Background:**

Risk Management presented this information to the Board of Commissioners at the Management Update on July 28, 2026. Marion County's property insurance with APIP is for the term of July 1, 2026, to July 1, 2027. The renewal premium is higher than projected by \$39,831.

The invoice, per procurement rules, requires approval by the Board of Commissioners.

**Financial Impacts:**

This premium is paid from the County's Self-insurance Fund.

**Impacts to Department  
& External Agencies:**

The premium for this insurance and other insurance program costs are allocated to departments.

**List of attachments:**

Invoice and signature page

**Presenter:**

William W. White, Risk Manager

**Department Head  
Signature:**

tgoettsch

Digitally signed by tgoettsch  
Date: 2026.07.17 10:57:07 -07'00'

# INVOICE



**Mail payment to:**  
Brown & Brown Insurance Services, Inc.  
P.O. Box 743061  
Los Angeles, CA 90074-3061

**Overnight payment to:**  
Brown & Brown Insurance Services, Inc.  
Lockbox 743061  
2706 Media Center Drive  
Los Angeles, CA 90065-1733

To Pay Online: [bbnw.epaypolicy.com](http://bbnw.epaypolicy.com)

**Marion County Business Services**  
555 Court St NE  
PO Box 14500  
Salem, OR 97309-5036

|                         |               |
|-------------------------|---------------|
| <b>Customer</b>         | Marion County |
| <b>Acct #</b>           | [REDACTED]    |
| <b>Date</b>             | 07/08/2026    |
| <b>Customer Service</b> | (503)274-6511 |
| <b>Page</b>             | 1 of 1        |

| Payment Information    |                     |
|------------------------|---------------------|
| <b>Invoice Summary</b> | \$ 1,002,331.14     |
| <b>Payment Amount</b>  |                     |
| <b>Payment for:</b>    | Invoice# [REDACTED] |

**Thank You**

Please detach and return with payment



Customer: Marion County

| Invoice    | Effective  | Transaction  | Description                                                                                                                                                                                                            | Amount                              |
|------------|------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| [REDACTED] | 07/01/2026 | Renew policy | Policy # [REDACTED] 07/01/2026-07/01/2027<br>National Fire & Marine Insurance Company<br><br>Commercial Property - Renew policy<br>Surplus Lines Fees - Renew policy<br>Appraisal Fee - Renew policy<br><br>[REDACTED] | 974,484.00<br>22,473.14<br>5,374.00 |
|            |            |              |                                                                                                                                                                                                                        | <b>Total</b>                        |
|            |            |              |                                                                                                                                                                                                                        | \$ 1,002,331.14                     |

**Thank You**

Please Remit Payment Upon Receipt

|  |  | Date       |
|--|--|------------|
|  |  | 07/08/2026 |

In the Matter of **Payment of** )  
**Property Insurance Invoice** )

Description: **Property Insurance with AIP, Policy # [REDACTED], Policy Term 2026/07/01 to 2027/07/01.**

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on **August 12, 2026**, to consider approval of the payment for **Property Insurance Invoice**.

DATED at Salem, Oregon, this **12th** day of **August, 2026**

## Chair

## Commissioner

## Commissioner



MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: August 12, 2026

Department: Community and Economic Development

Title:

Board Order to Authorize Chief Administrative Officer to approve Home Buyer Assistance payments up to \$125,000

Management Update/Work Session Date: July 28, 2026

Audio/Visual aids ☐

Time Required: 5 minutes

Contact: Brian Smith

Phone: 503-588-4416

Requested Action:

Approve a Board Order that authorizes the Chief Administrative Officer (CAO), or designee, to approve payments from the Marion County Community Services Home Buyer Assistance Program in the amount of up to \$125,000.00 per client, for a period of five-years from July 1, 2026 through June 30, 2031.

Issue, Description  
& Background:

With the maximum assistance level of \$125,000.00 it exceeds the Chief Administrative Officer's approval authority. If it is required obtain approval from the Board of Commissioners it does not coordinate with the closing process and would result in delayed closings.

On May 13, 2026, the Marion County Board of Commissioners approved the five-year Marion County Community Development Block Grant (CDBG) and HOME Consolidated Plan. Since the Consolidated Plan covers a five-year period, staff is requesting a Board Order authorizing the Chief Administrative Officer (CAO), or designee, to approve payments up to \$125,000 for each party assisted by the HBA for a five year period from July 1, 2026, through June 30, 2031.

Financial Impacts:

This action has no financial impact to Marion County as the funds for the payments are provided by U.S. Housing and Urban Development.

Impacts to Department  
& External Agencies:

This will improve the ability to process and allow for timely processing of down payment assistance for our clients.

List of attachments:

Board Order

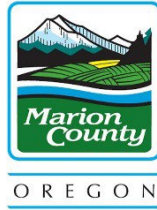
Presenter:

Steve Dickey

Department Head  
Signature:

*Kelli Wuse*

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## MEMORANDUM

**TO:** Marion County Board of Commissioners  
**FROM:** Steve Dickey, CDBG/HOME Program Manager  
**MEETING DATE:** August 12, 2026, Board of Commissioners Meeting

### 2026-2031 DOWN PAYMENT ASSISTANCE BOARD ORDER

#### PROJECT OVERVIEW

The program related to this agenda item is the Marion County Home Buyer Assistance Program that provides assistance (down payment, closing costs, or buying down points) to qualified home buyers in Marion County (but outside the Salem city limits). The matter at hand is the need to authorize the Marion County Chief Administrative Officer (CAO), or Chair or Vice-Chair of the Marion County Board of Commissioners, to approve payments for the Home Investment Partnerships Program (HOME) - Home Buyer Assistance (HBA) program (formerly known as Down Payment Assistance Program) in amounts up to \$125,000. The standard threshold for the CAO payment approval is \$100,000.

#### HISTORY & PRIOR BOARD DISCUSSIONS

On August 2nd, 2023, the Marion County Board of Commissioners approved the Down Payment Assistance and Recapture/Resale Policy. This policy raised the amount available for down payments from \$25,000.00 to \$125,000. With the new maximum at \$125,000 this required approval by the Board of Commissioners for every down payment. The issue encountered is related to the County's process to obtain approval from the Board of Commissioners does not coordinate with the closing process and would result in delayed closings. This in some cases would cause the sale to fail and the client would then have to start over finding a house.

To address this issue, starting with the 2023-2024 fiscal year a Board Order was issued delegating authority to the Chief Administrative Officer to authorize downpayments under the HBA program in amounts up to \$125,000. This Board Order was repeated again at the beginning of fiscal year 2024-2025. The DPA also changed the name to the HBA as the assistance may be used for down payments, closing costs, and/or buying down points.



## **UPDATE**

The previous Board Order expired on June 30, 2026 and staff is requesting consideration of a Board Order authorizing the Chief Administrative Officer (CAO), or Chair or Vice-Chair of the Marion County Board of Commissioners, to approve payments up to \$125,000 for each party assisted by the HBA for a period from July 1, 2026, through June 30, 2027.

## **PURPOSE OF THE MEETING**

The purpose of this agenda item at the August 12, 2026, Board Session is a request for the Commissioners to approve a Board Order that authorizes the Chief Administrative Officer, or Chair or Vice-Chair, to approve payments from the Marion County Home Buyer Assistance Program in the amount of up to \$125,000 per client, for a period from July 1, 2026, through June 30, 2027.

## **FUNDING & BUDGET**

The HBA program is funded through U.S. Housing and Urban Development (HUD) HOME grants provided to Marion County on an annual basis. The amount of funding dedicated to this program is determined each year by the Marion County Board of Commissioners.

## **NEXT STEPS**

Should the Board of Commissioners Meeting approve a Board Order that authorizes the Chief Administrative Officer, or Chair or Vice-Chair, to approve payments as described above, staff will proceed with this process through June 30, 2027.

## **ATTACHMENTS**

Attachment 1 – Board Order

**BEFORE THE BOARD OF COMMISSIONERS**  
**FOR MARION COUNTY, OREGON**

In the matter of the delegation of authority to     )  
the Chief Administrative Officer, or the             )  
Chair or Vice-Chair of the Marion County         )  
Board of Commissioners, to authorize             )  
payments under the Marion County Home           )  
Buyer Assistance Program                             )

**ORDER No. \_\_\_\_\_**

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on August 12<sup>th</sup>, 2026, to delegate authority to the Chief Administrative Officer, or the Chair or Vice-Chair of the Marion County Board of Commissioners, in relation to the Marion County Home Buyer Assistance Program.

WHEREAS, Marion County has approved a Home Buyer Assistance (“HBA”) program using HUD HOME Investment Partnership Program Funds; and

WHEREAS, the amount each applicant may receive under the HBA is up to \$125,000.00;

WHEREAS, the Board now seeks to delegate authority to the Chief Administrative Officer, or Chair or Vice-Chair of the Marion County Board of Commissioners, to approve and execute payments under the HBA;

IT IS HEREBY ORDERED that the Marion County Chief Administrative Officer, or Chair or Vice-Chair of the Marion County Board of Commissioners, is delegated the authority and responsibility of the Board of Commissioners, for the period of July 1, 2026 through June 30, 2027, to execute and authorize payments under the Home Buyer Assistance Program in an amount up to \$125,000.00 for each application.

DATED at Salem, Oregon, this \_\_\_\_ day of August.

MARION COUNTY BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

Meeting date: Wednesday, August 12th, 2026 9:00am

Department: Health & Human Services

Title:

IGA Manager Appointments

Management Update/Work Session Date: 7/21/26

Audio/Visual aids ☐

Time Required: 5 mins

Contact: Claire Perez

Phone: x3776

Requested Action:

Approve board orders appointing Nai Saechao and Ricarda Hargrove as new IGA managers for the I/DD program.

Issue, Description  
& Background:

The staff member previously designated as the IGA Manager is no longer employed by Marion County. To ensure continuity of operations and maintain the ability to accept Service Element Prior Authorizations (SEPAs) in eXPRS, the IDD program is requesting approval to designate Nai Saechao as the primary IGA Manager and Ricarda Hargrove as the backup IGA Manager. These appointments will ensure uninterrupted authorization processing and appropriate program coverage.

Financial Impacts:

N/A

Impacts to Department  
& External Agencies:

N/A

List of attachments:

Board Orders

Presenter:

Karin Perkins

Department Head  
Signature:

TGregg

Digitally signed by TGregg  
Date: 2026.07.23 13:37:37 -07'00'

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the Matter of appointing Nai Saechao as     )  
Service Element Prior Authorization (SEPA) )  
Authority as eXPRS IGA Manager             )  
For Marion County Health & Human Services)

ORDER No. \_\_\_\_\_

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on August 12, 2026, to consider appointing Service Element Prior Authorization (SEPA) authority as eXPRS Intergovernmental Agreement (IGA) manager.

WHEREAS, an employee of the Marion County Department of Health and Human Services may also serve as SEPA authority as eXPRS IGA Managers.

WHEREAS, the Board finds that the following are qualified and willing to serve

- Nai Saechao

now, therefore,

IT IS HEREBY ORDERED that the above-named employee of the Marion County Health and Human Services Department are appointed to the position listed above, effective August 12, 2026, to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon the 12<sup>th</sup> day of August, 2026.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the Matter of appointing Ricarda Hargrove as     )  
Service Element Prior Authorization (SEPA)         )  
Authority as eXPRS IGA Manager                     )  
For Marion County Health & Human Services        )

ORDER No. \_\_\_\_\_

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on August 12, 2026, to consider appointing Service Element Prior Authorization (SEPA) authority as eXPRS Intergovernmental Agreement (IGA) manager.

WHEREAS, an employee of the Marion County Department of Health and Human Services may also serve as SEPA authority as eXPRS IGA Managers.

WHEREAS, the Board finds that the following are qualified and willing to serve

- Ricarda Hargrove

now, therefore,

IT IS HEREBY ORDERED that the above-named employee of the Marion County Health and Human Services Department are appointed to the position listed above, effective August 12, 2026, to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon the 12<sup>th</sup> day of August, 2026.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

Meeting date: 8/12/2026

Department: Public Works

Title: Helmick Rd: Luckiamute River Bridge Agreement 7300-00029498

Management Update/Work Session Date: July 28, 2026 Audio/Visual aids ☐

Time Required: 5 Minutes Contact: Jill Ogden Phone: 3152

**Requested Action:**

Approve Supplemental Project Agreement 7300-00029498 with the Oregon Department of Transportation (ODOT) and Polk County to deliver the Helmick Road: Luckiamute River Bridge Rehabilitation Project on behalf of Polk County.

**Issue, Description  
& Background:**

Marion County is certified by ODOT to deliver federal aid projects. Polk County approached Marion County requesting we deliver this bridge project on their behalf rather than having ODOT deliver it.

ODOT allows certified agencies to deliver federal aid projects on behalf of non-certified agencies. To do so the certified and non-certified agencies must enter into an agreement with ODOT laying out the terms and conditions for delivering the project and the available funding.

**Financial Impacts:**

Total estimated project cost is \$3,828,500.00: \$3,435,313.05 (89.73%) Federal funds, \$393,186.95 (10.27%) Polk County matching funds, and \$0 Marion County funds.

**Impacts to Department  
& External Agencies:**

County engineering staff have the capacity to administer this project. By entering into this agreement, Polk County is committing to the federal match, any non-participating costs and any costs not covered by the grant amount.

**List of attachments:**

Supplemental Project Agreement 7300-00029498 (PW-6999-26)

**Presenter:**

Ryan Crowther

**Department Head  
Signature:**

Brian Nicholas

Digitally signed by Brian Nicholas  
Date: 2026.07.08 05:27:20 -07'00'

# Contract Review Sheet

Intergovernmental Agreement

**PW-6999-26**

Title: **IGA: Luckiamute River-Helmick Road Bridge (Polk County)**

Contractor's Name: **Oregon Department of Transportation**

Department: **Public Works Department**

Contact: **Traci Clarke**

Analyst: **Kathleen George**

Phone #: **503-365-3100**

Term - Date From: **Execution**

Expires: **December 31, 2032**

Original Contract Amount: **\$ 3,828,500.00**

Previous Amendments Amount: **\$ -**

Current Amendment: **\$ -**

New Contract Total: **\$ 3,828,500.00** Amd% **0%**

Outgoing Funds ☐ Federal Funds ☐ Reinstatement ☐ Retroactive ☐ Amendment greater than 25%

Source Selection Method: **50-0010 General Exemptions (IGAs Grants QRFs)**

**Department**

## Description of Services or Grant Award

Luckiamute River-Helmick Road Bridge (Polk County) - Supplemental Project Authorization No. 73000-00029498:3  
Certified Agency Performing on Behalf of a Non-Certified Agency (COBO).

Total estimated project cost is \$3,828,500.00: \$3,435,313.05 (89.73%) Federal funds, \$393,186.95 (10.27%) Polk County matching funds, and \$0 Marion County funds.

Description: Rehabilitation of bridge including seismic retrofit, erosion control repair and other general maintenance needs to preserve the historic integrity of the bridge.

Award Program: Funds have been awarded under the Statewide Local Bridge Program and will be applied in accordance with Paragraph V.3.f of the Program Agreement.

Work must be completed by 12/31/2032.

Desired BOC Session Date: **8/12/2026**

Contract should be in DocuSign by: **7/22/2026**

Agenda Planning Date: **7/30/2026**

Printed packets due in Finance: **7/28/2026**

Management Update: **7/28/2026**

BOC upload / Board Session email: **7/29/2026**

BOC Session Presenter(s) **Ryan Crowther**

Code: **Y**

## REQUIRED APPROVALS

  
Finance - Contracts  
Date **07/23/2026**

  
Contract Specialist  
Date **07/23/2026**

Legal Counsel  
Date

Chief Administrative Officer  
Date



A170-G030325

Oregon Department of Transportation  
LOCAL AGENCY CERTIFICATION PROGRAM  
Supplemental Project Authorization No. 73000-00029498:3  
Certified Agency Performing on Behalf of a Non-Certified Agency (COBO)

This Supplemental Project Authorization is a cooperative agreement made and entered into by and between the **Oregon Department of Transportation** ("State" or "ODOT"), **Marion County** ("Certified Agency") acting by and through its elected officials, and **Polk County** ("Non-Certified Agency") acting by and through its elected officials, all herein referred to individually as "Party" and collectively as "Parties."

RECITALS:

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. ODOT and Certified Agency entered into Local Agency Certification Program Agreement No. 73000-000 29498, executed on October 14, 2024 ("Program Agreement"), which is hereby incorporated by reference. The Program Agreement authorizes Certified Agency to administer federal-aid projects and allows Certified Agency to deliver a federal-aid project on behalf of a non-certified agency, subject to ODOT approval. This arrangement is known as "certified on behalf of" or "COBO" project delivery. (See Paragraph V.2.c of the Program Agreement.)
3. Non-Certified Agency desires Certified Agency to deliver a COBO project on its behalf, and Certified Agency is willing to do so. The Parties enter into this Agreement to authorize Certified Agency to deliver the project described the Project Details Table in Section A below ("Project") on behalf of Non-Certified Agency as agreed to herein.
4. Non-Certified Agency recognizes the Program Agreement is between ODOT and Certified Agency only and confers no obligations, benefits, or rights to Non-Certified Agency except as expressly provided herein. This Supplemental Project Authorization includes Non-Certified Agency as an additional Party. Accordingly, this Supplemental Project Authorization includes special provisions to address the obligations and cost responsibilities of each Party for this COBO Project.
5. For purposes of this COBO Project, ODOT considers Certified Agency to be a subrecipient of federal funds and to be eligible for reimbursement as the delivering agency. ODOT does not consider Non-Certified Agency to be a subrecipient or a contractor for purposes of federal funds and is not eligible for federal reimbursement for this Project.

A. PROJECT DETAILS TABLE

| SPA NUMBER          | #3                                                  |
|---------------------|-----------------------------------------------------|
| Project Key Number: | 22656                                               |
| Project Name:       | Luckiamute River, Helmick Road bridge (Polk County) |

|                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                     |                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| Project Description:                                                                                                                                                                                     | Rehabilitation of bridge including a phase 1 seismic retrofit, erosion control repair and other general maintenance needs to preserve the historic integrity of the bridge.                                                                                                                                                                         |                                                                  |
| Funding Award Program:                                                                                                                                                                                   | Funds have been awarded under the Statewide Local Bridge Program and will be applied in accordance with Paragraph V.3.f of the Program Agreement.                                                                                                                                                                                                   |                                                                  |
| Project End Date:                                                                                                                                                                                        | Certified Agency must complete the Project by: 10/31/2032.                                                                                                                                                                                                                                                                                          |                                                                  |
| Project Location and Jurisdiction:                                                                                                                                                                       | <ul style="list-style-type: none"> <li>Helmick Road and Helmich Road Bridge No. 53C122 are a part of Non-Certified Agency's street/road system or public improvement under the jurisdiction and control of Non-Certified Agency.</li> <li>Helmick Road Bridge No. 53C122 is "off system" per the federal National Bridge Inventory list.</li> </ul> |                                                                  |
| <b>FUNDING DETAILS</b>                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                     |                                                                  |
| Certified Agency's Unique Entity Identifier:                                                                                                                                                             | FUAKHMJE2437                                                                                                                                                                                                                                                                                                                                        |                                                                  |
| Certified Agency to report executive compensation information per Federal Transparency Act (see Exhibit B):                                                                                              | No                                                                                                                                                                                                                                                                                                                                                  |                                                                  |
| Award is for Research and Development (R&D) as defined in 2 CFR 200.1:                                                                                                                                   | No                                                                                                                                                                                                                                                                                                                                                  |                                                                  |
| Certified Agency Indirect Cost Rate(s):                                                                                                                                                                  | 7.9%                                                                                                                                                                                                                                                                                                                                                |                                                                  |
| Pro-rated Federal Share Percentage:                                                                                                                                                                      | 89.73%                                                                                                                                                                                                                                                                                                                                              |                                                                  |
| Certified Agency Required Match Percentage:                                                                                                                                                              | 10.27%                                                                                                                                                                                                                                                                                                                                              |                                                                  |
| Federal Funds:                                                                                                                                                                                           | \$3,435,313.05                                                                                                                                                                                                                                                                                                                                      |                                                                  |
| State Funds:                                                                                                                                                                                             | \$0                                                                                                                                                                                                                                                                                                                                                 |                                                                  |
| Certified Agency Funds:                                                                                                                                                                                  | \$0                                                                                                                                                                                                                                                                                                                                                 |                                                                  |
| Other Funds: <b>Non-Certified Agency Funds</b>                                                                                                                                                           | \$393,186.95                                                                                                                                                                                                                                                                                                                                        |                                                                  |
| Approved In-kind Contribution by Non-Certified Agency:                                                                                                                                                   | \$0                                                                                                                                                                                                                                                                                                                                                 |                                                                  |
| Total Project Cost                                                                                                                                                                                       | <b>\$3,828,500.00</b>                                                                                                                                                                                                                                                                                                                               |                                                                  |
| <b>INFORMATIONAL DETAILS</b>                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                     |                                                                  |
| ODOT's preliminary estimated costs for oversight and other ODOT services for Project phases covered by this Supplemental Project Authorization, applied in accordance with Section B, Paragraph 3 below: | \$30,000.00                                                                                                                                                                                                                                                                                                                                         |                                                                  |
| <b>APPLICABLE PROVISIONS</b>                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                     |                                                                  |
| <b>Standard Provisions:</b><br>The following exhibits to the <a href="#">Program Agreement</a> apply to this Project if marked "Yes" below ("No" indicates the exhibit does not apply to this Project).  |                                                                                                                                                                                                                                                                                                                                                     |                                                                  |
| Yes/No                                                                                                                                                                                                   | Exhibit #                                                                                                                                                                                                                                                                                                                                           | Description                                                      |
| Yes                                                                                                                                                                                                      | Exhibit B:                                                                                                                                                                                                                                                                                                                                          | Standard Provisions: Federal Transparency Act Subaward Reporting |
| Yes                                                                                                                                                                                                      | Exhibit C:                                                                                                                                                                                                                                                                                                                                          | Standard Provisions: Contract Insurance                          |
| Yes                                                                                                                                                                                                      | Exhibit D:                                                                                                                                                                                                                                                                                                                                          | Standard Provisions: Americans with Disabilities Act Compliance  |
| Yes                                                                                                                                                                                                      | Exhibit E:                                                                                                                                                                                                                                                                                                                                          | Standard Provisions: Local Bridge Projects                       |
| No                                                                                                                                                                                                       | Exhibit F:                                                                                                                                                                                                                                                                                                                                          | Standard Provisions: Right of Way Services                       |
| Special Provisions:                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                     |                                                                  |

| The following attachment(s) and Project-specific modification to the Program Agreement apply to this Project if marked “Yes” below (“N.A.” indicates “not applicable”). |                                                                                                                                     |                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Yes/N.A.                                                                                                                                                                | Attachment #                                                                                                                        | Description                                                         |
| Yes                                                                                                                                                                     | Attachment 1:                                                                                                                       | Project Vicinity Map                                                |
| Yes                                                                                                                                                                     | Attachment 2:                                                                                                                       | Revised Exhibit F: Special Provisions: Right of Way Services (COBO) |
| N.A                                                                                                                                                                     | Attachment 3:                                                                                                                       | N.A.                                                                |
| Yes                                                                                                                                                                     | See Section B, Paragraphs 4, 5, and 8 for other Project-specific modifications to the Program Agreement that apply to this Project. |                                                                     |

## B. SUPPLEMENTAL PROJECT AUTHORIZATION TERMS

1. **Applicable Provisions:** Except as otherwise modified by the terms of this Supplemental Project Authorization, the Project is subject to the terms and conditions of the Program Agreement and the Standard Provisions and Special Provisions specified in the Project Details Table above, which are incorporated into this Supplemental Project Authorization by reference as though fully set forth herein. The Parties further agree that the Program Agreement is between ODOT and Certified Agency only and confers no obligations, benefits, or rights to Non-Certified Agency except as expressly provided in this Supplemental Project Authorization.
2. **Scope:** The Project scope includes preliminary engineering, right of way, and construction phases programmed in the STIP for the rehabilitation and seismic retrofit, erosion control repair and other general maintenance needs to preserve the historic integrity of the Luckiamute River Bridge No. 53C122 located on Helmick Road, within Polk County as shown on Attachment 1 –Project Vicinity Map.
3. **ODOT Costs:** The Parties agree that ODOT will perform risk-based Project oversight in accordance with the Program Agreement. A preliminary estimate for the cost of ODOT’s work is shown above in the Project Details Table under Informational Details. The Parties agree that ODOT services to be performed in excess of this preliminary estimate shall be addressed as provided in Paragraph V.3 Subsection g. of the Program Agreement. Certified Agency and Non-Certified Agency understand that ODOT’s costs are estimates only and Certified Agency and Non-Certified Agency agree to pay ODOT’s actual costs incurred per the Terms of this Supplemental Project Authorization. On a quarterly basis, ODOT will provide Certified Agency a statement of costs expended by ODOT.
4. **Funding:** A combination of federal, state, and local funds may be expended on the Project as detailed in the Project Details Table above, subject to the limitations and obligations set forth in the Program Agreement and this Supplemental Project Authorization. Federal and State funds for a project shall be limited to the amount shown in the Funding Details section of the Project Details Table above.
  - a. Certified Agency guarantees the availability of Certified Agency funding in an amount required to fully fund Certified Agency’s share of the Total Project Costs, as shown in the Project Details Table, and in accordance with the Funding provisions in Paragraph V.3 of the Program Agreement, as modified by the following supplemental Project-specific Special Provisions:

- i. Non-Certified Agency shall fully reimburse Certified Agency for the match, any non-participating costs, and any costs not covered by state and federal funding that Certified Agency expends on behalf of the Project. To the extent allowed by law, failure of Non-Certified Agency to make such payments to Certified Agency may result in ODOT withholding Non-Certified Agency's proportional allocation of State Highway Trust Funds, refraining from awarding to Non-Certified Agency further federal or state funds that are in ODOT's discretion to award, and/or declining to enter into future project agreements with Non-Certified Agency until such costs are paid.
    - ii. Non-Certified Agency guarantees the availability of Non-Certified Agency funding in an amount required to fully reimburse Certified Agency for funds that Certified Agency expends on behalf of the Project consistent with this Agreement.
  - b. Certified Agency and Non-Certified Agency understand and agree that federal funding for this Project is contingent upon FHWA's approval of each funding request. Any work performed outside the period of performance approved by FHWA or outside the Project Scope will be considered non-participating and paid for at Certified Agency and Non-Certified Agency expense.
  - c. ODOT will submit requests for federal funding authorizations to FHWA by Project phase. The ODOT Project Contact or designee will provide Certified Agency with a written notice to proceed for each Project phase when FHWA approval has been secured and funds are available for expenditure on the Project.
  - d. With the notice to proceed, ODOT will provide Certified Agency with a copy of the USDOT FHWA Federal Aid Project Agreement between ODOT and FHWA for this Project, which contains the information required of pass-through entities by 2 CFR 200.332(b)(1).
5. **Invoicing:** Certified Agency shall submit invoices for Project progress billings in accordance with the invoicing provisions in Paragraph V.5 of the Program Agreement, modified by the following, supplemental Project-specific Special Provisions:
- a. Certified Agency shall invoice Non-Certified Agency for the federal match share, any non-participating costs, and all costs expended for the Project not reimbursed by ODOT. Upon receipt of Certified Agency invoice(s), Non-Certified Agency shall reimburse Certified Agency for the federal match share, any non-participating costs, and all costs expended for the Project not reimbursed by ODOT within 60 calendar days.
  - b. Certified Agency and Non-Certified Agency agree that any disputes arising on this Project regarding Certified Agency's invoices or Non-Certified Agency's payment of invoices identified in the preceding paragraph are to be resolved between Certified Agency and Non-Certified Agency only, except that ODOT may take action as provided in Paragraph 4.a.i above.
6. **Period of Performance:**
- a. **Begin and End Dates:** The Project period of performance begins when both the initial FHWA Project authorization has been received by ODOT and a notice to proceed for the first phase of the Project has been issued to Certified Agency by the ODOT Project Contact. The Project

period of performance ends on the Project End Date shown in the Project Details Table. All Project work must be completed within the period of performance.

- b. **Project End Date Changes:** The Project End Date may be changed upon written approval by the ODOT Project Contact, which shall be incorporated by reference into this Supplemental Project Authorization. To extend the Project End Date, Certified Agency shall submit a written request to the ODOT Project Contact as soon as Certified Agency becomes aware that a schedule change is necessary, but no less than sixty (60) calendar days prior to the authorized Project End Date. The ODOT Project Contact will coordinate with ODOT Program and Funding Services to seek authorization from FHWA prior to approving the extension request. FHWA authorization for extensions is not guaranteed. Any work performed outside the period of performance authorized by FHWA will be nonparticipating and paid for at Certified Agency and Non-Certified Agency expense.

- 7. **Project Useful Life:** The useful life of the Project is 20 years.

- 8. **Project-Specific Modifications:** For purposes of this Project only, the Parties agree to the following modifications to the terms of the Program Agreement, which are supplemental to the Program Agreement unless otherwise stated:

- a. **Exhibit D – Americans with Disabilities Act Compliance:** Exhibit D of the Program Agreement is modified by replacing Paragraphs 7 and 8 in Section A of Exhibit D with the following Project-specific Special Provisions:

#### **7. On-going Maintenance Obligation**

Certified Agency and Non-Certified Agency shall each ensure that any portions of the Project under their own maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Certified Agency and Non-Certified Agency each ensuring that:

- a. Pedestrian access is maintained as required by the ADA,
- b. Any complaints received by Certified Agency or Non-Certified Agency identifying safety or access issues regarding a sidewalk, curb ramp, pedestrian-activated signal, shared use path, transit stop, park-and-ride, on-street parking, or any other feature that might need to be accessible are promptly evaluated and addressed,
- c. Certified Agency, Non-Certified Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
- d. Any future alteration work on the Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
- e. Applicable permitting and regulatory actions are consistent with ADA requirements.

#### **8. Survival**

The maintenance obligations applicable to Certified Agency and Non-Certified Agency in Exhibit D, Section A, Paragraph 7 as modified by this Supplemental Project Authorization shall survive termination or expiration of this Supplemental Project Authorization.

- b. **Exhibit E - Local Bridge Program Requirements:** Exhibit E of the Program Agreement is modified by the following, supplemental Project-specific Special Provisions]:
  - i. The requirements of subsection 1.b of Exhibit E apply to the Project. Certified Agency's approved qualified staff is Steve Preszler, P.E., a Qualified Agency Project Manager in accordance with the [Qualifications and Coordination Requirements for Certified LPA not Certified in Bridge Design](#) policy, per Section C, Chapter 13 of the LAG Manual. Any change to Agency's qualified staff is subject to State's review and written approval.
  - ii. Certified Agency shall submit, and ODOT's Local Bridge Section will review, the consultant services contract, cost proposal, and design acceptance package in coordination with the ODOT Project Contact.
- c. **Exhibit F - Right of Way Services Requirements:** Exhibit F of the Program Agreement is replaced by Attachment 2, Revised Exhibit F: Specific Special Provisions: Right of Way Services (COBO version), attached hereto and incorporated herein.
- d. **Non-Certified Agency Authority to Enter Right of Way:** Non-Certified Agency grants ODOT and Certified Agency the authority to enter onto Non-Certified Agency's right of way as needed to complete this Project. Certified Agency grants Non-Certified Agency the authority to enter onto Certified Agency's right of way as needed to complete this Project.
- e. **Non-Certified Agency as Third Party Beneficiary:** For this Supplemental Project Authorization only, Non-Certified Agency is a named Third Party Beneficiary to the Program Agreement with the express right to enforce provisions within the Program Agreement only to the extent necessary to protect Non-Certified Agency's rights and obligations with respect to this Project.
- f. **Non-Certified Agency an Independent Entity:** Non-Certified Agency shall perform under this Supplemental Project Authorization as an independent entity and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform any work to fulfill Non-Certified Agency's obligations under this Supplemental Project Authorization including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- g. **Certified Agency Contracts on Behalf of Non-Certified Agency:** For contracts Certified Agency enters into for the performance of work under this Supplemental Project Authorization, in addition to the requirements of Paragraph VII.8.a. of the Program Agreement, Certified Agency shall:
  - i. Include Non-Certified Agency and its commission as intended third-party beneficiaries in the terms of Certified Agency's contract on any project, with express independent authority to enforce the terms and conditions of the contract;
  - ii. Require its construction contractor(s) to name the Non-Certified Agency as an additional or dual obligee on the construction contractor's performance bond and payment bond;



- iii. Require its contractor(s) to comply with the indemnification requirements in Paragraph VII.9 of the Program Agreement and name Non-Certified Agency and its commission as indemnitees;
  - iv. Require its contractor(s) to comply with the insurance requirements in Paragraph VII.10 of the Program Agreement;
  - v. Require its contractor(s) to endorse Non-Certified Agency and commission as additional insureds on the required liability insurance coverages, except Professional Liability, Workers' Compensation or Employer's Liability, if included;
  - vi. Provide Non-Certified Agency with a copy of each signed contract, as well as any other purchasing or contracting documentation and contractor certificates of insurance, upon Non-Certified Agency's request at any time; and
  - vii. Report to Non-Certified Agency any material breach of a term or condition of a Contract within ten (10) business days of Certified Agency discovering the breach.
- h. Contribution: Subsections i, ii, and iii of Paragraph VII.5.b of the Program Agreement are replaced by the following Project-specific Special Provisions:
- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a Party with respect to which any other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
  - ii. With respect to a Third Party Claim for which State is jointly liable with any other Party or Parties (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the other Party or Parties in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the other Party or Parties on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of the other Party or Parties on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
  - iii. With respect to a Third Party Claim for which any other Party or Parties are jointly liable with State (or would be if joined in the Third Party Claim), the other Party or Parties shall

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

- i. **Workers' Compensation and Employer's Liability:** Paragraph VII.11 of the Program Agreement is replaced by the following Project-specific Special Provision:

All employers, including Certified Agency and Non-Certified Agency, that employ subject workers who work under this Supplemental Project Authorization in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation Insurance coverage unless such employers are exempt under ORS 656.126. Employer's Liability insurance with coverage limits of not less than \$500,000 each accident must be included. Certified Agency and Non-Certified Agency shall ensure that each of its contractors complies with these requirements.

- j. **Term:** The term of this Supplemental Project Authorization is as specified in Paragraph VII.12.b of the Program Agreement.
- k. **Termination:** For purposes of this Supplemental Project Authorization Subsections b through h of Paragraph VII.13 of the Program Agreement are replaced by the following Project-specific Special Provisions; however, for purposes of the Program Agreement, Subsections a through h of the Program Agreement continue to apply between ODOT and Certified Agency as written in the Program Agreement:
  - b. This Supplemental Project Authorization may be terminated by mutual written consent of all Parties.
  - c. ODOT may terminate this Supplemental Project Authorization effective upon delivery of written notice to Certified Agency and Non-Certified Agency, or at such later date as may be established by ODOT, under any of the following conditions:
    - i. If Certified Agency or Non-Certified Agency fails to perform the work called for by this Supplemental Project Authorization within the time specified herein or any extension thereof.
    - ii. If Certified Agency or Non-Certified Agency fails to perform any of the other provisions of this Supplemental Project Authorization, or so fails to pursue the work as to endanger performance of this Supplemental Project Authorization in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within thirty (30) calendar days or such longer period as ODOT may authorize in the notice provided.



- iii. If Certified Agency or Non-Certified Agency fails to provide payment of its share of the cost of the Project.
- d. Certified Agency or Non-Certified Agency may terminate this Supplemental Project Authorization if ODOT fails to perform its obligations under any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from Certified Agency fails to correct such failures within thirty (30) calendar days or such longer period as Certified Agency or Non-Certified Agency may authorize in the notice provided.
- e. A Party may terminate this Supplemental Project Authorization effective upon delivery of written notice to the other Parties, or at such later date as may be established by the terminating Party, under any of the following conditions:
  - i. If the terminating Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow the terminating Party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Supplemental Project Authorization.
  - ii. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Supplemental Project Authorization is prohibited or if the terminating Party is prohibited from paying for such work from the planned funding source.
  - iii. As otherwise expressly provided in the Program Agreement.
- f. Any expiration or termination of this Supplemental Project Authorization shall not extinguish or prejudice any rights or obligations accrued to the Parties prior to termination.
- g. Upon termination, the Parties shall do the following:
  - i. Immediately cease all activities under this Supplemental Project Authorization, unless expressly agreed otherwise;
  - ii. Deliver to the other Parties all project plans, documents, information, works-in-progress, work product, and other property that are or would be deliverables under this Supplemental Project Authorization; and
  - iii. Provide the other Parties with a detailed summary of all expended costs.
- h. If Certified Agency is in default of this Agreement, upon ODOT's or Non-Certified Agency's request, Certified Agency shall surrender all project plans, documents, research, objects, or other tangible things reasonably needed to complete the work that would have been performed by Certified Agency under this Supplemental Project Authorization. Said project plans, documents, research, objects, or other tangible things do not include any third-party software licenses.
- i. **Merger; Waiver; Severability:** For purposes of this Supplemental Project Authorization, Subsections c, d, and e of Paragraph VII.14 of the Program Agreement are replaced with the following Project-specific Special Provisions; however, for purposes of the Program Agreement, Subsections c, d, and e of the Program Agreement continue to apply between ODOT and Certified Agency as written in the Program Agreement:

- c. This Supplemental Project Authorization and the Program Agreement, as amended, including all attached exhibits and attachments, constitutes the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Supplemental Project Authorization and any attachments will control over the Project application and documents provided by Certified Agency or Non-Certified Agency to ODOT. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Supplemental Project Authorization.
- d. No waiver, consent, modification or change of terms of this Supplemental Project Authorization shall bind a Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to enforce any provision of this Supplemental Project Authorization shall not constitute a waiver by that Party of that or any other provision.
- e. If any term or provision of this Supplemental Project Authorization is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Supplemental Project Authorization did not contain the particular term or provision held to be invalid.

**C. PROJECT CONTACTS, SIGNATURE AUTHORITIES, COUNTERPARTS, ACKNOWLEDGEMENT**

- 1. Each Party's Project Contact is shown on the signature page of this Supplemental Project Authorization. Each Party agrees to notify the other Party in writing of any contact information changes during the term of this Supplemental Project Authorization.
- 2. Each Party certifies and represents that the individuals signing this Supplemental Project Authorization have been authorized to enter into and execute this Supplemental Project Authorization on behalf of the Party under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind the Party.
- 3. This Supplemental Project Authorization may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Supplemental Project Authorization so executed shall constitute an original. The Parties may use Electronic Signatures in accordance with Paragraph VII.15. of the Program Agreement.
- 4. This Project is in the 2024-2027 Statewide Transportation Improvement Program, (Key No. 22656) that was approved by the Oregon Transportation Commission on July 13, 2023 (or subsequently approved by amendment to the STIP).
- 5. **Certified Agency and Non-Certified Agency Acknowledgement:**

*Certified Agency's and Non-Certified Agency's signing representatives certify that by signing this Supplemental Project Authorization, they have read the Program Agreement, including the exhibits that apply to this Supplemental Project Authorization as shown in the Project Details Table in Section A above.*

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

**Certified Agency:**

**MARION COUNTY**, acting by and through its elected officials

By (see MC Signature Page)

Commissioner

By \_\_\_\_\_  
Commissioner

By \_\_\_\_\_  
Commissioner

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL**

(If required by Certified Agency's process)

By \_\_\_\_\_  
Certified Agency Legal Counsel

Date \_\_\_\_\_

**Non-Certified Agency:**

**POLK COUNTY**, acting by and through its elected, designated officials

By John A. Monahan  
Commissioner

By Craig D. Brown  
Commissioner

By \_\_\_\_\_  
Commissioner

Date 6-10-20

**LEGAL REVIEW APPROVAL**

(If required by Non-Certified Agency's process)

By \_\_\_\_\_  
Non-Certified Agency Legal Counsel

Date \_\_\_\_\_

**STATE OF OREGON**, acting by and through its Department of Transportation

By \_\_\_\_\_

Region 2 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

State Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Region 2 Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Certification Program Manager

Date \_\_\_\_\_

By \_\_\_\_\_

State Bridge Engineer

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By Stacy Posegate, via email

Assistant Attorney General

Date February 13, 2026 email retained in file

**MARION COUNTY SIGNATURE PAGE FOR  
LUCKIAMUTE RIVER-HELMICK ROAD BRIDGE (POLK COUNTY)  
PW-6999-26**

**MARION COUNTY SIGNATURES  
BOARD OF COMMISSIONERS:**

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|------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Authorized Signature: <br><u>Brian L. May (Jul 24, 2026 07:10:32 PDT)</u> | 07/24/2026 |
|                                                                                                                                                            |            |

|                             |  |
|-----------------------------|--|
| Authorized Signature: _____ |  |
|                             |  |

|                              |  |
|------------------------------|--|
| Reviewed by Signature: _____ |  |
|                              |  |

|                                                                                                                                                     |            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Reviewed by Signature: <br>Marion County Contracts & Procurement | 07/23/2026 |
|                                                                                                                                                     |            |

**Certified Agency Project Contact:**

Steven Preszler, PE  
Project Manager Engineering  
Marion County Public Works  
5155 Silverton Rd NE Salem OR 97305  
503-365-3157  
spreszler@co.marion.or.us

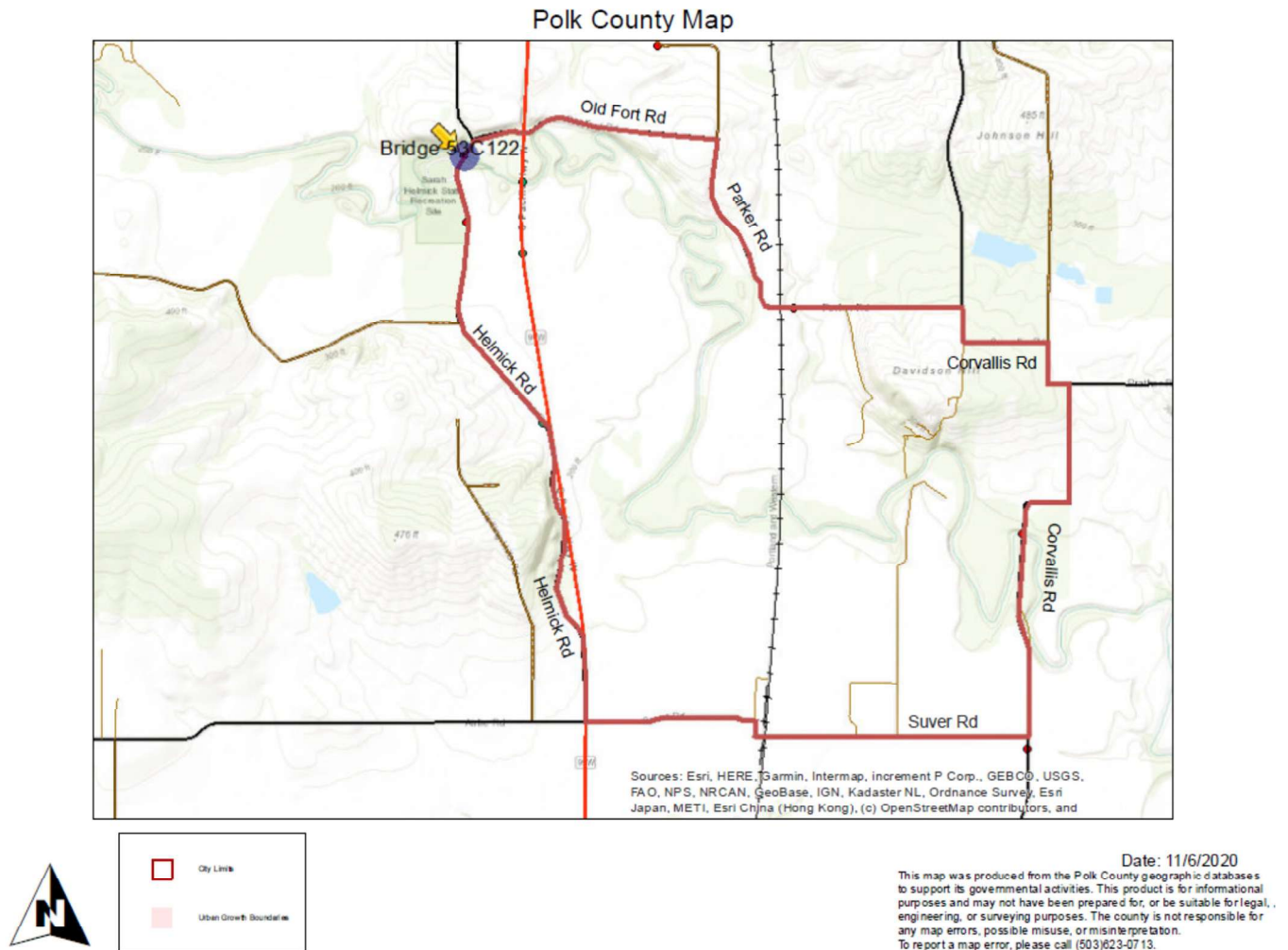
**Non-Certified Agency Project Contact:**

Todd Whitaker, PE Director  
Polk County Public Works  
820 SW Ash Street  
Dallas OR 97338-2151  
503-623-9287  
whitaker.todd@co.polk.or.us

**ODOT Project Contact:**

Valerie Greenway Transportation Project  
Manager  
ODOT Region 2  
455 Airport Road SE  
Salem OR 97301  
971-304-5021  
Valerie.greenway@odot.oregon.gov

Attachment 1  
Project Vicinity Map



Attachment 2

Revised Exhibit F: Special Provisions: Right of Way Services (COBO)

This Attachment 2, Revised Exhibit F: Special Provisions: Right of Way Services (COBO) (hereafter “Exhibit F”), applies only to the Supplemental Project Authorization to which it is attached. Certified Agency and Non-Certified Agency agree to comply with the provisions listed in this Exhibit F. References to “project” in this Exhibit F refer to the Project identified in the Project Details Table.

**A. RIGHT OF WAY SERVICES**

1. The Parties agree to the performance of the Right of Way Services (“Services”) as specified in this Supplemental Project Authorization.
2. The Parties agree to strictly follow the rules, policies, and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 42 USC Chapter 61, as amended and implemented through Title 49 CFR 24, ORS Chapter 35, 23 USC Chapter 1 as implemented through Title 23 CFR 710 relating to acquisition of real property for federal-aid highway projects, and the ODOT Right of Way Manual, located at <https://www.oregon.gov/ODOT/ROW/Documents/ROW-Manual.pdf> and incorporated herein by this reference. Each Party shall require its contractors and subcontractors, if any, to comply with these provisions.
3. The Parties agree that Services performed on the project shall be provided in accordance with an approved project-specific “Staffing Plan” as described in Paragraph A.7.
4. **Funding:**
  - a. Certified Agency shall prepare a programming cost estimate for the right of way phase and submit it to ODOT for approval.
  - b. Certified Agency shall request federal right of way funding authorization through the ODOT Project Contact and must receive from ODOT a written authorization to proceed prior to beginning Services.
  - c. Certified Agency and Non-Certified Agency shall pay the local share of the actual cost of ODOT’s oversight and other agreed to Services in accordance with the funding provisions in Paragraph V.3. of the Program Agreement as modified by Paragraph B.4.a of this Supplemental Project Authorization.
5. **ODOT Roles and Responsibilities:** ODOT, at project expense, will:
  - a. Provide oversight of the Services performed for the project.
  - b. Request the obligation of project funding from FHWA based on the approved programming cost estimate identified in Paragraph 4.a.
  - c. Coordinate co-certification of the right of way.
  - d. Prepare cost estimates for such oversight, obligation, and coordination work following the process specified in the Program Agreement Paragraph V.3.



- e. Perform any Services assigned to ODOT in this Supplemental Project Authorization.
6. **Certified Agency use of Qualified Individuals to Perform Services:**
- a. In performing Services under this Program Agreement, Certified Agency shall utilize “Qualified Individuals” from Certified Agency’s staff, another local public agency’s staff, or consultant’s staff who meet the qualifications described in Chapter 10 - Local Public Agency Program Oversight of the ODOT Right of Way Manual and as approved by the ODOT Right of Way Section. Certified Agency may also request ODOT staff to perform Services under the Program Agreement, as further described in this Supplemental Project Authorization. (See “Staffing Plan” requirements in Paragraph A.7.)
  - b. Certified Agency may perform needed appraisal Services by utilizing appraiser services procured by Certified Agency from ODOT’s Qualified Appraiser List, located online at: [https://www.oregon.gov/ODOT/ROW/Documents/Appraisal\\_Qualified-Consultant-List.pdf](https://www.oregon.gov/ODOT/ROW/Documents/Appraisal_Qualified-Consultant-List.pdf).
  - c. Certified Agency may perform other right of way related Services as needed by utilizing right of way consultants that meet the requirements of Paragraph 6 a. above.
  - d. Certified Agency shall procure any consultant services according to Program Agreement Paragraph V.10.a.
7. **Staffing Plan:** Prior to performing Services described in Section B below, Certified Agency shall prepare a project-specific Staffing Plan and submit it to ODOT for review and approval by the ODOT Right of Way Section. The Staffing Plan must detail the Services to be performed by Qualified Individuals. Certified Agency shall submit Staffing Plan updates to ODOT for approval as needed throughout the project to ensure all project Services are performed by Qualified Individuals.
8. **ODOT Performing Services as a Consultant:** The Parties agree this Paragraph 8 applies only when ODOT will perform Services for Certified Agency as a consultant on a project. Under such circumstances, the Parties agree:
- a. Certified Agency is responsible for delivering the project under the authority of the Certification Program Agreement and this Supplemental Project Authorization; and ODOT will perform Services as a consultant for Certified Agency.
  - b. The Certification Program Agreement and Supplemental Project Authorization for the project are sufficient for Certified Agency to contract ODOT to perform Services. The Parties need not enter into a separate agreement for performance of Services.
  - c. Any consultant Services to be performed by ODOT will be detailed in this Supplemental Project Authorization as a special provision in e. below.
  - d. In accordance with the funding provisions in Paragraph V.3. subsection g. of the Program Agreement, ODOT will provide estimates for the costs of its consultant Services, which are a subset of the Total Project Costs identified in this Supplemental Project Authorization. Services performed by ODOT as a consultant shall be invoiced and reimbursed at actual cost to the project according to Paragraph V.3., subsections g. and h. of the Program Agreement.
  - i. ODOT services: Not applicable.



9. Previously Donated or Acquired Property: Property previously donated to or acquired by Certified Agency or Non-Certified Agency prior to right of way funding authorization may be incorporated into the Project's right of way only after review and approval by ODOT and FHWA. Certified Agency shall submit such requests in writing on a form to be provided by the ODOT Program and Funding Services Manager, who will coordinate ODOT's and FHWA's approval.
10. Disposition of Real Property: Certified Agency and Non-Certified Agency agree that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall comply with 2 CFR 200.311 and 23 CFR 710. The disposition of such property shall be subject to ODOT and FHWA approval, and reimbursement to ODOT and FHWA of the required proportionate shares of the fair market value may be required.
11. Title VI Assurances: Certified Agency and Non-Certified Agency agree to comply with the applicable nondiscrimination assurances required by Title VI of the Civil Rights Act of 1964, 42 USC 2000d *et seq.*, 49 CFR Part 21, and 28 CFR 50.3, as amended, for all real property acquired with federal-aid participation. See US Department of Transportation guidance document number DOT 1050.2A for additional information related to applicable assurances.
12. Monumentation: Certified Agency shall ensure that all project right of way monumentation is conducted in conformance with ORS 209.155.

**B. CERTIFIED AGENCY AND NON-CERTIFIED AGENCY ROLES AND RESPONSIBILITIES**

1. Preliminary Phase: Certified Agency is responsible for the performance of Services set out in this Section B.1 during the preliminary right of way phase of the project identified in this Supplemental Project Authorization, and as identified below. Costs incurred for Services listed under this Section B.1 shall be charged as preliminary engineering expenditures. Certified Agency agrees to confer with Non-Certified Agency in the performance of Services, and Non-Certified Agency agrees to cooperate with Certified Agency and to complete any responsibilities assigned to Non-Certified Agency below.
  - a. Preliminary Phase Services: Certified Agency shall provide the following preliminary phase Services:
    - i. Prepare preliminary cost estimates.
    - ii. Make preliminary contacts with property owners.
    - iii. Gather and prepare data for environmental documents.
    - iv. Develop access and approach road list.
    - v. Prepare field location and project data as defined in this Supplemental Project Authorization.
  - b. Title: Certified Agency shall provide the following title Services on the project as follows:
    - i. Prepare preliminary title reports, if ODOT determines they are needed, before negotiations for acquisition commence.
    - ii. Specify the degree of rights to be acquired (e.g., fee, easement), which must be determined in accordance with the current ODOT Right of Way Manual.

- c. **Legal Descriptions:** Certified Agency shall provide property legal description Services as follows:
  - i. Prepare sufficient horizontal control, recovery, and retracement surveys; vesting deeds; maps; and other data so that legal descriptions can be written.
  - ii. Prepare project construction plans and cross-section information.
  - iii. Write legal descriptions and prepare right of way maps.
    - A. If Certified Agency acquires right of way along or adjacent to a state highway, property descriptions and right of way maps shall be prepared in accordance with the current ODOT Right of Way Engineering Manual, incorporated herein by reference. Preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by ODOT.
    - B. The ODOT Right of Way Engineering Manual is available at:  
<https://www.oregon.gov/odot/ETA/Pages/ROW-Engineering.aspx>
- d. **Hazmat:** Certified Agency shall provide the following Services regarding possible hazardous materials on the project site:
  - i. Conduct a Level 1 Initial Site Assessment, consistent with ODOT Guidance, within project limits to detect the presence of hazardous materials on any property purchase, excavation, or disturbance of structures, as early in the project design as possible, but at a minimum, prior to property acquisition or approved design.
  - ii. If the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties, conduct a Level 2 Preliminary Site Investigation of sufficient scope to confirm the presence of contamination, determine impacts to properties, and develop special provisions and cost estimates. The investigation shall be conducted according to the current ODOT Hazmat Program Manual, incorporated herein by reference, and applicable requirements of the Oregon Department of Environmental Quality. The ODOT Hazmat Program Manual is available at:  
<https://www.oregon.gov/odot/GeoEnvironmental/Pages/Hazmat-Manual.aspx>
  - iii. If contamination is found as a result of the Level 2 Preliminary Site Investigation, promptly disclose the severity and extent of contamination to ODOT and present a recommendation for remediation to ODOT as set forth in ODOT's Right of Way Manual Section 6.330.
  - iv. Attempt to have the property owner undertake any necessary remediation at the property owner's expense. Other options are set forth in ODOT's Right of Way Manual section 6.330. If Certified Agency undertakes any remediation on the site, Certified Agency will be solely responsible for any liability that may arise from such remediation.
- 2. **Right of Way Phase:** Certified Agency is responsible for the performance of Services outlined in this Section B.2 during the acquisition right of way phase of the project, as identified below. Costs incurred for Services listed under this Section B.2 must be charged as right of way phase expenditures.
  - a. **Right of Way Acquisition:**

- i. Right of Way Acquisition is the process of obtaining property necessary for the project, from negotiation to possession of the property, using various sub-processes, including, but not limited to, appraisal, negotiation, condemnation, relocation, title closing, and project-related property management.
  - ii. When performing Services, Certified Agency shall provide ODOT with a quarterly status update regarding acquisition of project right of way.
  - iii. Fee Title to properties acquired must be in the full legal name of Certified Agency.
  - iv. Certified Agency and Non-Certified Agency shall each adopt a resolution of intention and determination of necessity, prior to the initiation of negotiations, in accordance with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation ("Resolution"). Certified Agency's and Non-Certified Agency's Resolutions shall be substantially in the form of Section C below.
- b. **Real Property and Title Insurance:** Certified Agency shall determine the sufficiency of title (taking subject to) in accordance with the current ODOT Right of Way Manual and after obtaining ODOT's concurrence; clear encumbrances necessary to conform to these requirements; obtain title insurance policies as required for the properties acquired; and provide ODOT copies of the title insurance policies.
- c. **Appraisal:** Certified Agency shall provide the following appraisal Services:
  - i. Conduct the valuation process of properties to be acquired. If potential contamination of hazardous materials is identified on the property, Certified Agency shall follow section 6.330 in ODOT's Right of Way Manual.
  - ii. Perform the appraisal reviews that will be used by Certified Agency to set just compensation.
- d. **Just Compensation:** Certified Agency's authorized official shall set just compensation, based upon the appraisal review performed by Qualified Individuals. Non-Certified Agency understands and agrees that Certified Agency has sole authority to set just compensation; however, Certified Agency shall notify Non-Certified Agency of the just compensation amount prior to tendering the offer and provide Non-Certified Agency an opportunity to review.
- e. **Negotiations:**
  - i. Certified Agency shall tender all monetary offers to landowners in writing at the just compensation amount set by Certified Agency. Certified Agency shall have sole authority to negotiate and make all settlement offers, subject to the limitations in the ODOT Right of Way Manual.
  - ii. When an administrative settlement for a property acquisition is made for an amount above the set just compensation amount, Certified Agency shall prepare a written justification statement. Said statement shall document Certified Agency's determination that the administrative settlement is reasonable, prudent, and in the public interest. It shall include the consideration of any property trades, construction obligations, trial risks, and other relevant items used to justify the administrative settlement.
  - iii. Certified Agency shall provide ODOT with all pertinent letters, negotiation records, settlement justification statements, and obligations incurred during the acquisition process.

- iv. ODOT and Certified Agency shall determine a date for certification of right of way and agree to co-sign ODOT's Right of Way Certification form. ODOT and Certified Agency agree possession of all right of way is to be complete prior to advertising for any construction contract, unless otherwise agreed to by Certified Agency and ODOT.
- v. Certified Agency is responsible for all project condemnation proceedings and for ensuring all condemnation processes are complete prior to the agreed upon certification date identified in subsection iv above. Certified Agency agrees to take any formal action necessary to ensure that it has authority under ORS Chapter 35 to condemn property on behalf of the Non-Certified Agency.
- f. Relocation: Certified Agency shall provide the following relocation Services in accordance with Chapter 8 of the ODOT Right of Way Manual:
  - i. Perform any relocation assistance, make replacement housing computations, and do all things as required by applicable state and federal law necessary to relocate any persons displaced by the project.
  - ii. Determine relocation benefits for eligible property owners and make relocation and moving payments.
  - iii. Facilitate any relocation appeal process(es).

3. Closing Phase:

- a. Certified Agency shall close all transactions, including: drawing deeds, releases, and satisfactions necessary to clear title; obtaining signatures on release documents; and making payments. When ODOT provides Services as a consultant for Certified Agency, ODOT will submit to Certified Agency: (a) applicable portions of a Final Report packet as described in Section 6.590 of the ODOT Right of Way Manual; (b) all agreements with property owners; and (c) other information required by the Uniform Act or other federal laws regarding acquisition when federal funds are used as part of a transportation project.
- b. Upon acceptance by Certified Agency, any permanent conveyance documents shall be recorded by Certified Agency.

4. Property Management:

- a. Certified Agency and Non-Certified Agency shall ensure no encroachments of buildings or other private improvements are allowed upon the state highway right of way.
- b. When disposing of any improvements or excess land, Certified Agency and Non-Certified Agency shall do so consistent with applicable state, federal, and local laws and policies, including but not limited to 23 CFR 710.409 and ODOT Right of Way Manual Chapter 9.
- c. Certified Agency shall conduct asbestos, lead paint, and other hazardous materials surveys for any structures that will be demolished, renovated, or otherwise disturbed as a result of the project. Asbestos surveys must be conducted by an Asbestos Hazard Emergency Response Act (AHERA) certified inspector.

5. Condemnation:

- a. Certified Agency may offer mediation if Certified Agency and property owners have reached an impasse.
  - b. Certified Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
  - c. Certified Agency shall perform all legal and litigation services related to the condemnation process.
6. **Transfer of Right of Way:** When the project will involve a transfer of right of way between Certified Agency and Non-Certified Agency, Certified Agency and Non-Certified Agency shall coordinate to determine when to transfer all right of way. Transfer of right way:. The Parties agree to transfer right of way as follows:
- a. Certified Agency shall acquire all real property interests ("Property") necessary to complete the Project. Following the completion of the Project, Certified Agency shall transfer to Non-Certified Agency the Property in substantially the same form of title acquired by the Certified Agency with the exception that in any instrument transferring rights, Certified Agency shall grant to ODOT a right of reversion if the property ceases to be used for a transportation purpose or Non-certified Agency discriminates on the property in violation of Title VI. Certified Agency may, in its sole discretion, choose not to transfer all or a part of the Property as necessary for Certified Agency's transportation purposes.
  - b. Non-Certified Agency agrees that by its execution of this Supplemental Project Authorization, Non-Certified Agency shall accept Certified Agency's transfer of the Property along with all related maintenance obligations set forth in this Supplemental Project Authorization. Non-Certified Agency agrees further that if additional documentation is necessary to satisfy the conveyance requirements of ORS 93.808, Non-Certified Agency shall execute a form prepared by Certified Agency.
  - c. Certified Agency shall identify the existence of any hazardous materials on the property prior to transfer.
  - d. Certified Agency agrees to provide Non-Certified Agency all information and file documentation it has in its possession related to the transferred right of way. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of Certified Agency during the right of way acquisition process, and Certified Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

C. SAMPLE RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN

The Parties agree the following language is provided as a sample. Non-Certified Agency and Certified Agency may copy this language to incorporate into their own standard resolution form or use the full language and add an “attested to” line or signature line:

*WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;*

*WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience, and to adequately serve the traveling public;*

*WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance, or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and*

*WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in “Exhibit A” attached to this Resolution and, by this reference incorporated herein; now, therefore,*

*BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)*

*1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;*

*2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A to this Resolution. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;*

*3. ([Insert title of Agency]'s staff and [attorney/counsel]) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).*

*4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.*

*DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_*

*[insert signature blocks here]*



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

Meeting date: 8/12/2026

Department: Public Works

Title: North Fork Park Landslide (PIER) Professional Engineering and Related Services Contract PW-7018-26 with David Evans and Associates Inc.

Management Update/Work Session Date: 07/21/2026 Audio/Visual aids ☐

Time Required: 10 Min Contact: Ryan Crowther Phone: 503-365-3112

Requested Action:

Approve the professional engineering and related services contract with David Evans and Associates Inc. for \$399,569.24 which will provide land surveying and engineering services for the mitigation of a slow-moving landslide that is occurring at North Fork Park.

Issue, Description & Background:

Marion County issued a request for proposal, PW-1708-25, in September of 2025 for professional engineering and related services for landslide mitigation at North Fork Park. The successful proposer was David Evans and Associates, (DEA). Funding for this project was awarded through Community Development Block Grant - Disaster Recovery, (CDBG-DR) executed in December 2025, which granted \$1,753,569.47 for this project.

Approval of the contract with DEA Inc. for \$399,569.24 will provide land surveying and engineering services for the design of a mitigation plan and robust geotechnical solution for a slow-moving landslide that is occurring at North Fork Park.

Financial Impacts:

The total estimated cost for this professional engineering and related services contract is \$399,569.24 which will be paid with CDBG-DR federal funding. Matching funds are not required.

Impacts to Department & External Agencies:

Entering into this contract does not directly impact any other Marion County departments.

List of attachments:

Presenter:

Ryan Crowther, PE, Capital Projects Manager

Department Head Signature:

**Brian Nicholas** Digitally signed by Brian Nicholas  
Date: 2026.06.30 08:55:48 -07'00'



# Contract Review Sheet

A&E Standard Prof Svcs Agmnt

**PW-7018-26**

Title: North Fork Park Landslide Mitigation (CDBG-DR)

Contractor's Name: David Evans and Associates, Inc.

Department: Public Works Department

Contact: Alicia Jones

Analyst: Kathleen George

Phone #: -4388

Term - Date From: Execution

Expires: March 31, 2029

Original Contract Amount: \$ 399,569.24

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ 399,569.24 Amd% 0%

Outgoing Funds ☐ Federal Funds ☐ Reinstatement ☐ Retroactive ☐ Amendment greater than 25%

Source Selection Method: 30-0220 Formal Selection A&E

PW1708-25

Description of Services or Grant Award

North Fork Park Landslide Mitigation - Community Development Block Grant (CDBG-DR) - Disaster Recovery.

Provision of land surveying and engineering services for the design of a mitigation plan for a slow-moving landslide that is occurring at North Fork Park east of Mehama.

Desired BOC Session Date: 8/12/2026

Contract should be in DocuSign by: 7/22/2026

Agenda Planning Date: 7/30/2026

Printed packets due in Finance: 7/28/2026

Management Update: 7/28/2026

BOC upload / Board Session email: 7/29/2026

BOC Session Presenter(s) Ryan Crowther

Code: Y

## REQUIRED APPROVALS

 07/27/2026

Finance - Contracts

Date

 07/24/2026

Contract Specialist

Date

 07/29/2026

Legal Counsel

Date

  
Jan Fritz (Jul 29, 2026 13:11:57 PDT) 07/29/2026

Chief Administrative Officer

Date



**MARION COUNTY  
ENGINEERING AND RELATED SERVICES CONTRACT  
Contract Number: PW-7018-26**

|                                                                                                                                                                                                                                                               |                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| <b>Project Title: North Fork Pak Landslide Mitigation</b>                                                                                                                                                                                                     | <b>County Project Number: 106455</b>    |
| <b>Project Location: North Fork Park</b>                                                                                                                                                                                                                      | <b>Associated RFP Number: PW1708-25</b> |
| <b>Total Not-to-Exceed (“NTE”) amount for this Contract.</b> This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) \$48,061.84 for contingency tasks, each of which must be separately authorized by County. | <b>\$ 399,569.24</b>                    |

This Contract is between Marion County, hereafter called “County” and David Evans and Associates, Inc., a corporation, hereafter called “Consultant.” County and Consultant together are also referred to as “Parties” and individually referred to as “Party.” The primary contacts for this Contract are identified in Exhibit F, Contact Information and Key Persons.

For purposes of this Contract:

- a) “business days” means calendar days, excluding Saturdays, Sundays and all State of Oregon recognized holidays;
- b) “calendar days” means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State of Oregon holiday or other day;
- c) “Engineering” Services means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services that must be procured using qualifications based selection procedures (see Marion County Public Contracting Rules section 30-0110); and
- d) “Related Services” has the meaning provided in Marion County Public Contracting Rules section 10-0110.

If specified below, county’s payments to Consultant under this agreement will be paid in whole or in part with federal funds. If so specified, by signing this agreement, Consultant certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government. If applicable, Consultant shall comply with Exhibit G: Appendix II To Part 200—Contract Provisions For Non-Federal Entity Contracts Under Federal Awards

In accordance with 2 CFR 200.331, Consultant has been designated:

- ☐ Subrecipient
- ☒ Contractor/Vendor
- ☐ Not applicable – (there are no federal funds tied to the contract)

Assistance Listing Number (ALN) #(s): of federal funds to be paid through this Grant: 14.228.

**TERMS AND CONDITIONS**

**1. Contract Effective Date and Term.** This Contract is effective on the date it has been signed by the parties and all required approvals have been obtained. No work or compensation under the Contract is authorized until notice to proceed has been issued in writing (email acceptable) by the County. Unless otherwise amended or terminated, this Contract shall expire March 31, 2029.

**2. Statement of Work.** Consultant shall perform all Services and deliver all deliverables as described in Exhibit A, Statement of Work (the “Services”). The required schedule for performance under the Contract is specified in the Statement of Work.

**3. Compensation.** The maximum NTE amount, which includes the total of all allowable and reimbursable costs and expenses (and contingency tasks, if any) payable to Consultant under this Contract, is set forth in the table above and detailed further in Exhibit B, Compensation. County reserves the right, in its sole discretion, to amend this Contract to increase this amount for additional Services within the scope of the procurement. The payment methodology and basis for payment to Consultant is described in Exhibit B, Compensation.

**4. Contract Exhibits.** This Contract includes the following exhibits, each of which is incorporated into this Contract as though fully set forth herein:

- Exhibit A – Statement of Work
- Exhibit B – Compensation
- Exhibit C – Insurance
- Exhibit D – Special Terms and Conditions (RESERVED)
- Exhibit E – Errors & Omissions (“E&O”) Claims Process
- Exhibit F – Contact Information and Key Persons
- Exhibit G – Required Federal Terms and Conditions

**5. Order of Precedence.** Unless a different order is required by law, this Contract shall be interpreted in the following order of precedence: this Contract (including all amendments, if any) less all Exhibits, attachments and other documents/information incorporated into this Contract, then the Statement of Work and Payment Schedule, then all other Exhibits, then any other attachments or documents/information incorporated into this Contract by reference.

**6. Independent Contractor; Conflict of Interest; Responsibility for Taxes and Withholding; Consultant Oversight.**

- a. Consultant, by its signature on the Contract, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <https://www.irs.gov/pub/irs-pdf/p1779.pdf>. Consultant shall perform all required Services as an independent contractor. Although County reserves the right (i) to determine the delivery schedule (as mutually acceptable to County and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of County.
- b. Consultant shall be responsible for all Federal or State of Oregon (“State”) taxes applicable to compensation or payments paid to Consultant under the Contract and, unless Consultant is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the Contract, Consultant shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to County whenever Consultant's backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the Contract, except as a selfemployed- individual.
- c. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with County, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant's professional responsibility to report to County any information that comes to Consultant's attention (during performance of this Contract) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect County or a particular project.

**7. Subcontracts and Assignment; Successors and Assigns**

- a. Consultant shall obtain County's written consent prior to entering into any subcontracts for any of the Services required by the Contract, or in any manner assigning, selling or transferring any of its rights or interest under the Contract or delegate any of its duties or performance under the Contract. In addition to any other provisions County may require, Consultant shall include, in any permitted subcontract under the Contract, contractual provisions that shall require any subcontractor (which may also be referred to as "subconsultant") to comply with Sections 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 27 and 29 of these Contract provisions, the limitations of **Exhibit B** - Compensation, and the requirements and sanctions of ORS Chapter 656, Workers' Compensation, in the performance of the subcontractor's Services on the project that is the subject of the Contract, as if the subcontractor were the Consultant. County's consent to any subcontract shall not relieve Consultant of any of its duties or obligations under the Contract, including with respect to any Services, whether performed or to be performed by Consultant or a subcontractor.
- b. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
- c. Any purported assignment, delegation or disposition in violation of subsection "a." above is void.

**8. Third Party Beneficiaries.** There are no third-party beneficiaries of the Contract.

**9. Representations and Warranties.** Consultant represents and warrants to County that (i) Consultant has the power and authority to enter into and perform the Contract, (ii) the Contract, when executed and delivered is a valid and binding obligation of Consultant, enforceable in accordance with its terms, (iii) the Services under the Contract will be performed in accordance with the professional standard of care set forth in Section 10 below; (iv) Consultant is duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, is duly qualified and professionally competent to perform the Services; and (v) Consultant is an experienced firm having the skill, legal capacity, professional ability and resources necessary to perform all the Services required under the Contract. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

**10. Professional Standard of Care; Responsibility of Consultant; Design Within Funding Limit**

**a. Professional Standard of Care.**

Consultant shall perform all Services under the Contract in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

**b. Responsibility of Consultant.**

- (i) Consultant shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by Consultant under the Contract. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other Services.
- (ii) County's review, approval or acceptance of, or payment for, the Services required under the Contract shall not be construed to operate as a waiver of any rights under the Contract or of any cause of action arising out of the performance of the Contract, and Consultant shall be and remain liable to County in accordance with applicable law for all damages to County caused by Consultant's negligent performance of any of the Services furnished under the Contract or negligent failure to perform any of the Services under the Contract.
- (iii) The rights and remedies of County provided for under the Contract are in addition to any other rights and remedies provided by law.
- (iv) If Consultant is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the Contract.

**c. Reserved.**

**11. Ownership of Work Product**

**a. Definitions.** The following terms have the meanings set forth below:

- (i) "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Contract.

- (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than County or Consultant.
  - (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item, and all intellectual property rights therein, that Consultant is required to deliver to County pursuant to the Contract.
- b. Work Product.** All Work Product created by Consultant pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of County. County and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which County is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not "work made for hire," Consultant hereby irrevocably assigns to County any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon County's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in County. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third Party Intellectual Property derivative works.
- c. Consultant and Third Party Intellectual Property.** In the event that any Work Product is Consultant Intellectual Property or Third Party Intellectual Property (Consultant Intellectual Property or Third Party Intellectual Property that is applicable to the Services being performed by Consultant under the Contract or included in Work Product deliverable to County under the Contract), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by County to reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property and or Third Party Intellectual Property, including the right of County to authorize contractors, consultants and others to do the same on County's behalf. This obligation of the Consultant does not apply to a situation involving a third party who enters a license agreement directly with the County. At the request of Consultant, County shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).
- d. Consultant and Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the Contract is a derivative work based on Consultant Intellectual Property or Third Party Intellectual Property, or is a compilation that includes Consultant Intellectual Property or Third Party Intellectual Property, Consultant hereby agrees to grant to, or obtain for, County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property or Third Party Intellectual Property employed in the Work Product, including the right of County to authorize others to do the same on County's behalf.
- e. Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 11, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in Exhibit A – Statement of Work, County hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display County-owned Work Product on other unrelated projects, except for any "Confidential Information" protected from disclosure under the provisions of Section 12 below, pertaining to Confidentiality and Non-Disclosure.

**12. Confidentiality and Non-Disclosure.** Consultant and its subcontractors, and their respective employees and agents, shall keep confidential all information, in whatever form, produced, prepared, observed or received to the extent that such information is designated as confidential by the County, by law, or by this Contract. In

the event Consultant is required to disclose Confidential Information pursuant to a subpoena or other legal process, Consultant shall immediately notify County of such subpoena or other legal process, provide County with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with County in the event County decides to oppose the disclosure of the Confidential Information. In the event County decides not to oppose such subpoena or other legal process or County's decision to oppose the subpoena or legal process has not been successful, Consultant shall be excused from the confidentiality provisions of this Section, to the extent necessary to meet the requirements of the subpoena or other legal process controlling the required disclosure.

### **13. Indemnity**

- a. Claims for Other Than Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless County, and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from or arising out of the acts or omissions of Consultant or its sub-consultants, subcontractors, agents, or employees under this contract.
- b. Claims for Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless County, and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature arising out of the professionally negligent acts, errors or omissions of Consultant or its sub-consultants, subcontractors, agents, or employees in the performance of professional services under this contract, if Consultant's liability or fault is determined by adjudication, alternative dispute resolution, or by settlement agreement in an amount not exceeding Consultant's proportionate liability or fault.
- c. Indemnity for Infringement Claims.** *Without limiting the generality of section 13(a) or 13(b), Consultant expressly agrees to indemnify, defend, save and hold harmless the County and its officers, agents, and employees from any and all claims, suits, actions, losses, damages, liabilities, costs and expenses, including attorney fees, arising out of or relating to any claims that Consultant's services, the Work Product or any other tangible or intangible items delivered to the County by Consultant that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, County shall provide Consultant with prompt written notice of any infringement claim. Provided, however, Consultant shall not be obligated to indemnify, defend, save and hold harmless the County (or other entities identified above) under this section 13(c), based solely on the following: Consultant's compliance with County specifications or requirements, including, but not limited to the required use of tangible or intangible items provided by County.*
- d. Defense Qualification.** *Neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the County, without first receiving from the applicable entity, authority to act as legal counsel, nor shall Consultant settle any claim on behalf of the foregoing entities without the approval of these entities. The County may any time and at its election and expense, assume their own defense and settlement.*
- e. County's Acts or Omissions.** *This section 13 does not include indemnification by Consultant of the County or its officers, agents and employees, for the acts or omissions of the County or its officers, agents and employees, whether within the scope of the Contract or otherwise.*

### **14. Insurance.** Consultant shall carry insurance as required on **Exhibit C**.

### **15. Termination**

- a. Termination by Mutual Consent.** The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. County's Right to Terminate for Convenience.** County may, at its sole discretion, terminate the Contract, in whole or in part, by written notice to Consultant specifying the termination date of the Contract.
- c. County's Right to Terminate for Cause.** County may terminate the Contract, in whole or in part, immediately upon written notice to Consultant or at such later date as County may establish in such notice, upon the occurrence of any of the following events:

- (i) In the event the Board of Commissioners of the County, in the exercise of its reasonable discretion, reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the Consultant agrees to abide by any such decision including termination of service;
  - (ii) Federal, State or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the Contract are prohibited or County is prohibited from paying for such Services from the planned funding source;
  - (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
  - (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform the Services under the Contract within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 10 calendar days after County's notice to Consultant, or such longer period as County may specify in such notice.
- d. Cessation of Services.** Upon receiving a notice of termination of the Contract, Consultant shall immediately cease all activities under the Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of the Contract, Consultant shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon County's request, Consultant shall surrender to anyone County designates, all documents, information, research, works-in-progress, Work Product and other property, that are deliverables or would be deliverables had the Contract been completed, that are in Consultant's possession or control and may be needed by County to complete the Services.
- e. Consultant's Right to Terminate for Cause.**
- (i) Consultant may terminate the Contract by giving written notice to County if County fails to pay Consultant pursuant to the terms of the Contract and if County fails to cure within 15 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.
  - (ii) Consultant may terminate the Contract, for reasons other than nonpayment, if County commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Consultant's performance under the Contract, and such breach, default or failure is not cured within 30 calendar days after Consultant's notice to County, or such longer period as Consultant may specify in such notice.
- f. Remedies.**
- (i) In the event of termination pursuant to Sections 15(a), 15(b), 15(c)(i), 15(c)(ii) or 15(d), Consultant's sole remedy (except as otherwise required by applicable State or Federal law) shall be a claim for payment of the satisfactory Services actually rendered and accepted by County up to the time of termination, less previous amounts paid and any claim(s) which County has against Consultant, except in the event of a termination under Section 15(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current Fiscal Year. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay all excess to County upon demand.
  - (ii) In the event of termination pursuant to Section 15(c)(iii) or 15(c)(iv), County shall have any remedy available to it in law or equity. Such remedies may be pursued separately, collectively or in any order whatsoever. If it is determined for any reason that Consultant was not in default under Section 15(c)(iii) or 15(c)(iv), the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 15(b).

**16. Records Maintenance; Access.** For not less than ten (10) years after the Contract's expiration or termination, County, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Consultant and the Sub-consultants which pertain to the Contract for the purpose of making audits, examination, excerpts, and transcripts. If, for any reason, any part of this Contract, any Project-related consultant contract or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than seven (7) years or until all litigation is resolved, whichever is longer. Consultant shall provide

County and the other entities referenced above with full access to these records in preparation for and during litigation.

**17. Performance Evaluations.** County will conduct performance evaluation(s) on the Consultant and its subconsultants during the term of the Contract, which will be compiled and maintained by County, and become a written record of Consultant's performance. Generally, the performance evaluations will include criteria related to, but not limited to, quality and technical performance, adherence to contract scope and budget, schedule performance, and business relations (including communications and negotiations performance). County will provide a copy of the performance evaluation results to Consultant within 14 calendar days following completion. Consultant may respond, in writing, or may request a meeting to address any or all findings contained in the completed performance evaluation within 30 calendar days following receipt. County may adjust evaluation score(s) upon County's finding of good cause. County may use performance evaluation findings and conclusions in any way deemed necessary, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Consultant and withholding of retainage. County may use Consultant performance under previous contracts as a selection criterion for future contracts.

**18. Compliance with Applicable Law.** Consultant shall comply with all federal, state and local laws, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis for modifications to Consultant's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Consultant or the Parties, and other circumstances then existing. County's performance under the Contract is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.505, 279C.515, 279C.520 and 279C.530, which are incorporated by reference herein. All rights and remedies available to County under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the Contract. If Consultant discovers a conflict among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Consultant shall in writing request County to resolve the conflict. Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Contract. If County concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by County shall be final and not subject to further review or challenge.

**19. Permits and Licenses**

- a. Permits and licenses to conduct business.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold, maintain and fully pay for during the term of the Contract all permits and licenses required by law for Consultant to conduct its business and perform the Services under the Contract.
- b. Permits and licenses required for the project.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold and maintain during the term of the Contract all permits and licenses required for the project (for example, permits from regulatory authorities and use permits or licenses from owners of real and personal property), but County shall pay for such permits and licenses. Consultant shall review the project site, if applicable, and the nature of the Services that Consultant shall perform under the Contract. Consultant shall advise County throughout the course of the project as to the necessity of obtaining all project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

**20. Foreign Contractor.** If Consultant is not domiciled in or registered to do business in the State of Oregon as of the Effective Date, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Contract. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to executing this Contract.

**21. Force Majeure.** Neither County nor Consultant shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to, fire, riot, acts of God, terrorist acts or other acts of political sabotage, or war where such cause was beyond the reasonable control of County or Consultant, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.

**22. Survival.** All rights and obligations shall cease upon termination or expiration of the Contract, except for the rights and obligations set forth in Sections 5, 9, 10, 11, 12, 13, 15(e), 15(f), 16, 22, 23, 26, 27 and 29 and all other rights and obligations which by their context are intended to survive.

**23. Time is of the Essence.** Consultant agrees that time is of the essence in Consultant's performance of its obligations under the Contract.

**24. Notice.** Except as otherwise expressly provided in the Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or County at the e-mail address, the delivery address or facsimile number set forth in the Contract, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any notice or day-to-day communication sent by e-mail shall be deemed received when it is sent. **The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice.** Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to County's Contract Administrator or Consultant's representative, as applicable.

**25. Severability.** The Parties agree that if any term or provision of the Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**26. Dispute Resolution and Errors & Omissions Claims Process.** In the event of a dispute between the Parties regarding any aspect of the Contract or performance under the Contract, the Parties agree to attempt in good faith to investigate and resolve any such dispute through direct communications and negotiations.

- a. Errors & Omissions Related.** In the event those good faith efforts do not resolve disputes related to potential Errors and Omissions, the Parties agree to make good faith efforts to resolve the matter pursuant to **Exhibit E, Errors & Omissions Claims Process.**
- b. Other Disputes.** In the event good faith efforts do not resolve disputes unrelated to Errors & Omissions, the Parties agree to make a good faith effort to resolve any such dispute through fact finding and non-binding mediation prior to resorting to litigation. The mediator shall be selected by mutual agreement of the Parties. If the Parties fail to agree on a mediator, each Party shall select a mediator and those two persons shall agree on a third-party, who will be the sole mediator. The cost of the mediator shall be split equally between the Parties.

**27. Governing Law; Venue; Consent to Jurisdiction.** The Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between County and Consultant that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court located in the County in which the Project is located; provided, however, if a Claim must be brought in a Federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the County of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh



Amendment to the United States Constitution, or otherwise. **CONSULTANT, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

**28. Amendments.** County may amend the Contract to the extent permitted by applicable statutes, administrative rules and ordinances and as mutually agreed upon by County and Consultant. County may agree to appropriate increases in the maximum compensation payable under the Contract, should any County-approved increase occur in the scope, character, schedule or complexity of Services as outlined in the Statement of Work. Consultant shall not commence any Services authorized under an amendment, and the amendment is not effective, unless it is in writing, signed by the Parties and all approvals required by applicable law have been obtained.

**29. False Claims**

- a. Consultant understands and acknowledges it is subject to the Oregon False Claims Act ([ORS 180.750](http://uscode.house.gov/) to 180.785<http://uscode.house.gov/>) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Contract, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Contract or the Project for which the Services are being performed, including but not limited to Consultant's statement of proposal and any invoices, reports, or other deliverables.
- b. Consultant shall immediately disclose (in writing) to County whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed:
  - (i) A violation of the Oregon False Claims Act; or
  - (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the Contract. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

**30. Merger Clause; Waiver; Interpretation.** The Contract, including everything incorporated by reference, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. No waiver, consent, modification or change of terms of the Contract shall bind either Party, unless such waiver, consent, modification or change of terms is in writing and signed by the Parties. Such a waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Either Party's failure to enforce any provision of the Contract shall not constitute a waiver by that Party of that or any other provision. The characterization of provisions of the Contract as material provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

## CONSULTANT CERTIFICATIONS

**A. Any individual signing on behalf of Consultant hereby certifies under penalty of perjury:**

- (1) Consultant has provided its correct TIN to County;
- (2) Consultant is not subject to backup withholding because (a) Consultant is exempt from backup withholding, (b) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; and
- (3) s/he is authorized to act on behalf of Consultant, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of her/his knowledge, Consultant is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a State tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321, and 323; and local taxes administered by the Department of Revenue under ORS 305.620.

**B. Any individual signing on behalf of Consultant hereby certifies they are authorized to sign this Contract and that:**

- (1) Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.
- (2) Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.
- (3) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.
- (4) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

No Payment shall be made for Services that are performed before all necessary governmental approvals have been obtained, the Contract is fully executed, and Notice-To-Proceed has been issued by County.

**Counterparts:** The Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

**MARION COUNTY SIGNATURES:  
BOARD OF COMMISSIONERS:**

Chair \_\_\_\_\_ Date \_\_\_\_\_

Commissioner \_\_\_\_\_ Date \_\_\_\_\_

Commissioner \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature:  07/27/2026  
Department Director or designee \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature:  07/29/2026  
Jan Fritz (Jul 29, 2026 13:11:57 PDT)  
Chief Administrative Officer \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by Signature:  07/29/2026  
Marion County Legal Counsel \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by Signature:  07/27/2026  
Marion County Contracts & Procurement \_\_\_\_\_ Date \_\_\_\_\_

**CONSULTANT SIGNATURE(s)**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

## EXHIBIT A – STATEMENT OF WORK

### A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

Consultant services are being utilized for provision of land surveying and engineering services for the design of a mitigation plan and robust solution for a slow-moving landslide that is occurring at North Fork Park east of Mehama. The landslide, near the west entrance to the Park, is showing slow continuous movement, made more severe by the loss of vegetation that was stabilizing the bank prior to the Beachie Creek Fires of 2020. North Fork Park is one of the most popular and highly used parks on the recreational corridor. A large movement of material will eventually cause the park to close and may impact North Fork Road, forcing residents and emergency personnel to make a detour to reach farther up North Fork Road. This would create safety concerns and more congestion on the corridor. The exact slide mitigation needed at this location will be determined following a geotechnical analysis of the site. The park access road will be repaved following stabilization of the slide.

The County is expected to receive Housing and Urban Development (HUD) Disaster Recovery (DR) funding for this Project, and all Federal Regulations required by this funding must be met on the Project.

The park access road is located on Bureau of Land Management (BLM) property, and all necessary environmental studies must be completed in coordination with BLM. BLM staff may have availability to assist with some studies, but the consultant will be required to verify all NEPA requirements have been met on the Project. The total estimated Project cost, including survey, design, environmental and construction is \$1,500,000.

**General Expectation.** Consultant commits to provide Services (and oversee and direct the design of the project, if applicable) to obtain the greatest long-term value for the government, and to promote prudent expenditure of public funds within the constraints of the project, program, context, budget and cost-effective sustainability principles. Consultant shall: (i) avoid expenditures for aesthetic effect which are disproportionate to the project as a whole; (ii) use recycled/recyclable products to the maximum extent economically feasible in the performance of this Contract, and (iii) apprise County throughout the project concerning any issues or decisions with potential economic impact to the project.

### Project Phasing

This Project is divided into two phases:

- Phase 1 – Preliminary Engineering through Final Design (PS&E).
- Phase 2 - Construction Contract Administration, Construction Engineering and Inspection (CA/CEI).  
Following Final Design, County may, at its discretion:

- (a) negotiate and amend the Contract to include all CA/CEI Services (or various elements), or
- (b) complete various elements of construction oversight work with County's in-house staff, or
- (c) assign various elements of the CA/CEI Phase to another consulting firm.

This Statement of Work addresses the Preliminary Engineering through Final Design Phase of the project. Each subsequent phase is optional, at County's discretion, and may be added via amendment(s) to this Contract.

### County Responsibilities

- Coordination and communication of internal County staff;
- Provide access to available Project information, recommendations and goals;
- Review of Consultant progress to verify adherence to this Scope of Work (SOW) and delivery schedule;
- Notify Consultant of any known delays above and beyond the control of Consultant;
- Provide appropriate and timely review of Project deliverables supplied by Consultant to verify they are consistent with Project objectives and the requirements of the SOW;

## Acronyms and Definitions

|        |                                                                               |  |            |                                                     |
|--------|-------------------------------------------------------------------------------|--|------------|-----------------------------------------------------|
| AAI    | All Appropriate Inquiries                                                     |  | MUTCD      | Manual on Uniform Traffic Control Devices           |
| AJD    | Approved Jurisdictional Determination                                         |  | NTE        | Not To Exceed                                       |
| APE    | Area of Potential Effect                                                      |  | NTP        | Notice to Proceed                                   |
| AST    | Aboveground Storage Tank                                                      |  | NMFS       | National Marine Fisheries Service                   |
| ASTM   | American Society for Testing and Materials                                    |  | NOI / RROF | Notice of Intent to Request a Release of Funds      |
| BLM    | Bureau of Land Management                                                     |  | NTP        | Notice to Proceed                                   |
| CA/CEI | Construction Contract Administration, Construction Engineering and Inspection |  | OAR        | Oregon Administrative Rules                         |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act         |  | OHCS       | Oregon Housing Community Services                   |
| CFR    | Code of Federal Regulations                                                   |  | OHW        | Ordinary High Water                                 |
| County | Marion County                                                                 |  | ODOT       | Oregon Department of Transportation                 |
| CPM    | Marion County's Project Manager                                               |  | ORS        | Oregon Revised Statutes                             |
| DEQ    | Oregon Department of Environmental Quality                                    |  | PIER       | Planning Infrastructure and Economic Revitalization |
| DSL    | Oregon Department of State Lands                                              |  | POR        | Professional of Record                              |
| EDR    | Environmental Database Report                                                 |  | PS&E       | Plans, Specifications & Estimate                    |
| EPA    | US Environmental Protection Agency's                                          |  | QA         | Quality Assurance                                   |
| ESA    | Endangered Species Act                                                        |  | QC         | Quality Control                                     |
| ER     | Environmental Review                                                          |  | RE         | Responsible Entity                                  |
| ESCP   | Erosion and Sediment Control Plans                                            |  | REC        | Recognized Environmental Conditions                 |
| GNSS   | Global Navigation Satellite System                                            |  | ROW or R/W | Right of Way                                        |
| GPS    | Global Positioning System                                                     |  | SHPO       | Oregon State Historic Preservation Office           |
| HEROS  | HUD Environmental Review Online System                                        |  | SOW        | Statement of Work                                   |
| HMCS   | Hazardous Materials Corridor Study                                            |  | USACE      | US Army Corps of Engineers                          |
| HUD    | US Department of Housing and Urban Development                                |  | USFWS      | US Fish & Wildlife Service                          |
| JPA    | Joint Permit Application                                                      |  | USGS       | United States Geological Survey                     |

|      |                                   |       |                             |
|------|-----------------------------------|-------|-----------------------------|
| LUST | Leaking Underground Storage Tanks | UST   | Underground Storage Tank    |
| LWD  | Large Woody Debris                | WOTUS | Waters of the United States |

## **B. STANDARDS and GENERAL REQUIREMENTS**

### **1. Standards**

**Preliminary Engineering and Design Phase Services** – The following standards shall apply to the contract:

- AASHTO Geometric Design of Highways and Streets, 2018
- AASHTO Roadside Design Guide, 2011
- Manual on Uniform Traffic Control Devices (MUTCD), 2025
- AASHTO Guide to Pavement Design, Construction, and Management, 2026
- ODOT Pavement Design Guide, Current Edition
- ODOT Geotechnical Design Manual, Current Edition

### **2. Software and Format Requirements**

Software standards and formats include but are not limited to the following:

- Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by County.
- Consultant shall submit draft and final deliverables in electronic format via e-mail (and hard copy if requested).
- Consultant shall also submit any graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by County.
- Consultant shall submit design plans in AutoCAD Civil 3D .dwg format. The design plans must also be submitted in .pdf format.

Consultant's software shall produce deliverables that are fully compatible, readable and useable by County software, requiring no modification or translation of Consultant's deliverables. No loss of data integrity or accuracy shall result from any transfer of data. Compressed data shall be in a "self-expanding executable" format. Additional format requirements may be listed elsewhere in the Statement of Work or in the Contract.

### **3. Professional Licenses, Registrations and Qualifications**

- Consultant and its subconsultants must be duly licensed where required by law to perform the Services, and must be under the "responsible charge" (as that term is defined under ORS Chapter 672) of a person so licensed, as required by the applicable Oregon Revised Statutes and Oregon Administrative Rules, and other applicable laws (or must be otherwise exempt from any licensing requirements applicable to the Services being performed).
- County may require Consultant's Personnel to demonstrate a competency in the particular area/discipline to which they are assigned. This may include, but is not limited to, submittal of license number, resume, and work samples from previously completed projects.

### **4. General Requirements**

- **Endorsement of Data.** Consultant shall place their official Oregon Registered Engineer seal and signature on all engineering design drawings and specifications furnished to County, as well as any other materials where professional standards require such seal and signature.
- **Safety Equipment.** Consultant shall provide and use all safety equipment including (but not limited to) hard hats, safety vests and clothing if required by State and Federal regulations and County policies and procedures for the Services under the Contract.

## **C. REVIEW, COMMENT and SCHEDULE OVERVIEW**

- Consultant shall coordinate with County staff as necessary and shall revise draft deliverables to incorporate draft review comments.

- Consultant shall incorporate comments within 10 business days from receipt by County and return the revised deliverables to County staff, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by County.

#### **D. PROJECT COOPERATION**

Consultant shall only be responsible for those obligations and deliverables identified as being assigned to Consultant (or its subconsultants) in this Contract and the Statement of Work. All work assigned to other entities, other than subconsultants, is not subject to this Contract, but shall be the subject of separate Intergovernmental Agreements or contracts which will contain the obligations of those entities. Any tasks or deliverables assigned to a subconsultant shall be construed as being the responsibility of Consultant. Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity (other than subconsultants) as described in this Statement of Work shall be subject to the following guidelines:

- At the first indication of non-cooperation, Consultant shall provide written notice to County's Contract Administrator of the specific acts or inaction indicating non-cooperation and of any deliverables that may be delayed due to such lack of cooperation by other entities referenced in the Statement of Work.
- County's Contract Administrator shall contact the non-cooperative entity/s to discuss the matter and attempt to correct the problem and expedite items determined to be delaying Consultant/project.

If Consultant has followed the notification process described in section "a", and delinquency or delay of any deliverable is found to be a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in the Statement of Work, Consultant will not be found in breach or default with respect to delinquencies beyond any reasonable control of Consultant; nor shall Consultant be assessed or liable for any damages arising as a result of such delinquencies. Neither shall County be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. County's Contract Administrator will negotiate with Consultant in the best interest of the government, and may revise the delivery schedule to allow for delinquencies beyond any reasonable control of Consultant. Revised delivery dates beyond the expiration date require an amendment to the Contract.

#### **E. TASKS, DELIVERABLES and SCHEDULE**

##### **TASK 1 – PROJECT MANAGEMENT**

Consultant shall provide management and coordination of Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

##### **1.1 Administration & Record Keeping**

Consultant shall:

- Submit a Quality Assurance/Quality Control ("QA/QC") Plan for County review and approval unless there is one on file already approved for use.
- Prepare a Project design schedule using the Critical Path Method, prepared with MS Project software or approved equal. The Project schedule must include, but is not limited to: all major authorized tasks as agreed upon by the Parties, Project design team meetings, and milestones (type and date) specified in this SOW and required to complete all Services under this Contract. Consultant shall update the Project schedule during the Project if milestone or deliverable due dates are modified. For budgeting purposes, it is assumed that up to (3) Project schedule updates will be necessary;
- Prepare invoices and progress reports according to the requirements set forth in the Compensation Exhibit of the Contract. Each progress report must:
  - Include a summary of previous period's activities and the planned activities for the upcoming period;
  - Identify percentage completed of each Task/Deliverable;
  - Reconcile the budget with the actual amount billed to date;

- Identify unresolved issues and concerns that may affect the SOW, schedule and/or budget for Services.

For budgeting purposes, it is assumed that up to (12) progress reports will be necessary

- Develop and maintain a Project file to include survey and engineering computations, assumptions, meeting agendas and minutes, working drawings, quality control and review documentation, correspondence, and memoranda.

### **1.1 Consultant Deliverables and Schedule**

Consultant shall provide:

- QA/QC plan submitted electronically to CPM within 30 calendar days of Notice to Proceed (“NTP”) unless already on file.
- Project Draft Design Schedule provided at the project kick-off meeting. Submit a schedule (PDF format) to the CPM.
- Updated Project Design Schedule, as necessary, via timeline agreed to by CPM.
- Progress reports and invoices submitted electronically to CPM no later than the 20th calendar day of the month following the reporting period.

### **1.2 Coordination**

Consultant shall:

- Coordinate with the CPM as the main point of contact for coordination and management of Consultant Services under the Contract;
- Contact other County staff and regulatory agency staff, if necessary throughout the Contract, to gather any additional information needed for the Project, Project site, regulations and guidance;
- Provide overall management, direction and coordination of staff (including sub-consultants, if any) to include any necessary internal Consultant staff meetings;
- Contact CPM via telephone, virtual call, or other agreed upon communication means on a bi-weekly basis (unless agreed to otherwise) to provide Project status information

### **1.2 Consultant Deliverables and Schedule**

Consultant shall provide:

- On-going coordination and communication as needed to appropriately manage the Services under this Contract (no tangible deliverables for this task).
- Meeting minutes and phone memoranda as agreed with the CPM.

### **1.3 Project Meetings**

#### **1.3.1 Project Kickoff Meeting**

Consultant shall organize, conduct, prepare for and attend a one hour Project kickoff meeting. The Project kickoff meeting will be held at Marion County Public Works, in person, with County, Consultant’s PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the County. The purpose of the Project kickoff meeting is to review Project issues such as SOW; work products and deliverables; schedules; budgets; right of way; utility coordination/design; design criteria; guidance documents; standards and quality control. Consultant shall schedule Project kickoff meeting within 10 business days of Notice to Proceed (NTP). Consultant shall prepare draft meeting minutes for review by County. For budgeting purposes, it is assumed that up to (4) Consultant staff shall attend the (1) hour Project kickoff meeting.

#### **1.3.2 Project Development Team Meetings**

Consultant shall organize, conduct, prepare for and attend up to (3) one hour Project Development Team (“PDT”) Meetings. The PDT meetings will be held at Marion County Public Works with the Consultant’s PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with



input from the County. Consultant shall prepare draft and final meeting minutes to be distributed to County and all other meeting participants. For budgeting purposes, it is assumed that up to (3) Consultant staff shall attend each in-person PDT meeting.

### **1.3 Consultant Deliverables and Schedule**

For each meeting, Consultant shall provide:

- Meeting agenda submitted electronically to CPM and all other meeting participants 5 business days prior to meeting.
- Meeting minutes submitted electronically to CPM and all other meeting participants within 5 business days of meeting.

## **TASK 2 SURVEY**

Consultant shall survey this Project for the areas as described in Section A of this SOW unless otherwise noted in specific tasks. Deliverables are to be scheduled as per task 1 Project Management.

Consultant shall adhere to the standards stipulated by the Oregon Revised Statute (“ORS”) 672.

Consultant's Professional Land Surveyor, registered in the State of Oregon, shall review and stamp as “Approved” all survey related deliverables and shall be responsible for all land surveying services including conformance to all state statutes pertaining to survey and land boundary laws under this SOW. These include, but are not limited to, the following state statutes: ORS Chapters 92, 93, 209 and 672.

### **2.1 Horizontal and Vertical Control Network**

The purpose of this task is to provide the means by which the Project can be located relative to horizontal and vertical datum, map projection, and coordinate systems. Consultant shall establish a horizontal and vertical control in Oregon Coordinate Reference System (OCRS) Salem Zone and NAVD 88.

Consultant shall use monuments that comply with ORS 92.060 and ORS 209.250, or 5/8” Rebar with plastic or brass caps, or other County approved control points, for the GNSS and network points. Consultant shall establish a minimum of 3 GNSS control points through the length of the survey. A minimum of at least 3 inter-visible control points is required through the Project area.

### **2.1 Consultant Deliverables and Schedule**

Consultant shall:

- Place control points in the ground at the Project location.
  - Incorporate the information listed below into the deliverables listed in Tasks 2.4. An adjustment report for one or more of the following, Least Squares adjustment for networks, an approved traverse adjustment method for traverses and/or a GNSS adjustment report when using GNSS.
  - An ASCII file containing the coordinates for every network point set and found.
  - If the levels were electronically processed then one copy each of the following: original raw level file as collected in the field, ASCII file showing level closure data, ASCII file with elevations on all network points and/or an ASCII file showing the level rod readings.
  - Original field notes for the control network and one scanned copy of the original field notes in “.pdf” format.
  - A Civil 3D design file (\*.dwg) containing all the set and tied control points to show elevations.
  - A Civil 3D file (\*.dwg) containing all vertical and horizontal control points stored as cogo points to show elevations.

### **2.2 Monument Recovery**

The purpose of this task is to address the requirements of ORS 209.140, ORS 209.150 and 209.155, and other survey related statutes for construction Projects.

Consultant shall survey for but not limited to: Government corners, geodetic control stations, benchmarks, R/W monuments, property boundary markers, and roadway alignment markers.

#### Identify, Search and Recover Monuments

Consultant shall recover existing monuments to preserve the locations of any monuments of record that are endangered by any activity related to the Project and to resolve roadway and property lines. Consultant shall provide a record (field notes) of monuments searched for, the date of the search and the results of the search.

#### Field Survey of Recovered Monuments

Consultant shall locate, measure and document the location of survey markers and monuments of record for property boundaries and/or R/W needed within the areas.

The destruction of found monuments necessitates a record of survey (ORS 209.150,155). If the Project will impact property or existing survey monuments, Consultant shall create a Record of Survey ("ROS") which meets County and ORS requirements. This is shown in Task 2.2 below.

### **2.2 Consultant Deliverables and Schedule**

Consultant shall incorporate the information gathered in this task including field notes into the deliverables listed in Tasks 2.3 as required for delivery of documents in subsequent tasks. ROS to Marion County for filing.

### **2.3 Topographic Data, Detailed Base Map And Digital Terrain Model (DTM)**

The purpose of this task is to collect the existing topographic features and create a detailed basemap and DTM for the Project.

#### Existing Utility Records

Consultant shall research and obtain available facility maps and as-built construction plan data pertaining to utilities in or near the Project area from the County, One-Call Service, State or other governmental agencies and utility companies.

#### Topographic Data Collection

Consultant shall collect topographic data between the boundaries described in Section A of this SOW. Consultant shall collect and tie topographic data of man-made and/or natural features using a variety of County approved methods. These methods include but are not limited to: collecting the data using terrestrial (Total Station), GNSS (RTK), 3D Laser Scanning (Mobile or Static), or station and offset.

Consultant shall contact Oregon Utility Notification Center to request pre-survey utility locates. Consultant shall keep the locate request number and ticket information within the Project file.

Consultant shall record in the field notes the utility ownership, if available, when describing the line data points. Consultant shall record all visible utility identifications in the field notes, such as numbers shown on power and/or telephone poles, vault tags, telephone pedestals (aka risers), cabinets, meters, fences or screened enclosures for gas regulators, and sanitary sewer pump stations. This data is needed for the County or Consultant to communicate where the facilities may be in conflict with the Project.

Consultant shall measure and record all utility facility structures (e.g. concrete pads, top slab of vaults, pump station housing, barrier screens or fenced enclosures). Consultant shall make a request to the utility owner to pull the cover whenever a manhole is found locked or bolted.

Consultant shall tie environmental and archaeological features that have been identified within the Project area. These features include, but are not limited to, wetlands, high water mark, T&E species, hazmat sites, archaeology sites and sensitive plants.

#### Detailed Basemap

Consultant shall take applicable topographic data collected in this subtask and create a detailed basemap file. A detailed basemap has all features drafted to County provided criteria.

#### Digital Terrain Model ("DTM")

Consultant shall create a 3-dimensional digital terrain surface using all relevant topographical data collected in this subtask.

Consultant shall collect the topographical data to create points and break lines in adequate quantity and in proper placement, to accurately represent the surface of the ground. Consultant shall collect confidence points in the field and generate a confidence point report. The topographical data and confidence points must meet County Criteria. Consultant shall generate 1 foot minor contours and 5 foot major contours throughout the DTM for a QC analysis of the surface.

### **2.3 Consultant Deliverables and Schedule**

Consultant shall provide the following deliverables electronically (.PDF) to the CPM within 60 days of NTP:

- Civil 3D CADD Files (\*.dwg) Detailed Base Map with Civil 3D DTM
- All files for the network control points in (ASCII) format
- Files of survey research
- Confidence Point Report

Control Point Worksheet within construction documents showing locations of identified control points in relation to the Project, including datum, description, and whether found or set.

## **TASK 3 ENVIRONMENTAL SERVICES**

The environmental services associated with this scope assumes that the project solution will be landslide mitigation on the existing park entrance road alignment.

### **3.1 Wetland/Waters of the U.S./State Fieldwork and Delineation Report**

Consultant shall complete a wetland field determination and ordinary high water mark "(OHWM)" demarcation for the Project Study Area ("PSA").

Consultant shall use available data (including but not limited to: soil surveys, aerial photos, National/Local Wetland Inventory maps ("NWI/LWI")) as well as data gathered in the field to document the presence or absence of wetlands within the PSA.

Consultant shall:

- Determine wetland boundaries within the PSA in accordance with the criteria and methods described in the 1987 Corps of Engineers Wetland Delineation Manual (Environmental Laboratory Technical Report Y-87-1) and appropriate Regional Supplements.
- Place flags in the field to show wetland and upland sample plot locations, and the wetland boundaries. Consultant shall survey wetland and waters boundaries.
- Prepare sketch maps of approximate wetland boundaries with numbering of flags or stakes.
- Ensure that field methods used and data collected meet the U.S. Army Corps of Engineers ("USACE") and DSL technical requirements for wetland delineations and ordinary high water demarcations. Collect and record wetland delineation data on approved wetland determination data sheets for possible inclusion with a wetland delineation report.

- Place flags in the field to show the OHWM elevation of all jurisdictional surface waters. Assess the OHWM elevation using field indicators.
- Prepare sketch map of approximate OHWM boundaries concurrently with the wetland and OHWM field work with sequential numbering of flags or stakes to be provided prior to site survey for Project base mapping.

Consultant shall prepare a Wetland/Waters of the U.S./State Delineation Report (Wetland Delineation Report) in accordance with DSL and USACE requirements and standards. The Wetland Delineation Report must include all required information outlined in Oregon Administrative Rules (OAR) 141-090-035, as well as all wetland data sheets obtained in the field under Task 3.6.1.

Consultant shall prepare appropriate graphics required by USACE and DSL to accompany the Wetland Delineation Report. This shall include a site location map, tax lot map, National Wetland Inventory or Local Wetland Inventory map (if available), soil survey map, and aerial overlay map. Consultant's Wetland Delineation Report must also include wetland delineation boundary mapping (figures) as finalized by Consultant and as per the requirements of DSL, and a color photographic record depicting existing conditions.

Consultant shall also complete the appropriate DSL cover page for submitting the Wetland Delineation Report to for review and approval.

Consultant shall submit the Wetland Delineation Report to DSL and USACE. County will make payment of any associated fees. County will review the draft Wetland Delineation Report and will provide comments to Consultant within 2 weeks of receipt of the draft. Consultant shall make appropriate modifications to the draft Wetland Delineation Report in response to the comments and shall prepare the final for submittal.

### **3.1 Consultant Deliverables**

Consultant shall prepare and submit:

- Sketch map of approximate wetland and waters boundaries to County (if present) per the schedule in Task 1.
- Notification to County (via email) if wetlands are present and will be impacted.
- Electronic copy (Word) of the Draft Wetland Delineation Report to CPM for review per the schedule in Task 1.
- Electronic copy (PDF) of the Final Wetland Delineation Report to CPM 2 weeks following receipt of draft review comments per the schedule in Task 1.
- Final Wetland Delineation Report to DSL, USACE, and to OHCS per the schedule in Task 1.

### **3.2 HUD Environmental Review Documentation**

Consultant shall prepare the necessary HUD Environmental Review (ER) documentation for the project to include:

- Conduct research and obtain all supporting documentation to thoroughly investigate the impacts of the project on the surrounding environment, community, and population and the impacts of the surrounding conditions on the project. This work includes but is not limited to the following:
- Complete HUD 8-Step Process for wetland impacts as required by 24 CFR Part 55. Consultant shall prepare early and final public notice documentation and provide to OHCS

for publication. The 8-Step Process shall be documented in a HUD worksheet and in a brief memorandum describing the project and process.

- Review the site for ESA-listed plant, wildlife, and fish species. ESA compliance will be documented in the ESA Partner Worksheet and in accordance with the *ESA-MSA Guidance for HUD Projects in Oregon* (April 2022).
- Coordinate with the County, HUD, and other regulatory agencies to ensure all necessary documentation is obtained to complete the ER.
- Prepare and complete the HUD-required ER using the Partner Worksheets.
- Document the project's final determination as to whether the project will have (1) a minor beneficial impact, (2) no impact, (3) a minor adverse impact, or (4) a significant impact.
- Provide the CPM with a draft copy of the ER (Word format) for review.
- Coordinate with the OHCS to finalize the ER Record.
- Assist, as necessary, with any public outreach and notification determined to be required.
- Prepare NOI/RROF documentation, if determined to be necessary.

### **3.2 Consultant Deliverables and Schedule**

Consultant shall provide:

- Complete ER Record, including worksheets, memos, and public notices as required by HUD and OHCS
- NOI/RROF Documentation

### **3.3 NEPA Documentation**

BLM has prepared a programmatic Categorical Exclusion (CE) document for maintaining roads across all lands under ownership of the BLM in the Northwest Oregon District. It is proposed to adopt this documentation for the project. The Consultant will prepare a project consistency analysis with the existing CE to verify the documentation covers the proposed action. A draft will be prepared for review by the Oregon Housing & Community Services (OHCS), Marion County, and BLM. The Consultant will make edits and prepare a final consistency analysis document. BLM will provide notice for the adoption and make the document publicly available on their ePlanning website.

#### **3.3 Consultant Deliverables**

Consultant will prepare:

- Consistency Analysis

#### **3.3.1 OHCS NEPA Categorical Exclusion (CONTINGENCY TASK)**

The Oregon Housing & Community Services (OHCS) is the responsible state entity for NEPA compliance on this project per HUD PIER's funding. The project is anticipated to qualify for a "Categorical Exclusion Subject to Section 58.5" (CEST) for NEPA compliance.

The Consultant shall conduct a site visit and prepare a HUD Part 58 Categorical Exclusion Form in pursuit of a NEPA Documented Categorical Exclusion. Prior to the preparation of any NEPA-related documentation, the Consultant will contact OHCS staff to confirm the proposed NEPA approach and submittal requirements.

A draft of the Part 58 Form will be sent to Marion County for review and revised by the Consultant. A revised version will be sent to OHCS for agency review. Consultant will revise per any comments

received and prepare a final version of the Part 58 Form. The No Effect Letter and Section 106 document will be attached to the Part 58 Form.

### **3.3.1 Consultant Deliverables**

Consultant will prepare:

- HUD Part 58 Form

### **3.4 Environmental Permits**

Consultant shall research and prepare state and federal permit applications required for the Project as described in the subtasks listed below.

#### **3.4.1 USACE/DSL/DEQ Joint Permit Application (“JPA”) (CONTINGENCY TASK)**

Consultant shall prepare a complete JPA meeting all the applicable requirements of the most recent version of the Oregon Department of State Lands Removal-Fill Guide and USACE permit application standards. Consultant shall submit the JPA and Stormwater Management Plan to the Oregon Department of Environmental Quality (DEQ) to obtain Section 401 Water Quality Certification.

Agency will select the preferred design for the Project prior to the preparation of the JPA.

Consultant shall:

- Prepare JPA for a USACE Section 404 Nationwide Permit, a DSL Individual Permit, and DEQ 401 Water Quality Certification, to authorize work within the jurisdictional waters and any wetlands found in the Project area.
- Provide pre-submittal coordination with representatives of the USACE and DSL to confirm permitting requirements and application procedures. Conduct pre-submittal coordination by phone and email. Consultant shall coordinate and attend one pre-submittal site visit with DSL, USACE, and DEQ to discuss the Project and address the resource agencies concerns.
- Verify that features and impacts are correctly identified for the permit application.
- Prepare all JPA required drawings, maps, photographs, site descriptions, and any additional information required by DSL, USACE or DEQ for inclusion in the JPA.
- Prepare narratives and descriptions on Project purpose and need and Project alternatives using Project development information provided by County as necessary to complete the JPA.
- Respond to questions or comments raised by the DSL, USACE and DEQ following the submission of the JPA. This task may include correspondence and clarification of the JPA in the form of telephone calls or e-mails, to clarify regulatory Agency concerns and to facilitate the issuance of the USACE and DSL permits for this Project.
- Submit the complete JPA package to the DSL, USACE, and DEQ on behalf of Agency.

All required wetland and waters mitigation will be satisfied with Payment-to-Provide or purchase of mitigation bank credits. On-site or off-site compensatory wetland/waters mitigation coordination and planning will not be required.

If necessary, USACE will initiate ESA Consultation with NMFS upon submittal of the JPA. The project is expected be permitted using the SLOPES V Programmatic Biological Opinion.

Due to the varied nature of post-submittal coordination, it is expected that Consultant shall not expend more than 12 hours for office review and coordination time for post-submittal coordination with DSL, USACE, and DEQ. Agency will be responsible for obtaining Land Use Planning Signature on the JPA.

Agency will be responsible for payment of any associated fees for DSL, USACE, and DEQ to review and approve the submittals.

### **3.4.1 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- Electronic copy of the Draft JPA Submittal Package to Agency for review per Task 1 Project Design Schedule.
- Electronic copy (PDF) of the Final JPA Submittal Package to Agency 2 weeks following receipt of draft review comments.

### **3.4.2 Oregon Department of Environmental Quality (DEQ) 1200-CA Permit Application (CONTINGENCY TASK)**

If the Project design results in an overall ground disturbance that is greater than one acre, the County's 1200-CA permit will be required.

Consultant shall provide pre-submittal coordination with representatives of the DEQ and County to confirm permitting requirements and application procedures. Consultant coordination includes correspondence in the form of telephone calls, e-mail, letters, and memos to document permit needs. Consultant shall assemble permit documentation materials including the forms, plans, drawings, memos, details, and specifications to support the permit application.

County will be responsible for payment of any associated fees. County will acquire County's Planning Department signature. County must be listed as owner on the 1200-CA permit documents.

If the Project design results in ground disturbances within 50 feet of Waters of the State, Appendix B to the 1200-CA Permit, Natural Buffer Zone Requirements, will be required.

If the Project cannot provide and maintain a 50-foot undisturbed buffer zone between ground disturbances and the ordinary high water (OHW) line of the North Fork River, the Consultant shall provide documentation for compliance with the Natural Buffer Zone requirements. The compliance alternative will include the maintenance of a reduced buffer, supplemented by erosion and sediment controls (ESC) that achieve the equivalent sediment reduction as a 50-foot buffer. This compliance alternative requires the following steps:

- Step 1: Estimate the sediment reduction from the existing 50-foot buffer
- Step 2: Design controls that match the sediment removal efficiency of the 50-foot buffer
- Step 3: Document how design solutions and site-specific erosion and sediment controls (ESC) will achieve the sediment removal efficiency of the 50-foot buffer.

The required documentation includes:

- Calculations for the estimated sediment removal efficiency performance of the existing 50-foot buffer
- The model used to estimate sediment load reduction from the site (for example the USDA's RUSLE2 model)
- The results of calculations showing how the ESC will meet or exceed the sediment removal efficiency
- Descriptions of the ESC that will be used to achieve an equivalent sediment reduction.

Permit registrants are also required to document in their ESC Plan (ESCP) the buffer zone width that is retained or the width of the reduced buffer that will be retained. Design controls on the ESCP will be included in Task 10.4 Erosion and Sediment Control Design.

### **3.4.2 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- Electronic copy of the Draft 1200-CA Permit Documentation Package to Agency for review per Task 1 Project Design Schedule.
- Electronic copy (PDF) of the Final 1200-CA Permit Documentation Package to Agency 4 weeks following receipt of draft review comments.
- Electronic copy of Appendix B - Natural Buffer Zone Requirements documentation, in the form of a Memo, including modeling and calculations tables.

### **3.5 Hazardous Materials Corridor Study**

The purpose of this task is to facilitate County compliance with environmental regulations pertaining to site cleanup and waste management. This work is intended to identify potential sources of environmental contamination (hazardous waste, hazardous substances, toxic substances and other hazardous materials regulated under federal and State statutes and regulations/administrative rules) that could impact the Project.

Performance of this task must be in accordance with the following standards and guides:

- “Hazardous Waste Guide for Project Development”, by the American Association of State Highway and Transportation Officials (“AASHTO”) Special Committee on Environment, Archaeology and Historic Preservation.
- “ODOT Hazmat Program Procedures Guidebook,” Oregon Department of Transportation.
- “Level 1 Corridor Study” report template, Oregon Department of Transportation.

Consultant shall:

- Conduct geophysical surveys to identify potential underground storage tanks or buried debris. Collect surface soil samples from road shoulders to determine if the soil meets Oregon Department of Environmental Quality (“DEQ”) standards for clean fill
- Conduct site-specific subsurface investigations to determine if soil or groundwater are contaminated within the project corridor. Prepare contract bid documents for handling and disposal of contaminated materials.
- Conduct a site reconnaissance to identify potential sources of contamination that could impact construction or result in County acquiring contaminated property.
- Review available federal and State environmental databases to identify sites that could potentially impact the project, using the minimum search radii listed below.

| Environmental Database                   | Search Radius      |
|------------------------------------------|--------------------|
| State-Equivalent NPL List (ECSIS)        | 0.5 mile           |
| Oregon Permitted Landfill List           | 0.5 mile           |
| State Leaking (L)UST List                | 0.25 mile          |
| Federal RCRA Generators List             | Site and Adjoining |
| State Fire Marshal’s Spill Response List | Site and Adjoining |
| Oregon Motor Carrier Spill List          | Site and Adjoining |
| State Certified UST List                 | Site and Adjoining |



- Review DEQ files, available using DEQ's Facility Profiler web site at <http://deq12.deq.state.or.us/fp20/>, to determine whether contamination from adjacent facilities is likely to impact project construction. Alternatively, this review may be conducted using commercially available database reports such as provided by EDR.
- Review the Oregon Water Resources Department on-line database at [http://apps.wrd.state.or.us/apps/gw/well\\_log/Default.aspx](http://apps.wrd.state.or.us/apps/gw/well_log/Default.aspx) to determine if water wells or monitoring wells are located on or adjacent to the project corridor.
- Review project files at the appropriate DEQ Region office, based on the project location, for all facilities considered to be high risk for impacting project construction. Consultant shall use DEQ file information to delineate contaminated areas within the project corridor and identify if that information is sufficient to develop construction plans and specifications without additional sampling.
- Conduct historical research to identify past uses of the project corridor and adjacent properties, using one or more of the following resources:
  - Sanborn Fire Insurance Maps
  - Aerial Photographs
  - Reverse Agency Directories
  - Historic property ownership/occupancy records or building permits

The resource(s) selected must, if possible, provide historic information regarding land use back to 1935 at 10-year intervals, or the Consultant must demonstrate that such information is not readily available.

Consultant shall review pertinent records that may be made available by the County as they relate to the environmental condition of the project corridor.

Consultant shall assess if soil sampling is necessary to determine if soil excavated from the project corridor shall meet DEQ clean fill screening levels for contaminants-of-concern including pesticides, herbicides, metals, polynuclear aromatic hydrocarbons, petroleum hydrocarbons, and solid waste.

Consultant shall prepare a HMCS report summarizing the information obtained through the activities listed above. The report shall include photographs documenting project corridor observations. The report must include conclusions that identify specific sources of contamination that could impact project construction and recommendations for further investigation, if needed.

### **3.5. Consultant Deliverables and Schedule:**

- Draft HMCS report (electronic format) to REC and CPM within 8 weeks following Notice to Proceed ("NTP").
- Final HMCS report (electronic format) to REC and CPM within 2 weeks following receipt of draft review comments.

## **TASK 4 PUBLIC INVOLVEMENT SUPPORT**

Consultant shall assist County with public involvement and outreach, as defined below, for the design phase of the Project through Final PS&E. County will have overall responsibility for the Project public involvement and outreach program.

#### **Task 4.1 Public Involvement Plan (Reserved)**

#### **Task 4.2 Public Involvement Meetings**

Consultant shall attend up to 1 meeting, as listed below, to provide Project information and address specific questions and concerns related to the Project.

- Community Open House

Consultant shall prepare the following:

- Project maps or drawings.

County will schedule, coordinate the location and advertise the meetings. County will collect and document feedback received at the meeting. For budgeting purposes, it is assumed that up to (2) Consultant staff shall attend each 2-hour public meeting.

#### **4.2 Consultant Deliverables and Schedule:**

Consultant shall provide the following:

- Draft project maps or drawings (PDF format) provided 5 working days prior to the meeting
- Final project maps or drawings (roll map hard copy) provided at the meeting

### **TASK 5 - UTILITIES (RESERVED)**

### **TASK 6 GEOTECHNICAL SERVICES**

Consultant shall conduct geotechnical field investigation(s) to explore the following: Surface and subsurface conditions in proposed improvement areas, including retaining walls, grading, surface and subsurface conditions in area of existing slope instability.

Consultant shall provide documentation which summarizes and presents the results of the investigation, analyses, and recommendations.

#### **6.1 Data Review / Reconnaissance**

Data Review:

Consultant shall review available existing information to evaluate the following:

- Geologic conditions along the proposed Project alignment, such as geologic units, historic land use, fill materials, and geologic hazards.

Consultant shall review available information from the following sources (as applicable):

Existing published and unpublished literature from County, federal, city, or county records; Published geologic literature including geologic or hazard maps; Previous geological and geotechnical reports from County, federal, city, county, or other officials, consultants, groups or individuals pertinent to the Project; As-built roadway plans (as available); and Maintenance records.

#### Reconnaissance:

Consultant shall conduct a geologic, and geotechnical reconnaissance of the site consisting of up to 1 separate site visits. Consultant shall identify the following:

Geologic conditions at the Project site, any geologic hazards present and their impacts to the proposed Project elements.

As part of the site reconnaissance work, Consultant shall Observe surface conditions that may be indicative of subsurface conditions of concern, as well as past or ongoing geologic processes (e.g., areas of seeps or springs, erosion, unstable slopes, shallow groundwater, roadway settlement, offsets and depressions, existing earthwork performance, exposed soil and bedrock units).

Perform landslide mapping.

Identify site constraints, staging concerns (for exploration and construction).

Identify potential exploration and monitoring locations.

Locate geotechnical explorations and stake or paint on the ground proposed boring locations.

#### **6.1 Consultant Deliverables and Schedule:**

Consultant shall incorporate information from this task into deliverables for tasks 6.2, 6.5 and 6.6.

#### **6.2 Exploration and Testing Work Plan ("ETWP")**

Consultant shall prepare an ETWP prior to beginning field work. No field work is to be performed, other than initial site reconnaissance, before review and approval by County of the ETWP.

The ETWP shall address the proposed drilling (geotechnical borings) and instrumentation; site access; exploration and sampling procedures; preliminary laboratory testing plan; safety plan; and the traffic control plan. The traffic control plan must address minor road encroachments as well as any lane or shoulder closures for activities associated with borings, and restoration of pavements, shoulders, and other areas disturbed due to subsurface exploration activities, including erosion control measures.

Consultant shall comply with any and all environmental permits, including archeology clearance, and approvals prior to any geotechnical drilling work (as per ODOT Geotechnical Design Manual sections 3.8 and 3.8.4).

Consultant shall obtain required Right-of-Way Permits from County for exploration locations in public ROW prior to beginning field work.

#### **6.2 Consultant Deliverable and Schedule:**

Consultant shall provide:

- Draft ETWP in PDF format to CPM
- Final ETWP in PDF format at least 5 business days prior to beginning field work to CPM

#### **6.3 Geotechnical Explorations**

Consultant shall conduct field investigation work in accordance with the most current versions of the [ODOT Geotechnical Design Manual](#).

Consultant shall perform all field explorations in conformance with the approved ETWP developed in task 6.2. Consultant shall follow all environmental permits and approvals prior to performing any exploration Services by drilling subcontractors. Consultant or their drilling contractor shall locate all underground utilities.

Once all environmental permits and approvals have been provided, consultant shall perform subsurface explorations to estimate and characterize the in situ soils and obtain design parameters for the purposes of addressing foundation support and other geotechnical or geological considerations for the following:

Retaining walls  
Landslide mitigation  
Slope stability

The anticipated subsurface explorations to be performed for the Project are shown in the following table:

| TEST METHOD          | EST # | DEPTH(S) OF EXPLORATION(S) | ANTICIPATED ROCK CORING | INSTRUMENT(S) TO BE INSTALLED                              |
|----------------------|-------|----------------------------|-------------------------|------------------------------------------------------------|
| Drilled Borings: B-1 | 1     | Up to 80 feet              | Up to 15 feet           | Inclinometer<br>Vibrating Wire<br>Piezometer<br>Datalogger |
| Drilled Boring: B-2  | 1     | Up to 65 feet              | None                    | None                                                       |
| Hand Auger Borings   | 3     | Up to 6 feet               | None                    | None                                                       |

Consultant shall finish one boring with an inclinometer and a vibrating wire piezometer. A datalogger will be used to collect readings of the piezometer. Consultant shall perform a baseline reading of the inclinometer approximately 3 days after the installation of the instrument. The consultant shall perform up to 3 additional readings of the inclinometer. The datalogger's piezometer data will be uploaded at the time of the inclinometer reads.

Consultant shall provide an experienced Professional Engineer or Certified Engineering Geologist, licensed in Oregon to supervise the field operations for in situ data gathering.

Consultant shall perform the exploration work while following additional requirements as follows: Collect the drill cuttings and drilling mud in sealable steel drums and remove from the site, unless otherwise coordinated with County. Consultant assumes that the subsurface soils are non-hazardous.

The borings must be abandoned and backfilled according to Oregon Water Resources Department ("OWRD") regulations.

All borings and core holes through pavement must be patched with cold patch asphalt emulsion, quick set PCC, or as approved by County.

Instruments must be capped by lockable monuments, or traffic-grade vaults, or as approved by County.

Borings must be completed by drillers appropriately licensed by OWRD.

Consultant assumes that two-way flagging will not be required to close the entrance to the parking lot for drilling operations and for reading the inclinometer and datalogger. Consultant assumes that drilling will take place during daytime hours.

### **6.3 Consultant Deliverables and Schedule:**

Information from this task shall be incorporated into deliverables for tasks 6.5 and 6.6.

### **6.4 Laboratory Testing**

Consultant shall perform laboratory tests on disturbed and undisturbed soil samples obtained from the explorations in order to: Characterize the subgrade and subsurface soils; Determine index properties; Develop engineering soil parameters for the design and construction of landslide mitigation retaining walls and rock buttress; Assist with determining engineering geologic unit boundaries; and Check field soil classification.

The laboratory testing program must be performed in accordance with standard ASTM, AASHTO, County, and ODOT practices to include the following:

Up to 12 Moisture/density;

Up to 2 Atterberg limits;

Up to 2 Gradation;

Up to 2 Unconfined Compressive strength testing on rock cores; and

Up to 1 Direct shear strength test.

### **6.4 Consultant Deliverables and Schedule:**

Information from this task shall be incorporated into deliverables for tasks 6.5 as needed and 6.6.

### **6.5 Pavement Design Report (reserved)**

### **6.6 Geotechnical Report and Geotechnical Data Sheets**

Consultant shall prepare a Geotechnical Report according to the ODOT Geotechnical Design Manual criteria for submittal to County for review. The Geotechnical Report must:

- Include design assumptions and calculations
- Geotechnical data sheets
- Include Comments regarding Special Provisions
- Summarize the geotechnical design and construction recommendations.
- Identify general specification criteria for the construction contract and provide recommendations for special provisions, if required.
- Summarize the results of the geotechnical analyses.
- Provide design recommendations for the selected landslide mitigation alternative. Consultant assumes that this will be one retaining wall and one rock buttress.

Consultant shall prepare up to 1 Geotechnical Data Sheet to be incorporated into the Advance and Final plan sheets.

### **6.6 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft Geotechnical Report in PDF format
- Final Geotechnical Report in PDF format to CPM within 2 weeks of receipt of comments from County.
- Geotechnical Data sheets to be incorporated into Advance and Final PS&E packages delivered under tasks 13.1 and 13.2.

## **TASK 7 HYDRAULICS RELATED SERVICES**

Consultant shall provide stormwater management and hydraulic related design services under this SOW for delivery of tasks and deliverables according to the agreed upon delivery schedule.

#### **7.1 Hydraulic Site Investigation (Reserved)**

#### **7.2 Hydrologic Analysis (Reserved)**

#### **7.3 Hydraulic Analysis (Reserved)**

#### **7.4 Hydraulics Report (Reserved)**

#### **7.5 Stormwater Management Design**

The purpose of this subtask is to design stormwater systems for the conveyance and treatment of drainage in the Project.

##### **Storm Sewer Conveyance**

The purpose of this subtask is to provide design of stormwater conveyance facilities that collect and carry highway runoff in conformance with: Any County requirements that are stricter than the Federal standards.

Consultant shall:

- Determine the locations of flow entering and leaving the Project right-of-way (R/W).
- Review existing conditions downstream of locations where flow is leaving the Project R/W for deficiencies and document observations.
- Delineate on-site drainage basins, calculate peak flow rates for design, model the proposed pipe network, and calculate hydraulic grade line to check that proper freeboard design requirements are being met.
- Check inlet capacity and inlet spacing, calculate gutter flow to check spread, and provide design recommendations for inlet locations.
- Provide design recommendations for pipe network, associated pipe sizes, pipe material recommendations, and manhole access design recommendations (i.e. -spacing, location within a travel lane, etc.).
- Provide manhole diameter design recommendations based upon analysis of pipe connections at each manhole.
- Compare pipe network against known utilities in the Project area and provide design recommendations to minimize utility conflicts or to adjust existing utilities.
- Provide Stormwater Outfall design and energy dissipator design recommendations in compliance with applicable Project permits.

##### **Roadside Channel Conveyance:**

Consultant shall model ditches to calculate water surface elevation, depth, and velocity and provide channel lining design recommendations per HEC-15, Design of Roadside Channels with Flexible Linings.

##### **Stormwater Quality Design:**

The purpose of this subtask is to provide design of stormwater management facilities that provide water quality treatment of highway runoff per County, HUD, or BLM standards, whichever standard is most strict.

Consultant shall:

- Define Contributing Impervious area.
- Delineate on-site drainage subbasins.
- Identify treatment Best Management Practice (“BMP”) types applicable for the site.
- Identify potential locations to site facilities within and outside the existing R/W.
- Estimate facility size, type and space needs at each of the potential locations.
- Evaluate constraints to siting a stormwater facility (i.e.-drainage area, adjacent grades, roadway safety, presence of existing utilities, protected resource areas, etc.)
- Prepare up to 3 stormwater management strategies that combine potential stormwater facilities into a comprehensive solution for meeting the needs of the Project.
- Compare alternative stormwater management strategies and recommend a preferred strategy.

### **Stormwater Quantity Design**

The purpose of this subtask is to provide design of stormwater management facilities that control quantity and flow rate of highway runoff per County, HUD, or BLM standards, whichever standard is most strict.

Consultant shall:

- Define Contributing Impervious Area (“CIA”).
- Delineate on-site drainage subbasins.
- Identify potential locations to site facilities within and outside the existing R/W.
- Estimate facility size, type and space needs at each of the potential locations.
- Evaluate constraints to siting a stormwater facility (i.e. drainage area, adjacent grades, roadway safety, presence of existing utilities, protected resource areas, etc.).
- Prepare up to 3 stormwater management strategies that combine potential stormwater facilities into a comprehensive solution for meeting the needs of the Project.
- Compare alternative stormwater management strategies and recommend a preferred strategy.
- Provide written design recommendations in the Stormwater Design report (Task 7.6) for:
  - Pipe network and associated pipe sizes
  - Manhole diameter
  - Pipe material recommendations
  - Channel Lining
  - Stormwater outfall
  - Energy dissipator
- Provide documentation in the Stormwater Design report (Task 7.6) for up to 3 stormwater management strategies and include a recommended preferred strategy.

### **7.5 Consultant Deliverables and Schedule:**

Information from this task shall be incorporated into deliverables for Tasks 7.6.

### **7.6 Stormwater Design Report**

The purpose of this subtask is to provide preliminary stormwater design recommendations and document the final stormwater facility design recommendations.

Consultant shall prepare a preliminary version of the Project Stormwater Design Report per County or ODOT Hydraulics Manual guidelines containing preliminary stormwater facility design recommendations.

Consultant shall prepare a final Stormwater Design Report to reflect County review comments on stormwater facility design recommendations, changes to stormwater facility design due to

advancement of the overall Project design, and supporting documentation of the final stormwater facility design.

**7.6 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft Stormwater Design Report in PDF file format, along with an MS Word file containing the report narrative, due with the Advance PS&E Package (Task 15.2).
- Final Stormwater Design Report, PDF file of complete report, due with the Final PS&E Package (Task 15.3).

**7.7 Stormwater Operation and Maintenance (O&M) Manual (Reserved)**

**7.8 Temporary Water Management Design (Reserved)**

**7.9 Floodplain Impact Analysis (Reserved)**

## **TASK 8 TRAFFIC ENGINEERING & MANAGEMENT**

Consultant shall provide traffic analysis and design Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

**8.1 Traffic Analysis (Reserved)**

**8.2 Traffic Signal Design (Reserved)**

**8.3 Traffic Signal Interconnect (Reserved)**

**8.4 Permanent Signing (Reserved)**

County shall provide new permanent signing, if any, for the North Fork Park entrance road.

**8.5 Permanent Pavement Markings (Reserved)**

**8.6 Illumination Design (Reserved)**

**8.7 Traffic Management Plan (Reserved)**

**8.8 Traffic Control Plans (“TCPs”)**

Consultant shall prepare and submit PS&E for temporary traffic control to accommodate the public during construction. Consultant shall develop plans and specifications to accommodate vehicle, bicycle and pedestrian traffic during construction. ODOT or County standard plans must be referenced where possible. Consultant’s TCPs will be similar to other recent projects in the corridor that use Gates Hill Road as a temporary detour.

TCPs must meet MUTCD, and County requirements.

**8.8 Consultant Deliverables and Schedule**

Consultant shall provide:



- Advance TCPs, special provisions, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final TCPs, special provisions, and cost estimate included in Final PS&E Package submittal (Task 15.3)

## **TASK 9 RAILROAD COORDINATION AND SUPPORT (RESERVED)**

## **TASK 10 ROADWAY DESIGN**

Consultant shall provide roadway design Services under this SOW for delivery of tasks and deliverables according to the agreed upon delivery schedule.

### **10.1 Design Criteria**

Consultant shall prepare draft and final design criteria. Design criteria must be consistent with AASHTO A Policy on Geometric Design of Streets and Highways. Consultant shall present the design criteria in a table or matrix format listing all conditions, assumptions and minimum standards for the roadway design elements of the Project. This includes the following:

Determine design vehicles  
Determine design speed  
Determine roadside design requirements (clear zone)  
Determine sight distance considerations  
Determine cross slope, horizontal curves, and super-elevation  
Determine maximum grade, vertical curves  
Determine cross section elements:  
Number and width of travel lanes  
Shoulders  
Side slopes  
Ditches or swales (drainage facilities)

### **10.1 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft design criteria electronically (PDF format) to CPM within 6 weeks from Notice to Proceed ("NTP").
- Final design criteria electronically (PDF format) to CPM within 2 weeks from receipt of County comments.

### **10.2 Concept Plans/Alternative Analysis**

Consultant shall work with County to develop up to 3 alternatives for the retaining wall and roadway design based on coordination with the wall designer.

Consultant shall develop each alternative to concept level design sufficient to establish construction limits, quantities and major construction activities. Each alternative must have horizontal and vertical alignment developed that meets minimum design standards. Consultant shall prepare a conceptual drawing for each alternative. The drawing must utilize a GIS or topographic survey base map or corridor roll plot on an aerial map at a scale of 1:40. Geometric design elements that do not meet design standards must be identified as needing a design exception.

Consultant shall analyze each alternative and determine the potential benefits and impacts associated with construction of the proposed alternative. Potential benefits and impacts to be considered include, but are not limited to, right of way, access, safety, utilities, permitting and environmental.

Consultant shall prepare a construction cost estimate for each alternative that includes the major construction items and quantities that can be identified at this level of design detail.

#### **10.2 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Alternative conceptual drawings and estimates to be incorporated into the TS&L task 11.1.

#### **10.3 Roadway Design Exceptions (RESERVED)**

### **TASK 11 WALL DESIGN**

Consultant shall perform preliminary structural analysis and design. Consultant shall base the general design upon the applicable sections of the AASHTO LRFD Bridge Design Specifications and the Local Agency Guidelines (LAG) for Certified Local Public Agencies (LPA). Consultant shall address other design requirements and costs conforming to AASHTO and Agency standards.

Deviations from these standards require prior approval by the County's Project Manager (CPM).

#### **11.1 Wall Type, Size and Location ("TS&L")**

Consultant shall perform an alternatives analysis to determine the type, size and location of the proposed wall. Consultant shall evaluate up to 2 wall type alternatives in order to develop a recommended structure type. Consultant shall develop a recommendation of the structure type by using evaluation criteria such as cost, constructability, speed of construction, environmental impacts, right-of-way requirements and durability. Wall types shall be as recommended and in agreement with the required project geotechnical report.

Consultant shall address the following in the Wall TS&L narrative:

Type, size and location recommendation for the preferred structure type meeting statutory requirements and standards as agreed upon with the CPM.

Outline of site specific constraints, including but not limited to; topography, geology, hydrology, environmental constraints and requirements, permits, R/W, utilities, geotechnical and cost

Consultant shall prepare wall plan sheets as specified in Table 11 which is attached at the end of Task 11.

Consultant shall prepare quantity based cost estimates for the alternatives considered with a 30% contingency applied.

Consultant shall resolve any comments received on draft Wall TS&L not incorporated into the Final TS&L with the CPM, and incorporate remaining comments into the Final TS&L report to be included with the DAP submittal.

### **11.1 Consultant Deliverables and Schedule**

Consultant shall provide:

- Draft Wall TS&L for both alternatives considered including narrative and cost estimates to CPM in accordance with the schedule of Task XX. Two plan sheets will be developed for the recommended wall type.
- Incorporate final Wall TS&L comments for the recommended alternative into the final TS&L report documents.

### **11.2 90% Wall Design**

The Consultant shall complete the wall design and prepare the 90% wall plans, specifications, and cost estimate. 90% PS&E shall be a completed set ready for final comment by the County. A Class II design check of the wall will be completed (as outlined in the ODOT BDM) will be completed as part of this task.

Consultant shall reference County and ODOT standard drawings, details, and other related drawings as required when developing design drawings. The following structure plans are anticipated:

Wall Layout and Elevation Sheet

General Notes

Geotechnical Data Sheet

Wall Details (3 sheets)

Consultant shall prepare/update wall technical special provisions, construction cost estimate and 90% wall plans as specified in Task 15.2 Advance PS&E.

Consultant shall illustrate and report non-standard details, materials, or other specialty works sufficient for County reviewers to evaluate and provide acceptance for such items. Consultant shall address review comments and incorporate feedback into the final design.

### **11.2 Consultant Deliverables and Schedule**

Consultant shall provide:

- 90% plans submitted as part of Task 15.2 deliverables

### **11.3 100% Wall Design**

Consultant shall incorporate or resolve all comments received from the County during 90% plans review and prepare 100% wall plans to be included in the construction bid package.

Consultant shall finalize wall technical special provisions, construction cost estimate and final bridge plans as specified in Task 15.2 Final PS&E

### **11.3 Consultant Deliverables and Schedule:**

Consultant shall provide:

- 100% wall PS&E documents with engineering seals affixed, submitted as part of Task 15.3
- Calculation book incorporating Class II design check.

## **TASK 12 PERMITS (RESERVED)**

## **TASK 13 - DESIGN ACCEPTANCE PACKAGE (30%)(RESERVED)**

## **TASK 14 RIGHT OF WAY (“R/W”) (RESERVED)**

## **TASK 15 - PLANS, SPECIFICATIONS, AND ESTIMATE (“PS&E”)**

### **15.1 Preliminary PS&E (60%) (RESERVED)**

### **15.2 Advance PS&E (90%)**

This task includes preparation of advance plans, Special Provisions, construction cost estimate, risk assessment, and quality control reviews.

Advance Plans:

Consultant shall prepare drawings, per Table 15 below and reference County standard drawings and details, and other related drawings.

Table 15

| Name of Sheet                    | Scale  | Estimated # of Sheets | 90% Advanced Submittal | 100% Final Submittal |
|----------------------------------|--------|-----------------------|------------------------|----------------------|
| Title sheet                      | NA     | 1                     | X                      | X                    |
| Typical sections                 | NA     | 1                     | X                      | X                    |
| Details                          | NA     | 1                     | X                      | X                    |
| Traffic Control Plan             | 1:40   | 1                     | X                      | X                    |
| Roadway plans                    | 1:40   | 1                     | X                      | X                    |
| Roadway profiles                 | 1:40   | 1                     | X                      | X                    |
| Erosion control                  | 1:40   | 2                     | X                      | X                    |
| Drainage details                 | NA     | 1                     | X                      | X                    |
| Retaining wall plans and details | Varies | 6                     | X                      | X                    |
| Sign and striping plans          | 1:40   | 1                     | X                      | X                    |
| Landscaping                      | 1:40   | 1                     | X                      | X                    |

Consultant shall prepare drawings, per Table 15 above and:

Reference County standard drawings and details;

Prepare the 2024 Bid Booklet and Special Provisions Document Assembly form;

Prepare Advance construction cost estimate quantities and unit costs utilizing County standard bid items. Consultant shall prepare the estimate on the Certified LPA cost estimate form 734-5096 to include mobilization, contingency, and construction engineering (based on percentages agreed to by both parties). The estimate must be based on unit prices utilizing County, ODOT, and Consultant's historical bid information and considering a 2027 bid letting.

The CPM will submit a Preliminary PS&E Review Comment Log as a single electronic file to Consultant.

**Advance Special Provisions:**

Consultant shall prepare Project Special Provisions in accordance with 2024 Oregon Standard Specifications for Construction as amended and County Specification and Writing Style Manual. Consultant shall prepare the Special Provisions to the 90% level (the "Advance Special Provisions") in MS Word utilizing "Track Changes".

The Advance Special Provisions must incorporate County's boilerplate Special Provisions corresponding with the Project bid date. If a bid date has not been identified, Consultant shall use the most current boilerplate Special Provisions. Boilerplates, by bid date, can be found at the following website:

<https://www.oregon.gov/odot/Business/Pages/Special-Provisions.aspx>

Consultant shall obtain concurrence from County for any unique special provisions or changes made to the boilerplate Special Provisions, beyond fill-in-the-blank changes. Consultant shall document the changes made to the Special Provisions and County concurrence.

Consultant shall consult with County and incorporate the required insurance information into the Special Provisions.

**Advance Cost Estimate:**

Consultant shall update the construction cost estimate quantities and unit costs utilizing County standard bid items to support the Advance Plans (the "Advance Cost Estimate"). Consultant shall prepare the estimate to include mobilization, contingencies, and construction engineering based on the percentages agreed to by both parties. The estimate must be based on unit prices utilizing County, ODOT, and Consultant historic bid information for the anticipated bid letting. Consultant shall prepare the final cost estimate using excel or County required software.

**Construction Schedule:**

Consultant shall prepare a construction schedule, using the Critical Path Method (MS Project and PDF format) that outlines a reasonable Project construction sequence and time frames. The schedule must include anticipated material lead times, Project milestones and anticipated construction phasing and staging.

**Advance PS&E Revisions/Corrections:**

The CPM will submit a single electronic file of Advance PS&E Comment Log review comments to Consultant.

Consultant shall address comments received and communicate with the CPM the proposed resolution to the comments. Consultant shall provide written response to address review comments received from the CPM on the Advance PS&E.

### **15.2 Consultant Deliverables and Schedule**

Consultant shall submit the following to the CPM within 8 weeks of the CPM's written approval (e-mail acceptable) of the Final TS&L (Task 11.1):

- Advance Plans (PDF)
- Advance Special Provisions in electronic format (MS Word, utilizing "Track Changes")
- Advance Construction Cost Estimate in electronic format (Excel and PDF)
- Construction schedule in electronic format (MS Project format and PDF)
- Comment response log for plans and specifications (Excel)
- Special Provisions changes and County concurrence
- Consultant shall submit Advance PS&E Review Comment Log with initial responses to the CPM within 2 weeks of receipt of comments.

### **15.3 Final PS&E Package (100%)**

Consultant shall prepare the Final PS&E package for bidding purposes. The final plans, Special Provisions, and construction cost estimate must incorporate all revisions agreed to and documented on the Advance PS&E Comment Log (Task 15.2).

Consultant shall coordinate with the CPM to ensure all deliverables listed on the most current version of the Certified Local Public Agency PS&E Submittal Completeness Checklist will be satisfied.

County will review final plan sheets and note any final revisions needed prior to preparation and submittal of Professional of Record (POR)-signed Final Plans within 2 weeks of receipt of documents from Consultant. Consultant shall incorporate final revisions into POR-signed Final Plans.

Upon request from County, Consultant shall resolve comments from County.

### **15.3 Consultant Deliverables and Schedule**

Consultant shall submit the following to County, 2 weeks prior to the PS&E due date:

| Description                                                    | Format                 |
|----------------------------------------------------------------|------------------------|
| Unsigned Final Design Plans (11 x 17)                          | PDF                    |
| Project Special Provisions                                     | Word & PDF             |
| POR Certification with all Special Provisions sections stamped | PDF                    |
| Signed Special Provision Integrity Certification               | PDF                    |
| Special Provision Summary Form                                 | Excel                  |
| Construction Cost Estimate (County Format)                     | PDF, excel             |
| CPM Construction Schedule (11 x 17 in color)                   | PDF, MS Project format |
| Project Risk Assessment Summary                                | PDF                    |
| NEPA Approval Documentation (delivered under Task 3)           | PDF                    |
| Utilities Certification (delivered under Task 5)               | PDF                    |

Consultant shall submit the following to CPM, no later than 1 week prior to the PS&E Due Date:

- POR-signed Final Plans in PDF format

## **TASK 16 ADVERTISE AND AWARD ASSISTANCE**

This task includes the preparation of addenda, as needed, and responding to questions during the Advertisement or Ad phase of the project. Consultant shall respond to questions from County and prospective bidders about the plans and specifications during the advertisement for bids and award process.

The PM may not discuss possible or probable changes to the Project unless the changes have been formalized by issuance of an Addendum. Consultant shall alert the CPM if the potential response to a Bidder's question conflicts with the Bid Documents, and then an Addendum will be issued by County if determined appropriate in County's discretion.

Consultant shall prepare all required Contract addenda. Consultant shall submit the addenda to CPM for review, acceptance and distribution to prospective bidders.

### **16.1 Questions During Advertisement**

Consultant's Project Manager, or Consultant's designee(s) approved by County, shall assist County with questions regarding the bid documents and bid process. Consultant shall respond to all questions in writing within 2 business day(s) to CPM.

Consultant shall, during the bidding process, assist the County with the communications with prospective bidders and suppliers in a manner that assures that no prospective bidder or supplier is provided with information not in the bidding documents and that could provide a bidding advantage or disadvantage. Consultant shall prepare a written log to document conversations and questions asked by prospective bidders or suppliers and the answers provided to the County. Consultant shall maintain the written log in the Project file and provide upon request of the CPM.

### **16.1 Consultant Deliverables and Schedule**

Consultant shall provide:

- Written log of conversations, questions and answers. Provided to ACCPM upon request and no later than 5 calendar days prior to bid closing date.

### **16.2 Addenda to the Bid Documents (CONTINGENCY TASK; Requires separate NTP)**

This task identifies specific deliverables that the County at its discretion may elect to authorize Consultant to produce. Consultant shall only complete this Task 16.2 and the identified deliverables if written (email acceptable) NTP is issued by the County.

Consultant shall prepare up to 2 bid addenda to provide interpretation of construction documents.

If County chooses to authorize this work, Consultant shall submit Addendum documents within 5 calendar days from NTP unless a different timeframe is agreed to and stated in the NTP (prior to expiration of contract).

Consultant shall prepare and deliver to County the addenda text in a PDF and Microsoft Word file. Consultant shall prepare and deliver to County stamped drawings in PDF format. Consultant shall coordinate reviews of addenda by CPM prior to submittal. Consultant shall not be responsible for distributing addenda to bidders. County will issue and distribute all addenda.

## **16.2 Consultant Deliverables and Schedule**

Consultant shall provide:

- Bid document addenda; stamped PDF drawings; or special provision revisions

### **F. CONTINGENCY TASKS**

The table below is a summary of contingency tasks that County, at its discretion, may authorize Consultant to perform. Details of the contingency tasks and associated deliverables are stated in the Task section of the Statement of Work. Consultant shall complete only the specific contingency task(s) identified and authorized via written (e-mail acceptable) Notice-to-Proceed ("NTP") issued by County's Project Manager. If requested by County, Consultant shall submit a detailed cost estimate for the agreed-to contingency Services (up to the NTE amount(s) in the Contingency Task Summary Table) within the scope of the contingency task. County chooses to authorize some or all of these tasks, Consultant shall complete the authorized tasks and deliverables per the schedule identified for each task. The NTP will include the contingency task name and number, agreed-to due date for completion and NTE amount for the authorized contingency task.

Each contingency task is only billable (up to the NTE amount identified for the task) if specifically authorized per NTP. In the table below, the "NTE for Each" amount for a contingency task includes all labor, overhead, profit, and expenses for the task. The funds budgeted for contingency tasks may not be applied to non-contingency tasks without an amendment to the Contract. The total amount for all contingency tasks authorized shall not exceed the maximum identified in the table below. Each authorized contingency task must be billed as a separate line item on Consultant's invoice.

**Contingency Task Summary Table**

| Contingency Task Description                                           | NTE for Each | Max Quantity | Method of Comp. | Total NTE Amount | Fixed Fee |
|------------------------------------------------------------------------|--------------|--------------|-----------------|------------------|-----------|
| Task 3.3.1 OHCS NEPA Categorical Exclusion                             | \$ 20,216.78 | 1            | T&M             | \$20,216.78      | N/A       |
| Task 3.4.1 USACE/DSL/DEQ Joint Permit Application                      | \$ 17,599.33 | 1            | T&M             | \$17,599.33      | N/A       |
| Task 3.4.2 Oregon DEQ 1200-CA Permit Application                       | \$ 7,899.15  | 1            | T&M             | \$7,899.15       | N/A       |
| Task 16.2 Addenda to the Bid Documents                                 | \$2,346.58   | 1            | T&M             | \$2,346.58       | N/A       |
| <b>Total NTE For All Contingency Tasks:</b>                            |              |              |                 | \$ 48,061.84     |           |
| <b>Total For Any Contingency Fixed-Fee Amounts:</b>                    |              |              |                 |                  | \$ 0      |
| <b>Total NTE for Contingency Cost (and Fixed-Fee Amounts, if any):</b> |              |              |                 | \$ \$48,061.84   |           |



## EXHIBIT B – COMPENSATION

### Definitions:

**CPFF** – Cost Plus Fixed Fee

**FCCM** – Facilities Capital Cost of Money

**NBR** – Negotiated Billing Rates. NBRs are fully loaded billing rates used by firms that do not have an audited, approved overhead rate. NBRs are inclusive of direct salary, indirect expenses and profit.

**NTE** – Not to Exceed Amount

**T&M** – Time and Materials

### **A. METHOD of COMPENSATION for NON-CONTINGENCY TASKS**

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with Contract requirements and all applicable standards. Consultant shall complete all Services and provide all deliverables as defined in the Contract. If the applicable compensation is exhausted, but Services and deliverables are not complete, Consultant shall complete the Services and provide the deliverables to County's satisfaction without additional compensation.

The amount payable under the Contract may be adjusted by County or renegotiated to:

- Reduce the NTE, Fixed-Price or Fixed-Fee amount associated with Tasks/Deliverables that were not authorized by County or not performed by Consultant;
- Reduce the NTE, Fixed-Price or Fixed-Fee amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the Contract;
- Increase the NTE, Fixed-Price or Fixed-Fee amount for additional Tasks/Deliverables added to the scope of work via amendment to the Contract.

{The method(s) of compensation for contingency tasks, if any, is specified in Exhibit A, Contingency Task Summary Table.}

### **Time and Materials with Not-To-Exceed (T&M)**

County will pay Consultant for completion of Services required under the Contract on the basis of T&M, up to the NTE amount established in the Contract. Billable items include:

- **Loaded Costs**– the NBR (which is inclusive of profit and overhead costs); or the actual direct salary rate paid to the specific employee(s) (up to the maximum rate approved in the Contract for the employee's classification) productively engaged in work to complete the Services required under the Contract, plus profit and the approved overhead.
- **Direct Non-Labor Costs** (without mark-up) - Approved travel costs (up to the rates established in Section B of this Exhibit) and other approved direct-non labor expenses that are not included in overhead.
- **Subcontractor Costs** (without mark-up, unless County notifies Consultant otherwise in writing) - the hourly labor rates and direct non-labor costs (as described above) that have been billed to Consultant and recognized by Consultant as valid, undisputed and payable.

|                                                                                   |
|-----------------------------------------------------------------------------------|
| <b>The dollar amount for T&amp;M non-contingency Services is: \$ \$351,507.40</b> |
|-----------------------------------------------------------------------------------|

### **B. PAYMENT OPTIONS**

Payments will occur only after County has determined that Consultant has completed, and County has accepted, the required Services (including defined deliverables) for which payment is sought via a properly submitted and correct invoice.

**Progress Payments for Acceptable Progress.** County will pay Consultant monthly progress payments for actual costs, up to the Contract NTE amount, for Consultant's acceptable (and verifiable) progress on tasks and deliverables included in the invoice.

### **C. TRAVEL**

Travel costs are allowable only if they are authorized under the Contract and if the travel is essential to the normal discharge of County's responsibilities and is related to official County business. **All travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the County.** Personal expenses shall not be authorized at any time. The following guidelines shall apply to the Contract:

- The travel, lodging, and per diem rates referenced in this Section C are the maximums that Consultant's estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section C may be negotiated in the Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller at <https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf>.
- Mileage - For compensation based on Cost-Plus-Fixed-Fee or Time and Materials (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by County will be reimbursed according to the rates set forth by the State Controller at <https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> that are in effect on the date when the travel occurs.
- For compensation based on Cost-Plus-Fixed-Fee or Time and Materials, Consultant shall submit receipts for travel-related expenses billed to County, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official State business who shared the room.

### **D. INVOICES**

Consultant shall submit invoices in the format required by County (and with supporting documentation to substantiate charges on the invoice, including a detailed line-item breakdown of labor and direct non-labor costs by task/subtask) no more frequently than once per month. The address for invoice submittal is set forth in Exhibit F. In addition to all other applicable invoice requirements in this section D, each invoice must include the following information:

- The project name
- Invoice number
- Invoice date
- Billing period
- The County's Contract number
- The County's project number
- The County project manager's name
- Remit address
- Consultant project manager's name
- Task numbers from contract
- Percent complete of each task/deliverable
- Total amount due for the billing period

**Progress Reports:** Each monthly invoice must include a progress report. The monthly progress report must cover the period invoiced and, at minimum, must:

- Describe the previous month's project activities and the planned activities for the next month;
- For each task/deliverable identify the percentage completed during the month and the cumulative percentage completed;
- Reconcile progress of each task/deliverable with the schedule identified for each.
- Identify issues/concerns that may affect the project Statement of Work, schedule or budget.

#### **T&M Compensation:**

- Consultant shall prepare invoices based on the actual hourly rates, up to the maximums for each respective classification approved in the Contract, of the employees (or subconsultants) that performed the Services.
- Consultant shall provide documentation in each invoice to itemize all reimbursable actual labor costs and direct non-labor expenses for which Consultant seeks reimbursement, including a breakdown by task of the number of labor hours for each employee, employee names and classifications. Include receipts for any items purchased or equipment rentals for the Project that exceed \$100. Include copies of all invoices, similarly detailed, from authorized subconsultants.
- County will reimburse Consultant for approved travel expenses incurred in accordance with **Exhibit B**, Section C of the Contract, if County has agreed to reimburse Consultant for travel expenses. For travel expense claims include receipts for lodging; rental cars, airfare.

#### **E. PAYMENT TERMS**

Payment will be made to Consultant no later than 30 calendar days from receipt of invoice completed in conformance with all contractual requirements. County will endeavor to notify Consultant within 10 business days of receipt of invoice regarding any necessary revisions or corrections to the invoice. If revisions are necessary, payment will be made no later than 30 calendar days from receipt of the revised invoice. Any interest for overdue payment will be in conformance with Oregon law.

#### **F. CORRECTIVE WORK**

Consultant shall complete all Services, including Deliverables, as required in the Contract to County's satisfaction. If County, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, County shall notify Consultant in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Consultant shall respond to County outlining how the deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and Deliverables to County's satisfaction without further compensation. County will not unreasonably withhold payment.

#### **G. WITHHOLDING/RETAINAGE**

County reserves the right to initiate, at any time during the Contract, withholding of payment equal to 5% of the amount of each invoice submitted to County under the Contract. County will make final payment of any balance due to Consultant promptly upon verification of completion and acceptance of all Services by County and will pay interest as required on retainage.

#### **H. PAYMENT REDUCTION**

County, or its duly authorized agents, may audit Consultant's fiscal records, including certified payroll and overhead records at any time. If County finds previously undisclosed inaccurate or improper costs have been invoiced and paid, County will notify Consultant and seek clarification. County, in its sole discretion, may reduce the payment for Services by withholding the inaccurate or improper amounts from any future payment to Consultant, withhold the inaccurate or improper amounts from final payment to Consultant, or may use any other means to seek recovery of already paid but improperly calculated amounts.

#### **I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES**

##### **Specific Limitations**

For cost reimbursement compensation such as CPFF or T&M, Consultant shall invoice County only for actual productive time Consultant personnel spend on Services by any level of Consultant's staff (up to the established not-to-exceed amount). Consultant's general supervisors or personnel who are responsible for more than one County project shall charge only for actual productive time spent directly on the project identified in the Contract.

County will pay Consultant only up to the hourly rates set forth in the Contract that are commensurate with the type of Services performed regardless of the classification, title, or level of experience of the individual

performing those Services. However, under no circumstances shall Consultant invoice County based on higher direct salary rates than the actual amount paid to its employees.

**Discriminatory Pricing.** Direct and indirect costs as applied to work performed under County contracts and subcontracts may not be discriminatory against the County. It is discriminatory against the County if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-County work under comparable circumstances.

**Discriminatory Wage Rates.** Pursuant to ORS 279C.520, Consultant shall comply with the prohibitions set forth in ORS 652.220. Failure to comply is a breach that entitles the County to terminate the Contract for cause.

**Employee Discussions Regarding Compensation.** Consultant shall not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person {see ORS 279C.520(1)}.

### **Unallowable Charges**

County will not pay for direct or indirect costs that are unallowable under the provisions of [48 CFR Part 31](#).

Costs or direct charges for, but not limited to, the following are not reimbursable:

- Costs for negotiation of the Contract or Contract amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subcontractors or direct non-labor costs.
- Transfer of knowledge and information related to Key Person replacements.
- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).
- Premium costs incurred as a result of working overtime or holidays. (Premium time should normally be charged to overhead. In accordance with ORS 279C.520, employees shall be paid at not less than time and one-half for all overtime worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

## **J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES**

### **1. Approved cost data on file with ODOT -**

If Consultant or its subconsultants have current, approved overhead, salary, or NBR rate schedules on file at ODOT, Consultant and its subconsultants will submit those approved rate schedules and any required certifications (or County may obtain rate schedules from ODOT) as required in subsections 2 and 3 below for use under the Contract.

**2. Overhead Schedule** - If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted to County. Consultant Certification of compliance with Federal Cost Principles is required A signed [Certification of Final Indirect Costs form](#) must be submitted with the overhead schedule.

In order to assess the adequacy of an audited overhead rate for use in fair and reasonable price negotiation, County may evaluate a firm's financial capability, internal control structure, and overhead schedule. This includes a determination as to the applicability of historical overhead rates to the anticipated future contract period, performing financial ratio analysis, evaluating overhead account trends and utilization rates for reasonableness.

### **3. Salary and Billing Rate Schedules**

Consultant shall, and shall cause all of its subconsultants to submit electronically to County the applicable rate schedules described below.

**Direct Salary Rate Schedule** - includes the name, classification and actual direct salary rate as approved for each employee that may be used under the Contract. This schedule is required for firms that calculate an overhead rate. This schedule will not be included in the Contract but will be retained by County.

**Negotiated Billing Rate Schedule** - may be required for Consultants or subconsultants that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead as part of their normal accounting practice) and County determines it is in the public's best interest to negotiate specific billing rates. Instead of calculating a billing rate using a formula that applies overhead, profit, and Facilities Capital Cost of Money to the direct salary rate, this schedule lists negotiated rates that are fully inclusive of profit, overhead and any cost of living or merit raises. The billing rates invoiced under the Contract must not exceed the rates per classifications listed in the schedule and may be no greater than the lowest rates charged to other public or private clients.

**Direct Non-Labor Rate Schedule** - is an optional schedule used to list actual costs of reimbursable items that are not included in the firm's overhead rate (or that are properly applied as a credit in overhead calculation).

**Approved Rate Schedules** - The rate schedules approved for the Contract and the breakdown of costs (BOC) are incorporated into this Contract by this reference. Prior to approval of additional subconsultants, Consultant shall provide to County any requested documentation of qualifications and experience of the prospective subconsultant and its staff.

#### **K. RATE REVISIONS**

The hourly rates (including escalations, if any) approved for use under this Contract shall remain in effect throughout the duration of the Contract unless revisions are approved by County. Any approved revisions to the hourly rates allowable under the Contract shall not cause an increase in the Contract NTE amount (exceptions may be approved by County on a case by case basis).

#### **L. BREAKDOWN OF COSTS (BOC)**

Prior to execution of the Contract or any amendments that add Services, Consultant shall prepare and submit a BOC based on the approved overhead and actual direct salary rates (and approved NBRs as applicable) for each classification to be used under the Contract. Consultant shall include names of proposed staffing in the BOC.

The BOC must include a detailed breakdown of the costs for each element of the work regardless of compensation method. The BOC must identify:

- a) the proposed staff assignments (classifications and names) and hours per task and sub-task;
- b) an itemization with documentation (estimates from vendors shall be provided upon request) to support rental equipment, flaggers, travel and other direct non-labor expenses; and
- c) the estimate for Services as provided by each subconsultant that shows the assigned staff and hours per task and sub-task and itemized direct non-labor costs. County may ask for qualifications of any staff assigned to work on a project if they were not included in Statement of Proposal originally submitted for solicitation.
- d) the certification status of any disadvantaged business enterprise, minority-owned business, woman-owned business, service-disabled veteran-owned business or emerging small business subcontractors included in the BOC.
- e) **Contingency Tasks.** Amounts for any contingency tasks must be shown as a separate line-item for each task. The amount for a contingency task must include all labor, overhead, profit, and expenses for the task. Expenses for contingency tasks must not be included in an overall amount for direct non-labor expenses applied to the budget for the non-contingency tasks. Enter the agreed to unit and extended amounts for contingency tasks in the Contingency Task Summary table.

**The final BOC, dated April 24, 2026, is not physically attached, but is incorporated into this Contract by this reference with the same force and affect as though fully set forth herein. A copy of the final BOC has been provided to the Consultant prior to execution of this Contract.**

## **EXHIBIT C**

### **INSURANCE PROVISIONS**

A. **REQUIRED INSURANCE.** Consultant or shall obtain at Consultant's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Consultant shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:

i. **WORKERS COMPENSATION.** All employers, including Consultant, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Consultant shall require and ensure that each of its subconsultants complies with these requirements.

ii. **PROFESSIONAL LIABILITY.** Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Consultant shall provide proof of insurance of not less than the following amounts as determined by the County:

- ☒ **Required by County**   ☐ **Not required by County.**  
☒ \$1,000,000 Per occurrence limit for any single claimant; and  
☒ \$2,000,000 Per occurrence limit for multiple claimants  
☐ Exclusion Approved by Risk Manager

iii. **COMMERCIAL GENERAL LIABILITY.** Covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Consultant shall provide proof of insurance of not less than the following amounts as determined by the County:

- ☒ **Required by County**   ☐ **Not required by County.**

**Bodily Injury/Death:**

- ☒ \$1,000,000 Per occurrence limit for any single claimant; and  
☒ \$2,000,000 Per occurrence limit for multiple claimants  
☐ Exclusion Approved by Risk Manager  
☐ \$500,000 Per occurrence limit for any single claimant  
☐ \$1,000,000 Per occurrence limit for multiple claimant

iv. **AUTOMOBILE LIABILITY INSURANCE.** Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Consultant shall provide proof of insurance of not less than the following amounts as determined by the County:

- ☒ **Required by County**   ☐ **Not required by County.**

**Bodily Injury/Death:**

- ☐ Oregon Financial Responsibility Law, ORS 806.060 (*\$25,000 property damage/\$50,000 bodily injury \$5,000 personal injury*).  
☒ \$500,000 Per occurrence limit for any single claimant; and  
☒ \$1,000,000 Per occurrence limit for multiple claimants  
☐ Exclusion Approved by Risk Manager

B. **ADDITIONAL INSURED.** The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees and agents as Additional Insureds but only with respect to Consultant's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. **NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Consultant or its insurer(s) to County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by County.

D. **CERTIFICATE(S) OF INSURANCE.** Consultant shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Consultant shall pay for all deductibles, self-insured retention and self-insurance, if any.

## **EXHIBIT D – SPECIAL TERMS AND CONDITIONS**

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).



## **EXHIBIT E – ERRORS & OMISSIONS (E&O) CLAIMS PROCESS**

### ***E&O CLAIMS PROCESS***

The goals of the E&O claims process are to:

- Identify E&O issues and associated costs early
- Require timely notification to the Consultant of problem issues
- Establish a requirement to work together to correct, mitigate, or minimize the effects on the construction project's quality, schedule and budget and
- To identify associated costs when the standard of care has not been met and provide resolution of responsibility for "Premium" Costs incurred.

The process is focused on resolving issues at the lowest possible administrative levels in a spirit of collaboration. If the County Contract Administrator (CA) cannot reach resolution with the Consultant regarding E&O issues, however, the CA may request a standard of care determination from the Chief Engineer.

### ***Procedure for resolution of disagreements***

#### **GENERAL**

When either Party discovers or determines actions, omissions, or deliverables by the other Party to be incorrect or outside the terms of the contract, the following steps shall be followed:

- Provide oral and written notice of the issue (email, fax, or hard copy) to the other Party,
- Consultant shall provide CA requested records and documents pertaining to the issue and will participate in a technical review committee to determine if standard of care was met, at the request of the Chief Engineer.
- Work together to correct, mitigate or minimize the effects of the issue
- When the standard of care has not been met, work together to determine responsibility for any Premium Costs incurred as a result of the issue

#### **INITIAL VERBAL NOTICE AND WRITTEN LETTER OF CONCERN**

When either Party discovers or determines actions, omissions, or work products by either Party to be incorrect or outside the terms of the Contract, the discovering Party shall give timely oral notice and a written Letter of Concern to the other Party.

If the Consultant disagrees with any written or oral order of the County that in the opinion of the Consultant would entitle the Consultant to additional compensation, the Consultant shall provide oral notice and written Letter of Concern to the CA within seven (7) days of receiving the order from the County. The Letter of Concern must include an explanation of why the Consultant believes the requirements of the oral or written order are outside of the agreed scope of services. The CA shall acknowledge in writing receipt of the Consultant Letter of Concern.

If the County believes the Consultant has not performed with the required Standard of Care, the County shall provide the Consultant oral notice and written Letter of Concern. The Consultant shall acknowledge in writing receipt of the County's Letter of Concern and provide to the County all project related requested information.

#### **INFORMATION EXCHANGE AND RESOLUTION MEETING**

**The Consultant and CA shall meet within seven (7) calendar days of sending or receiving a Letter of Concern, or on a mutually agreed, to discuss the issue of concern and provide to the CA all requested information pertaining to the issue.**

The primary purpose of this meeting is to determine how, at the County's sole discretion, to correct, mitigate, or minimize the effects of the issue, including impacts of the issue on the construction project's work quality, schedule, and costs.

Following the County's determination of the appropriate corrective action, the Consultant and the CA shall work together to resolve responsibility and corresponding Premium Costs related to the issue.

If the CA is unable to reach satisfactory resolution of responsibility and corresponding Premium Costs with the Consultant, the CA will request the Chief Engineer to initiate an internal review.

#### **CLAIMS PROCEDURE**

The County, upon request of the CA and at the discretion and direction of the Chief Engineer, will undertake an internal review for the purpose of determining if the standard of care was met. The Consultant will cooperate with the internal review as requested.

If the Chief Engineer determines that standard of care has been met, then all parties are to continue to work together to correct, minimize or mitigate effects of the issue and it is the County's responsibility to cover Premium Costs.

If the Chief Engineer determines that standard of care has not been met, then Cost Evaluation and Recovery will be pursued.

The County may, at any time during the course of this Contract, and up to the time allowable by law following the final payment for any work on the contract, present the Consultant with a Claim for actual damages incurred due to any disagreement concerning standard of care issues and all subsequent damages suffered by the County arising from such issues.

#### **COST EVALUATION AND RECOVERY**

The Premium Costs incurred by the County and/or construction project resulting from the Consultant's failure to meet the standard of care will be evaluated and quantified. Any extenuating or mitigating factors in relation to cost recovery, such as limitations on fee and scope of services, time constraints for performance of services, unforeseen or changed conditions, third party requirements, responsibility and comparative fault of other parties, or other circumstances or constraints affecting the Consultant's performance will be considered.

Utilizing cost information generated by the County's internal investigation, the CA will meet with the Consultant in an attempt to reach agreement for resolution of responsibility and corresponding Premium Costs. If resolution is not reached, then the Chief Engineer or designee will meet with the Consultant and pursue one of all of the following actions:

- Negotiate a resolution with the Consultant
- Agree with the Consultant to share equally the cost to jointly present the issue to a creditable, neutral third party panel to obtain a non-binding recommendation
- Pursue other Alternate Dispute Resolution methods as agreed to with the Consultant, or
- Escalate the issue to litigation.

#### **ALTERNATE METHODS OF RECOVERY**

When the parties reach agreement on cost recovery for a failure to meet the standard of care determination, the Consultant may make restitution to the County in the following methods as agreed to by both Parties:

- Making direct payments to the County
- Correcting the deficient services
- Re-performing the deficient services
- Forfeiting payments for other services on other County Contracts
- Providing in-kind services at no cost to County
- Utilizing other methods acceptable to both parties

#### **Documentation**

The CA or designee shall document the contract file with all correspondence, notices, meeting notes and Letters of Concern related to E&O issues, claims, or potential claims. The file must include a written statement summarizing the findings of the claims process and the outcome, including:

- The determination of whether or not the Consultant met Contract requirements and met the standard of care;
- The determination of responsibility and whether there were mitigating circumstances beyond the reasonable control of the Consultant;
- The determination of whether or not the work requested by the County was within the scope of services of the Contract;
- If the Consultant was not required to correct deficiencies at no cost to the County, provide the reasons for that decision.
- A record of negotiation for any negotiated settlement subject to the rules regarding confidentiality of mediations in OAR 731 division 001.

## **DEFINITIONS**

**County** – Marion County, Oregon

**CA** – County's Contract Administrator overseeing the consultant contract and deliverables.

**County TI** – County Technical Investigator. A County manager familiar with the technical discipline at issue who independently reviews records and interviews personnel pertinent to the claim to determine if the standard of care was met.

**Consultant** – Private Sector entity, which has entered into a Contract with the County to provide Architectural or Engineering services and which employs, or engages the services of, the Professional of Record.

**Contract** - The project specific Contract between County and Consultant.

**Error** – Plan or specification details or contract administration actions which are incorrect, conflicting, insufficient or ambiguous

**E&O** – Errors and Omissions

**Omission** – The plans or specifications or contract administration actions are silent on an issue that should otherwise be addressed in the documents

**Parties** – Refers to County and Consultant collectively

**Party** – Refers to County and Consultant separately

**Premium Costs** – The additional costs incurred by the County and/or a construction project which result from the Consultant's failure to meet the Standard of Care. Premium Costs are dollar amounts paid for non-value added work. Premium costs are not reimbursed by the federal government on federal aid projects. Delays, inefficiencies, rework, or extra work as shown below, caused by the Consultant's failure to meet the standard of care, will be considered as non-value added work. Non- value added work can occur in three distinct situations:

- Work delays or inefficiencies.  
The Premium Costs are the total delay/inefficiency damages paid to the construction contractor.
- Rework  
The Premium Costs are the dollar amount of the original items of work that have to be removed and the costs to remove these items.

- **Extra Work**

The Premium Costs are computed as the net difference between the final agreed prices paid to the construction contractor and what the cost would have been had the extra work been included in the original bid at letting.

**Standard of Care** – For the standard of care that applies to your project, refer to the standard of care language included in the Contract for the project.

**TRC** – Technical Review Committee. A committee convened by the County Chief Engineer, chaired by the County TI and staffed by at least 3 technical experts chosen by the County TI from a list of County, ACEC and other technical experts. The committee is charged with reviewing records and interviewing personnel pertinent to the claim to determine if standard of care was met.

## EXHIBIT F – CONTACT INFORMATION and KEY PERSONS

### 1. Party Contact Information.

#### a.1 \* County's Project Manager (CPM)

|                |                                                                      |
|----------------|----------------------------------------------------------------------|
| <b>Name:</b>   | Scot Tencza                                                          |
| <b>Ph:</b>     | 503-588-7919                                                         |
| <b>E-mail:</b> | <a href="mailto:stencza@co.marion.or.us">stencza@co.marion.or.us</a> |

#### a.2 \*: County Contract Administrator for contractual matters:

|                |                                                                    |
|----------------|--------------------------------------------------------------------|
| <b>Name:</b>   | Alicia Jones                                                       |
| <b>Ph:</b>     | 503-373-4320                                                       |
| <b>E-mail:</b> | <a href="mailto:ajones@co.marion.or.us">ajones@co.marion.or.us</a> |

#### a.3 County's address for invoicing:

|                         |                                                                                                       |
|-------------------------|-------------------------------------------------------------------------------------------------------|
| <b>Mailing Address:</b> | Marion County Public Works<br>5155 Silverton Road. NE, Bldg.1<br>Salem, OR 97305<br>Attn: Scot Tencza |
| <b>E-mail:</b>          | <a href="mailto:jscates@co.marion.or.us">jscates@co.marion.or.us</a>                                  |

#### b. \*\*Consultant's Project Manager (PM) for this Contract is:

|                |                                                    |
|----------------|----------------------------------------------------|
| <b>Name:</b>   | Ed Chamberland                                     |
| <b>Ph:</b>     | 503-910-0234                                       |
| <b>E-mail:</b> | <a href="mailto:Ejc@deainc.com">Ejc@deainc.com</a> |

#### c. Consultant's remit address for payments and contact for billings:

|                 |                                                                                                                            |
|-----------------|----------------------------------------------------------------------------------------------------------------------------|
| <b>Name:</b>    | Jean Georgitso                                                                                                             |
| <b>Address:</b> | 5121 Skyline Village Loop South<br>Suite 200<br>Salem, OR 97306<br><br>Remit: PO Box 511777<br>Los Angeles, CA 900051-1777 |
| <b>Ph:</b>      | 503-361-8635                                                                                                               |
| <b>E-mail:</b>  | <a href="mailto:jege@deainc.com">jege@deainc.com</a>                                                                       |

\* County may change the Contract Administrator or Project Manager designation by promptly sending written notice (e-mail acceptable) to Consultant.

\*\*Any changes to Consultant's Project Manager must be approved in writing (e-mail acceptable) by County.

## **2. Key Persons**

Consultant acknowledges and agrees that County selected Consultant, and is entering into the Contract because of the special qualifications of Consultant's key personnel ("Key Persons" or "Key Personnel"), which may include specific staff agreed to during Contract negotiations. In particular, County, through the Contract is engaging the expertise, experience, judgment and personal attention of the Key Persons identified in the Contract.

Each Key Person shall not delegate performance of any management powers or other responsibilities he or she is required to provide under the Contract to another of Consultant's or subconsultant's personnel without first obtaining the written consent of County. Further, Consultant shall not re-assign or transfer any Key Person to other duties or positions such that the Key Person is no longer available to provide County with his or her expertise, experience, judgment, and personal attention according to any schedule established under the Contract without first obtaining County's prior written consent to such re-assignment or transfer. Notification of request to change a Key Person shall be in writing (via e-mail or other form as may be required by County.) Throughout the term of the Contract, Consultant shall provide updated information (if requested by County) to demonstrate the continuing qualifications of any staff working on County projects, including those approved as Key Persons.

In particular, County, through the Contract is engaging the expertise, experience, judgment and personal attention of the following Key Persons:

| <b>Name</b>        | <b>Role</b>                   |
|--------------------|-------------------------------|
| Ed Chamberland, PE | Project Manager               |
| Eric Paslack, PE   | Geotechnical Engineer         |
| Scott Sinclair, PE | Civil Engineering Design Lead |
| Jeanne Wright      | Cultural Resource Specialist  |
| Brett Karnes, PE   | Structures                    |

## **3. Reassignment or Transfer of Key Person**

In the event Consultant requests that County approve a reassignment or transfer of a Key Person:

- Consultant shall provide a resume for the proposed substitute demonstrating that the proposed replacement has qualifications that are equal to or better than the qualifications of the person being replaced.
- County shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person.
- Any substitute or replacement for a Key Person must be approved in writing (e-mail acceptable) and shall be deemed to be a Key Person under the Contract.

Consultant agrees that the time/costs associated with the transfer of knowledge and information for a Key Person replacement is not a cost borne by County and shall not be billed to County. This includes labor hours spent reviewing project documentation, participation in meetings with personnel associated with the Contract/project, and participating in site visits to become familiar with the project.

## **EXHIBIT G – Marion County Requirements for Non-Federal Entity Contracts**

### **Section 1: Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40

hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323. Procurement of recovered materials.

(K) See § 200.216. Prohibition on certain telecommunications and video surveillance services or equipment.

(L) See § 200.322. Domestic preference for procurements.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]



## Section 2: Additional Requirements for Non-Federal Entity Contracts

### 1. Audit Requirements

- Subrecipients must comply with the federal regulations set forth in 2 CFR §200.5XX Subpart F.
- Subrecipient must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law as set forth in 2 CFR §200.501(h).
- If Subrecipient expends federal awards in excess of \$1,000,000 in a fiscal year, Subrecipient is subject to audit conducted in accordance with the provisions of 2 CFR §200.5XX Subpart F. Copies of all audits must be submitted to the County within 30 days of completion.
- Subrecipient must save, protect and hold harmless the County from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the County.

2. System for Award Management - 2 CFR Part 25 - Subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. Subrecipient must also comply with applicable restrictions on subawards ("subgrants") to first tier subcontractors (first-tier "Subcontractors"), including restrictions on subawards to entities that do not acquire and provide (to the County) the unique entity identifier required for SAM registration.

3. Whistleblower Protection Act - 2 CFR § 200.217 - Subrecipient must comply and ensure the compliance by subcontractors, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Subrecipient must inform subcontractors, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.

4. Recordkeeping Requirements - Subrecipient must maintain records and financial documents for five years after all funds have been expended or returned to the County. The County may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Subrecipient must agree to provide or make available such records to the County upon request, and to the Government Accountability Office ("GAO"), U.S. Treasury's Office of Inspector General ("OIG"), and their authorized representative in order to conduct audits or other investigations.

6. Civil Rights Compliance - Recipients of Federal financial assistance from the U.S. Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the U.S. Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Subrecipient's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Subrecipient's

implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Subrecipient implementing regulations at 31 CFR part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, U.S. Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. U.S. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). U.S. Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal governments.

7. Real Property, Equipment and Other Capital Expenditures - County shall, and shall cause its Subrecipients to, maintain policies and procedures for the management of property and equipment that comply with all requirements of the applicable Uniform Guidance at 2 CFR Part 200, Subpart D, 2 CFR Part 200.310 – 200.316 and 200.439, and specific requirements of the source of funds. These regulations shall apply to all real property, equipment, and other capital expenditures purchased with the federal funding.

### **Section 3: Additional Federal Guidelines – Oregon Housing and Community Services / PIER Program (Planning, Infrastructure, and Economic Revitalization)**

#### **1. Duplication of Benefits Clause**

The Consultant certifies that it has not received, and agrees that it will not receive, any other financial assistance from any other source (including but not limited to FEMA, SBA, insurance proceeds, or private grants) for the specific services and 'Scope of Work' funded under this Contract. In the event the Consultant receives such assistance, it must immediately notify Marion County.

#### **2. Subrogation and Assignment Agreement**

The Consultant hereby assigns to Marion County all of its right, title, and interest in and to any 'Duplication of Benefits' as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The Consultant agrees to subrogate and deliver to Marion County any future payments received from any source for the same work or services performed under this Contract. The Consultant further agrees to assist the County and OHCS in the pursuit of any such third-party payments if necessary to ensure program compliance.



MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: August 12, 2026

Department: Public Works

Title:

**Public Hearing for Noise Variance 26-002/Rue 3 LLC**

Management Update/Work Session Date: N/A Audio/Visual aids ☐

Time Required: 5 min Contact: John Speckman Phone: 503-566-4173

Requested Action:

Staff recommended motion: Approve Noise Variance 26-002/Rue 3 LLC  
Other motion options for consideration are:  
1. Close the public hearing and deny the application.  
2. Close the public hearing and approve a modified request.

Issue, Description  
& Background:

Application of Ben Rue, Lucas Rue, Joel Rue, and Jesse Rue, on property owned by Rue 3 LLC, for a noise variance to allow music exceeding noise ordinance between 5:00 p.m. and 10:00 p.m. on August 23, 2026, on property located at 12333 Silver Falls Highway SE, Aumsville (T8S; R2W; Section 16; Tax lot 1000).

The applicant is hosting an employee appreciation event. A live band will play music outdoors at volumes that may exceed the noise ordinance. Under Marion County Code 8.45 Noise, the Marion County Board of Commissioners must hold a public hearing on the matter and issue a decision.

Financial Impacts:

None

Impacts to Department  
& External Agencies:

None

List of attachments:

Staff Report, Application, Site Plan

Presenter:

John Speckman

Department Head  
Signature:

*for Brandon Arch*

**County Commissioners**

Colm Willis, Chair

Kevin Cameron

Danielle Bethell



**Chief Administrative Officer**

Jan Fritz

**Director**

Brian Nicholas, PE

**MARION COUNTY PUBLIC WORKS**

**MARION COUNTY PLANNING DIRECTOR'S NOISE VARIANCE REPORT**

Application of Rue 3 LLC

)

Noise Variance 26-002

**APPLICATION**

Application of Ben Rue, Lucas Rue, Joel Rue, and Jesse Rue, on property owned by Rue 3 LLC, for a noise variance to allow music exceeding the noise ordinance between 5:00 p.m. and 10:00 p.m. on August 23, 2026, on Exclusive Farm Use (EFU) zoned property located at 12333 Silver Falls Highway SE, Aumsville (T8S; R1W; Section 16, Tax lot 1000).

**BACKGROUND**

The Marion County Planning Division has reviewed the above-referenced application and offers the following comments:

1. The property is an approximately 95-acre farm parcel located on the north side of Silver Falls Highway (HWY 214), approximately 5-miles east of where Silver Falls Highway meets Highway 22. The property is the headquarters of Victor Point Farms.
2. Surrounding properties are almost all zoned EFU and in commercial farm use. The predominant crop grown in the area is grass seed. A few hundred feet east is the only non-EFU parcel in the area, an Industrial (I) zoned property which is a meat processing and pet food production facility.
3. The application is for a noise variance to allow noise exceeding 65 decibels (dBA) between the hours of 5:00 p.m. and 10:00 p.m. for one day only on August 23, 2026. The application was submitted on July 17, 2026, more than 35 days before the event as required by MCC 8.45.090(B). All property owners within 1,500-feet of the subject property were mailed notice of the hearing. Many of the farm properties in the area contain farm dwellings. The closest neighboring dwelling to the proposed temporary stage location is approximately 1,500-feet to the east.

**MARION COUNTY CODE (MCC) CHAPTER 8.45 FINDINGS**

4. Under MCC 8.45, noise from any musical instrument is limited to 65 dBA during those hours between 7 a.m. and 10 p.m. unless a variance is granted. The criteria for a variance are listed in MCC 8.45.090(E) and include:
  1. *The variance will provide a substantial benefit to the public generally;*
  2. *Denial would significantly delay, increase the cost, or impact the utility of the project or event;*
  - and
  3. *Effective measures will be implemented to mitigate, to the extent feasible, significant noise impacts.*

5. The applicant is the company that owns the property, Rue 3 LLC, which is hosting a private employee appreciation event. This event will feature live music being played in the front yard of the dwelling on the southern end of the property between 5:00 p.m. and 10:00 p.m. The proposed event will not generate significant noise outside of the permitted hours of 5:00 a.m. to 10:00 p.m., however the applicants expect the volume to exceed 65 decibels and therefore seek this noise variance to permit sound at higher levels be produced during the hours between 5:00 p.m. and 10:00 p.m. Approval of this variance will permit the celebration of a company who employs many people in the local area. Denial would impact the utility of the event by requiring a more somber tone. The site plan shows that the band will be playing music in front of the dwelling on this property. The closest dwellings to this location are approximately 1,500-feet to the east, and 1,800-feet to the west. Due to the distance from the source of the music, and the fact the applicant will end music at 10 p.m. consistent with the standard hours in Chapter 8.45, it appears that the proposed noise variance will not create any significant noise impacts on neighboring properties.
6. Based on the information provided, the Planning Director recommends approval of this application.



**Marion County**  
OREGON

# NOISE ORDINANCE VARIANCE APPLICATION

Application must be submitted at least 35 days prior to event date

Do not double-side or spiral bind any documents being submitted

Fee: ☒ \$500

☐ \$0 if submitted in conjunction with a Mass Gathering Application

**RECEIVED**

JUL 17 2026

Marion County  
Planning

|                                                                          |                                                                      |
|--------------------------------------------------------------------------|----------------------------------------------------------------------|
| NAME OF EVENT OR USE:<br>OMS CELEBRATION                                 | DATE(s) AND TIMES FOR VARIANCE:<br>8/23/26<br>5 PM - 10 PM           |
| ADDRESS OF LOCATION:<br>12333 SILVER FALLS HWY SE<br>AUMSVILLE, OR 97325 | NAME OF ORGANIZATION (if applicable):<br>VICTOR POINT FARMS          |
| NAME OF PERSON REQUESTING VARIANCE:<br>BRENN VICK & BEN RUE              | ADDRESS, CITY, STATE, ZIP<br>1451 NW MILWAUKEE AVE<br>BEND, OR 97701 |
| DAYTIME PHONE NO.:<br>541 786 5758                                       | E-MAIL:<br>BRENN.VICK@THE-PROGRAM.COM                                |
| EVENT EMERGENCY CONTACT NAME:<br>BEN RUE                                 | 24-HOUR PHONE NO.:<br>503 871 0254                                   |
| PROPERTY OWNER(S) NAME:<br>BEN, JESSE, JOEL, & LUCAS RUE                 | MAILING ADDRESS, CITY, STATE, ZIP<br>12333 SILVER FALLS HWY SE       |

## REQUIRED INFORMATION

**NATURE OF THE EVENT:** Indicate what will happen at your event and the provision in the Noise Code for which the variance is requested (attach an additional sheet if necessary).

~~BACKYARD~~ BACKYARD CELEBRATION W/ A BAND FOR 200 PPL

3rd Contact: Kate Warwick 859-814-9166

## FOR OFFICE USE ONLY:

Township 8S Range 1W Section 16  
Tax lot number(s) 1000  
Zone EFU /zone map number 46/47  
Case Number NV-26-002  
TPA/header ✓

### Application elements submitted:

☒ Title transfer instrument  
☒ Site plan  
☒ Filing fee P.E. 68 7/17/2026  
☒ Applicant statement

Application accepted by ACS

Date 7/16/2026

**HOW AND WHERE WILL SOUND AMPLIFICATION BE USED DURING THE EVENT?** Include nature of the noise and location on the property.

LIVE BAND IN FRONT YARD

**AT WHAT TIME WILL THE NOISE BE CREATED AND FOR HOW LONG?** (Time period for which the variance is to apply)

5 PM - 10 PM

**DESCRIBE THE EXTENT AND SCOPE OF MEASURES THAT WILL BE OR HAVE BEEN TAKEN TO REDUCE OR DIMINISH THE DISTURBANCE** (attach an additional sheet if necessary):

CHOOSE LOCATION FARTHEST AWAY FROM NEIGHBORS ACROSS STREET FROM EMPTY FIELD AND FIELDS ON BOTH SIDES.

**THE APPLICANT(S) AND PROPERTY OWNERS SHALL CERTIFY THAT:**

- A. If the permit is granted, the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
- B. I/We hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements and the statements in the site plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.
- C. I/We hereby grant permission for and consent to Marion County, its officers, agents, and employees, law enforcement, public health and fire control officers to come upon the above-described property to gather information and inspect the property whenever reasonably necessary for the purpose of processing this application and/or monitoring the terms and conditions of the permit issued and any other applicable laws or ordinances.
- D. The applicants have read the entire contents of the application, including the procedures and criteria, and understand the requirements for approving or denying the application.

**PRINTED NAME AND SIGNATURE** of each owner of the subject property.

Ben Rue  
Print Name

[Signature]  
Signature

Joel Rue  
Print Name

[Signature]  
Signature

Lucas Rue  
Print Name

[Signature]  
Signature

Jesse Rue  
Print Name

[Signature]  
Signature

**PRINTED NAME AND SIGNATURE OF THE APPLICANT/ORGANIZER** (if different from property owner)

BRENN VICK [Signature]

DATED this 16 day of JULY, 2026

## Applicant Statement (required)

It is up to the applicant to fully explain your proposal and how it conforms to Marion County land use regulations. This is your opportunity to provide detailed information on the "who, what, where, when and why" that is specific to your proposal.

There are specific criteria and regulations for each zone; these are available from the Planning Division. We strongly encourage you to obtain a copy of this information, review it, and then prepare your "applicant's statement".

These are a few items you should consider including (where applicable):

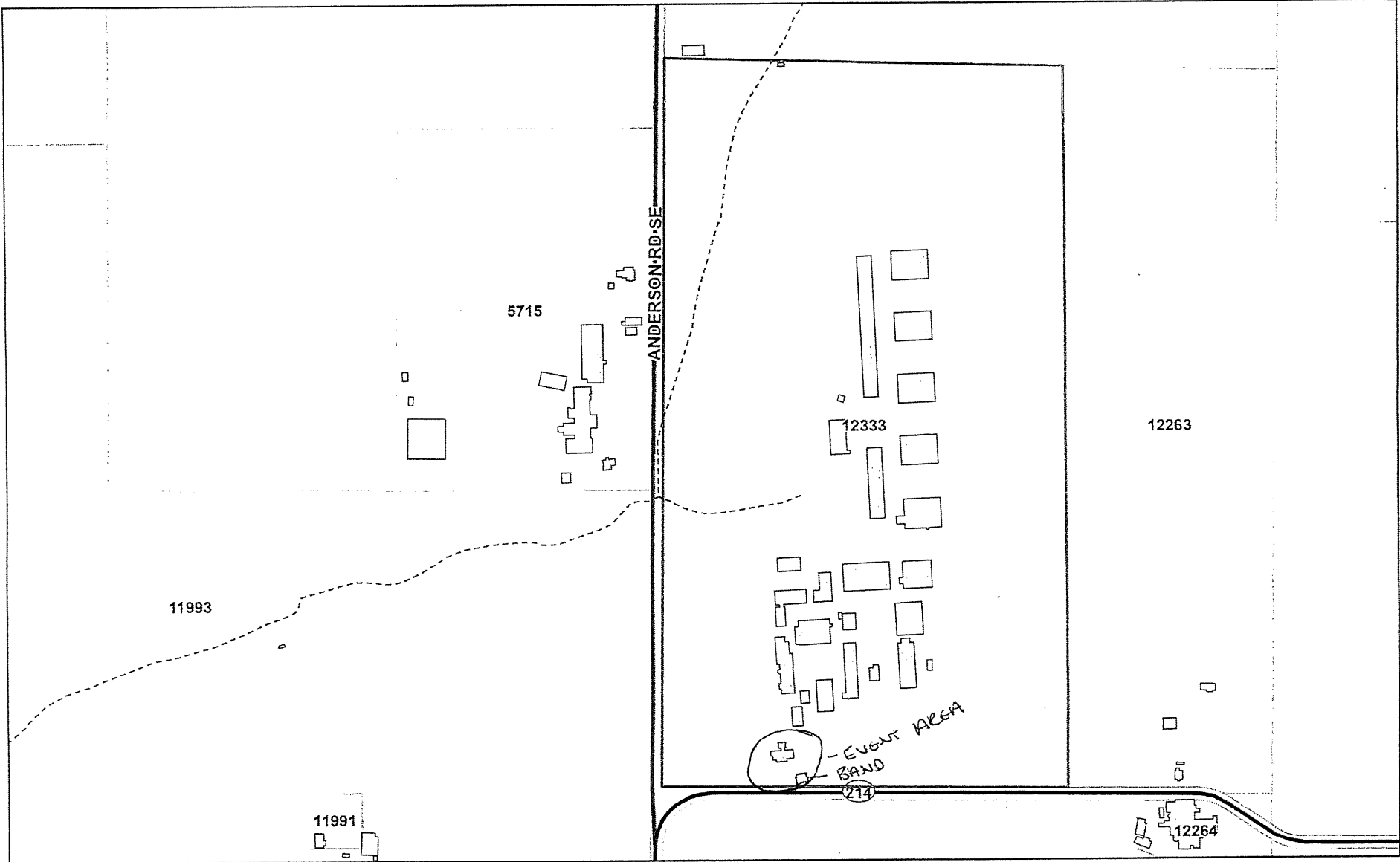
- Describe the property as it exists now and after implementation of the proposal: topography, existing structures and their use, new or alteration of structures, etc.
- Describe surrounding properties: type of land use, scale of development, etc. and any impact your proposed use might have on these properties such as dust, noise, fumes or odors, traffic, etc. And, if so, what measures will you take to mitigate these impacts?

OMS SOIL COMPANY'S VICTOR POINT FARMS ARE HAVING A  
CUSTOMER/EMPLOYEE APPRECIATION PARTY AUGUST 23, 2026  
FOR 200 PEOPLE FROM 5 PM - 10 PM. WE WILL HAVE A  
LIVE BAND PERFORMANCE WITH AMPLIFICATION.  
CASUAL BUFFET STYLE DINNER WITH LIVE MUSIC FOR EVERYONE  
TO HANG OUT AND MINGLE.

(use additional paper if needed)



Land Use Planning Web Map



Page 7 of 8

7/16/2026, 4:05:30 PM

- MC Building Outlines - 2016 Roadways

Streams

----- Intermittent

State Roads

County Roads

NCR, Limited Maintenance

Non County Roads

County Owned, City Maintained

City Roads

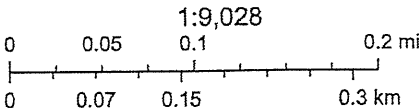
Federal Roads

Private Roads

Parcels

County Boundary

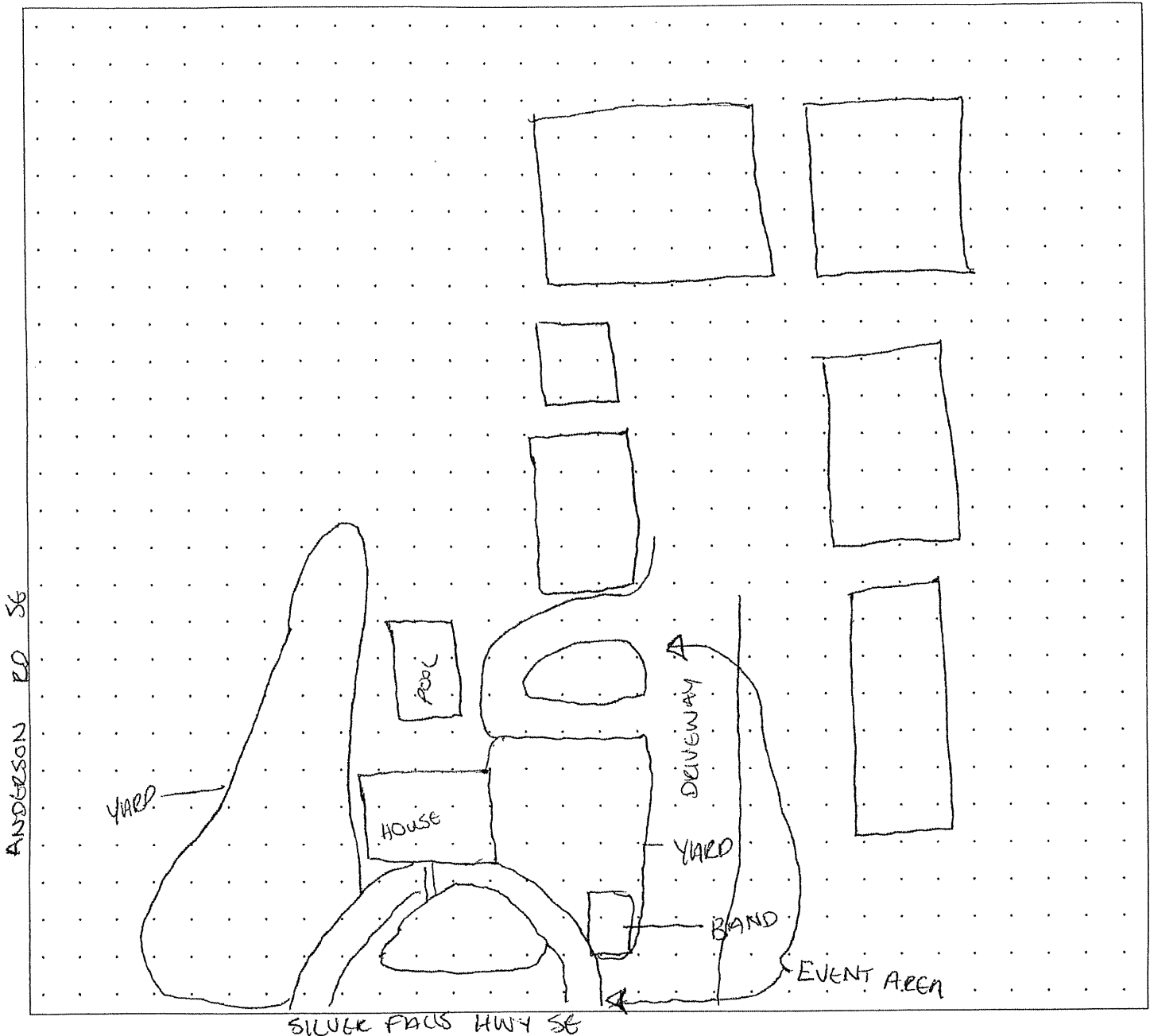
City Boundaries



MC IT-GIS, MC PW, MC-ASR, MC-IT GIS, MC IT-GIS, MC Planning

**SITE PLAN MUST SHOW ALL PROPERTY LINES AND DIMENSIONS**

- ☐ Drawn to Scale: 1 square = \_\_\_\_\_
- ☐ Feet Not Drawn to Scale: Total Acres \_\_\_\_\_



I certify that the above information is accurate to the best of my knowledge. I AM THE [ ] Owner ☒ Authorized Agent

NAME (please print): BRENN VICK

My telephone number is: 541 786 5758

Applicant's Signature: [Signature] Date: 7/16/26

Applicant's Mailing Address: 1451 NW MILWAUKEE City: BEND Zip: 97701

FOR OFFICE USE ONLY

PLANNING: \_\_\_\_\_ Date: \_\_\_\_\_

PUBLIC WORKS: \_\_\_\_\_ Date: \_\_\_\_\_

BUILDING INSPECTION: (Acceptable for Planning requirements only) \_\_\_\_\_ Date: \_\_\_\_\_



MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: August 12, 2026

Department: Public Works

Title: Public Hearing on remand of Partition/Variance 25-013/Francisco Villalobos

Management Update/Work Session Date: N/A Audio/Visual aids ☐

Time Required: 20 min Contact: Austin Barnes Phone: 503-566-4174

Requested Action:

Staff recommends Partition/Variance 25-013/Francisco Villalobos be approved. Other options are:

1. Continue the public hearing.
2. Close the public hearing and leave the record open, to deliberate at a later date.
3. Close the public hearing and deny or modify the request.
4. Remand the matter back to the Hearings Officer

Issue, Description & Background:

Partition/Variance 25-013 was to partition an 8-acre parcel into three parcels and for a variance to allow six dwellings to be accessed off a private easement in an Acreage Residential zone located at 2628 Happy Valley Way SE. The Planning Director approved the application which was subsequently appealed. On August 7, 2025, the Hearings Officer held a hearing with an open record period and issued a decision on September 9, 2025, approving the request. This was appealed to the Board which denied the appeal on the basis of no new arguments being made. This decision was appealed to LUBA who remanded the matter back to the county, stating that our code did not clearly provide for a variance to allow more than 4 dwellings on a private easement. Applicants have chosen to move forward with a remand hearing.

Financial Impacts:

None

Impacts to Department & External Agencies:

None

List of attachments:

Board Decision, LUBA Remand

Presenter:

Austin Barnes

Department Head Signature:

*For Brandon Reel*

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

|                      |   |                    |
|----------------------|---|--------------------|
| In the Matter of the | ) | Case No. P/V25-013 |
| Application of:      | ) |                    |
| Francisco Villalobos | ) |                    |

**ORDER NO. \_\_\_\_\_**

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Francisco Villalobos to partition an 8-acre parcel into three parcels consisting of 4-acres, 2-acres, and 2-acres and a variance to MCC 17.110.800 to allow five dwellings to be served off a private easement in an AR (Acreage Residential) zone located at 2628 Happy Valley Way SE, Salem (T8S; R2W; Section 2C; Tax lot 100).

The Marion County Hearings Officer held a duly noticed public hearing on this application on August 7, 2025, and issued a decision approving the proposal on September 9, 2025. The Hearings Officer's decision was appealed to the Board on September 24, 2025. On October 29, 2025, the Board considered the appeal, application, record, and findings.

IT IS HEREBY ORDERED that the appeal is **DENIED**, and the Board affirms the Hearings Officer's decision on this matter, which is attached as Exhibit A.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2025, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

**JUDICIAL NOTICE**

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of

FRANCISCO VILLALOBOS

)  
)  
)

Case No. P / V 25-013

**PARTITION / VARIANCE**

**ORDER**

**I. Nature of the Application**

This matter comes before the Marion County Hearings Officer on the Application of Francisco Villalobos to partition an 8-acre parcel into three parcels consisting of 4-acres, 2-acres, and 2-acres and a variance to MCC 17.110.800 to allow five dwellings to be served off a private easement in an AR (Acreage Residential) zone located at 2628 Happy Valley Way SE, Salem.

**II. Relevant Criteria**

The standards and criteria relevant to this application are found in the Marion County Rural Code, Marion County Code (MCC) Chapter 17, particularly Chapter 17.128 (Acreage Residential Zone), Chapter 17.122 (Variances), and Chapter 17.110.800 (Dwellings and all other buildings to be accessible to a public street).

**III. Public Hearing**

A public hearing was held on this matter on August 7, 2025. At the hearing, the Planning Division file was made a part of the record. The following persons appeared at the hearing and provided testimony and/or argument on the Application:

- |    |                |                                 |
|----|----------------|---------------------------------|
| 1. | Austin Barnes  | Marion County Planning Division |
| 2. | Norman Bickell | Applicant Representative        |
| 3. | Victor Pagel   | Appellant / Opponent            |

No objections were made to notice, jurisdiction, or conflict of interest. The following exhibits were presented at the hearing, and included in the record:

- Exhibit 1: Map 08 2W 02C  
Exhibit 2: Written Statement of Victor Pagel

An open record period was requested by Applicant and Appellant pursuant to ORS 197.797 and MCC 16.44.100. Applicant provided his first open-record submission to Planning on August 12, 2025. However, because of an email address error, Mr. Pagel did not receive the submission until Monday, April 18, 2025. Mr. Pagel therefore requested until Monday, August 25, 2025 to provide a second open-record submission, and the Applicant was granted until September 2, 2025 for a final submission to allow for the Labor Day holiday on September 1, 2025.

PARTITION / VARIANCE 25-013

Francisco Villalobos

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The following submissions were entered into the record:

- |                       |                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| Open Record Period 1: | Response to Appellant Letter Opposing the Granting of a Variance/Partitioning on Applicant's Property from Norman Bickell for Francesco Villalobos |
| Open Record Period 2: | Submission of Victor Pagel                                                                                                                         |
| Open Record Period 3: | Final Submission from Norman Bickell on behalf of Applicant                                                                                        |

#### **IV. Executive Summary**

Applicant seeks to partition an 8-acre parcel into three parcels consisting of 4-acres, 2-acres, and 2-acres and a variance to allow five dwellings to be served off a private easement in an AR (Acreage Residential) zone. Marion County Planning Division approved the application, and the decision was appealed by an adjacent property owner.

The Notice of Appeal challenges whether MCC 17.122.010 authorizes a variance of the number of dwellings to be served by an easement. If such authority exists, Appellant also challenges whether Applicant meets the variance criteria.

Marion County Planning has interpreted MCC 17.122.010 to allow a variance, and variances to the number of dwellings allowed off a private drive were granted in V 22-004 (after a public hearing), V 06-007, and V 06-002. MCC 17.122.010 includes language that provides authority for the hearings officer (or director, planning commission or Board) to allow a variance for a "any of the standards of this title" (not uses). A "standard of this title" is the access standard. The four-dwelling limit on a private drive is a standard stated at MCC 17.110.800. As a standard, the four-dwelling limit can be varied if the variance criteria are satisfied.

Further, the AR zone has a limitation on the amount of land available for development, and the allowance of a variance to reach density allowed in the zone will accomplish efficient use of the land in the AR zone and is critical to reduce the pressure for expanding the zone into adjacent resource zones.

Upon presentation of the evidence and review of the record, the Hearings Officer determines that the proposed partitioning and variance complies with the criteria in the AR zone and Applicant has met his burden of proving the applicable standards and criteria for **APPROVAL** subject to conditions.

#### **V. Findings of Fact**

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:



1. The property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas.
2. The subject property is located at the end of Happy Valley Way SE, approximately 450 feet south of its intersection with Burton Pl SE. The property contains one dwelling and a few accessory structures in the northeast corner. South of the dwelling contains a dense wooded area. A canal/ditch runs along the southwest property line.

The subject property was first created as Parcel 1 of Partition Case P94-051. The property was then subject of P/PLA23-021, in which tax lot 100 gained acreage from the southern portion of what was once tax lot 200, making tax lot 100 8-acres in size. The subject property is therefore legal for land use purposes.

3. Surrounding uses consist of AR parcels containing acreage homesites.
4. Applicant proposes to divide an 8-acre parcel into three parcels consisting of 4-acres, 2-acres, and 2-acres. The applicant also requests a variance to allow more than four dwellings to be served by a private road, as the roads Burton Pl and Happy Valley Wy already create access to four dwellings.
5. The Marion County Planning Division requested comments from various governmental agencies:

Public Works Land Development and Engineering Permits (LDEP) commented:

Applicant is advised to consult with the local Fire Marshal regarding any plat requirements for depiction of fire easement turnouts and/or turnaround and potential construction of emergency access improvements as triggered by application for building permits.

Marion County Surveyor's Office commented:

- a. Parcels must be surveyed and monumented.
- b. Per ORS 92.050, plat must be submitted for review.
- c. Checking fee and recording fees required.
- d. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.

Marion County Fire District No. 1 commented that the project must meet following code requirements:

- a. Fire-flow requirements for buildings in protected areas without adequate and reliable water systems. The 2017 National Fire Protection Association 1142,

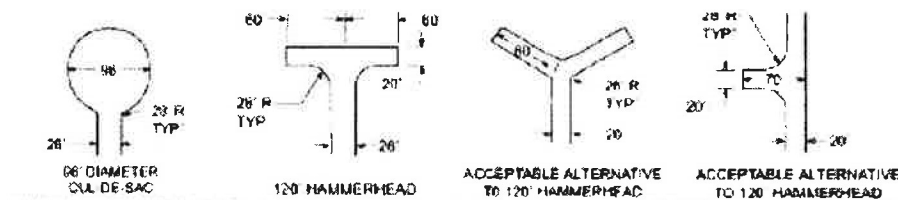
PARTITION / VARIANCE 25-013

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Standard on water supplies for suburban and rural firefighting. 2022 Oregon Fire Code Section B 107. The requirements for firefighting water supplies may be modified as approved by the fire code official where any of the following apply: (2022 OFC 503.1.1 Exception).

- i. Buildings are equipped throughout with an approved automatic fire sprinkler system (the approval of this alternate method of construction shall be accomplished in accordance with the provisions of ORS 455.610(5).
  - ii. There are not more than two Group R-3 or Group U occupancies.
- b. Fire Safety During Construction: Approved fire department access road, required water supply, fire hydrants, and safety precautions shall be installed and serviceable prior to and during the time of construction. 2022 Oregon Fire Code Chapter 33.
  - c. Turnouts: When a fire apparatus access road exceeds 400' feet in length, turnouts 10' feet wide and 30' feet long shall be provided in addition to the required road width and shall be placed no more than 400' feet apart, unless otherwise approved by the fire code official. These distances may be adjusted based on visibility and sight distances. (OFC Chapter 5)
  - d. Turning radius: The inside turning radius and outside turning radius shall be not less than 28 feet and 48 feet respectively, measured from the same center point. (2022 OFC 503.2.4 & Appendix D)
  - e. Fire apparatus road distance from buildings and turnarounds: Access roads shall be within 150' of all portions of the exterior wall of the building as measured by and approve route around the exterior of the building. An approved turnaround is required if the remaining distance to an approve intersection roadway, as measured along the fire apparatus access road, is greater than 150'. 2022 Oregon Fire Code 503.1.1
  - f. Dead End Roads: Dead end fire apparatus access roads in excess of 150' feet in length shall be provided with an approved turnaround. Diagrams of approved turnarounds are shown below: (OFC 503.2.5)





- g. Fire Apparatus Access Road Width and Vertical Clearance: Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet; 26 feet adjacent to fire hydrants 2014 Oregon Fire Code (OFC) Appendix D 103.1 and an unobstructed vertical clearance of not less than 13 feet 6 inches. 2022 Oregon Fire Code Section 503.2.1 and Appendix D103.1
- h. No parking signs: Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed. Roads 26 feet wide or less shall be posted on both sides as a fire lane. Roads more than 26 feet wide to 32 feet wide shall be posted on one side as a fire lane. Signs shall read "NO PARKING – FIRE LANE" and shall be installed with a clear space above grade level of 7 feet. Signs shall be 12 inches wide by 18 inches high and shall have red letters on a reflective white background. 2022 OFC D103.6-D103.6.2. You may contact the Fire Marshal if you would like code requirement for painted curbs. 2022 OFC 503.3
- i. Premise identification: Buildings shall have address numbers or approved identification placed in a position that is plainly legible and visible from the access road fronting the property. Numbers shall contrast with their background and shall be a minimum of 4 inches height with a minimum stroke width of ½ inch. 2022 OFC 505.
- j. Gates: Gates securing fire apparatus roads shall comply with all the following (2022 OFC D103.5):
  - i. Minimum unobstructed width shall be 16 feet.
  - ii. Gates shall be set back a minimum of 30 feet from the intersecting roadway.
  - iii. Gates shall be of the swinging type or sliding type.
  - iv. Manual operation shall be capable by one person.
  - v. Electric gates shall be equipped with a means for operation for fire department personnel.
  - vi. Locking devices shall be approved

Marion County Building Inspection commented: "No Building Inspection concerns. Permit(s) are required to be obtained prior to development of structures and/or utilities installation on private property."

Marion County Septic commented: "A site evaluation is required for both proposed 2-acre parcels and an Existing System Evaluation is required on the proposed 4-acre parcel to verify a 10' setback to property lines and verify there is room for a repair system on the property."

Marion County Tax Assessor provided information regarding taxes on the subject property.

All other contacted agencies either failed to comment or stated no objection to the proposal.

6. Austin Barnes, Marion County Planning Department, testified at the hearing. Mr. Barnes stated that this proposal involves a private drive that is located off a private drive, which was previously allowed by the County but is now longer permitted. Mr. Barnes explained that when Planning is considering a variance to a private road, the significant inquire is whether the road is safe and are there any existing hazards. In this case, based on historic use and road engineering, there are no safety concerns from Planning's perspective. Mr. Barnes noted that the Appellant previously applied to partition as the Applicant has done, and such application was approved. Mr. Barnes further explained that the Appellant's concern about the reduction of his property value based upon the partition and variance is not a criterion under the Marion County Code. Mr. Barnes responded to the Appellant's concern that the variance criteria is not satisfied in noting that no criteria is cited by Appellant. Mr. Barnes stated that in this case, there is no other way to provide access to the parcel, and that if development is permitted, the road safely supports additional traffic. Planning determines that the variance criteria are met.
7. Norman Bickell, Applicant Representative, testified at the hearing. Mr. Bickell testified that he agrees with Planning that this area of Macleay has been partitioned prior to land use planning in 1973, and that there has been redivision over the years. Mr. Bickell does not see that the Appellant would be losing value to his property with approval of the application, but that issue does not have any bearing on whether the criteria is met. Mr. Bickell argues that the criteria are satisfied, and that the hearings officer does have authority to grant a variance to the number of dwellings served under MCC 17.122.020. Mr. Bickell states that there could not be an extension to Burton place because the lots are not owned by the Applicant. Mr. Bickell testified that there are no safety issues associated with the roadway because the road is paved, and the 12-foot width is sufficient for a private road.
8. Victor Pagel, Appellant, testified at the hearing. Mr. Pagel submitted his written comments as Exhibit 2. Mr. Pagel stated that he and his wife, Martha Pagel, deceased bought their property in 1987. Mr. Pagel stated that before the hearings officer can review the criteria, the determination must be made regarding whether MCC 17.122.010 gives the hearings officer the power to grant a variance. Mr. Pagel argues that the hearings office does not have the authority to grant a variance under MCC 17.122.010: the type of variance requested (limitation of the number of dwellings per easement standard) is not permitted. Mr. Pagel states that because MCC 17.122.010 includes specific references (lot area, lot width, percentage of lot coverage and number of dwelling units or structures permitted on a lot, height of structure, location, yards, signs, parking and loading space, vision clearance and other standards), because "number of homes to be served by a private roadway" is not included, it is specifically excluded.

Mr. Pagel testified that the only review criteria on which Planning focused is safety. Mr. Pagel argues that the easement is only a single lane of traffic, and he disputes that there are only two lots without sufficient right of way. Mr. Pagel argues there are alternative to

the variance, including extending Burton Place. Mr. Pagel testified that the County no longer permits the private intersections, and it should similarly not increase use with a variance in this case. Mr. Pagel argues that increased traffic results in a decreased value of his property which has the effect of condemnation.

Victor Pagel testified that his objection is focused on the variance, not the partition.

9. On August 12, 2025, Applicant's First Open Record Submittal was received. Applicant's submission addressed the questions presented by Appellant: (1) Whether the hearings officer has the authority to grant a variance; (2) Whether the criteria in MCC 17.122.020 is met; (3) Whether the 10.5 feet paved roadway is sufficient for vehicular traffic; (4) Whether other property owners were approached to extend public right of way; and (5) Whether the easement concerns raised by applicant are sufficient to limit additional use of the easement.

Applicant argues that the power to grant variances arises in MCC 17.122 language allowing a variance with respect to the "number of dwelling units" when "limits for an adjustment" in 17.116.030 are exceeded." Marion County Planning determined, based on policy and interpretation, that the number of dwelling units that are limited off a private easement is a variable standard.

Applicant's continued position is that the criteria of MCC 17.122.020 is satisfied.

Applicant agrees to add two additional feet of gravel to the existing 10.5 feet paved roadway to verify the easement is an all-weather surface with a minimum of 12 feet.

Applicant argues that he has no right to provide for a public street extension of Burton Place SE, and that such provision is cost-prohibited. Also, Applicant has frontage on the easement.

Applicant argues that Appellant's easement concerns are shared with any easement, and that the concerns would be in place regardless of the number of dwelling units served by the easement.

10. On August 25, 2025, the Appellant submitted his supplemental comments in opposition to the variance requested in P V 25-013. Appellant argues that MCC 17.122.010 is silent as to the limitation of the number of dwellings per easement standard, yet specific with regard to listing matters about which standards may be varied. Mr. Pagel argues that a legislative act is required to modify MCC 17.110.800 to allow its variance.

Appellant argues that the feasibility of alternate should be further considered, and that safety of the existing access and risks of damage raises a legitimate question about whether the criteria for a variance have been satisfied.



11. On September 2, 2025, the Applicant submitted his final submission. Applicant argues that the number of additional dwellings to be served by the easement is a variable standard, and that the interpretation is consistent with prior County decisions (included for illustrative purposes). Applicant also argues that there are no alternatives to a variance (as suggested by Appellant) because the alternative unreasonably requests that other property owners (not participating in the hearing) to give up an additional 30 feet of their property to accomplish the 60 feet required for a public street (none of which would be the appellant).

## **VI. Additional Findings of Fact and Conclusions of Law**

1. Applicant has the burden of proving all applicable standards and criteria are met by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

2. Applicant must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, applicants have not met their burden, and the application must be denied. If the evidence for every criterion there's a hair or breath in applicant's favor the burden of proof is met and the application is approved.
3. The Planning Director for Marion County approved the application on June 12, 2025, subject to certain conditions.
4. Victor C. Pagel, an interested party, filed an Appeal of the Planning Division Decision on June 27, 2025. Mr. Pagel filed the appeal on the basis that (1) the government's decision results in a reduction in land value for his property; (2) The partitioning of the land to allow additional dwellings is not authorized; and (3) that the variance criteria necessary to allow more than four dwellings to be served by private easement are not satisfied. The appeal is timely, and a public hearing was scheduled in response to the notice of appeal.

### PARTITION

5. There are no specific approval criteria for partitioning property in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres.

Applicant proposes to develop three lots: two lots with consisting of 2 acres, and a third lot consisting of 4 acres. Each lot will comply with the minimum lot size of the zone. The standard is met.

**PARTITION / VARIANCE 25-013**

Francisco Villalobos

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Final partitioning may vary from the proposed plan due to topography or surveying. Minor variations are permitted; however, each resulting parcel shall be a minimum of two acres in size.

6. Appellant, Mr. Pagel, challenges the authorization to partition the four (4) acres to allow for more dwellings. However, no specific basis for the lack of authorization under the Marion County Code is stated. Although Mr. Pagel challenges the authorization, his primary objection is directed at the proposed variance rather than the proposed partition.
7. The proposal meets the criteria for partitioning in the AR zone.

#### VARIANCE

8. MCC 17.122.040 permits an application for a variance to be filed by the owner of the property that is the subject of the application. Francisco Villalobos submitted a Bargain and Sale Deed recorded in the Marion County Records at 2024-33823 which indicated Francisco Villalobos is the owner of the subject property. The criterion is met.
9. MCC 17.122.045 requires the variance application to include the signature of the owner of the subject property (or agents otherwise identified in MCC 17.122.040). Francisco Villalobos signed the application for the variance. The criterion is met.
10. The proposed partitioning would serve six (6) dwellings served from a private easement, Happy Valley Way SE. Marion County Code 17.110.800 limits the number of dwellings served by a private road to four (4) dwellings. Applicant seeks a variance to allow two additional dwellings to be served by Happy Valley Way SE. The area of the proposed partitioning does not have direct access to a public roadway.
11. The director, planning commission, hearings officer, or board may permit and authorize a variance when it appears from the application and facts presented that the proposal satisfies the variance criteria listed in MCC 17.122.020(A).
12. MCC 17.122.010 (Power to Grant Variances) provides: Subject to the restrictions and provisions contained in this title, the director, planning commission, hearings officer or board shall have the power to vary or modify the strict application of any of the standards of this title in any case where such strict application would result in practical difficulties or unnecessary hardships with reference to requirements governing: lot area, lot width, percentage of lot coverage, and number of dwelling units or structures permitted on a lot, standards when limits for an adjustment in MCC 17.116.030 are exceeded. Variances to allow uses or new uses not otherwise allowed are prohibited. Variance to criteria and definition are also prohibited.

MCC 17.110.800 (Dwellings and All Other Buildings To Be Accessible to Public Street) provides: Every dwelling shall be situated on a lot having direct access by abutting upon a public street or a pre-existing private driveway of a width not less than 20 feet. A private drive shall not serve more than four dwelling units unless the parcels, on which

PARTITION / VARIANCE 25-013

Francisco Villalobos

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those units are proposed to be placed, were established with the approval of Marion County in accordance with State Law and Marion County ordinances prior to May 1, 1977, or were approved under Chapter 17.121 MCC Planned Development.

Appellant rejects the interpretation and policy implemented by Marion County Planning that a variance can be sought to allow more than four dwellings to be served by a private road. Appellant argues that MCC 17.122.010 is silent as to the limitation of the number of dwellings per easement standard, yet specific with regard to listing matters about which standards may be varied. Appellant argues that a legislative act is required to modify MCC 17.110.800 to allow its variance.

As evidenced by prior orders submitted by Applicant, MCC 17.122.010 has been interpreted to allow a variance to allow more than four dwellings to be served by a private road. In practice, the County has treated requests to serve more than four dwellings on a private road as a variance and evaluated them under MCC 17.122.020 (hardship, unusual circumstances, minimum necessary, no significant adverse effects, intent maintained).

Appellant Pagel advances an *expressio unius est exclusion alterius* argument (the expression of one thing implies the exclusion of others). Courts have treated this maxim as a presumption that yields to context. If the inclusion of terms is illustrative, then the specific expression is not intended to exclude another term. The inclusion of “catch all” language like “and other” and “otherwise” can also defeat the construction that the list is intended to be exhaustive.

MCC 17.122.010 does include language that provides authority for the hearings officer to allow a variance for a “any of the standards of this title.” The language “any of the standards of this title” is even broader than a “catch all” phrase and references a broader category of permissible variances than the non-exhaustive listing in the code.

Further, the AR zone has a limitation on the amount of land available for development, and the allowance of a variance to reach density allowed in the zone is critical to reduce the pressure for expanding the zone into adjacent resource zones.

Applicant provided an assessor’s map of the surrounding area which shows that the area has been repartitioned into smaller lots during the last 20 years, which Applicant argues is a more efficient use of the land in the AR zone. Applicant suggests that approval of the variance will accomplish the infill of the area in an efficient manner.

It is the determination of the hearings officer that the policy and practice of the County is reasonable and supported by the provisions of MCC 17.122.010 to allow a variance for more than four dwellings to be served by a private road.

MCC 17.122.010 gives the county authority to vary “any of the standards of this title” (not uses). A “standard of this title” is access standard. The four-dwelling limit on a



private drive is a standard stated at MCC 17.110.800. As a standard, the four-dwelling limit can be varied if the variance criteria are satisfied.

13. The variance criteria listed in MCC 17.122.020(A) must be met by the Applicant:

1. *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and*

The only access to the subject property is off Happy Valley Wy SE. There is no direct access to a public roadway. Applicant states that the granting of this variance will effectively utilize this residential land and will keep development from encroaching on nearby resource zones.

Without the variance to MCC 17.110.800, Applicant would not be able to partition and develop the land to the maximum density allowed by the AR zone. The criterion is met.

2. *There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and*

The AR designation for this neighborhood is intended for use with acreage homesites. Marion County approved the partitioning of this land under Partition Plat P 95-059 through land use case P94-051. At the time, due to existing development in the area, there was not an opportunity to expand any public roadway for access to the newly created parcels.

A private roadway, Burton Pl SE, had already been established, eliminating the possibility for a public roadway on Burton Place SE; therefore, Happy Valley Wy SE was created.

This situation presents an unusual circumstance concerning the amount of partitionable land on the subject parcel, which can only be addressed through the granting of a variance. The development goals for the area and the code limiting access to more than four homes are in contradiction, a situation that was established during the original subdivision of the neighborhood. The most reasonable option for development is to permit a variance to MCC 17.110.800. The criterion is met.

3. *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*

The proposed use is to allow the creation of three lots, maximizing the rural residential capacity in the AR zone which requires a 2-acre minimum. This degree of variance is the minimum to permit the proposed development. The criterion is met.

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4. *The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and*

The roadway currently serves four lots, each containing a dwelling. This rural area has undergone multiple partitioning efforts over the past 40 years. Therefore, the addition of two homesites off Happy Valley Wy SE appears to align with the development goals of this neighborhood.

Both Burton Pl SE and Happy Valley Wy SE are paved and well-maintained roadways. Additionally, since the uses of the newly created parcels will not be commercial or industrial, the traffic impact on these private roads will be minimal.

The variance will allow the roadways use by two homesites, which should not have a significant or adverse impact. There is no evidence of unreasonable additional noise, traffic, visibility, or other issues that could impact the neighborhood. The criterion is met.

5. *The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and*

Requests for Comments were sent out to various agencies regarding the proposed partition and variance. The Marion County No. 1 Fire District did not indicate any access or safety concerns. Any requirements for fire turnarounds may be placed by the fire district at the time building permits are applied for. Each lot will have to provide evidence of an approved septic system and will have to enter into an access and utility easement agreement for the maintenance of the easement. It appears that the proposed variance to allow six dwellings to be served by Happy Valley Wy SE would not adversely affect public health or safety. The criterion is met.

6. *The variance will maintain the intent and purpose of the provision being varied.*

Appellant argues that the because the County no longer permits a private drive off of another private drive as a safety concern, this variance should not be allowed (with the risk of damage and injuries stated in Appellant's August 7 written comments).

Applicant states that the restriction on the number of dwellings that can be served off a private easement was developed with the original adoption of the zoning ordinance. Applicant states that in this case, the number of dwellings being served will increase from 4 to 6 and with agreements for maintenance of the easements in place, there should not be any significant impact to adjoining properties.

Allowing Burton Pl SE and Happy Valley Wy SE to serve two additional dwellings in its current condition would not exceed its capacity. Public Works LDEP did not make any requirements regarding improvements on these roads, insinuating the roadways can handle the newly proposed development. Although concerns about "increased risk of



damage or injury” is noted, there is not sufficient evidence that the variance would result in safety issues or modify the intent and purpose of the provision. The criterion is met.

#### Objection on Constitutional Grounds

14. Appellant Victor Pagel argues that the “effect of this governmental decision is to reduce the value of [his] land, without just compensation to him. Mr. Pagel’s argument essentially claims that approval of this land use application results in a “taking” of his property in violation of the Fifth Amendment to the United States Constitution and Article I, Section 18 of the Oregon Constitution. To succeed with this claim, Mr. Pagel government physically occupies the land, or if the decision requires the dedication of land (e.g. for a road) without a clear nexus and proportionality. See, e.g. *Nollan v. California Coastal Comm’n.*, 483 US 825 (1987) and *Dolan v. City of Tigard*, 512 US 374 (1994).

Mr. Pagel alleges that the value of his land is reduced solely in order to increase the value of Applicant’s land. Mr. Pagel, has a reasonable concern about the easement, but it is a concern about easements in general. There is no indication that use of the roadway by two additional dwellings will cause a measurable loss to Mr. Pagel’s property value.

There is no sufficient evidence to indicate that a variance to allow more than four dwellings to use a private roadway is a taking of Mr. Pagel’s property without a clear nexus or proportionality.

The hearings officer recognizes that Mr. Pagel has raised a constitutional issue in this forum. However, Applicant meets the applicable criteria for a partition and variance under the Marion County Code, and there is no indication that application of the relevant provisions is unconstitutional.

15. Based on the above findings, the proposed partitioning complies with the above criteria and is therefore, **APPROVED**, subject to conditions stated herein which are necessary for the health and safety.

#### **VII. Order**

It is hereby found that Applicant has met his burden of proving the applicable standards and criteria for approval of a variance application. Therefore, the partition and variance application is **APPROVED**, with the following conditions:

1. Conditions required by the Marion County Surveyor’s Office:
  - a. Parcels must be surveyed and monumented.
  - b. Per ORS 92.050, plat must be submitted for review.
  - c. Checking fee and recording fees required.
  - d. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.

2. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director. All parcels shall be a minimum of two acres in size.
3. The northernmost 2-acre parcel shall be addressed: 2625 Happy Valley Wy SE.  
The southernmost 2-acre parcel shall be addressed: 2675 Happy Valley Wy SE.  
The parent parcel, the existing 4-acre parcel, shall remain: 2628 Happy Valley Wy SE.  
Addresses will be finalized at the time that building permit applications are reviewed and may change if alterations are made to the property or nearby properties.
4. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

### **VIII. Other Permits**

It is advised that the use of the property proposed in this Application may require additional permits from other local, state or federal agencies the Marion County land use review and approval process does not take the place of or relieve the Applicant of responsibility for acquiring such other permits or satisfy any restrictions or conditions thereon the land use permit approved here and does not remove alter or impair in any way covenants or restrictions imposed on this property by deed or other instrument.

It is recommended that the agencies mentioned in Finding of Fact No. 5 herein be contacted to identify restrictions or necessary permits. Applicant is advised of the following:

- a. Prior to recording the plat, all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
- b. The applicant should contact the Marion County No. 1 Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
- c. Applicant is advised to check with Marion County Building Inspection for any building or septic requirements.

### **IX. Effective Date**

The application approved herein shall become effective on the 25th day of September, 2025, unless the Marion County Board of Commissioners, on its own motion or by appeal timely filed, is asked to review this order in case of board review, this order shall be stayed and shall be subject to final action as is taken by the board.

### **X. Appeal Rights**

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Suite 2130, Salem, OR 97301) by 5:00 p.m. on the 24<sup>th</sup> day of September, 2025. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED this 9<sup>th</sup> day of September, 2025.



Will F. Foster

Marion County Hearings Officer

## CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Francisco Villalobos  
2628 Happy Valley Way SE  
Salem, OR 97317

Tax Collector (via email)  
NMcVey@co.marion.or.us  
ADhillon@co.marion.or.us

Norman Bickell  
3322 42<sup>nd</sup> Avenue SE #771  
Salem, OR 97317

Surveyor's Office (via email)  
Klnman@co.marion.or.us

Victor Pagel  
7826 Burton Place SE  
Salem, OR 97301

Fire District: (via email)  
salemfire@cityofsalem.net

Kathy Cervantes  
2532 Rose Garden St NE  
Salem, OR 97301

Planning Division (via email)  
breich@co.marion.or.us  
abarnes@co.marion.or.us  
jspeckman@co.marion.or.us  
ediaz@co.marion.or.us

Area Advisory Committee #3:  
None

Building Inspection (via email)  
pwolterman@co.marion.or.us  
Kaldrich@co.marion.or.us  
CTate@co.marion.or.us

Roger Kaye  
Friends of Marion County  
P.O. Box 3274  
Salem, OR 97302

Public Works LDEP Section (via email)  
jrasmussen@co.marion.or.us  
mcldcp@co.marion.or.us  
JShanahan@co.marion.or.us

1000 Friends of Oregon  
133 SW 2nd Ave  
Portland, OR 97204-2597

School District: (via email)  
Fridenmaker\_david@salkeiz.k12.or.us

Pudding River Watershed Council (via email)

anna@puddingriverwatershed.org  
cleanpuddingriver@gmail.com

County Agencies Notified:

Code Enforcement (via email)  
CGoffin@co.marion.or.us

Assessor's Office (via email)  
assessor@co.marion.or.us

State Agencies Notified: (via email)  
Mike.I.mccord@wrđ.state.or.us  
Gregory.j.wacker@oregon.gov

By mailing to them copies thereof. I further certify that said copies were placed in a sealed envelope addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon on the 9<sup>th</sup> day of September, 2025, and that the postage thereon was prepaid.

A handwritten signature in blue ink, appearing to read "Christine Wilson", is written over a horizontal line.

Administrative Assistant to the  
Hearings Officer





MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: <sup>29</sup>October ~~22~~, 2025  
Department: Public Works

Title:

Consider accepting appeal of Hearings Officer decision approving Partition/Variance (P/V) 25-013/Francisco Villalobos

Management Update/Work Session Date: N/A

Audio/Visual aids ☐

Time Required: 5 min Contact: Austin Barnes Phone: 503-566-4174

Requested Action:

Staff recommended motion: Deny the appeal of Hearings Officer's decision approving Partition/Variance 25-013/Francisco Villalobos.  
Other motion options for consideration are:  
1. Accept the appeal.  
2. Remand the matter back to the hearings officer.

Issue, Description & Background:

Partition/Variance 25-013 was for a partition an 8-acre parcel into three parcels consisting of 4-acres, 2-acres, and 2-acres, and for a variance to allow six dwellings to be accessed off a private easement in an Acreage Residential zone located at 2628 Happy Valley Way SE. The Planning Director approved the application which was subsequently appealed. On August 7, 2025, the Hearings Officer held a hearing with an open record period and issued a decision on September 9, 2025, approving the request. Applicants appealed the Hearings Officer's decision on September 24, 2025. Staff recommends the Board deny the appeal, appellants have submitted no new evidence or information and are not asking the board to make a policy decision or interpretation of code.

Financial Impacts:

None

Impacts to Department & External Agencies:

None

List of attachments:

Appeal, Hearings Officer Decision

Presenter:

Austin Barnes

Department Head Signature:

for Brandon Risch

RECEIVED

September 24, 2025

25 SEP 24 P2:56

VIA HAND DELIVERY

Marion County Board of Commissioners  
c/o Marion County Clerk  
555 Court St NE, 2<sup>nd</sup> Floor  
Salem OR 97301

FILED  
MARION COUNTY CLERK

Re: Appeal of Hearings Officer's Land Use Decision (PV 25-013)

Dear Members of the Board of Commissioners:

The undersigned is the appellant and is asking the Board of Commissioners to accept this appeal and to reverse the September 9, 2025, ORDER of the Hearings Officer in case number P/V 25-013 (attached). The applicant in that case had purchased four acres of vacant land from the adjacent land owner to his west with the knowledge that MCC 17.110.800 prohibited him from placing dwellings on the acres so purchased. That prohibition limits to four the maximum number of dwellings that may be served by a private drive (easement), and the applicable easement already serves four dwellings. The applicant desires a variance of 17.110.800 seeking to allow for two additional dwellings to be served by the easement. The applicant's four acres are adjacent to and east of Appellant's property, and the easement is on the north end of Appellant's property. The Planning Director allowed the variance, which has been approved by the hearings officer.

Appellant challenges the hearings officer's ruling, arguing that:

1. The director does not have the power to consider a variance of MCC 17.110.800. (Appellant believes that this may be a matter of first impression for the Board.)
2. If the director does have such power, the applicant has not satisfied all of the required criteria for granting a variance under MCC 17.122.020.

### **POWER TO GRANT VARIANCES**

"17.122.010 Power to grant variances. Subject to the restrictions and provisions contained in this title, the director, planning commission, hearings officer or board shall have the power to vary or modify the strict application of any of the standards of this title in any case where such strict application would result in practical difficulties or unnecessary hardships with reference to requirements governing: lot area, lot width, percentage of lot coverage and number of dwelling units or structures permitted on a lot, height of structures, location, yards, signs, parking and loading space, vision clearance and other standards when limits for an adjustment in MCC 17.116.030 are exceeded. Variances to allow uses or new uses not otherwise allowed are prohibited. Variances to criteria and definitions are also prohibited."

At the August 7, 2025, hearing before the hearings officer, Department staff opined that the power to vary the rule limiting the number of dwellings per easement to four stems from the language "number of dwelling units" contained in 17.122.010. And in his 8/12/25 Response Mr. Bickell on behalf of the applicant emphasized the words "number of dwelling units" in attempting to support the director's power to vary the limit with regard to the number of dwellings per easement.

Neither 17.110.800 nor its subject matter, limiting the maximum number of dwellings that may be served by an easement to four, is listed in 17.122.010 as a standard that may be varied, which is not disputed by the applicant or the department. But despite that fact, the hearings officer concluded: "It is the determination of the hearings officer that the policy and practice of the County is reasonable and supported by the provisions of MCC 17.122.010 to allow a variance for more than four dwellings to be served by a private road."

In support of her determination, the hearings officer stated that there are a number of prior cases wherein a variance regarding the number of dwellings per easement limit was allowed. Appellant responds however, that those matters dealt only with whether the criteria for variance had been met, and it does not appear to the appellant that the question of whether the power to do so was ever raised or addressed.

When acknowledging the fact that neither 17.110.800 nor its subject matter is listed in 17.122.010, the hearings officer stated that although the inclusion of many standards may mean that all others are excluded (*expressio unius est exclusio alterius*), such a presumption may need to yield to context. She wrote that if the inclusion of terms is illustrative or there is "catch all" language like "and other" and "otherwise", then the argument that the list is intended to be exhaustive may be defeated. Appellant agrees with that analysis but argues in response that if that maxim means anything in this case it results in the very clear conclusion that the list is indeed exhaustive because there is nothing in 17.122.010 to suggest that it is merely illustrative, nor is there language that is "catch all" such as "and other" or "otherwise".

The hearings officer then pointed to the phrase "any of the standards of this title" in 17.122.010 as even broader than a "catch all" phrase. Appellant argues that in doing so the hearings officer totally ignored the limiting and defining following language [bold emphasis added]: "**with reference to requirements governing: lot area, lot width, percentage of lot coverage and number of dwelling units or structures permitted on a lot, height of structures, location, yards, signs, parking and loading space, vision clearance and other standards when limits for an adjustment in MCC 17.116.030 are exceeded.**"



On page 9 of the ORDER, in the first paragraph of item #12, the hearings officer set out a portion of 17.122.010 with the following: "percentage of lot coverage, and number of dwelling units or structures permitted on a lot". In doing so she mistakenly inserted a comma after the word "coverage". A comma in that position might suggest to some that "percentage of lot coverage" is separate and distinct from "and number of dwelling units or structures permitted on at lot". **However the rule contains no such comma**, and indeed, matters relating percentage of lot coverage **and** number of dwellings units or structures permitted are often interrelated and complex. Thus, any attempt to justify a variance of the four dwellings per easement limitation with the isolated and out of context "number of dwelling units" language is misplaced.

(Note also that in the same paragraph purporting to set out the language of 17.122.010 the following language was omitted by the hearings officer: "height of structures, location, yards, signs, parking and loading space, vision clearance and other". These are among the entire list of limiting and defining factors with regard to standards that may be varied.)

When he purchased the vacant land the applicant was not allowed to use it for dwellings because of the four dwellings per easement limitation. Thus if he had requested a variance to increase the number of dwellings from zero to one on each lot, his request would logically be denied because of the four dwellings per easement rule.

Furthermore, if successful, and whether seeking a variance of 17.110.800 as in this case, or whether the applicant had requested an increase of number of dwellings, the "use" of that vacant land would be changed from zero dwellings per lot to one dwelling per lot. However, 17.122.010 also includes the language: "Variances to allow uses or new uses not otherwise allowed are prohibited." The "use" of the four acres at the time of the applicant's purchase did not include dwellings. Accordingly, the correct result in either case is: denial.

Department staff also testified at the hearing that the "other standards" language in 17.122.010 supports the position that the director has the power to vary the four dwellings per easement rule. Appellant responds that the "other standards" language in 17.122.010 is clearly limited to "when limits for an adjustment in MCC 17.116.030 are exceeded". The adjustments that are allowed under MCC 17.116.030 do not include increasing the number of dwellings per easement rule beyond four.

In his application the applicant said that it has been proposed to the Department of Public Works that the limit of four dwellings per easement be increased. Obviously no such proposal has been implemented – nor has the “Power to grant variances” rule been amended to allow for variance of the number of dwellings per easement. Stuck with the existing rules, the department has dictated, albeit out of whole cloth, that 17.122.010 includes the power to vary 17.110.800. This is the equivalent of a legislative act by the director which is prohibited.

If the power to vary this piece of legislation exists, then it would appear that the director has the power to vary any standard, and there would be no reason for the legislatively listed limiting and defining factors in 17.122.010.

The board is urged to conclude and hold specifically that based upon a plain reading of 17.122.010, the standard of not more than four dwellings per easement is not subject to variance.

### **CRITERIA FOR GRANTING A VARIANCE UNDER MCC 17.122.020**

When testifying at the hearing, department staff stated that the department is concerned with safety when considering the variance criteria spelled out in 17.122.020. He further stated that the existing intersection (Burton Place easement, Imig driveway, Drzal driveway, Happy Valley driveway) amounts to a private drive off of another private drive, **which the county no longer permits**. Yet by allowing two more dwellings, there will be two more private drives that are off of a private drive that is off of another private drive!

The criteria require that the problems presented by the applicant are “unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title”. First, just as the appellant knew of the limitations dealing with the number of dwellings per easement when purchasing his property in 1987, the applicant knew of such limitations when he purchased his property and when he purchased the additional 4 acres. Appellant argues that knowingly creating and/or accepting conditions and then crying “hardships”, “unreasonable”, and “unnecessary” in regard to those conditions - and then seeking a bailout from the county, is not the scenario that the legislatively created criteria intend.

Finally, a variance to 17.110.800 is not the **only** way to resolve the self-imposed problem presented by the applicant. Back in 2001 the property owners at the other (west) end of Burton Place SE and the county got together, upon the application of the owners, and resolved a virtually identical problem (See Notice of Decision Subdivision 01-5; and site plan submitted in this case by the applicant). That event is not disputed by the applicant.

Marion County Board of Commissioners  
Appeal of Hearings Officer Order P/V 25-013  
September 24, 2025  
Page 5

There is no evidence that the applicant has made similar attempts to resolve his concerns. Appellant does not know whether the applicant has approached other property owners, but he has not approached the appellant about it. The applicant and the department acknowledge the possibility of taking such a similar approach as an alternative to a variance, but without presenting any evidence of exploring it, they simply offer conclusions with phrases like, "[this variance] is the best alternative for all of the individual property owners", and that it is "more feasible to bolster the easement".

Although the criteria do not explicitly allow for "feasibility" to be considered in the context of "only", perhaps it must be implicitly considered if it is shown that, in fact, the alternative is virtually impossible and therefore out of the question. However, a similar problem was successfully resolved by the property owners and county in 2001, and the applicant has made no attempt whatsoever to work with other property owners and the county to resolve his problem in a similar fashion. In conclusion, the applicant has not satisfied the **only** requirement.

Respectfully submitted,



Victor C Pagel  
(OSB 69135 Retired Status)  
7826 Burton Place SE  
Salem OR 97317  
503-559-3103  
vicpagel@wvi.com

P.S. Although the director's Decision and the hearings officer's Order at times reference "five dwellings" per easement, the applicant has requested six and Order allows six.

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of ) Case No. P / V 25-013  
FRANCISCO VILLALOBOS ) **PARTITION / VARIANCE**

**ORDER**

**I. Nature of the Application**

This matter comes before the Marion County Hearings Officer on the Application of Francisco Villalobos to partition an 8-acre parcel into three parcels consisting of 4-acres, 2-acres, and 2-acres and a variance to MCC 17.110.800 to allow five dwellings to be served off a private easement in an AR (Acreage Residential) zone located at 2628 Happy Valley Way SE, Salem.

**II. Relevant Criteria**

The standards and criteria relevant to this application are found in the Marion County Rural Code, Marion County Code (MCC) Chapter 17, particularly Chapter 17.128 (Acreage Residential Zone), Chapter 17.122 (Variances), and Chapter 17.110.800 (Dwellings and all other buildings to be accessible to a public street).

**III. Public Hearing**

A public hearing was held on this matter on August 7, 2025. At the hearing, the Planning Division file was made a part of the record. The following persons appeared at the hearing and provided testimony and/or argument on the Application:

- |    |                |                                 |
|----|----------------|---------------------------------|
| 1. | Austin Barnes  | Marion County Planning Division |
| 2. | Norman Bickell | Applicant Representative        |
| 3. | Victor Pagel   | Appellant / Opponent            |

No objections were made to notice, jurisdiction, or conflict of interest. The following exhibits were presented at the hearing, and included in the record:

- Exhibit 1: Map 08 2W 02C  
Exhibit 2: Written Statement of Victor Pagel

An open record period was requested by Applicant and Appellant pursuant to ORS 197.797 and MCC 16.44.100. Applicant provided his first open-record submission to Planning on August 12, 2025. However, because of an email address error, Mr. Pagel did not receive the submission until Monday, April 18, 2025. Mr. Pagel therefore requested until Monday, August 25, 2025 to provide a second open-record submission, and the Applicant was granted until September 2, 2025 for a final submission to allow for the Labor Day holiday on September 1, 2025.

PARTITION / VARIANCE 25-013  
Francisco Villalobos  
Page 1



The following submissions were entered into the record:

- |                       |                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| Open Record Period 1: | Response to Appellant Letter Opposing the Granting of a Variance/Partitioning on Applicant's Property from Norman Bickell for Francesco Villalobos |
| Open Record Period 2: | Submission of Victor Pagel                                                                                                                         |
| Open Record Period 3: | Final Submission from Norman Bickell on behalf of Applicant                                                                                        |

#### **IV. Executive Summary**

Applicant seeks to partition an 8-acre parcel into three parcels consisting of 4-acres, 2-acres, and 2-acres and a variance to allow five dwellings to be served off a private easement in an AR (Acreage Residential) zone. Marion County Planning Division approved the application, and the decision was appealed by an adjacent property owner.

The Notice of Appeal challenges whether MCC 17.122.010 authorizes a variance of the number of dwellings to be served by an easement. If such authority exists, Appellant also challenges whether Applicant meets the variance criteria.

Marion County Planning has interpreted MCC 17.122.010 to allow a variance, and variances to the number of dwellings allowed off a private drive were granted in V 22-004 (after a public hearing), V 06-007, and V 06-002. MCC 17.122.010 includes language that provides authority for the hearings officer (or director, planning commission or Board) to allow a variance for a "any of the standards of this title" (not uses). A "standard of this title" is the access standard. The four-dwelling limit on a private drive is a standard stated at MCC 17.110.800. As a standard, the four-dwelling limit can be varied if the variance criteria are satisfied.

Further, the AR zone has a limitation on the amount of land available for development, and the allowance of a variance to reach density allowed in the zone will accomplish efficient use of the land in the AR zone and is critical to reduce the pressure for expanding the zone into adjacent resource zones.

Upon presentation of the evidence and review of the record, the Hearings Officer determines that the proposed partitioning and variance complies with the criteria in the AR zone and Applicant has met his burden of proving the applicable standards and criteria for **APPROVAL** subject to conditions.

#### **V. Findings of Fact**

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas.
2. The subject property is located at the end of Happy Valley Way SE, approximately 450 feet south of its intersection with Burton Pl SE. The property contains one dwelling and a few accessory structures in the northeast corner. South of the dwelling contains a dense wooded area. A canal/ditch runs along the southwest property line.

The subject property was first created as Parcel 1 of Partition Case P94-051. The property was then subject of P/PLA23-021, in which tax lot 100 gained acreage from the southern portion of what was once tax lot 200, making tax lot 100 8-acres in size. The subject property is therefore legal for land use purposes.

3. Surrounding uses consist of AR parcels containing acreage homesites.
4. Applicant proposes to divide an 8-acre parcel into three parcels consisting of 4-acres, 2-acres, and 2-acres. The applicant also requests a variance to allow more than four dwellings to be served by a private road, as the roads Burton Pl and Happy Valley Wy already create access to four dwellings.
5. The Marion County Planning Division requested comments from various governmental agencies:

Public Works Land Development and Engineering Permits (LDEP) commented:

Applicant is advised to consult with the local Fire Marshal regarding any plat requirements for depiction of fire easement turnouts and/or turnaround and potential construction of emergency access improvements as triggered by application for building permits.

Marion County Surveyor's Office commented:

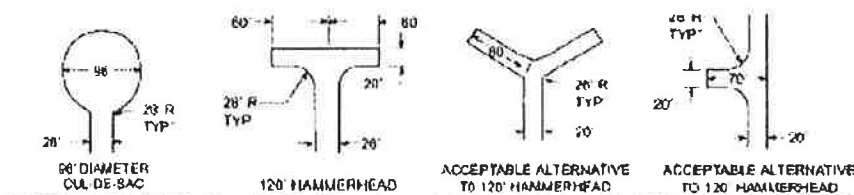
- a. Parcels must be surveyed and monumented.
- b. Per ORS 92.050, plat must be submitted for review.
- c. Checking fee and recording fees required.
- d. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.

Marion County Fire District No. 1 commented that the project must meet following code requirements:

- a. Fire-flow requirements for buildings in protected areas without adequate and reliable water systems. The 2017 National Fire Protection Association 1142,

Standard on water supplies for suburban and rural firefighting. 2022 Oregon Fire Code Section B 107. The requirements for firefighting water supplies may be modified as approved by the fire code official where any of the following apply: (2022 OFC 503.1.1 Exception).

- i. Buildings are equipped throughout with an approved automatic fire sprinkler system (the approval of this alternate method of construction shall be accomplished in accordance with the provisions of ORS 455.610(5).
  - ii. There are not more than two Group R-3 or Group U occupancies.
- b. Fire Safety During Construction: Approved fire department access road, required water supply, fire hydrants, and safety precautions shall be installed and serviceable prior to and during the time of construction. 2022 Oregon Fire Code Chapter 33.
  - c. Turnouts: When a fire apparatus access road exceeds 400' feet in length, turnouts 10' feet wide and 30' feet long shall be provided in addition to the required road width and shall be placed no more than 400' feet apart, unless otherwise approved by the fire code official. These distances may be adjusted based on visibility and sight distances. (OFC Chapter 5)
  - d. Turning radius: The inside turning radius and outside turning radius shall be not less than 28 feet and 48 feet respectively, measured from the same center point. (2022 OFC 503.2.4 & Appendix D)
  - e. Fire apparatus road distance from buildings and turnarounds: Access roads shall be within 150' of all portions of the exterior wall of the building as measured by and approve route around the exterior of the building. An approved turnaround is required if the remaining distance to an approve intersection roadway, as measured along the fire apparatus access road, is greater than 150'. 2022 Oregon Fire Code 503.1.1
  - f. Dead End Roads: Dead end fire apparatus access roads in excess of 150' feet in length shall be provided with an approved turnaround. Diagrams of approved turnarounds are shown below: (OFC 503.2.5)





- g. Fire Apparatus Access Road Width and Vertical Clearance: Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet; 26 feet adjacent to fire hydrants 2014 Oregon Fire Code (OFC) Appendix D 103.1 and an unobstructed vertical clearance of not less than 13 feet 6 inches. 2022 Oregon Fire Code Section 503.2.1 and Appendix D103.1
- h. No parking signs: Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed. Roads 26 feet wide or less shall be posted on both sides as a fire lane. Roads more than 26 feet wide to 32 feet wide shall be posted on one side as a fire lane. Signs shall read "NO PARKING – FIRE LANE" and shall be installed with a clear space above grade level of 7 feet. Signs shall be 12 inches wide by 18 inches high and shall have red letters on a reflective white background. 2022 OFC D103.6-D103.6.2. You may contact the Fire Marshal if you would like code requirement for painted curbs. 2022 OFC 503.3
- i. Premise identification: Buildings shall have address numbers or approved identification placed in a position that is plainly legible and visible from the access road fronting the property. Numbers shall contrast with their background and shall be a minimum of 4 inches height with a minimum stroke width of ½ inch. 2022 OFC 505.
- j. Gates: Gates securing fire apparatus roads shall comply with all the following (2022 OFC D103.5):
  - i. Minimum unobstructed width shall be 16 feet.
  - ii. Gates shall be set back a minimum of 30 feet from the intersecting roadway.
  - iii. Gates shall be of the swinging type or sliding type.
  - iv. Manual operation shall be capable by one person.
  - v. Electric gates shall be equipped with a means for operation for fire department personnel.
  - vi. Locking devices shall be approved

Marion County Building Inspection commented: "No Building Inspection concerns. Permit(s) are required to be obtained prior to development of structures and/or utilities installation on private property."

Marion County Septic commented: "A site evaluation is required for both proposed 2-acre parcels and an Existing System Evaluation is required on the proposed 4-acre parcel to verify a 10' setback to property lines and verify there is room for a repair system on the property."

Marion County Tax Assessor provided information regarding taxes on the subject property.



All other contacted agencies either failed to comment or stated no objection to the proposal.

6. Austin Barnes, Marion County Planning Department, testified at the hearing. Mr. Barnes stated that this proposal involves a private drive that is located off a private drive, which was previously allowed by the County but is now longer permitted. Mr. Barnes explained that when Planning is considering a variance to a private road, the significant inquire is whether the road is safe and are there any existing hazards. In this case, based on historic use and road engineering, there are no safety concerns from Planning's perspective. Mr. Barnes noted that the Appellant previously applied to partition as the Applicant has done, and such application was approved. Mr. Barnes further explained that the Appellant's concern about the reduction of his property value based upon the partition and variance is not a criterion under the Marion County Code. Mr. Barnes responded to the Appellant's concern that the variance criteria is not satisfied in noting that no criteria is cited by Appellant. Mr. Barnes stated that in this case, there is no other way to provide access to the parcel, and that if development is permitted, the road safely supports additional traffic. Planning determines that the variance criteria are met.
7. Norman Bickell, Applicant Representative, testified at the hearing. Mr. Bickell testified that he agrees with Planning that this area of Macleay has been partitioned prior to land use planning in 1973, and that there has been redivision over the years. Mr. Bickell does not see that the Appellant would be losing value to his property with approval of the application, but that issue does not have any bearing on whether the criteria is met. Mr. Bickell argues that the criteria are satisfied, and that the hearings officer does have authority to grant a variance to the number of dwellings served under MCC 17.122.020. Mr. Bickell states that there could not be an extension to Burton place because the lots are not owned by the Applicant. Mr. Bickell testified that there are no safety issues associated with the roadway because the road is paved, and the 12-foot width is sufficient for a private road.
8. Victor Pagel, Appellant, testified at the hearing. Mr. Pagel submitted his written comments as Exhibit 2. Mr. Pagel stated that he and his wife, Martha Pagel, deceased bought their property in 1987. Mr. Pagel stated that before the hearings officer can review the criteria, the determination must be made regarding whether MCC 17.122.010 gives the hearings officer the power to grant a variance. Mr. Pagel argues that the hearings office does not have the authority to grant a variance under MCC 17.122.010: the type of variance requested (limitation of the number of dwellings per easement standard) is not permitted. Mr. Pagel states that because MCC 17.122.010 includes specific references (lot area, lot width, percentage of lot coverage and number of dwelling units or structures permitted on a lot, height of structure, location, yards, signs, parking and loading space, vision clearance and other standards), because "number of homes to be served by a private roadway" is not included, it is specifically excluded.

Mr. Pagel testified that the only review criteria on which Planning focused is safety. Mr. Pagel argues that the easement is only a single lane of traffic, and he disputes that there are only two lots without sufficient right of way. Mr. Pagel argues there are alternative to

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the variance, including extending Burton Place. Mr. Pagel testified that the County no longer permits the private intersections, and it should similarly not increase use with a variance in this case. Mr. Pagel argues that increased traffic results in a decreased value of his property which has the effect of condemnation.

Victor Pagel testified that his objection is focused on the variance, not the partition.

9. On August 12, 2025, Applicant's First Open Record Submittal was received. Applicant's submission addressed the questions presented by Appellant: (1) Whether the hearings officer has the authority to grant a variance; (2) Whether the criteria in MCC 17.122.020 is met; (3) Whether the 10.5 feet paved roadway is sufficient for vehicular traffic; (4) Whether other property owners were approached to extend public right of way; and (5) Whether the easement concerns raised by applicant are sufficient to limit additional use of the easement.

Applicant argues that the power to grant variances arises in MCC 17.122 language allowing a variance with respect to the "number of dwelling units" when "limits for an adjustment" in 17.116.030 are exceeded." Marion County Planning determined, based on policy and interpretation, that the number of dwelling units that are limited off a private easement is a variable standard.

Applicant's continued position is that the criteria of MCC 17.122.020 is satisfied.

Applicant agrees to add two additional feet of gravel to the existing 10.5 feet paved roadway to verify the easement is an all-weather surface with a minimum of 12 feet.

Applicant argues that he has no right to provide for a public street extension of Burton Place SE, and that such provision is cost-prohibited. Also, Applicant has frontage on the easement.

Applicant argues that Appellant's easement concerns are shared with any easement, and that the concerns would be in place regardless of the number of dwelling units served by the easement.

10. On August 25, 2025, the Appellant submitted his supplemental comments in opposition to the variance requested in P V 25-013. Appellant argues that MCC 17.122.010 is silent as to the limitation of the number of dwellings per easement standard, yet specific with regard to listing matters about which standards may be varied. Mr. Pagel argues that a legislative act is required to modify MCC 17.110.800 to allow its variance.

Appellant argues that the feasibility of alternate should be further considered, and that safety of the existing access and risks of damage raises a legitimate question about whether the criteria for a variance have been satisfied.

11. On September 2, 2025, the Applicant submitted his final submission. Applicant argues that the number of additional dwellings to be served by the easement is a variable standard, and that the interpretation is consistent with prior County decisions (included for illustrative purposes). Applicant also argues that there are no alternatives to a variance (as suggested by Appellant) because the alternative unreasonably requests that other property owners (not participating in the hearing) to give up an additional 30 feet of their property to accomplish the 60 feet required for a public street (none of which would be the appellant).

## **VI. Additional Findings of Fact and Conclusions of Law**

1. Applicant has the burden of proving all applicable standards and criteria are met by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

2. Applicant must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, applicants have not met their burden, and the application must be denied. If the evidence for every criterion there's a hair or breath in applicant's favor the burden of proof is met and the application is approved.
3. The Planning Director for Marion County approved the application on June 12, 2025, subject to certain conditions.
4. Victor C. Pagel, an interested party, filed an Appeal of the Planning Division Decision on June 27, 2025. Mr. Pagel filed the appeal on the basis that (1) the government's decision results in a reduction in land value for his property; (2) The partitioning of the land to allow additional dwellings is not authorized; and (3) that the variance criteria necessary to allow more than four dwellings to be served by private easement are not satisfied. The appeal is timely, and a public hearing was scheduled in response to the notice of appeal.

### PARTITION

5. There are no specific approval criteria for partitioning property in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres.

Applicant proposes to develop three lots: two lots with consisting of 2 acres, and a third lot consisting of 4 acres. Each lot will comply with the minimum lot size of the zone. The standard is met.

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Final partitioning may vary from the proposed plan due to topography or surveying. Minor variations are permitted; however, each resulting parcel shall be a minimum of two acres in size.

6. Appellant, Mr. Pagel, challenges the authorization to partition the four (4) acres to allow for more dwellings. However, no specific basis for the lack of authorization under the Marion County Code is stated. Although Mr. Pagel challenges the authorization, his primary objection is directed at the proposed variance rather than the proposed partition.
7. The proposal meets the criteria for partitioning in the AR zone.

#### VARIANCE

8. MCC 17.122.040 permits an application for a variance to be filed by the owner of the property that is the subject of the application. Francisco Villalobos submitted a Bargain and Sale Deed recorded in the Marion County Records at 2024-33823 which indicated Francisco Villalobos is the owner of the subject property. The criterion is met.
9. MCC 17.122.045 requires the variance application to include the signature of the owner of the subject property (or agents otherwise identified in MCC 17.122.040). Francisco Villalobos signed the application for the variance. The criterion is met.
10. The proposed partitioning would serve six (6) dwellings served from a private easement, Happy Valley Way SE. Marion County Code 17.110.800 limits the number of dwellings served by a private road to four (4) dwellings. Applicant seeks a variance to allow two additional dwellings to be served by Happy Valley Way SE. The area of the proposed partitioning does not have direct access to a public roadway.
11. The director, planning commission, hearings officer, or board may permit and authorize a variance when it appears from the application and facts presented that the proposal satisfies the variance criteria listed in MCC 17.122.020(A).
12. MCC 17.122.010 (Power to Grant Variances) provides: Subject to the restrictions and provisions contained in this title, the director, planning commission, hearings officer or board shall have the power to vary or modify the strict application of any of the standards of this title in any case where such strict application would result in practical difficulties or unnecessary hardships with reference to requirements governing: lot area, lot width, percentage of lot coverage, and number of dwelling units or structures permitted on a lot, standards when limits for an adjustment in MCC 17.116.030 are exceeded. Variances to allow uses or new uses not otherwise allowed are prohibited. Variance to criteria and definition are also prohibited.

MCC 17.110.800 (Dwellings and All Other Buildings To Be Accessible to Public Street) provides: Every dwelling shall be situated on a lot having direct access by abutting upon a public street or a pre-existing private driveway of a width not less than 20 feet. A private drive shall not serve more than four dwelling units unless the parcels, on which

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those units are proposed to be placed, were established with the approval of Marion County in accordance with State Law and Marion County ordinances prior to May 1, 1977, or were approved under Chapter 17.121 MCC Planned Development.

Appellant rejects the interpretation and policy implemented by Marion County Planning that a variance can be sought to allow more than four dwellings to be served by a private road. Appellant argues that MCC 17.122.010 is silent as to the limitation of the number of dwellings per easement standard, yet specific with regard to listing matters about which standards may be varied. Appellant argues that a legislative act is required to modify MCC 17.110.800 to allow its variance.

As evidenced by prior orders submitted by Applicant, MCC 17.122.010 has been interpreted to allow a variance to allow more than four dwellings to be served by a private road. In practice, the County has treated requests to serve more than four dwellings on a private road as a variance and evaluated them under MCC 17.122.020 (hardship, unusual circumstances, minimum necessary, no significant adverse effects, intent maintained).

Appellant Pagel advances an *expressio unius est exclusion alterius* argument (the expression of one thing implies the exclusion of others). Courts have treated this maxim as a presumption that yields to context. If the inclusion of terms is illustrative, then the specific expression is not intended to exclude another term. The inclusion of “catch all” language like “and other” and “otherwise” can also defeat the construction that the list is intended to be exhaustive.

MCC 17.122.010 does include language that provides authority for the hearings officer to allow a variance for a “any of the standards of this title.” The language “any of the standards of this title” is even broader than a “catch all” phrase and references a broader category of permissible variances than the non-exhaustive listing in the code.

Further, the AR zone has a limitation on the amount of land available for development, and the allowance of a variance to reach density allowed in the zone is critical to reduce the pressure for expanding the zone into adjacent resource zones.

Applicant provided an assessor’s map of the surrounding area which shows that the area has been repartitioned into smaller lots during the last 20 years, which Applicant argues is a more efficient use of the land in the AR zone. Applicant suggests that approval of the variance will accomplish the infill of the area in an efficient manner.

It is the determination of the hearings officer that the policy and practice of the County is reasonable and supported by the provisions of MCC 17.122.010 to allow a variance for more than four dwellings to be served by a private road.

MCC 17.122.010 gives the county authority to vary “any of the standards of this title” (not uses). A “standard of this title” is access standard. The four-dwelling limit on a

private drive is a standard stated at MCC 17.110.800. As a standard, the four-dwelling limit can be varied if the variance criteria are satisfied.

13. The variance criteria listed in MCC 17.122.020(A) must be met by the Applicant:

1. *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and*

The only access to the subject property is off Happy Valley Wy SE. There is no direct access to a public roadway. Applicant states that the granting of this variance will effectively utilize this residential land and will keep development from encroaching on nearby resource zones.

Without the variance to MCC 17.110.800, Applicant would not be able to partition and develop the land to the maximum density allowed by the AR zone. The criterion is met.

2. *There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and*

The AR designation for this neighborhood is intended for use with acreage homesites. Marion County approved the partitioning of this land under Partition Plat P 95-059 through land use case P94-051. At the time, due to existing development in the area, there was not an opportunity to expand any public roadway for access to the newly created parcels.

A private roadway, Burton Pl SE, had already been established, eliminating the possibility for a public roadway on Burton Place SE; therefore, Happy Valley Wy SE was created.

This situation presents an unusual circumstance concerning the amount of partitionable land on the subject parcel, which can only be addressed through the granting of a variance. The development goals for the area and the code limiting access to more than four homes are in contradiction, a situation that was established during the original subdivision of the neighborhood. The most reasonable option for development is to permit a variance to MCC 17.110.800. The criterion is met.

3. *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*

The proposed use is to allow the creation of three lots, maximizing the rural residential capacity in the AR zone which requires a 2-acre minimum. This degree of variance is the minimum to permit the proposed development. The criterion is met.

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4. *The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and*

The roadway currently serves four lots, each containing a dwelling. This rural area has undergone multiple partitioning efforts over the past 40 years. Therefore, the addition of two homesites off Happy Valley Wy SE appears to align with the development goals of this neighborhood.

Both Burton Pl SE and Happy Valley Wy SE are paved and well-maintained roadways. Additionally, since the uses of the newly created parcels will not be commercial or industrial, the traffic impact on these private roads will be minimal.

The variance will allow the roadways use by two homesites, which should not have a significant or adverse impact. There is no evidence of unreasonable additional noise, traffic, visibility, or other issues that could impact the neighborhood. The criterion is met.

5. *The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and*

Requests for Comments were sent out to various agencies regarding the proposed partition and variance. The Marion County No. 1 Fire District did not indicate any access or safety concerns. Any requirements for fire turnarounds may be placed by the fire district at the time building permits are applied for. Each lot will have to provide evidence of an approved septic system and will have to enter into an access and utility easement agreement for the maintenance of the easement. It appears that the proposed variance to allow six dwellings to be served by Happy Valley Wy SE would not adversely affect public health or safety. The criterion is met.

6. *The variance will maintain the intent and purpose of the provision being varied.*

Appellant argues that the because the County no longer permits a private drive off of another private drive as a safety concern, this variance should not be allowed (with the risk of damage and injuries stated in Appellant's August 7 written comments).

Applicant states that the restriction on the number of dwellings that can be served off a private easement was developed with the original adoption of the zoning ordinance. Applicant states that in this case, the number of dwellings being served will increase from 4 to 6 and with agreements for maintenance of the easements in place, there should not be any significant impact to adjoining properties.

Allowing Burton Pl SE and Happy Valley Wy SE to serve two additional dwellings in its current condition would not exceed its capacity. Public Works LDEP did not make any requirements regarding improvements on these roads, insinuating the roadways can handle the newly proposed development. Although concerns about "increased risk of



damage or injury” is noted, there is not sufficient evidence that the variance would result in safety issues or modify the intent and purpose of the provision. The criterion is met.

#### Objection on Constitutional Grounds

14. Appellant Victor Pagel argues that the “effect of this governmental decision is to reduce the value of [his] land, without just compensation to him. Mr. Pagel’s argument essentially claims that approval of this land use application results in a “taking” of his property in violation of the Fifth Amendment to the United States Constitution and Article I, Section 18 of the Oregon Constitution. To succeed with this claim, Mr. Pagel government physically occupies the land, or if the decision requires the dedication of land (e.g. for a road) without a clear nexus and proportionality. See, e.g. *Nollan v. California Coastal Comm’n*, 483 US 825 (1987) and *Dolan v. City of Tigard*, 512 US 374 (1994).

Mr. Pagel alleges that the value of his land is reduced solely in order to increase the value of Applicant’s land. Mr. Pagel, has a reasonable concern about the easement, but it is a concern about easements in general. There is no indication that use of the roadway by two additional dwellings will cause a measurable loss to Mr. Pagel’s property value.

There is no sufficient evidence to indicate that a variance to allow more than four dwellings to use a private roadway is a taking of Mr. Pagel’s property without a clear nexus or proportionality.

The hearings officer recognizes that Mr. Pagel has raised a constitutional issue in this forum. However, Applicant meets the applicable criteria for a partition and variance under the Marion County Code, and there is no indication that application of the relevant provisions is unconstitutional.

15. Based on the above findings, the proposed partitioning complies with the above criteria and is therefore, **APPROVED**, subject to conditions stated herein which are necessary for the health and safety.

#### **VII. Order**

It is hereby found that Applicant has met his burden of proving the applicable standards and criteria for approval of a variance application. Therefore, the partition and variance application is APPROVED, with the following conditions:

1. Conditions required by the Marion County Surveyor’s Office:
  - a. Parcels must be surveyed and monumented.
  - b. Per ORS 92.050, plat must be submitted for review.
  - c. Checking fee and recording fees required.
  - d. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.

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2. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director. All parcels shall be a minimum of two acres in size.
3. The northernmost 2-acre parcel shall be addressed: 2625 Happy Valley Wy SE.  
The southernmost 2-acre parcel shall be addressed: 2675 Happy Valley Wy SE.  
The parent parcel, the existing 4-acre parcel, shall remain: 2628 Happy Valley Wy SE.  
Addresses will be finalized at the time that building permit applications are reviewed and may change if alterations are made to the property or nearby properties.
4. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

#### **VIII. Other Permits**

It is advised that the use of the property proposed in this Application may require additional permits from other local, state or federal agencies the Marion County land use review and approval process does not take the place of or relieve the Applicant of responsibility for acquiring such other permits or satisfy any restrictions or conditions thereon the land use permit approved here and does not remove alter or impair in any way covenants or restrictions imposed on this property by deed or other instrument.

It is recommended that the agencies mentioned in Finding of Fact No. 5 herein be contacted to identify restrictions or necessary permits. Applicant is advised of the following:

- a. Prior to recording the plat, all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
- b. The applicant should contact the Marion County No. 1 Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
- c. Applicant is advised to check with Marion County Building Inspection for any building or septic requirements.

#### **IX. Effective Date**

The application approved herein shall become effective on the 25th day of September, 2025, unless the Marion County Board of Commissioners, on its own motion or by appeal timely filed, is asked to review this order in case of board review, this order shall be stayed and shall be subject to final action as is taken by the board.

### **X. Appeal Rights**

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Suite 2130, Salem, OR 97301) by 5:00 p.m. on the 24<sup>th</sup> day of September, 2025. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED this 9<sup>th</sup> day of September, 2025.

  
\_\_\_\_\_  
Will F. Foster  
Marion County Hearings Officer

## CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Francisco Villalobos  
2628 Happy Valley Way SE  
Salem, OR 97317

Tax Collector (via email)  
NMcVey@co.marion.or.us  
ADhillon@co.marion.or.us

Norman Bickell  
3322 42<sup>nd</sup> Avenue SE #771  
Salem, OR 97317

Surveyor's Office (via email)  
KInman@co.marion.or.us

Victor Pagel  
7826 Burton Place SE  
Salem, OR 97301

Fire District: (via email)  
salemfire@cityofsalem.net

Kathy Cervantes  
2532 Rose Garden St NE  
Salem, OR 97301

Planning Division (via email)  
breich@co.marion.or.us  
abarnes@co.marion.or.us  
jspeckman@co.marion.or.us  
ediaz@co.marion.or.us

Area Advisory Committee #3:  
None

Building Inspection (via email)  
pwolterman@co.marion.or.us  
Kaldrich@co.marion.or.us  
CTate@co.marion.or.us

Roger Kaye  
Friends of Marion County  
P.O. Box 3274  
Salem, OR 97302

Public Works LDEP Section (via email)  
jrasmussen@co.marion.or.us  
mcldep@co.marion.or.us  
JShanahan@co.marion.or.us

1000 Friends of Oregon  
133 SW 2nd Ave  
Portland, OR 97204-2597

School District: (via email)  
Fridenmaker\_david@salkeiz.k12.or.us

Pudding River Watershed Council (via email)

anna@puddingriverwatershed.org  
cleanpuddingriver@gmail.com

County Agencies Notified:

Code Enforcement (via email)  
CGoffin@co.marion.or.us

Assessor's Office (via email)  
assessor@co.marion.or.us

State Agencies Notified: (via email)  
Mike.I.mccord@wrdd.state.or.us  
Gregory.j.wacker@oregon.gov

By mailing to them copies thereof. I further certify that said copies were placed in a sealed envelope addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon on the 9<sup>th</sup> day of September, 2025, and that the postage thereon was prepaid.

  
Administrative Assistant to the  
Hearings Officer



BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

VICTOR C. PAGEL,  
*Petitioner,*

vs.

MARION COUNTY,  
*Respondent.*

LUBA No. 2025-078

FINAL OPINION  
AND ORDER

Appeal from Marion County.

Petitioner filed the petition for review and reply brief and argued on behalf of himself.

Andrew Mittendorf filed the respondent's brief and argued on behalf of respondent.

WILSON, Board Member; ZAMUDIO, Board Chair; BASSHAM, Board Member, participated in the decision.

REMANDED 03/17/2026

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a county decision that approves a partition of an 8-acre parcel into three parcels and a variance to allow a private easement to serve more than four dwellings.

**FACTS**

The applicant owns an 8-acre parcel that is accessed from the north by a private easement that already serves four dwellings. The application sought to partition the property into one 4-acre parcel and two 2-acre parcels. All three parcels were proposed to be served by an extension of the private easement. The Marion County Code (MCC) allows private easements to serve up to four dwellings. As more than four dwellings would be served by the private easement, the applicant requested a variance to allow the private easement to serve additional dwellings on the new parcels.

The planning department approved the applications. Petitioner, an adjacent land owner, appealed the approval to a county hearings officer. During the local proceeding, petitioner did not challenge the partition but did challenge the variance. The hearings officer approved the partition and variance, and petitioner appealed to the board of county commissioners. The board of county commissioners denied the appeal and adopted the hearings officer's decision. This appeal followed.



1 **FIRST ASSIGNMENT OF ERROR**

2 MCC 17.110.800 restricts private drives to serving not more than four  
3 dwellings.<sup>1</sup> There is no dispute that the existing private easement would need to  
4 serve more than four dwellings to access the parcels created by the partition. The  
5 county granted a variance to MCC 17.110.800 pursuant to MCC 17.122.010,  
6 which provides:

7 “Power to grant variances. Subject to the restrictions and provisions  
8 contained in this title, the director, planning commission, hearings  
9 officer or board *shall have the power to vary or modify the strict*  
10 *application of any of the standards of this title in any case where*  
11 *such strict application would result in practical difficulties or*  
12 *unnecessary hardships with reference to requirements governing:*  
13 *lot area, lot width, percentage of lot coverage and number of*  
14 *dwelling units or structures permitted on a lot, height of structures,*  
15 *location, yards, signs, parking and loading space, vision clearance*  
16 *and other standards* when limits for an adjustment in MCC  
17 17.116.030 are exceeded. Variances to allow uses or new uses not  
18 otherwise allowed are prohibited. Variances to criteria and  
19 definitions are also prohibited.” (Emphases added.)

20 Petitioner argues that while MCC 17.122.010 provides that variances may  
21 be obtained for “any of the standards of this title,” variances may only be obtained

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<sup>1</sup> MCC 17.110.800 provides: “Dwellings and all other buildings to be accessible to public street. Every dwelling shall be situated on a lot having direct access by abutting upon a public street or a pre-existing private driveway of a width not less than 20 feet. A private drive shall not serve more than four dwelling units unless the parcels, on which those units are proposed to be placed, were established with the approval of Marion County in accordance with state law and Marion County ordinances prior to May 1, 1977, or were approved under Chapter 17.121 MCC, Planned Development.”

1 “in any case where such strict application would result in [difficulties or  
2 hardships] with reference to requirements governing” a list of specific  
3 requirements. According to petitioner, unless the limitation of four dwellings to  
4 be served by a private easement in MCC 17.110.800 falls under the list of  
5 referred-to requirements, a variance is not available.<sup>2</sup>

6 The hearings officer’s decision interpreted MCC 17.122.010 to allow the  
7 four-dwelling limitation on private easements to be eligible for a variance  
8 because variances are allowed “for any standards.” The hearings officer stopped  
9 her analysis there and did not consider whether MCC 17.110.800 was one of the  
10 requirements listed as available for variances. The hearings officer’s decision  
11 states:

12 “[Petitioner] advances an *expressio unius est exclusio alterius*  
13 argument (the expression of one thing implies the exclusion of  
14 others). Courts have treated this maxim as a presumption that yields  
15 to context. If the inclusion of terms is illustrative, then the specific  
16 expression is not intended to exclude another term. The inclusion of  
17 ‘catch all’ language like ‘and other’ and ‘otherwise’ can also defeat  
18 the construction that the list is intended to be exhaustive.

19 “MCC 17.122.010 does include language that provides authority for  
20 the hearings officer to allow a variance for ‘any of the standards of

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<sup>2</sup> Although petitioner cites the maxim of *eiusdem generis* (the general terms of an act can be modified and limited by the enumeration of specific examples) and *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of others), more plainly petitioner argues that the hearings officer ignored most of MCC 17.122.010 which sets out the necessary conditions for a variance to be available.



1 this title.’ The language ‘any of the standards of this title’ is even  
2 broader than a ‘catch all’ phrase and references a broader category  
3 of permissible variances than the non-exhaustive listing in the code.

4 “\* \* \* \* \*

5 “MCC 17.122.010 gives the county authority to vary ‘any of the  
6 standards of this title’ (not uses). A ‘standard of this title’ is access  
7 standard. The four-dwelling limit on a private drive is a standard  
8 stated at MCC 17.110.800. As a standard, the four-dwelling limit  
9 can be varied if the variance criteria are satisfied.” Record 13-14.

10 The board adopted the hearings officer’s interpretation. Under ORS  
11 197.829(1), as construed in *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d  
12 776 (2010), LUBA must defer to a local governing body’s interpretation of its  
13 comprehensive plan and land use regulations, unless the local government’s  
14 interpretation is inconsistent with the express language, purpose, or underlying  
15 policy of the comprehensive plan or land use regulation.<sup>3</sup> *Crowley v. City of Hood*

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<sup>3</sup> ORS 197.829 provides:

“(1) The Land Use Board of Appeals shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

“(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

“(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

“(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or

1 *River*, 294 Or App 240, 244, 430 P3d 1113 (2018). In *Crowley*, an appeal that  
2 involved the city council’s interpretation of the city’s comprehensive plan, the  
3 Court of Appeals explained: “Whether the [local government’s] interpretation of  
4 its comprehensive plan is inconsistent with the plan, or the purposes or policies  
5 underlying that plan, depends on whether the interpretation is plausible, given the  
6 interpretive principles that ordinarily apply to the construction of ordinances  
7 under the rules of *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12,  
8 859 P2d 1143 (1993), as modified by *State v. Gaines*, 346 Or 160, 171-72, 206  
9 P3d 1042 (2009).” *Id.* (quoting *Friends of the Hood River Waterfront v. City of*  
10 *Hood River*, 263 Or App 80, 88-89, 326 P3d 1229 (2014); internal quotation  
11 marks and brackets omitted). “The standard of review under ORS 197.829(1) and  
12 *Siporen* is ‘highly deferential’ to the [local government], and the ‘existence of a  
13 stronger or more logical interpretation does not render a weaker or less logical  
14 interpretation ‘implausible.’” *Id.* at 245 (citing *Mark Latham Excavation, Inc. v.*  
15 *Deschutes County*, 250 Or App 543, 555, 281 P3d 644 (2012)).

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“(d) Is contrary to a state statute, land use goal or rule that  
the comprehensive plan provision or land use  
regulation implements.

“(2) If a local government fails to interpret a provision of its  
comprehensive plan or land use regulations, or if such  
interpretation is inadequate for review, the board may make  
its own determination of whether the local government  
decision is correct.”

1 The county's interpretation gives meaning to the phrase "any of the  
2 standards of this title" and concludes that is sufficient authority to grant a  
3 variance. The county's interpretation essentially found that the list of  
4 circumstances describing when a variance is possible is superfluous. According  
5 to the county, any standard may be varied – end of analysis.

6 The county's interpretation is inconsistent with the express language of  
7 MCC 17.122.010 because it does not consider, give meaning to, or harmonize the  
8 whole of that provision. The express language of the ordinance provides that "any  
9 standard" may be varied "where": (1) "such strict application would result in  
10 practical difficulties or unnecessary hardships" and (2) "with reference to  
11 requirements governing" a list of development standards – or buckets, that is,  
12 categories of standards that the county may vary. In other words, the provision  
13 allows any standard to be varied as long as it creates a difficulty or hardship and  
14 falls within one of the enumerated buckets. To allow "any standard" to be varied  
15 without any consideration of the remaining language that clearly sets out that the  
16 standard sought to varied must fall within one of the buckets is not plausible.  
17 While *Siporen* deference gives the county considerable deference in determining  
18 what standards fall within those buckets – *Siporen* deference does not allow the  
19 county to ignore the language setting out the buckets altogether.

20 Below, planning staff and the applicant argued that the four-dwelling  
21 standard of MCC 17.110.800 could be varied because it falls within the "number  
22 of dwelling units or structures permitted on a lot" bucket. Staff also argued that



1 MCC 17.110.800 could be varied because it falls within the “and other standards”  
2 bucket.<sup>4</sup> The county’s adopted interpretation does not address either of these  
3 arguments and the county did not rely on either of these interpretations in the  
4 decision.<sup>5</sup> Therefore, any interpretation that MCC 17.110.800 may be varied  
5 under either of those buckets is not before us, and we express no opinion on any  
6 such interpretation.

7 The challenged decision and the respondent’s brief also rely on the fact  
8 that the county has traditionally allowed variances to MCC 17.110.800. The  
9 decision states:

10 “As evidenced by prior orders submitted by Applicant, MCC  
11 17.122.010 has been interpreted to allow a variance to allow more  
12 than four dwellings to be served by a private road. In practice, the  
13 County has treated requests to serve more than four dwellings on a  
14 private road as a variance and evaluated them under MCC  
15 17.122.020 \* \* \*.” Record 13.

16 Initially, none of the county decisions entered into the record and relied  
17 upon by the county address the question presented in this appeal – whether MCC  
18 17.110.800 is a standard that may be varied under MCC 17.122.010. All of those  
19 decisions merely assumed a variance was potentially available and went straight

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<sup>4</sup> The applicant presented this argument at Record 118. Staff presented this argument during the public hearing.

<sup>5</sup> Respondent’s attorney confirmed at oral argument that the decision relied solely on the “any of the standards of this title” language and did not find that MCC 17.110.800 fell within any of the buckets.

1 to the variance approval criteria. Second, even if those decisions had addressed  
2 the issue, that would not be binding on LUBA.<sup>6</sup>

3 While we could interpret MCC 17.122.010 ourselves pursuant to ORS  
4 197.829(2) to determine whether MCC 17.110.800 falls within one of the  
5 enumerated buckets, we believe the better course is for the county to make its  
6 own interpretation after considering all of the language in the provision.<sup>7</sup>

7 The first assignment of error is sustained.

## 8 **SECOND ASSIGNMENT OF ERROR**

9 MCC 17.122.020 provides the approval criteria for a variance. Petitioner  
10 argues that the county's finding that the first approval criterion is satisfied is not  
11 supported by substantial evidence. MCC 17.122.020(A)(1) provides:

12 “(A) The director, planning commission, hearings officer, or board  
13 may permit and authorize a variance when it appears from the  
14 application and the facts presented that:

15 “(1) There are unnecessary, unreasonable hardships of  
16 practical difficulties which can be relieved only by  
17 modifying the literal requirements of this title[.]”

18 The county's findings state:

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<sup>6</sup> While it is understandable why the hearings officer felt she was bound by prior board of commissioners decisions, that is not a basis for LUBA to affirm the decision.

<sup>7</sup> ORS 197.829(2) provides: “If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct.”



1 “The only access to the subject property is off Happy Valley Way  
2 SE. There is no direct access to a public roadway. Applicant states  
3 that the granting of this variance will effectively utilize this  
4 residential land and will keep development from encroaching on  
5 nearby resource zones.

6 “Without the variance to MCC 17.110.800, Applicant would not be  
7 able to partition and develop the land to the maximum density  
8 allowed by the AR zone. The criterion is met.” Record 14.

9 Petitioner argues that under MCC 17.122.020(A)(1), a variance may be  
10 granted if the hardship or difficulty can be relieved *only* by granting a variance.  
11 According to petitioner, the hardship or difficulty could be relieved by extending  
12 a public road to the new parcels rather than extending a private easement. While  
13 it is not entirely clear exactly what petitioner is proposing, apparently a nearby  
14 road, Burton Place, was extended to serve additional properties rather than  
15 extending a private drive. Petitioner argues that if there is an alternative solution  
16 that does not require a variance then a variance is not warranted.

17 Pursuant to OAR 661-010-0071(2)(b), we will remand a decision that is  
18 not supported by substantial evidence in the whole record. Substantial evidence  
19 is evidence that a reasonable person would rely on in making a decision. *Dodd v.*  
20 *Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). In reviewing the  
21 evidence, LUBA may not substitute its judgement for that of the local decision  
22 maker. Rather, LUBA must consider all the evidence to which it is directed, and  
23 determine whether based on that evidence, a reasonable local decision maker  
24 could reach the decision that it did. *Younger v. City of Portland*, 305 Or 346, 358-  
25 60, 725 P2d 262 (1988).

1 The county explains that the applicant addressed the impracticability of  
2 exploring the alternative proposed by petitioner:

3 “[T]he requirement that the applicant work with other property  
4 owners along the easements is not practical. The solution that would  
5 allow for the properties in question would require a subdivision  
6 application with the dedication of a public street. This would impact  
7 all of the property owners who would first agree and second give up  
8 an additional 30 feet of their property to accomplish the 60 feet  
9 required for a public street.” Respondent’s Brief 9 (citing Record  
10 85).

11 Petitioner argues that the county improperly shifted the burden to  
12 petitioner to demonstrate a feasible alternative rather than requiring the applicant  
13 to establish that there were no reasonable alternatives. Petitioner cites *Stahl v.*  
14 *Tillamook County*, 43 Or LUBA 518 (2003) in support of his argument. In *Stahl*,  
15 however, the county specifically interpreted its ordinance to shift the burden to  
16 opponents. *Id.* at 526-27. In the present case, the county found that the applicant  
17 had established that there were no feasible alternatives. While the county did not  
18 find that petitioner’s suggested alternative was feasible, it did not shift the burden  
19 to petitioner. The county weighed conflicting evidence and found that the  
20 applicant’s evidence was more persuasive. We agree with the county that a  
21 reasonable person could rely on the fact that a subdivision application would be  
22 required and that additional property owners would have to dedicate portions of  
23 their property to accomplish petitioner’s alternative to find that the hardship or  
24 difficulty can be relieved only by granting a variance.

25 The second assignment of error is denied.

1       The county's decision is remanded.