MARION COUNTY BOARD OF COMMISSIONERS

"Delivering Excellence Everyday"

Wednesday, August 13, 2025
Board Session 9:00 a.m.

Senator Hearing Room
555 Court Street NE, Salem

PUBLIC COMMENT

CONSENT

BOARD OF COMMISSIONERS

1. OLCC Applications – Recommended Approval
   - L & L Fresh Noodle, LLC, dba, Noodle Zone – Salem, Oregon; and
   - Rava Vineyards – Silverton, Oregon

2. Board Committee Appointment – Health Insurance Study Committee
Approve an order appointing Sherrie Hickam as a management representative to the Marion County Health Insurance Study Committee (HISC).

COMMUNITY SERVICES

3. Approve the Standard Professional Services Contract with Dwyer Construction Management and Consulting, LLC in the not-to-exceed amount of $204,995 to provide owner's representative services for the Detroit Marinas Excavation and Resiliency Project retroactive to July 22, 2025, through June 30, 2028.

HEALTH AND HUMAN SERVICES

4. Approve an order to approve the revised bylaws for the Marion County Local Alcohol and Drug Planning Committee (LADPC).

5. Approve an order to approve the revised bylaws for the Marion County Mental Health Advisory Committee (MHAC).

6. Approve Amendment #2 to the Contract for Services with Bridgeway Community Health to add $21,753.60 for a new not-to-exceed contract total of $108,767.60 for dual credentialed co-occurring counselors to provide services for drug and alcohol treatment and mental health to support participants in specialty court programs through December 31, 2025.

7. Approve Amendment #3 to the Contract for Services with Gibraltar Medical Staffing, LLC, to add $500,000 for a new not-to-exceed contract total of $4,250,000 to continue to provide qualified medical staffing personnel for mental health counseling and medication management through January 31, 2028.

PUBLIC WORKS

8. Approve the Engineering and Related Services Contract with Shannon and Wilson, Inc., in the not-to-exceed amount of $350,000 to provide on-call geotechnical engineering and related services for landslides and other naturally occurring events that damage or threaten to damage the county's transportation infrastructure through July 31, 2027.

9. Approve the incoming funds Grant Agreement with the Oregon Department of Transportation (ODOT) to provide state funding in the amount of $301,977 for pedestrian facility upgrades at the intersection of Brown Road and Arizona Avenue for the Safe Routes to School (SRTS): Scott Elementary School project through August 6, 2030.

10. Approve an order to remove Stephen Staten as a member of the Marion County Parks Commission.

11. Approve an order to approve the revised bylaws for the Marion County Parks Commission

SHERIFF'S OFFICE

12. Approve the incoming funds Challenge Cost Share Agreement with the United States Department of Agriculture (USDA) – Forest Service in the not-to-exceed amount of $150,000 to provide law enforcement services and for the purchase of two reader board signs for use within the Willamette National Forest through July 1, 2028.

ACTION

PUBLIC WORKS

13. Consider whether to accept or deny an appeal of the hearings officer's decision denying Zone Change (ZC) Case #25-002/Creative Electric, LLC. –John Speckman

14. Consider approval of the Section 106 Memorandum of Agreement (MOA) between the United States Federal Highway Administration (FHWA), the Oregon State Historic Preservation Office (SHPO), the Oregon Department of Transportation (ODOT), and Marion County that documents the plans and obligations regarding the mitigation strategy for the Scotts Mills Road: Butte Creek Bridge Replacement project. –Ryan Crowther

15. Approve an order to accept the revised bylaws for the Marion County Materials Management Advisory Council (MMAC). –Brian May

BOARD OF COMMISSIONERS
Board Appointments – Materials Management Advisory Council

16. Approve orders appointing the following to the Marion County Materials Management Advisory Council (MMAC) with terms ending July 31, 2029:

- Councilor Walter Wick, elected official representing the City of Aumsville;
- Mayor Brian Asher, elected official representing the City of Aurora;
- Councilor Walter Perry, elected official representing the City of Jefferson;
- Councilor Daniel Kohler, elected official representing the City of Keizer;
- Jenny Ammon, staff member representing the City of Keizer;
- Councilor Linda Nishioka, elected official representing the City of Salem;
- Ryan Zink, staff member representing the City of Salem;
- Councilor Jordan Ohrt, elected official representing the City of Stayton;
- Mayor Frank Lonergan, elected official representing the City of Woodburn;
- Jim Row, staff member representing the City of Woodburn;
- Treva Gambs, representing the food service/grocery industry;
- Duane West, representing the Home Builders Association;
- Shane Kuenzi, representing the materials management industry;
- Julie Jackson, representing the recycling industry; and
- Commissioner Kevin Cameron, elected official representing Marion County, with an ending term date of December 31, 2025.

–Brian May

PUBLIC HEARINGS
Starting no earlier than 9:30 a.m.

PUBLIC WORKS

A. Public hearing to consider Conditional Use/Comprehensive Plan Amendment (CU/CPA) Case 24-038/TLM Holdings, LLC. –John Speckman

For agenda items where in-person testimony is allowed, the public may submit written testimony or sign up to provide testimony by telephone by emailing 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 culaquier 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

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF MARION COUNTY, STATE OF OREGON

NO. 20159

REC'D AUG 01 2025

In the Matter of the Application of

For a recommendation regarding the application to the Oregon Liquor Control Commission for

RECOMMENDATION

This matter coming before the Board of County Commissioners on the application of Noodle Zone for a recommendation to the Oregon Liquor Control Commission under the provisions of ORS 471.166; and the Board having referred said application to the Sheriff of Marion County, Oregon, and having the report of said Sheriff that the applicant has not been convicted of a crime involving a violation of the liquor control laws, or the gambling laws, or of crimes involving moral turpi-tude, and that the applicant is of good moral character, a citizen of the United States of America, and otherwise qualified to be licensed under the Oregon Liquor Control Act;

IT IS, THEREFORE RECOMMENDED TO THE OREGON LIQUOR CONTROL COMMISSION that the application of the above be refused_____ granted_____.

Dated at Salem, Marion County, Oregon this _____day of _____, 20_____.

_____County Commissioner

_____County Commissioner

_____County Commissioner

Approved by _____
County Sheriff 7/31/25

OREGON LIQUOR & CANNABIS COMMISSION

Local Government Recommendation – Liquor License

Annual Liquor License Types	
Off-Premises Sales	Brewery-Public House
Limited On-Premises Sales	Brewery
Full On-Premises, Caterer	Distillery
Full On-Premises, Commercial	Grower Sales Privilege
Full On-Premises, For Profit Private Club	Winery
Full On-Premises, Non Profit Private Club	Wholesale Malt Beverage & Wine
Full On-Premises, Other Public Location	Warehouse
Full On-Premises, Public Passenger Carrier	

Section 1 – Submission – To be completed by Applicant:

Legal Entity/Individual Applicant Name(s): L & L FRESH NOODLE LLC

Proposed Trade Name: NOODLE ZONE

Premises Address: 3316 LANCASTER DR NE Unit:

City: SALEM County: MARION Zip: 97305

Application Type: (●) New License Application ( ) Change of Ownership ( ) Change of Location

License Type: Limited On-Premises Sales [ ] Additional Location for an Existing License

Contact Name: REBECCA LEUNG / UNITED CPAS & CO., LLC Phone: [redacted]

Mailing Address: [redacted]

City: SALEM State: OR Zip: 97301

Email Address: unitedcpaspdx@gmail.com

Please check all that apply to your proposed business operations at this location:

[ ] Manufacturing/Production

[ ] Retail Off-Premises Sales

[■] Retail On-Premises Sales & Consumption

If there will be On-Premises Consumption at this location:

[■] Indoor Consumption [ ] Outdoor Consumption

[■] Proposing to Allow Minors

Section 1 continued on next page

OREGON LIQUOR & CANNABIS COMMISSION

Local Government Recommendation – Liquor License

Section 1 Continued – Submission - To be completed by Applicant:

Legal Entity/Individual Applicant Name(s): L & L FRESH NOODLE LLC

Proposed Trade Name: NOODLE ZONE

IMPORTANT: You MUST submit this form to the local government PRIOR to submitting to OLCC. Section 2 must be completed ***by the local government*** for this form to be accepted with your CAMP application.

Section 2 – Acceptance - To be completed by Local Government:

Local Government Recommendation Proof of Acceptance

After accepting this form, please return a copy to the applicant with received and accepted information

City or County Name: Marion

Date Application Received: 07/28/25

Received by: Deborah Bisher

Optional Date Received Stamp

RECEIVED
25 JUL 28 A9:19
MARION COUNTY CLERK

Section 3 – Recommendation - To be completed by Local Government:

- ○ **Recommend this license be granted**
- ○ **Recommend this license be denied** (Please include documentation that meets OAR 845-005-0308)
- ○ **No Recommendation/Neutral**

Name of Reviewing Official:

Title:

Date:

Signature:

After providing your recommendation and signature, please return this form to the applicant.

OREGON LIQUOR & CANNABIS COMMISSION

BUSINESS INFORMATION – LIQUOR LICENSE

Applicant Name	L & L FRESH NOODLE LLC
Trade Name	NOODLE ZONE
Premises Street Address	3316 LANCASTER DR NE, SALEM, OR 97305
License Type	Limited On-Premises Sales

Business Contact	JUNFENG LIU
Mailing Address	[redacted]
Phone Number	[redacted]
Email Address	[redacted]

Operating Hours

Day of Week	Open Time	Closed Time
Monday	11:00am	8:30pm
Tuesday	11:00am	8:30pm
Wednesday	11:00am	8:30pm
Thursday	11:00am	8:30pm
Friday	11:00am	8:30pm
Saturday	11:00am	8:30pm
Sunday	11:00am	8:30pm

Seasonal Variation: Yes ☐

Explanation:

☐ Not open to the public or by appointment only

Seating Count

Restaurant Seating #: 40 Outdoor Seating #: _____ Other Seating #: 2

☐ No On-Premises Consumption

ENTERTAINMENT

Check all that apply:

- ☐ Live Music
- ☐ Recorded Music
- ☐ DJ Music
- ☐ Dancing
- ☐ Karaoke
- ☐ Coin-Operated Games
- ☐ Pool Tables
- ☐ Social Gaming (ex: gambling)
  [As defined in ORS 167.117(21)]
  A game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the social game.
- ☐ Video Lottery Machines
- ☐ Nude Dancing
- ☐ Live Entertainment
- ☐ Minor Entertainers
- ☐ Minor Entertainers in an Area Prohibited to Minors
  **Need prior OLCC approval
- ☐ Other:

MARION COUNTY
BILL BURGESS
MARION COUNTY CLERK

Receipt #: 65973
Receipt Date: 07/28/2025 09:13 AM
Station: 5
Cashier: DEB
Receipt Name: NOODLE ZONE

Comments:

Thank You!
BILL BURGESS, MARION COUNTY CLERK

Please retain this receipt for your records.

Documents are recorded as submitted. The Marion County Clerk's Office assumes no liability for sufficiency, validity, or accuracy.

Miscellaneous Fees		
LIQUOR LICENSE FEE	YES	$25.00

Receipt Total	**$25.00**
[redacted] [redacted]	$25.00

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF MARION COUNTY, STATE OF OREGON

NO. 20160

RECD AUG 04 2025

In the Matter of the Application of

For a recommendation regarding the application to the Oregon Liquor Control Commission for

RECOMMENDATION

This matter coming before the Board of County Commissioners on the application of Rava Vinyards for a recommendation to the Oregon Liquor Control Commission under the provisions of ORS 471.166; and the Board having referred said application to the Sheriff of Marion County, Oregon, and having the report of said Sheriff that the applicant has not been convicted of a crime involving a violation of the liquor control laws, or the gambling laws, or of crimes involving moral turpi-tude, and that the applicant is of good moral character, a citizen of the United States of America, and otherwise qualified to be licensed under the Oregon Liquor Control Act;

IT IS, THEREFORE RECOMMENDED TO THE OREGON LIQUOR CONTROL COMMISSION that the application of the above be refused_____ granted_____.

Dated at Salem, Marion County, Oregon this _____day of _____, 20_____.

_____County Commissioner

_____County Commissioner

_____County Commissioner

Approved by _____
County Sheriff 7/31/25

OREGON LIQUOR & CANNABIS COMMISSION

Local Government Recommendation – Liquor License

Annual Liquor License Types	
Off-Premises Sales	Brewery-Public House
Limited On-Premises Sales	Brewery
Full On-Premises, Caterer	Distillery
Full On-Premises, Commercial	Grower Sales Privilege
Full On-Premises, For Profit Private Club	Winery
Full On-Premises, Non Profit Private Club	Wholesale Malt Beverage & Wine
Full On-Premises, Other Public Location	Warehouse
Full On-Premises, Public Passenger Carrier	

Section 1 – Submission – To be completed by Applicant:

License Information

Legal Entity/Individual Applicant Name(s): Mike and Ruth Rava

Proposed Trade Name: Rava Vineyards

Premises Address: 16584 Herigstad Rd. NE Unit:

City: Silverton, County: Marion Zip: 97381

Application Type: (●) New License Application ( ) Change of Ownership ( ) Change of Location

License Type: Grower Sales Privilege License [ ] Additional Location for an Existing License

Application Contact Information

Contact Name: Ruth Rava Phone [redacted]

Mailing Address: 16584 Herigstad Rd. NE.

City: Silverton State: OR Zip: 97381

Email Address: [redacted]

Business Details

Please check all that apply to your proposed business operations at this location:

[ ] Manufacturing/Production

[X] Retail Off-Premises Sales

[ ] Retail On-Premises Sales & Consumption

If there will be On-Premises Consumption at this location:

[ ] Indoor Consumption [ ] Outdoor Consumption

[ ] Proposing to Allow Minors

Section 1 continued on next page

OREGON LIQUOR & CANNABIS COMMISSION

Local Government Recommendation – Liquor License

Section 1 Continued – Submission - To be completed by Applicant:

Legal Entity/Individual Applicant Name(s): Mike and Ruth Rava

Proposed Trade Name: Rava Vineyards

IMPORTANT: You MUST submit this form to the local government PRIOR to submitting to OLCC. Section 2 must be completed ***by the local government*** for this form to be accepted with your CAMP application.

Section 2 – Acceptance - To be completed by Local Government:

Local Government Recommendation Proof of Acceptance

After accepting this form, please return a copy to the applicant with received and accepted information

City or County Name: Marion County

Date Application Received: 07/30/2025

Received by: Deborah Bishop

Optional Date Received Stamp

RECEIVED
25 JUL 30 P4:50
MARION COUNTY CLERK

Section 3 – Recommendation - To be completed by Local Government:

- ○ **Recommend this license be granted**
- ○ **Recommend this license be denied** (Please include documentation that meets OAR 845-005-0308)
- ○ **No Recommendation/Neutral**

Name of Reviewing Official:

Title:

Date:

Signature:

After providing your recommendation and signature, please return this form to the applicant.

OREGON LIQUOR & CANNABIS COMMISSION

BUSINESS INFORMATION – LIQUOR LICENSE

Applicant Name	Mike and Ruth Rava	Business Contact	Ruth Rava
Trade Name	Rava Vineyards	Mailing Address	16584 Herigstad Rd. NE Silverton, OR 97381
Premises Street Address	16584 Herigstad Rd. NE Silverton, OR 97381	Phone Number	[redacted]
License Type	Grower Sales Privilege License	Email Address	[redacted]

Operating Hours

Day of Week	Open Time	Closed Time	Seasonal Variation	Explanation
			Yes ☐	

☒ Not open to the public or by appointment only

Seating

Restaurant Seating: _____ Outdoor Seating: _____ Other Seating: _____

☒ No On-Premises Consumption

ENTERTAINMENT

Check all that apply: -none-

- ☐ Live Music
- ☐ Recorded Music
- ☐ DJ Music
- ☐ Dancing
- ☐ Karaoke
- ☐ Coin-operated Games
- ☐ Social Gaming
- ☐ Pool Tables
- ☐ Video Lottery Machines
- ☐ Nude Dancing
- ☐ Live Entertainment
- ☐ Minor Entertainers
- ☐ Minor Entertainers in an Area Prohibited to Minors **Need prior OLCC approval
- ☐ Other:

MARION COUNTY
BILL BURGESS
MARION COUNTY CLERK

Receipt #: 66384
Station: 4
Receipt Name: RUTH RAVA

Receipt Date: 07/30/2025 04:50 PM
Cashier: DEB

Comments:

Thank You!
BILL BURGESS, MARION COUNTY CLERK

Please retain this receipt for your records.

Documents are recorded as submitted. The Marion County Clerk's Office assumes no liability for sufficiency, validity, or accuracy.

Miscellaneous Fees		
LIQUOR LICENSE FEE	YES	$25.00

Receipt Total		**$25.00**
CHECK	1001	$25.00

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 13, 2025

Department: Human Resources

Title:	Marion County Health Insurance Study Committee Management Representative Appointment (MC HISC)
Management Update/Work Session Date:	7/29/2025 **Audio/Visual aids** ☐
Time Required:	5 **Contact:** Lori Klemsen **Phone:** 503-584-7781
Requested Action:	Appoint Sherrie Hickam as a voting management representative to the MC HISC.
Issue, Description & Background:	Consider adoption of an order appointing Sherrie Hickam as a voting management representative to the Marion County Health Insurance Study Committee (MC HISC). The Marion County Commissioners appoint management representatives to the MC HISC.
Financial Impacts:	None
Impacts to Department & External Agencies:	None
List of attachments:	Board Order to appoint Sherrie Hickam to the MC HISC
Presenter:	Lori Klemsen
Department Head Signature:	Salvador Llerenas Digitally signed by Salvador Llerenas Date: 2025.07.31 14:32:42 -07'00'

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the Matter of appointing)
Sherrie Hickam to the)
Marion County Health)
Insurance Study Committee.)

ORDER NO. _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled meeting on August 13, 2025 to consider appointing one management representative of the Marion County Health Insurance Study Committee (MC HISC); and

IT APPEARING that Sherrie Hickam is qualified and willing to serve as a management representative of the MC Health Insurance Study Committee; now, therefore

IT IS HEREBY ORDERED that Sherrie Hickam is appointed to the MC Health Insurance Study Committee as a management representative and shall serve at the pleasure of the Marion County Board of Commissioners;

IT IS FURTHER ORDERED that this order shall take effect immediately upon its passage.

DATED this 13th day of August, 2025.

MARION COUNTY BOARD OF COMMISSIONERS

_____
Chair

_____
Commissioner

_____
Commissioner

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 8/13/2025

Department: Community Services

Title: Detroit Marinas Owner's Representative Agreement

Management Update/Work Session Date: 7/29/2025 & 8/12/2025 **Audio/Visual aids** ☐

Time Required: 10 minutes **Contact:** Chip Bury **Phone:** 503-585-3235

Requested Action:
Consider approval of contract with Dwyer Construction Management and Consulting LLC to provide Owner's Representative services for the Detroit Marinas Excavation & Resiliency project in the amount of $204,995.00.

Issue, Description & Background:
The Detroit Marinas Excavation & Resiliency project consists of the proposed excavation of 162,000 cubic yards of sediment under both commercial marinas located at the Detroit Lake Reservoir. Removing the sediment under the marinas would allow the marinas to extend their summer season by approximately two months and would support all area businesses that rely on a summer recreation season of May 1st through October 1st to sustain solvency year-round.

This agreement would provide Owner's Representative services to ensure the County and Citizens best interests are upheld throughout the remainder of the project.

Financial Impacts:
The Detroit Marinas Excavation and Resiliency project is funded through multiple federal, state and local funding sources, this agreement is for $204,995.00 funded by ARPA.

Impacts to Department & External Agencies:
Dwyer CM&C would act on behalf of the County, protecting County interests and ensuring the project aligns with County goals throughout the entire construction process. Dwyer CM&C would manage communication, mitigate risks, and help make informed decisions, ultimately aiming to deliver a successful project that meets the County's vision, budget, and time line.

List of attachments: Contract CS-6666-25

Presenter: Chip Bury

Department Head Signature: Kelli Wurse

Contract Review Sheet

Contract for Services **CS-6666-25**

Title: **Econ - Owner's Rep for Detroit Marinas and Excavation Resiliency Project**

Contractor's Name: **Dwyer Construction Management and Consulting LLC**

Department: **Community Services Department** Contact: **Ashley Jackson**

Analyst: **Toby Giddings** Phone #: **(503) 584-7722**

Term - Date From: **July 22, 2025** Expires: **June 30, 2028**

Original Contract Amount: **$ 204,995.00** Previous Amendments Amount: **$ -**

Current Amendment: **$ -** New Contract Total: **$ 204,995.00** Amd% **0%**

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

Source Selection Method: **20-0260 Request for Proposal** RFP# **Department**

Description of Services or Grant Award

This agreement will provides for an Owner's Representative for the Detroit Lake Marinas Excavation and Resiliency Project. Dwyer Construction Management and Consulting LLC brings a practical, results-driven approach built on a foundation of stakeholder collaboration, cost-conscious oversight, and a deep understanding of complex, earthwork-intensive construction. They have extensive experience managing large-scale, complex projects that include substantial earthwork scope.

Desired BOC Session Date:	**8/13/2025**	Contract should be in DocuSign by:	**7/23/2025**
Agenda Planning Date	**7/31/2025**	Printed packets due in Finance:	**7/29/2025**
Management Update	**8/12/2025**	BOC upload / Board Session email:	**7/30/2025**

BOC Session Presenter(s) **Chip Bury** Code: **Y**

REQUIRED APPROVALS

Finance - Contracts	Date	Contract Specialist	Date
Legal Counsel	Date	Chief Administrative Officer	Date

REQUEST FOR AUTHORIZATION OF CONTRACT
CS-6666-25

Date: 7/29/2025
To: Chief Administrative Officer
Cc: Contract File
From: Ashley Jackson

I. Subject: Retroactive

The Marion County Community Services Department is requesting approval of a retroactive contract as described in Section 10-0580 of the Marion County Public Contracting Rules. The contract is with Dwyer Construction Management and Consulting LLC for Econ - Owner's Rep for Detroit Marinas and Excavation Resiliency Project with a value of $204,995.00 and will be effective retroactive to 7/22/2025 upon approval.

A. BACKGROUND

Due to staff turnover, an Owner's Representative is vital for the continuation of this project and to ensure a smooth execution of the construction phase. This role will additionally ensure transparent communication between all parties and the community.

B. As required in Section 10-0580(2)(a), Department staff will provide an explanation of why the contract was not submitted before performance began:

Due to significant delays in multiple procurements for this project and extending deadlines for work plans for permitting purposes a quick on-boarding was necessary in order to provide clear and concise communication with all parties involved as well as the public and community this project impacts directly.

C. As required in Section 10-0580(2)(b), Department staff will provide a description of the steps being taken to prevent similar occurrences in the future:

Staff will work to ensure procurement and contract execution is completed in a timely manner.

Submitted by:

_____
Ashley Jackson
Community Services Department

Reviewed by:

_____
Contracts & Procurement

Acknowledged by:

_____
Department Head

Acknowledged by:

_____
Jan Fritz, CAO

MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT

(Architectural, Engineering, Land Surveying and Related Services)

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is between Marion County, a political subdivision of the State of Oregon, by and through its Community Services Department, (the "Owner"), and:

Company:	**Dwyer Construction Management and Consulting LLC**	Phone:	**971-500-2834**
		Contract #	**CS-6666-25**
		Email:	**david@dwyercmc.com**
Address:	**9685 SW Killarney Lane, Tualatin, OR 97062**		

(the "Consultant") (collectively Owner and Consultant are referred to as the "Parties"). This Contract is for Services related to completion of the project more particularly described as follows (the "Project"):

Owner's Representative Services to manage selected pre-construction activities and the construction of the Detroit Marinas Excavation and Resiliency Project on behalf of County. This Project, located along the shore of Detroit Reservoir on the west side of the City of Detroit, is for the excavation of sediment from below the docks of Detroit Lake Marina and Kane's Marina and the placement of those spoils at a predetermined location within the Detroit Reservoir lakebed.

This Contract shall become effective on July 22nd, 2025(the "Effective Date"). The Contract shall expire, unless otherwise terminated or extended, on June 30, 2028. Generally, the Services to be performed by Consultant on the Project consist of the following (the "Services"):

- General Project Management Services
- Construction Services

The Services are more specifically described in the EXHIBIT A, Statement of Work. Owner agrees to pay Consultant a sum not to exceed $204,995.00 for performance of the Services, which shall include all allowable expenses. Progress payments shall be made in accordance with EXHIBIT B, Consultant Compensation.

This Contract consists of these introductory provisions and the signature page(s), Section 1-Relationship of the Parties, Section 2-Consultant's Responsibilities; Representations and Warranties, Section 3-Responsibilities of Owner; Special Contract Provisions, Section 4-General Contract Provisions and the following exhibits attached hereto and incorporated herein by this reference:

EXHIBIT A: Statement of Work
EXHIBIT B: Consultant Compensation
EXHIBIT C: Insurance Provisions
EXHIBIT D: Special Contract Provisions
EXHIBIT E: RESERVED
EXHIBIT F: Rate Schedule
EXHIBIT G: RESERVED

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTERS ADDRESSED HEREIN. THE TERMS OF THIS CONTRACT CANNOT

BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES AND CONTAINING ALL REQUIRED APPROVALS. ANY SUCH WAIVER, ALTERATION, MODIFICATION, SUPPLEMENTATION OR AMENDMENT SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS CONTRACT EXCEPT AS CONTAINED, INCORPORATED, OR REFERENCED HEREIN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS CONTRACT, UNDERSTANDS THIS CONTRACT, AND AGREES TO BE BOUND BY ALL OF THIS CONTRACT'S TERMS AND CONDITIONS. THIS CONTRACT, AND ANY AMENDMENTS TO IT, MAY BE EXECUTED IN COUNTERPARTS (EACH OF WHICH SHALL BE AN ORIGINAL AND ALL OF WHICH SHALL CONSTITUTE BUT ONE AND THE SAME INSTRUMENT) OR IN MULTIPLE ORIGINALS.

MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:

_____
Chair Date

_____
Commissioner Date

_____
Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

DWYER CONSTRUCTION MANAGEMENT AND CONSULTING LLC SIGNATURE

Authorized Signature: _____

Date

Title: _____

1 RELATIONSHIP OF THE PARTIES

1.1 Consultant shall provide the Services for the Project in accordance with the terms and conditions of this Contract. Consultant's performance of Services shall be as a professional consultant to Owner to carry out the Project and to provide the technical documents and supervision to achieve Owner's Project objectives.

1.2 In administering this Contract, Owner may retain the services of an independent project manager and other consultants as needed to fulfill Owner's objectives.

1.3 Consultant shall provide a list of all sub-consultants which Consultant intends to utilize on the Project (the "Sub-consultants"). This list shall include such information on the qualifications of the Sub-consultants as may be requested by Owner. Owner reserves the right to review the Sub-consultants proposed. Consultant shall not retain a Sub-consultant to which Owner has a reasonable objection.

1.4 Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Consultant and Sub-consultants identified by Consultant (collectively, the "Key Personnel" and individually, the "Key Person"). Therefore, Consultant shall make available Key Personnel as identified in its proposal. Consultant shall provide to Owner a list of the proposed Key Personnel to be assigned to the Project. This list shall include such information on the professional background of each Key Person as may be requested by Owner. If any Key Person becomes unavailable to Consultant, the Parties shall mutually agree upon an appropriate replacement. Without prior notice to, and the written consent of, Owner, Consultant shall not: (i) re-assign or transfer any Key Person to other duties or positions so that the Key Person is unable to fully perform his or her responsibilities under the Contract; (ii) allow any Key Person to delegate to anyone his or her performance of any management authority or other responsibility required under the Contract; or (iii) substitute any Key Person. Any of these actions shall constitute a material breach of the Contract. Consultant shall remove any individual or Sub-consultant from the Project if so directed by Owner in writing following discussion with Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

2 CONSULTANT'S RESPONSIBILITIES; REPRESENTATIONS AND WARRANTIES

2.1 Consultant agrees that:

2.1.1 The phrase "Standard of Care" that is used in this Contract is defined as follows: the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions (the "Standard of Care");

2.1.2 Consultant shall perform all Services in accordance with the Standard of Care;

2.1.3 Consultant shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables and other documents so that they accurately reflect, fully comply with and incorporate all applicable laws, rules, and regulations, and so that they are complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of Consultant;

2.1.4 Consultant shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, specifications, deliverables and other documents prepared by Consultant at no additional cost to Owner;

2.1.5 Owner's review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables, and other documents. Any review or acceptance by Owner will not relieve Consultant of any responsibility for complying with the Standard of Care;

2.1.6 Consultant shall, at no additional cost to Owner, render assistance to Owner in resolving problems or other issues relating to the Project design or to specified materials;

2.1.7 During the term of the Contract, Consultant shall obtain, hold, maintain and fully pay for all licenses and permits required by law for Consultant to conduct its business and perform the Services. During the term of the Contract, Owner shall pay for, and Consultant shall obtain, hold and maintain all licenses and permits required for the Project, unless otherwise specified in the Contract. Consultant shall review the Project site and the nature of the Services and advise Owner 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; and

2.1.8 Consultant shall pay all Sub-consultants and other subcontractors as required by Consultant's contracts with those Sub-consultants and subcontractors. Consultant agrees that Owner has no direct or indirect contractual obligation or other legal duty whatsoever to pay the Sub-consultants and other subcontractors of Consultant or otherwise ensure that Consultant makes full and timely payment to those Sub-consultants and subcontractors for services performed on the Project.

2.2 Consultant represents and warrants to Owner that:

2.2.1 Consultant has the power and authority to enter into and perform this Contract; the persons executing this Contract on behalf of Consultant have the actual authority to bind Consultant to the terms of this Contract;

2.2.2 When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms; the provisions of this Contract do not conflict with or result in a default under any agreement or other instrument binding upon Consultant and do not result in a violation of any law, regulation, court decree or court order or other legal process applicable to Consultant;

2.2.3 Consultant shall, at all times during the term of this Contract, be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;

2.2.4 Consultant is an experienced firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Contract and to design and administer a project having the scope and complexity of the Project;

2.2.5 Consultant has the capabilities and resources necessary to perform Consultant's obligations under this Contract;

2.2.6 Consultant is, or shall become, in a manner consistent with the Standard of Care, familiar with all current laws, rules, and regulations which are applicable to the design and construction of the Project;

2.2.7 All Services shall be performed in accordance with the Standard of Care;

2.2.8 RESERVED

2.2.9 RESERVED

2.3 The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in this Contract or at law.

3 RESPONSIBILITIES OF OWNER; SPECIAL CONTRACT PROVISIONS

Owner's responsibilities under this Contract, and certain additional responsibilities of Consultant, are set forth in Exhibit D-Special Contract Provisions.

4 GENERAL CONTRACT PROVISIONS

4.1 ***Contract Performance.*** Consultant shall at all times perform the Services diligently and without delay and shall punctually fulfill all Contract requirements consistent with the schedule for the performance of Services set forth in Exhibit A. Expiration or termination of the Contract shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance. Time is of the essence in the performance of this Contract.

4.2 ***Access to Records.*** For not less than ten (10) years after the Contract's expiration or termination, Owner, 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 Owner and the other entities referenced above with full access to these records in preparation for and during litigation.

4.3 ***Funds Available and Authorized.*** Owner reasonably believes as of the Effective Date that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within Owner's appropriation or limitation. Consultant understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to Services performed after the last day of the current budget cycle is contingent upon Owner budgeting and appropriating funds or other expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract. In the event funds become unavailable, Owner shall notify Consultant as soon as possible. In any event, Owner shall pay Consultant for Work performed provided such Work was performed in accordance with the Contract less any setoff to which Owner is entitled.

4.4 ***Insurance.*** Consultant shall maintain in effect for the duration of this Contract, or any other time periods required herein, the insurance set forth in Exhibit C-Insurance Provisions.

4.5 Indemnity.

4.5.1 CLAIMS FOR OTHER THAN PROFESSIONAL LIABILITY. EACH PARTY SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE OTHER PARTY, 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 THE OTHER PARTY OR ITS SUB-CONSULTANTS, SUBCONTRACTORS, AGENTS, OR EMPLOYEES UNDER THIS CONTRACT.

4.5.2 CLAIMS FOR PROFESSIONAL LIABILITY. EACH PARTY SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE OTHER PARTY, 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 THE OTHER PARTY OR ITS SUB CONSULTANTS, SUBCONTRACTORS, AGENTS, OR EMPLOYEES IN THE PERFORMANCE OF PROFESSIONAL SERVICES UNDER THIS CONTRACT.

4.5.3 Owner Defense Requirements. Notwithstanding the obligations under Sections 4.5.1 and 4.5.2, neither Consultant nor any attorney engaged by Consultant shall defend any claim in the name of Marion County, nor purport to act as legal representative of Marion County or any of its agencies, without the prior written consent of Marion County Legal Counsel. Owner may, at any time and at its election, assume its own defense and settlement of any claims in the event that: it determines that Consultant is prohibited from defending Marion County; Consultant is not adequately defending Marion County's interests; an important governmental principle is at issue; or it is in the best interests of Marion County to do so, Marion County reserves all rights to pursue any claims it may have against Consultant if Marion County elects to assume its own defense.

4.5.4 RESERVED

4.6 Consultant's Status.

4.6.1 Consultant shall perform all Services as an independent contractor. Although Owner reserves the right to set the delivery schedule for the Services to be performed and to evaluate the quality of the completed performance, Owner cannot and will not control the means and manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant, Consultant's employees and the Sub-consultants are not "officers, employees, or agents" of Owner, as those terms are used in ORS 30.265.

4.6.2 Consultant shall not have control or charge of, and shall not be responsible for, the acts or omissions of other consultants or contractors under contract with Owner who are performing services or construction work on the Project. However, this provision does not in any way change Consultant's professional responsibility to report to Owner any information, including

information on the performance of consultants or contractors outside the control or charge of Consultant, concerning activities or conditions that have or could have an adverse effect on Owner or the Project.

4.6.3 Consultant is not a contributing member of the Public Employee's Retirement System and will be responsible for any federal, state, or other taxes applicable to any compensation or payments paid to Consultant under this Contract. Consultant will not be eligible for any benefits from any payments made under this Contract for federal Social Security, unemployment insurance, or worker's compensation, except as a self-employed individual. If any payment under this Contract is to be charged against federal funds, Consultant certifies that it is not currently employed by the federal government.

4.7 ***Successors & Assignments.*** The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Contract is executed, Consultant shall not enter into any Sub-consultant agreements for any of the Services or assign or transfer any of its interest in this Contract, without the prior written consent of Owner.

4.8 ***Compliance with Applicable Law.*** Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Services. Owner's performance under this Contract is conditioned upon Consultant's compliance with the provisions of ORS 279C.505, 279C.515, 279C.520, and 279C.530, which are hereby incorporated by reference. Consultant, the Sub-consultants, if any, and all employers providing Services, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017.

4.9 ***Governing Law; Jurisdiction; Venue.*** This Contract shall be governed by and construed 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 Owner and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; 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 "Governing Law; Jurisdiction; Venue" section be construed as a waiver by Marion County of any form of 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 THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

4.10 Tax Compliance Certification.

4.10.1 By signature on this Contract, the undersigned certifies under penalty of perjury that the undersigned is authorized to act on behalf of Consultant and that Consultant is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws.

4.10.2 For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 401.792 to 401.816 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323

(Cigarettes and Tobacco Products Tax), the elderly rental assistance program under ORS 310.630 to 310.706, and any local taxes administered by the Department of Revenue under ORS 305.620.

4.11 ***Severability.*** The Parties agree that if any term or provision of this 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.

4.12 ***Force Majeure.*** Neither party 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 war where such cause was beyond such party's reasonable control. 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.

4.13 ***Waiver.*** The failure of Owner to enforce any provision of this Contract shall not constitute a waiver by Owner of that or any other provision.

4.14 ***Third Party Beneficiaries.*** Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against Owner or Consultant. Consultant's Services under this Contract shall be performed solely for Owner's benefit and no other entity or person shall have any claim against Consultant because of this Contract for the performance or nonperformance of Services hereunder.

4.15 Ownership of Work Product; Confidentiality.

4.15.1 Definitions. As used in this Contract, the following terms have the meanings set forth below:

4.15.1.1 "Consultant Intellectual Property" means any intellectual property that is owned by Consultant and developed independently from this Contract and that is applicable to the Services or included in the Work Product.

4.15.1.2 "Third Party Intellectual Property" means any intellectual property that is owned by parties other than Owner or Consultant and that is applicable to the Services or included in the Work Product.

4.15.1.3 "Work Product" means the Services Consultant delivers or is required to deliver to Owner under this Contract. Work Product includes every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports, and other materials, whether completed, partially completed or in draft form.

4.15.2 Work Product. Except as provided in Sections 4.15.3 and 4.15.4, all Work Product created by Consultant pursuant to this Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire" or an employment to invent, shall be the exclusive property of Owner. Owner and Consultant agree that such original works of authorship are "work made for hire" of which Owner is the author within the meaning of the United States Copyright Act. To the extent that Owner is not the owner of the intellectual

property rights in such Work Product, Consultant hereby irrevocably assigns to Owner any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Owner's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Owner. Consultant forever waives any and all rights relating to original Work Product created pursuant to this 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.

4.15.3 Consultant Intellectual Property. In the event that Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use Consultant Intellectual Property, including the right of Owner to authorize contractors, consultants and others to use Consultant Intellectual Property, for the purposes described in this Contract.

4.15.4 Third Party Intellectual Property. In the event that Third Party Intellectual Property is necessary for the use of any Work Product, Consultant shall secure on Owner's behalf and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third-Party Intellectual Property, including the right of Owner to authorize contractors, consultants and others to use the Third Party Intellectual Property, for the purposes described in this Contract.

4.15.5 Consultant Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of Owner to authorize contractors, consultants and others to use the pre-existing elements of Consultant Intellectual Property employed in a Work Product, for the purposes described in this Contract.

4.15.6 Third Party Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Consultant shall secure on Owner's behalf and in the name of Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, including the right to authorize contractors, consultants and others to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, for the purposes described in this Contract.

4.15.7 Limited Owner Indemnity. To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.397, Consultant shall be indemnified and held harmless by Owner from liability arising out of re-use or alteration of the Work Product by Owner which was not specifically contemplated and agreed to by the Parties in this Contract or under separate contract.

4.15.8 Consultant Use of Work Product. Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless otherwise specified, Consultant may use standard line drawings, specifications, and calculations on other, unrelated projects.

4.15.9 Confidential Information. Consultant acknowledges that it or its employees, Sub-consultants, subcontractors or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of Owner or Owner's clients. Any and all information provided by Owner and marked confidential, or identified as confidential in a separate writing, that becomes available to Consultant or its employees, Sub-consultants, subcontractors or agents in the performance of this Contract shall be deemed to be confidential information of Owner ("Confidential Information"). Any reports or other documents or items, including software, that result from Consultant's use of the Confidential Information and any Work Product that Owner designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Consultant) publicly known; (b) is furnished by Owner to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than Owner without the obligation of confidentiality; (e) is disclosed with the written consent of Owner; or (f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

4.15.10 Non-Disclosure. Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to Owner under this Contract, and to advise each of its employees, Sub-consultants, subcontractors and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise Owner immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Consultant will at its expense cooperate with Owner in seeking injunctive or other equitable relief in the name of Owner or Consultant against any such person. Consultant agrees that, except as directed by Owner, Consultant will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at Owner's request, Consultant will turn over to Owner all documents, papers, and other matter in Consultant's possession that embody Confidential Information.

4.15.11 Injunctive Relief. Consultant acknowledges that breach of this Section 4.15, including disclosure of any Confidential Information, will give rise to irreparable injury to Owner that is inadequately compensable in damages. Accordingly, Owner may seek and obtain injunctive relief against the breach or threatened breach of this Section 4.15, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are

necessary for the protection of the legitimate business interests of Owner and are reasonable in scope and content.

4.15.12 Publicity. Consultant agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of Owner.

4.15.13 Security. Consultant shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of Owner when using, having access to, or creating systems for any of Owner's computers, data, systems, personnel, or other information resources.

4.16 ***Termination***.

4.16.1 Parties Right to Terminate by Agreement. This Contract may be terminated at any time, in whole or in part, by written mutual consent of the Parties.

4.16.2 Owner's Right to Terminate for Convenience. Owner may, at its sole discretion, terminate this Contract, in whole or in part, by written notice to Consultant specifying the termination date of the Contract.

4.16.2.1 In the event the Board of Commissioners of Marion 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;

4.16.2.2 Federal, state or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under this Contract are prohibited or Owner is prohibited from paying for such Services from the planned funding source;

4.16.2.3 Consultant no longer holds all licenses or certificates that are required to perform the Services; or

4.16.2.4 Consultant fails to provide Services within the times specified or allowed under this Contract; fails to perform any of the provisions of this Contract; or so fails to perform the Services as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from Owner, does not correct such failures within the time that Owner specifies (which shall not be less than 10 calendar days, except in the case of emergency).

4.16.3 Cessation of Services. Upon receiving a notice of termination, and except as otherwise directed in writing by Owner, Consultant shall immediately cease all activities related to the Services or the Project.

4.16.4 Consultant's Right to Terminate for Cause.

4.16.4.1 Consultant may terminate this Contract if Owner fails to pay Consultant pursuant to this Contract, provided that Owner has failed to make such payment to Consultant within fifteen (15) calendar days after receiving written notice from Consultant of such failure.

4.16.4.2 Consultant may terminate this Contract, for reasons other than non-payment, if Owner commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform under the Contract within the time specified, or so fails to perform as to endanger Consultant's performance under this Contract, and such breach, default or failure is not cured within thirty (30) calendar days after delivery of Consultant's notice, or such longer period as Consultant may specify in such notice.

4.16.5 Delivery of Work Product/Retained Remedies of Owner. As directed by Owner, Consultant shall, upon termination, promptly deliver to Owner all documents, information, works in progress and other property that are deliverables or would be deliverables if the Contract had been completed. By Consultant's signature on this Contract, Consultant allows Owner to use Work Product and other property for Owner's intended use. The rights and remedies of Owner provided in this Section 4.16 are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

4.16.6 Payment upon Termination.

4.16.6.1 In the event of termination pursuant to Sections 4.16.1, 4.16.2, 4.16.2.1, 4.16.2.2 or 4.16.5, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Owner plus Consultant's reasonable Contract close-out costs, less previous amounts paid and any claim(s) which Owner has against Consultant, except in the event of a termination under Section 4.16.3.1, where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium, consistent with Section 4.3. Within thirty (30) days after termination, Consultant shall submit an itemized invoice for all un-reimbursed Services completed before termination and all Contract close-out costs actually incurred by Consultant. Owner shall not be obligated to pay for any such costs invoiced to and received by Owner later than thirty (30) days after termination. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall promptly refund any excess amount upon demand.

4.16.6.2 In the event of termination pursuant to Sections 4.16.2.3 or 4.16.2.4, Owner 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 Sections 4.16.2.3 or 4.16.2.4, the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 4.16.2.

4.17 ***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's Corporation Division all information required by those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to executing this Contract.

4.18 ***Notice***. Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mail, postage prepaid, to Consultant or Owner at the address or number set forth on Exhibit A, or to such other address or number as either party may provide pursuant to this "Notice" section. Any notice delivered by mail shall be deemed to be given five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be

deemed to be given when the transmitting machine generates a receipt of the transmission. To be effective against Owner, any facsimile communication or notice must be confirmed by telephone notice to Owner's Representative for the Project as indicated in Exhibit A and shall not be deemed to be given until such confirmation is completed. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

4.19 ***Media Contacts; Confidentiality.*** Consultant shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without Owner's prior written authorization.

4.20 ***Conflict of Interest.*** Except with Owner's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear to, compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

Exhibits A through G are attached.

MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT

EXHIBIT A - STATEMENT OF WORK

Owner and Consultant agree that the following Services shall be provided by Consultant for the construction administration of the Project. The completed Project is intended to be an improved site that can be legally and fully used for the intended functions as constructed. For purposes of this Contract, "Basic Services" are those Services described in Section A1 of this Exhibit A, and "Reimbursable Expenses" are those expenses described in Section B.2 of Exhibit B-Consultant Compensation, and further defined in Section B.1.03 of Exhibit B.

BACKGROUND: Detroit Lake is one of the most popular recreational lakes in Oregon, bringing in tourists from around the state. Detroit Lake is a reservoir that is controlled by Detroit Dam. Located in the eastern portion of Marion County, the Detroit Lake area is the recreational heart of the Santiam Canyon communities of Detroit, Idanha, and to a lesser extent Gates and Mill City.

The U.S. Army Corps of Engineers (USACE) manages Detroit Dam for flood risk management. In addition, the water controlled by Detroit Dam is managed for hydropower, water quality improvement, irrigation, fish and wildlife habitat and recreation.

As the primary outdoor recreation destination in the North Santiam Canyon, Detroit Lake is crucial to the economic recovery of the region. The main economic engines supporting the regional economy are the Detroit Lake and Kane's Marinas, which provide moorage and boat rentals and serve as the base for camping and lodging facilities. Without these anchor amenities, other businesses that rely on tourism will suffer. All area businesses depend on a recreation season of May 1st to October 1st to maintain solvency year-round, with approximately 60% of annual revenue for these businesses being generated in the month of August alone.

However, declining water levels at Detroit Lake have adversely impacted the largest source of income from recreational tourism. Detroit Lake Marina and Kane's Marina lay upon shallow shelves, requiring the marinas to close their docks increasingly earlier as water is drained from the lake. Marion County estimates that lower water conditions could result in an economic loss of $11 million per year to local businesses and industries for recreational purposes. Ongoing uncertainty around the U.S. Army Corps of Engineers' management of Detroit Lake and Dam, diminishing investments in recreation on federal lands, as well as the lack of a solution for managing wastewater, has limited investments in recreation-related services that could capture tourism and recreation spending in the Canyon Communities.

Owner's Rep for Detroit Marinas and Excavation Resiliency Project

PROJECT PHILOSOPHY: Consultant shall perform professional services for the design of the Project to obtain the greatest long-term value for Owner, and to result in the prudent expenditure of public funds within the constraints of the Project program, context, and budget. In pursuing these goals, Consultant, with Owner's assistance, shall:

a. Perform Services which are appropriate for the context of the Project and the nature of its function, both present and future.

b. Avoid expenditures for aesthetic effect which are disproportionate when compared to the additional benefit to the Project as a whole.

c. Help assure the Project is completed on time and within budget.

d. Strive to reduce the construction cost of the Project while keeping life-cycle costs low.

e. Apprise Owner throughout the Project concerning the economic or financial impact of all design decisions.

f. Document all Project requirements and verify, to Owner's satisfaction, that requirements are included in the Construction Documents.

Representatives of the Parties for this Contract and the Project are:

Consultant: Dwyer Construction Management and Consulting LLC Telephone: 971-500-2834

Owner: Marion County Community Services Telephone: 503-588-7975

The Services that Consultant shall perform for the Project are described below:

A.1 BASIC SERVICES CONSTRUCTION CONTRACT ADMINISTRATION SERVICES

For the construction administration services, Consultant shall provide those Basic Services necessary for the administration of the Construction Contract as set forth in the General Conditions and Supplemental General Conditions of the Construction Contract. Consultant shall receive and transmit information as a representative of Owner during the construction of the Project and shall advise and consult with Owner. Instructions to Construction Contractor shall be forwarded through Consultant in writing. Consultant shall have authority to act on behalf of Owner only to the extent provided in the Construction Contract, CS-6469-25 with Siegmund Excavation and Construction, ("Contractor.")

A.1.1 OFFICE CONSTRUCTION ADMINISTRATION Services. Consultant shall process submittals, including receipt, review of, and appropriate action on shop drawings, product data, samples and other submittals required by the Construction Contract and all documents specifically incorporated by reference into the Construction Contract (the "Contract Documents"). Consultant shall distribute submittals as required and shall maintain a master file of submittals and related communications.

A.1.2 INSPECTION COORDINATION Services. With respect to independent inspection and testing agencies, Consultant shall: administer and coordinate field testing and inspections by independent agencies as required by the Contract Documents; recommend the scope, standards, procedures, and frequency of testing and inspections; arrange for testing and inspection on Owner's behalf; notify inspecting and testing agencies of status of the Work requiring testing and inspection; evaluate compliance by testing and inspection agencies with required scope, standards, procedures, and frequency of testing and inspections; review reports on inspections and tests and notify Owner and Contractor of observed deficiencies in the Work. Consultant shall oversee, and coordinate with Owner and Contractor, the review of any system furniture installation by the Contractor to verify that dimension requirements are met.

A.1.3 SUPPLEMENTAL DOCUMENTS Services. Consultant shall: prepare, reproduce, and distribute supplemental drawings, specifications, and interpretations in response to requests for clarification by the Contractor, Engineer of Record, or Owner and as required by construction exigencies; and forward Owner's instructions and provide guidance to the Contractor on Owner's behalf relative to changed requirements and schedule revisions.

A.1.4 QUOTATION REQUESTS/CHANGE ORDERS Services. Consultant shall: prepare, reproduce and distribute drawings and specifications to describe Work to be added, deleted, or modified; review proposals from Contractor for reasonableness of quantities and costs of labor and materials; review and make recommendations regarding changes in time for substantial completion; review and make detailed recommendations, including, if requested, a specific alternative cost breakdown, regarding impact on space planning design; negotiate with Contractor on Owner's behalf regarding costs of Work proposed to be added, deleted, or modified; assist in the preparation of appropriate modifications of the Construction Contract; coordinate communications, approvals, notifications, and record keeping regarding changes in the Work.

A.1.5 PAYMENT REVIEW Services. Consultant shall: evaluate and certify applications for payment, including review and determination of whether each charge is accurate and constitutes payment for fully authorized and completed Work, and maintain complete records regarding performance of this Service.

A.1.6 PROJECT CLOSEOUT Services. Upon notice from the Contractor that the Work, or a designated portion thereof which is acceptable to Owner, is sufficiently complete, in accordance with the Contract Documents, to permit utilization for the use for which it is intended, Consultant shall

a. Perform a detailed inspection, with Owner's representative, of the Work for conformity to the Contract Documents to verify the list submitted by the Contractor of items to be completed or corrected; and determine the amounts to be withheld until final completion.

b. Issue certificates of substantial completion and perform inspection(s) upon notice by Contractor that the Work is ready for final inspection and acceptance.

c. Notify Owner and Contractor of deficiencies found in follow up inspection(s), if any;

d. Perform a final inspection with Owner's representative to verify final completion of the Work, and receipt and transmittal of warranties, affidavits, receipts, and releases and waivers of lien or bonds indemnifying Owner against liens;

e. Issue final certificate(s) for payment; and

f. Issue a summary of expenses. Consultant shall maintain and provide Owner with records regarding direct expenses including both general and specific travel expenses, whether reimbursable or not. This summary shall include all expenses incurred by Consultant and any Sub-consultants as a direct result of the performance of Services. The breakdown of these expenses shall be as follows:

    i. All of Consultant’s direct travel expenses, whether reimbursed or included in a Supplemental Service and therefore not separately reimbursed;

    ii. All of Sub-consultants’ direct travel expenses, whether reimbursed or included in a Supplemental Service and therefore not separately reimbursed;

iii. All of Consultant's direct general expenses, other than travel expenses, whether reimbursed or included in a Supplemental Service and therefore not separately reimbursed; and

iv. All of Sub-consultants' direct general expenses, other than travel expenses, whether reimbursed or included in a Supplemental Service and therefore not separately reimbursed.

A.1.7 RECORD DOCUMENT Services. Consultant shall provide Owner with accurate record drawings and record specifications manuals for the Project as more particularly described in this Section. Consultant shall deliver to Owner, within 5 days from receipt of the Contractor's working record documents, the following record documents (the "Record Documents"):

a. Hardcopy Set - The Record Documents shall consist of one (1) complete sets of record drawings, prepared 20 lb. (minimum) bond media (the "Record Drawings"). The Record Drawings shall include all drawing sheets used for bidding including; addenda, all changes resulting from regulatory reviews, change orders and as-built conditions. Consultant is not responsible for the accuracy of the working as-built drawings furnished by Contractor.

b. Electronic Set - A complete set of Record Drawings (as described above in Section A.6.07(a) above) and generated in AutoCAD (version as directed by Owner) shall be provided to Owner by Consultant, as well as an electronic version of the complete specifications in a file format approved by Owner. Consultant shall verify that all electronic drawings are readable and that all AutoCAD xreference ("Xrefs") files are bound and formatted in such a way as to be readable by the AutoCAD version they are saved in. Consultant shall provide a list of all drawings, including Xrefs that are associated with the Record Drawings. The electronic Record Documents shall be provided on recordable (not re-recordable) compact discs.

A.1.8 WARRANTY REVIEW Services. Consultant shall: consult with and make recommendations to Owner, during the duration of the Construction Contract warranty period, concerning inadequate performance of materials, systems, and equipment under warranty; perform inspections prior to expiration of the warranty period to ascertain adequacy of performance of materials, systems, and equipment; and document defects or deficiencies and assist Owner in preparing instructions to the Contractor for correction of noted defects.

A.1.9 CONSTRUCTION CONTRACT ADMINISTRATION Services. Consultant shall perform Construction Contract administration Services as set forth in this section and the Contract Documents.

a. Consultant shall visit the site at weekly intervals, and upon special circumstances as requested by Owner, to be familiar with the progress and quality of the Work, and to determine if the Work is generally proceeding in accordance with the Contract Documents. Consultant, in conjunction with the payment review, shall report to Owner on the accuracy of Contractor's working record drawings each month during construction. However, Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such on-site observations, Consultant shall report such visits, observations, and information in a weekly written report to Owner.

b. Consultant shall not have control or charge of, and shall not be responsible for construction means, methods, techniques, sequences, or procedures, for safety precautions and programs in connection with the Work. Consultant, by virtue of its position alone and without regard for Consultant's actual involvement on site, shall not have control or charge of, and shall not be responsible for the acts or omissions of Contractor and any subcontractors or any other persons

performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

c. Subject to the concurrence of Owner, Consultant shall be the interpreter of the requirements of the Contract Documents, regarding the performance thereunder by both Owner and Contractor. Accordingly, Consultant shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either Owner or Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes, and other matters in question between Owner and Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents. Owner shall render a final determination in the event that Owner disagrees with Consultant's proposed interpretation or decision.

d. Consultant shall review and take appropriate action on Contractor's submittals, including shop drawings, product data, and samples, checking for conformance with the design concept of the Work and the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. Consultant shall forward to Owner one (1) copy of all approved shop drawings, product data, and samples, together with correspondence related to these documents as a record of the Work. Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

e. Consultant shall conduct construction observations and reviews to determine "Substantial Completion" and "Final Completion" (as those terms are defined in the Construction Contract) and shall receive and forward to Owner written warranties and related documents required by the Contract Documents and assembled by Contractor. Consultant, with Owner's concurrence, shall prepare and certify a "Certificate of Substantial Completion" and a "Certificate of Final Payment" under the Construction Contract.

MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT

EXHIBIT B - CONSULTANT COMPENSATION

B.1 BASIS OF COMPENSATION

B.1.1 Owner shall compensate Consultant for the performance of Services set forth in Exhibit A, as follows:

The maximum, not to exceed total amount payable under this Contract is $204,995.00, for the combination of Basic Services, and Reimbursable Expenses.

Consultant shall perform the Basic Services for: a maximum, not-to-exceed price of $202,560.00.

Owner shall reimburse Consultant for any allowable Reimbursable Expenses up to a maximum amount of $2,435.00.

B.1.2 Payments for Services and Reimbursable Expenses shall be made monthly, following Owner's review and approval of detailed invoices submitted by Consultant and acceptance of the Services or approval of Reimbursable Expenses by Owner. Payment for all Services performed and for Reimbursable Expenses shall not exceed the amounts indicated in Section B.1.03, below. Owner shall make payments only after Owner's receipt and approval of (i) Consultant's detailed monthly invoice as described in Section B.1.07, and (ii) all reports, designs, certificates, and documents covered by the invoice. Payments are subject to the provisions of ORS 293.462.

B.1.3 Payments for Basic Services shall be in proportion to the Services performed set forth in Exhibit A. The total compensation for the Services shall not exceed the following percentages of the total amount payable for the Warranty Period Services, which may be included by Contract amendment, are listed separately):

B.1.4 Reimbursable Expenses, as described in Section B.2, are defined as the direct costs expended by Consultant, Consultant's employees and Sub-consultants for performance of Services rendered to complete the Project. The estimated dollar amounts for each of the identified Reimbursable Expense items are as follows:

1	Travel Related Expenses	$2,435.00
2	General Reimbursable Expenses	
	Total	**$2,435.00**

It is understood that the actual total amount payable for each individual Reimbursable Expense item may be more or less than the estimate above, however, the total amount of all Reimbursable Expenses shall not exceed the maximum amount stated in Section B.1.01 for Reimbursable Expenses without a Contract amendment. Payments for Reimbursable Expenses shall be identified and tracked on monthly invoices according to the expense items listed above.

B.1.5 Consultant shall not submit invoices for, and Owner will not pay, any amount in excess of the maximum, not to exceed amount payable under this Contract set forth in Section B.1.01. If this amount is increased by Contract amendment, the amendment must be effective before. Consultant performs Services subject to the amendment. Consultant shall notify Owner's Representative identified in this Contract in writing of the expiration of the Contract, thirty (30) days prior to such expiration. No payment will be made for any Services performed prior to the Effective Date or after the expiration date of the Contract.

B.1.6 Consultant shall submit monthly invoices for Services performed. To be processed for payment by Owner, the invoices shall include the following basic information:

a. The correct name of Owner's authorized representative

b. Invoice date

c. Date range during which the Services being invoiced for were provided

d. The last invoice submitted on the Project must be clearly labeled "Final Invoice"

e. Original Contract total, not to exceed amount broken out by: Basic Services, and Reimbursable Expenses separated by two categories of Travel Expenses and General Reimbursables

f. Statement of changes to the original total, not to exceed amount by amendment(s) and broken out in the same way as in item F, showing the revised Contract amounts

g. Paid to date amounts showing the amounts submitted for prior to the current invoice (regardless of payment status) and broken out the same way as in item F

h. Amounts being invoiced for in the current invoice and broken out the same way as in item F, with a roll up of a "Total Amount Billed For This Invoice" line item amount

i. Balances Remaining after receipt of payment for the current invoice broken out the same way as in item F

Consultant shall describe all Services performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed. Reimbursable Expenses shall be broken out into to line-item categories, 1) Travel Expenses and 2) General Reimbursable Expenses. Invoices for Basic Services shall be for completed Basic Services only and shall indicate the percentage of the total Basic Services that the amount invoiced represents.

Consultant shall send invoices to Owner using the following address:

Marion County Community Services Department
PO Box 14500
Salem, OR 97309

Consultant shall not indicate or invoice for any past due amounts in the current invoice. All such notifications of a past due amount must be handled by a separate Statement of Account.

Owner shall have the right to reject any invoice which does not have the proper information as required by this section without incurring penalty liabilities for late payment.

B.1.7 Owner and Consultant agree in accordance with the terms and conditions of this Contract that:

a. If the scope of the Project or the Services are changed materially, Consultant shall request in writing an amendment to the Contract before additional Services are provided and before compensation is adjusted. All legally required approvals must be obtained for any Contract amendment before the amendment is effective and before Services may be performed or payment made under the amendment.

b. Consultant's fee for preparing routine change orders adding or deleting Services from the Project shall be included in the maximum not-to-exceed amount for Basic Services stated in Section B.1.03.

c. Upon Owner's request and without additional compensation, Consultant shall make such revisions to completed Contract Documents as are necessary to correct errors or omissions appearing therein, in accordance with the standard of care described in Section 2.1.1 of Consultant's Responsibilities; Representations and Warranties.

B.2 REIMBURSABLE EXPENSES

B.2.1 Reimbursable Expenses are in addition to compensation for Services and shall not exceed the maximum amount stated in Section B.1.05 without prior authorization by Owner. This amount is separated into two categories, Travel Expenses and General Reimbursable Expenses, as outlined below. Reimbursable Expenses include actual, allowable and reasonable expenditures made by Consultant and Consultant's employees in performing the Services required in Exhibit A. Reimbursable Expenses must be evidenced by copies of actual third-party invoices or receipts delivered to Owner to qualify for reimbursement and are limited to the types of actual expenses listed below.

a. General Reimbursable Expenses consist of:

i. Long distance communications.

ii. Reproductions, postage and handling of drawings and specifications and other documents, excluding reproductions of drawings, specifications and other documents used by Consultant and Consultant's subconsultants.

iv. Third-party models and mockups requested by Owner.

v. The printing of master or reproducible sets of plans and project manuals including specifications.

vi. Plan check fees.

b. Travel Expenses:

All travel shall be allowed only when the travel is essential to the normal discharge of Consultant's responsibilities under the Contract. All travel shall be conducted in the most efficient and cost-effective manner resulting in the best value to the Owner. The travel must comply with all the requirements set forth in this section and must be for official Marion County business only. Personal expenses shall not be authorized at any time. All expenses are included in the total maximum Contract amount stated in Section B.1.01.

Current approved rates are as follows:

i. Mileage. Mileage for travel in a private automobile, while Consultant is acting within the course and scope of his/her duties under this Contract and driving over the most direct and

usually traveled route, will be reimbursed at the current federal mileage rate. To qualify for mileage reimbursement, Consultant must hold a valid, current driver's license for the class of vehicle to be driven and carry personal automobile liability insurance in amounts not less than those required by (i) the Oregon Financial Responsibility Law (ORS 806.060) or (ii) the jurisdiction in which the vehicle is being operated, whichever is greater. No mileage reimbursement will be paid for the use of motorcycles or mopeds.

ii. Meals. Receipts are required for reimbursement.

Owner will not pay any mark up over actual allowable reimbursement costs. Any costs associated with recordkeeping or labor to create reproductions of receipts is considered indirect overhead and therefore part of Consultant's Professional Hourly Rates.

MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT

EXHIBIT C - INSURANCE PROVISIONS

A. REQUIRED INSURANCE. Contractor shall obtain at Contractor'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. Contractor 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 Contractor, 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). Contractor shall require and ensure that each of its subcontractors 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. Contractor 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. CYBER LIABILITY. Covering network security, breach of data, and coverage for regulatory fines and fees imposed against County due to failures in products and services provided under this Contract. Cyber Liability coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability.

☐ Required by County ☒ Not required by County.
☐ $2,000,000 Per occurrence limit for any single claimant; and
☐ $5,000,000 Per occurrence limit for multiple claimants
☐ Exclusion Approved by Information Technology Director and Risk Manager

iv. 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. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

☒ Required by County ☐ Not required by County.
Minimum Limits:
☒ $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

v. 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"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

☒ Required by County ☐ Not required by County.
Minimum Limits:
☐ 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 Contractor'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 Contractor 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. Contractor 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). Contractor shall pay for all deductibles, self-insured retention, and self-insurance, if any.

MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT

EXHIBIT D - SPECIAL CONTRACT PROVISIONS

D.1 RESPONSIBILITIES OF OWNER

D.1.1 Owner's Project budget shall include contingencies for design, bidding, changes in the Work during construction, and other costs described below.

D.1.2 Owner, at Owner's sole option, may retain an inspector to inspect the Project in order to protect Owner's interests. The costs of the inspector are to be paid by Owner and the inspector shall serve at the pleasure of Owner. When retained by Owner, the inspector's duties are not to be interpreted as conflicting with the duties of Consultant or relieving Consultant of any responsibility or duty incurred under this Contract, nor may the inspector act as Consultant's agent.

D.1.3 Owner shall furnish to Consultant a certified land survey, soils report of the building site, and other related information as Owner deems necessary.

D.1.4 Owner shall furnish to Consultant a Hazardous Material Survey, and any subsequent testing and/or abatement as may be required.

D.1.5 Owner shall furnish to Consultant structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

D.1.6 Owner shall be responsible for payment of all plan check fees, review fees, permit fees, taxes, development charges, or any other costs related to obtaining governing bodies' approval for construction of the Project.

D.2 PROJECT RESPONSIBILITIES

D.2.1 Consultant shall prepare a schedule of its activities through the Project. Consultant shall schedule and prepare agendas for all meetings which involve Consultant's Services. Consultant shall chair such meetings and shall record and distribute minutes, in a format and level of detail acceptable to Owner, of decisions and actions to attendees.

D.2.2 Consultant shall confirm firsthand, through site investigations of the observable circumstances and existing conditions, the critical issues that may impact design criteria and shall not rely solely on furnished As Built documents. Consultant shall be liable, at Owner's discretion, for any cost change impacts as a result of using inaccurate As Built drawings which, if used solely for the design process without confirmation, create conflicts on site.

D.2.3 RESERVED

MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT

EXHIBIT E - RESERVED

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EXHIBIT F - RATE SCHEDULE

	Hourly Rate
Stephan Owens, Owner's Representative	$160.00
Krys Lukesh, Construction Expert	$160.00
Paul Sellke, Civil and Geotechnical Engineer (subconsultant)	$200.00
David Dwyer, President	$210.00

MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT

EXHIBIT G - RESERVED

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: Wednesday, August 13, 2025 9:00am

Department: Health & Human Services

Title: Local Alcohol & Drug Planning Committee (LAPDC) Bylaws Revision

Management Update/Work Session Date: 7/29/2025 **Audio/Visual aids** ☐

Time Required: 5 **Contact:** Samantha Andress **Phone:** x4903

Requested Action:
Approve the revised LADPC bylaws.

Issue, Description & Background:
The purpose of the Marion County Local Alcohol and Drug Planning Committee ("Committee") is to serve as a structured advisory group to the Marion County Local Mental Health Authority ("Local Mental Health Authority"). Its primary purpose will be to support the effective development and operation of the Marion County Health & Human Services through provision of key information, materials, and data informed recommendations to the Local Mental Health Authority. In accordance with county administrative policies and procedures, bylaws will be reviewed by the Committee every three years and any changes will be approved by the Board.

Financial Impacts:
None

Impacts to Department & External Agencies:
None

List of attachments:
Bylaws, board order

Presenter:
Ryan Matthews

Department Head Signature:
Ryan Matthews
Digitally signed by Ryan Matthews
Date: 2025.07.29 14:55:16 -07'00'

Marion County

LOCAL ALCOHOL AND DRUG PLANNING COMMITTEE BYLAWS

This document is available upon request on alternative formats including but not limited to large print, Braille, audio recording and other languages. Please call 503-588-5357 at least 48 hours in advance.

1. Name

This committee is established pursuant to ORS 430.342 and shall be known as the Marion County Local Alcohol and Drug Planning Committee.

2. Mission

Create a safe and welcoming community where all people can access high-quality public and mental health services and are supported to achieve their highest level of health.

3. Purpose

The purpose of the Marion County Local Alcohol and Drug Planning Committee ("Committee") is to serve as a structured advisory group to the Marion County Local Mental Health Authority ("Local Mental Health Authority"). Its primary purpose will be to support the effective development and operation of the Marion County Health & Human Services through provision of key information, materials, and data informed recommendations to the Local Mental Health Authority.

The Marion County Board of Commissioners ("Board") designates the Committee to act as the local planning committee for alcohol and drug prevention and treatment services, pursuant to ORS 430.342 (1).

4. Scope

The Committee will act as an advisory capacity to the Local Mental Health Authority and the Marion County Health and Human Services (MCHHS) Administrator. Pursuant to ORS 430.342 (2), Committee work will be limited to advising the Local Mental Health Authority and the MCHHS Administrator by identifying needs and establishing priorities for alcohol and drug prevention and treatment services that best suit the needs and values of the community. As described in ORS 430.342 (2), the Committee will report its findings to Oregon Health Authority, the Local Mental Health Authority, and the budget advisory committee of the commission.

The Committee will not have formal authority to govern the Local Mental Health Authority or MCHHS, or its administration, services, or staffing. Committee members will not represent the Local Mental Health Authority or MCHHS or any of its subprograms in a public relations capacity, unless specifically requested by the Local Mental Health Authority or its designee. The Committee will not direct funding of MCHHS services or administrative oversight thereof. The Committee may recommend funding opportunities (such as grants) that involve furthering the operation, oversight, or development of the MCHHS.

5. Membership

Committee members will include person who have unique knowledge, expertise, or personal experience in the area of community behavioral health program needs and services.

a. **Appointment.** The Board will appoint persons to the Committee. Members shall be appointed for terms of four (4) years with the ability to be re-appointed by the Board.

b. **Membership based on ORS 430.342 (3).** The Committee shall be representative of the geographic area and shall be persons with interest or experience in developing alcohol and drug prevention and treatment services. Members shall include a number of minority members which reasonably reflects the proportion of the need for prevention, treatment and rehabilitation services of minorities in the community.

c. **Membership based on ORS 430.075.** At least 20 percent of Committee shall be consumers with representation balanced by age.

d. **Representation.** The Committee shall consist of not more than eleven (11) members.

e. **Duties/Expectations.** Committee members undertake the responsibility of assisting the Committee in achieving its mission. Fulfillment of this responsibility includes the following:

1) Provide support to the Committee in the community;
2) Work on Committee projects to advance its goals;
3) Communicate with members in order to facilitate the work of the Committee;
4) Regularly attend meetings. More than five (5) unexcused absences in any 12- month period may result in removal of the member from the Committee. A member's absence is unexcused if the member fails to notify county staff in advance of a meeting that the member will not attend the meeting.
5) Attend meetings prepared to participate.
6) Participate in the development of MCHHS grant applications as required by statute.

6. MCHHS Staff Role

The MCHHS CMHP Director and MCHHS staff will have an active role in the Committee. The MCHHS CMHP Director and MCHHS staff will provide support and assist in the administration of the Committee.

7. Termination

a. **Removal by Board of Commissioners.** All Committee members serve at the pleasure of the Board of Commissioners. The Board may remove a Committee member on its own motion or upon the recommendation of the Committee.

b. **Resignation.** Resignations by members shall be submitted in writing to the Committee chair or vice-chair and announced at the next regularly scheduled meeting. The chair or vice-chair shall forward a copy of the resignation to the Board.

8. Meetings

a. Public Meetings Law. The Committee is a public body subject to the public meetings and records law as stated in ORS Chapter 192. All meetings will be open to the public.

b. Regular Meetings. The Committee will meet September through May with summer break in June, July, and August. Regular meetings may be canceled or changed to another specific place, date and time provided that actual notice is given.

c. Notice. The Committee will provide for and give public notice, reasonably calculated to give actual notice, to Committee members, interested persons, news media that have requested notice, and the general public. Notice shall include the time and place for holding regular meetings. The notice will also include a list of the primary subjects anticipated to be considered at the meeting. Distribution of meeting notices will be in a manner which maximizes the potential of the public to be aware of the proceedings and to participate. Whenever possible, matters resulting in a recommendation to the Board will be deliberated during a minimum of two meetings to assure maximum participation.

d. Special Meetings. Special meetings may be called by the Committee chair by notifying all members and the general public through a news media notice not less than 24 hours prior to the time of the special meeting. When possible, notice should be provided as soon as possible to encourage public participation.

e. Quorum. The majority of the Committee membership will constitute a quorum for the transaction of all business at meetings. Members may attend either in person or electronically so long as persons in attendance can both hear and communicate with each other. Members attending electronically may be counted towards achieving a quorum.

f. Decision making procedure. Each Committee member will be entitled to one vote on all issues presented at meetings at which the member is present. The primary decision-making method shall be the consensus process. Consensus is achieved when all members approve an action. However, if consensus cannot be achieved with regard to any issue, decision-making shall be accomplished by majority vote. Majority is defined as a majority of the Committee members.

g. Minutes. The staff member assigned to the Committee will cause meeting minutes to be prepared. Minutes will include a list of the members present, motions, proposals, resolutions, and orders proposed and their disposition, the results of all votes and a vote by each member by name, the substance of any discussions on any matter, and reference to any document discussed at that meeting. Minutes will be distributed to the membership one week prior to the monthly meeting. Minutes will also be distributed to the Board and posted on the Marion County website.

h. Agendas. Items may be placed on a meeting agenda by any Committee member or by county staff. The agenda will be distributed to members at least one week prior to a regular meeting.

9. Sub-Committees

a. Creation of Sub-Committees. The Committee may authorize the formation of sub-committees as necessary to deal with specific problems or issues as the Committee believes appropriate. All sub-committees are required to report their information and/or recommendations to the Committee. Sub-committee members shall be members of the Committee. The Committee will select the members of a sub-committee.

10. Officers

The Committee will be led by a chair and a vice-chair who will act as leaders of convened meetings and as the parliamentarian. The members of the Committee shall recommend the chair and vice chair to the Board for approval. The Board has full discretion to choose from among any committee members and shall make official appointments through a board order. Officers serve a 2-year term with the ability to be reappointed or removed by the Board of Commissioners.

a. Chair Responsibilities. The chair will enforce Committee directives, guidelines, and membership rules and will guide the conduct of public meetings.

i. The Chair will meet with the MCHHS staff quarterly to ensure that the Committee is working in conjunction with other MCHHS advisory committees.

b. Vice-Chair Responsibilities. In the absence of the chair, the vice-chair will assume the chair's responsibilities. If the chair or vice-chair is not available for a publicly-convened meeting, then the assembled quorum of the meeting will select a temporary chairperson to conduct the meeting.

11. Conflicts of Interest

a. Declaration. The Committee is subject to ORS 244.020, 244.040, and 244.120 to 244.130, defining conflict of interest and establishing protocols for members of public bodies in Oregon. LADPC members are expected to declare a conflict of interest prior to consideration of any matter causing a potential or actual conflict.

b. Potential Conflict Defined. A potential conflict of interest exists when a Committee member takes an action that reasonably could be expected to have a financial impact on that member, a relative, or a business with which the member or member's relative is associated. The Committee member may participate in an action after declaring the potential conflict and announcing its nature.

c. Actual Conflict Defined. An actual conflict of interest exists when an action is reasonably certain to result in a special benefit or detriment to the Committee member, a relative, or a business with which the member or member's relative is associated. The member will declare the actual conflict and announce its nature. The member must then refrain from taking any official action, except when the member's vote is necessary to achieve a quorum. When a vote is necessary to achieve a quorum, the member may vote, but may not participate in any discussion or debate on the issue out of which the actual conflict arises.

12. Revision of Bylaws

In accordance with county administrative policies and procedures, bylaws will be reviewed by the Committee every three years and any recommended changes will only take effect after Board approval.

a. **Distribution.** Upon the Board approving new or revised bylaws, the MCHHS Department will distribute the bylaws to all Committee members.

13. Community Relations/Public Input

Any member of the public will be welcome to attend Committee meetings. Public comments will be encouraged and will be accepted verbally or in writing. Anyone who wishes to voice opinions or present information or concerns to the Committee may contact the chair, vice-chair, or MCHHS Department staff. Arrangements will be made and time will be allotted at meetings as appropriate to assure broad public participation. Persons who require interpreter assistance, an assistive listening devise, large print material or other accommodations for free, may call 503-588-5357 at least 48 hours in advance of the meeting.

Approved by the Marion County Board of Commissioners: **DATE: _____**

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of revising bylaws)
for the Local Alcohol and Drug)
Planning Committee)

ORDER No. _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on Wednesday, August 13, 2025, to revise the bylaws for the Marion County Local Alcohol and Drug Planning Committee;

WHEREAS, the Board of Commissioners recommend approval of the revised Marion County Local Alcohol and Drug Planning Committee bylaws enabling the Committee to act as a structured advisory group to the Marion County Local Mental Health Authority and the Marion County Health & Human Services Community Mental Health Program.

WHEREAS, the Board of Commissioners finds that it is in the public interest to regularly review the bylaws of the Marion County Local Alcohol and Drug Planning Committee; now, therefore,

IT IS HEREBY ORDERED that the revised bylaws of the Marion County Local Alcohol and Drug Planning Committee are approved.

IT IS FURTHER ORDERED that these bylaws supersede any previously approved bylaws of the Marion County Local Alcohol and Drug Planning Committee.

DATED this 13th day of August 2025

MARION COUNTY BOARD OF COMMISSIONERS

_____
Chair

_____
Commissioner

_____
Commissioner

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: Wednesday, August 13, 2025 9:00am

Department: Health & Human Services

Title: Mental Health Advisory Committee (MHAC) Bylaws Revision

Management Update/Work Session Date: 7/29/2025 **Audio/Visual aids** ☐

Time Required: 5 **Contact:** Samantha Andress **Phone:** x4903

Requested Action:
Approve the revised MHAC bylaws.

Issue, Description & Background:
The purpose of the Marion County Mental Health Advisory Committee ("Committee") is to serve as a structured advisory group to the Marion County Local Mental Health Authority ("Local Mental Health Authority"). Its primary purpose will be to support the effective development and operation of the Marion County Health & Human Services (MCHHS) Community Mental Health Program (CMHP) through provision of key information, materials, and data informed recommendations to the Local Mental Health Authority. In accordance with county administrative policies and procedures, bylaws will be reviewed by the Committee every three years and any changes will be approved by the Board.

Financial Impacts:
None

Impacts to Department & External Agencies:
None

List of attachments:
Bylaws, board order

Presenter:
Ryan Matthews

Department Head Signature:
Ryan Matthews
Digitally signed by Ryan Matthews
Date: 2025.07.29 14:59:32 -07'00'

Marion County

MENTAL HEALTH ADVISORY COMMITTEE

This document is available upon request on alternative formats including but not limited to large print, Braille, audio recording and other languages. Please call 503-588-5357 at least 48 hours in advance.

1. Name

This committee is established pursuant to ORS 430.630 and shall be known as the Marion County Mental Health Advisory Committee.

2. Mission

Create a safe and welcoming community where all people can access high-quality public and mental health services and are supported to achieve their highest level of health.

3. Purpose

The purpose of the Marion County Mental Health Advisory Committee ("Committee") is to serve as a structured advisory group to the Marion County Local Mental Health Authority ("Local Mental Health Authority"). Its primary purpose will be to support the effective development and operation of the Marion County Health & Human Services (MCHHS) Community Mental Health Program (CMHP) through provision of key information, materials, and data informed recommendations to the Local Mental Health Authority.

4. Scope

The Committee will act as an advisory capacity to the Local Mental Health Authority and the MCHHS CMHP Director. Committee work will be limited to advising the Local Mental Health Authority and the CMHP Director on services to be provided by community mental health programs (as described in ORS 430.630), priorities for services provided by community mental health programs (as described in ORS 430.644), priorities for services for persons with mental or emotional disturbances (as described in ORS 430.646), and mental health services for children (as described in ORS 430.705).

The Committee will not have formal authority to govern the Local Mental Health Authority, MCHHS, the MCHHS CMHP, its administration, services, or staffing. Committee members will not represent MCHHS or any of its subprograms in a public relations capacity, unless specifically requested by the Local Mental Health Authority or its designee. The Committee will not direct funding of MCHHS or MCHHS CMHP services or administrative oversight thereof. The Committee may recommend funding opportunities (such as grants) that involve furthering the operation, oversight, or development of the MCHHS CMHP.

5. Membership

Committee members will include persons who have unique knowledge, expertise, or personal experience in the area of community behavioral health program needs and services. In accordance with ORS 430.075(1), twenty (20) percent of Committee Members will be consumers with representation balanced

by age. Consumer is defined in ORS 430.073(1) as a person who has received or is receiving mental health or addiction services.

a. **Appointment.** Pursuant to ORS 430.630(7), the Marion County Board of Commissioners ("Board") will appoint persons to the Committee. Members shall be appointed to serve terms of four (4) years with the ability to be re-appointed by the Board.

b. **Membership based on ORS 340.631.** The Committee shall include "persons with disabilities" and "older adults," as defined in ORS 430.050 (6). Pursuant to ORS 340.631, these members shall meet separately with the Intellectual Developmental Disabilities Advisory Committee, established by the Board as the disability issues advisory committee, according to OAR 411-320-0030(11) and ORS 430.631.

c. **Representation**. The Committee shall consist of not more than eleven (11) members.

d. **Duties.** Committee members undertake the responsibility of assisting the Committee in achieving its mission. Fulfillment of this responsibility includes the following:

1) Provide support to the Committee in the community;
2) Work on Committee projects to advance its goals;
3) Communicate with members in order to facilitate the work of the Committee;
4) Regularly attend meetings. More than five (5) unexcused absences in any 12- month period may result in removal of the member from the Committee. A member's absence is unexcused if the member fails to notify county staff in advance of a meeting that the member will not attend the meeting.
5) Attend meetings prepared to participate.

6. MCHHS Staff Role

The MCHHS CMHP Director and MCHHS staff will have an active role in the Committee. The MCHHS CMHP Director and MCHHS staff will provide support and assist in the administration of the Committee.

7. Termination

a. **Removal by Board of Commissioners.** All Committee members serve at the pleasure of the Board. The Board may remove a Committee member on its own motion or upon the recommendation of the Committee.

b. **Resignation.** Resignations by members shall be submitted in writing to the Committee chair or vice-chair and announced at the next regularly scheduled meeting. The chair or vice-chair shall forward a copy of the resignation to the Board.

8. Meetings

a. **Public meeting laws.** The Committee is a public body subject to the public meetings and record laws as stated in ORS Chapter 192. All meetings will be open to the public.

b. Regular meetings. The Committee will meet September through May with summer break in June, July, and August. Regular meetings may be canceled or changed to another specific place, date and time provided that actual notice is given.

c. Notice. The Committee will provide for and give public notice, reasonably calculated to give actual notice, to Committee members, interested persons, news media that have requested notice, and general public notice. Notice shall include the time and place for holding regular meetings. The notice will also include a list of the primary subjects anticipated to be considered at the meeting. Distribution of meeting notices will be in a manner that maximizes the potential of the public awareness of the proceedings of the Committee and to participate in its deliberations. Whenever possible, matters resulting in a recommendation to the Board will be deliberated during a minimum of two meetings to assure maximum participation.

d. Special Meetings. Special meetings may be called by the Committee chair by notifying all members and the general public through a news media notice not less than 24 hours prior to the time of the special meeting. When possible, notice should be provided as soon as possible to encourage public participation.

e. Quorum. The majority of the Committee membership will constitute a quorum for the transaction of all business at meetings. Members may attend either in person or electronically so long as persons in attendance can both hear and communicate with each other. Members attending electronically may be counted towards achieving a quorum.

f. Decision making procedure. Each Committee member will be entitled to one vote on all issues presented at meetings at which the member is present. The primary decision-making method shall be the consensus process. Consensus is achieved when all members approve an action. However, if consensus cannot be achieved with regard to any issue, decision-making shall be accomplished by majority vote. Majority is defined as a majority of the Committee members.

g. Minutes. The staff member assigned to the Committee will cause meeting minutes to be prepared. Minutes will include a list of the members present, motions, proposals, resolutions, and orders proposed and their disposition, the results of all votes and a vote by each member by name, the substance of any discussions on any matter, and reference to any document discussed at that meeting. Minutes will be distributed to the membership one week prior to the monthly meeting. Minutes will also be distributed to the Board and posted on the Marion County website.

h. Agendas. Items may be placed on a meeting agenda by any Committee member or by county staff. The agenda will be distributed to members at least one week prior to a regular meeting.

9. Sub-Committees

a. Creation of Sub-Committees. The Committee may authorize the formation of sub-committees as necessary to deal with specific problems or issues as the Committee believes appropriate. All sub-committees are required to report their information and/or recommendations to the Committee. Sub-committee members shall be members of the Committee. The Committee will select the members of a sub-committee.

b. **Disability Issues Advisory Committee.** Pursuant to ORS 430.631(2), "persons with disabilities" shall meet separately with the Disability Issues Advisory Committee.

10. Officers

The Committee will be led by a chair and a vice-chair who will act as leaders of convened meetings and as the parliamentarian. The members of the committee shall recommend the chair and vice chair to the Board for approval. The Board has full discretion to choose from among any committee members and shall make official appointments through a board order. Officers serve a 2-year term with the ability to be reappointed or removed by the Board of Commissioners.
.

a. **Chair responsibilities.** The chair will enforce Committee directives, guidelines, and membership rules and will guide the conduct of public meetings.

    i. The Chair will meet with MCHHS staff quarterly to ensure that the Committee is working in conjunction with other MCHHS advisory committees.

b. **Vice chair responsibilities.** In the absence of the chair, the vice chair will assume the chair's responsibilities. If the chair or vice-chair are not available for a publicly convened meeting, then the assembled quorum of the meeting will select a temporary chairperson to conduct the meeting.

11. Conflicts of Interest

a. **Declaration.** The Committee is subject to ORS 244.020, 244.040(1), and 244.120 to 244.130, defining conflict of interest and establishing protocols for members of public bodies in Oregon. Committee members are expected to declare a conflict of interest prior to consideration of any matter causing a potential or actual conflict.

b. **Potential conflict defined.** A potential conflict of interest exists when a Committee member takes an action that reasonably could be expected to have a financial impact on that member, a relative, or a business with which the member or member's relative is associated. The Committee member may participate in an action after declaring the potential conflict and announcing its nature.

c. **Actual conflict defined.** An actual conflict of interest exists when an action is reasonably certain to result in a special benefit or detriment to the Committee member, a relative, or a business with which the member or member's relative is associated. The member will declare the actual conflict and announce its nature. The member must then refrain from taking any official action, except when the member's vote is necessary to achieve a quorum. When a vote is necessary to achieve a quorum, the member may vote, but may not participate in any discussion or debate on the issue out of which the actual conflict arises.

12. Revision of Bylaws

In accordance with county administrative policies and procedures, bylaws will be reviewed by the Committee every three years and any recommended changes will only take effect after Board approval.

a. **Distribution.** Upon the Board approving new or revised bylaws, the MCHHS Department will distribute the bylaws to all Committee members.

13. Community Relations/Public Input.

Any member of the public will be welcome to attend Committee meetings. Public comments are encouraged and will be accepted verbally or in writing. Anyone who wishes to voice an opinion or present information or concerns to the Committee may contact the chair, vice-chair, or MCHHS Department staff. Arrangements will be made and time will be allotted at meetings as appropriate to assure broad public participation. Persons who require interpreter assistance, an assistive listening device, large print material or other accommodations for free, may call 503-588-5357 at least 48 hours in advance of the meeting.

Approved by the Marion County Board of Commissioners: **DATE: _____**

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of revising bylaws)
for the Mental Health Advisory)
Committee)

ORDER No. _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on Wednesday, August 13, 2025, to revise the bylaws for the Marion County Mental Health Advisory Committee;

WHEREAS, the Board of Commissioners recommend approval of the revised Marion County Mental Health Advisory Committee bylaws enabling the Committee to act as a structured advisory group to the Marion County Local Mental Health Authority and the Marion County Health & Human Services Community Mental Health Program.

WHEREAS, the Board of Commissioners finds that it is in the public interest to regularly review the bylaws of the Marion County Mental Health Advisory Committee; now, therefore,

IT IS HEREBY ORDERED that the revised bylaws of the Marion County Mental Health Advisory Committee are approved.

IT IS FURTHER ORDERED that these bylaws supersede any previously approved bylaws of the Marion County Mental Health Advisory Committee.

DATED this 13th day of August 2025

MARION COUNTY BOARD OF COMMISSIONERS

_____
Chair

_____
Commissioner

_____
Commissioner

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 8/13/25

Department: Health & Human Services

Title: Amendment 2 to Mental Health Court/Counseling Contract with Bridgeway Community Health

Management Update/Work Session Date: 07/29/25 **Audio/Visual aids** ☐

Time Required: 10 min **Contact:** Kristina Ballow **Phone:** 503-588-5409

Requested Action:
Seeking Approval of Amendment 2 to the contract with Bridgeway Community Health for Mental Health Court: Co-Occuring Substance Use and Mental Health Counseling.

Issue, Description & Background:
Provide dedicated co-occurring counselors who are dual credentialed to provide services for drug and alcohol treatment and mental health to support participants in the 2023-2025 Specialty Court Programs.

Amendment 2 - add funds of $21,753.60 to cover until 12/31/25.

Financial Impacts:
New total contract amount of $108,767.60.

Impacts to Department & External Agencies:
Health and Human Services anticipates no financial impact to other departments.

List of attachments:
Amendment 1-2, Original

Presenter:
Rhett Martin

Department Head Signature:
Ryan Matthews
Digitally signed by Ryan Matthews
Date: 2025.07.17 09:06:33 -07'00'

Docusign Envelope ID: DD90BF4F-63A4-4608-B4D9-A3E1E5738C36

Contract Review Sheet

Contract for Services **HE-5516-23 - Am2**

Title: **Mental Health Court: Co-Occurring Substance Use and Mental Health Counseling**

Contractor's Name: **Bridgeway Community Health**

Department: **Health and Human Services** Contact: **Kristina Ballow**

Analyst: **Chalyce MacDonald** Phone #: **(503) 588-5409**

Term - Date From: **July 1, 2023** Expires: **December 31, 2025**

Original Contract Amount: **$ 87,014.00** Previous Amendments Amount: **$ -**

Current Amendment: **$ 21,753.60** New Contract Total: **$ 108,767.60** Amd% **25%**

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

Source Selection Method: **20-0260 Request for Proposal** RFP# **HE1327-23**

Description of Services or Grant Award

Provide dedicated co-occurring counselors who are dual credentialed to provide services for drug and alcohol treatment and mental health to support participants in the 2023-2025 Specialty Court Programs.

Amendment 1 established new expiration date of December 31, 2025, or the date available funding has been expended or the date a replacement Contract has been established.

Amendment 2 - add funds of $21,753.60 to cover remaining life of contract.

Desired BOC Session Date:	**8/13/2025**	Contract should be in DocuSign by:	**7/23/2025**
Agenda Planning Date	**7/31/2025**	Printed packets due in Finance:	**7/29/2025**
Management Update	**7/29/2025**	BOC upload / Board Session email:	**7/30/2025**

BOC Session Presenter(s) **Rhett Martin** Code: **Y**

REQUIRED APPROVALS

DocuSigned by: Sandra L. Hazen C5F72231E6F54E3... 7/16/2025
Finance - Contracts — Date

Signed by: kristina Ballow A38C58E8078E42B... 7/18/2025
Contract Specialist — Date

Signed by: Scott Norris 60C98A6F708240B... 7/17/2025
Legal Counsel — Date

DocuSigned by: Jan Fritz DC16351248DE4EC... 7/17/2025
Chief Administrative Officer — Date

Docusign Envelope ID: DD90BF4F-63A4-4608-B4D9-A3E1E5738C36

Marion County
OREGON

AMENDMENT 2 to HE-5516-23
the CONTRACT FOR SERVICES
between
MARION COUNTY and BRIDGEWAY COMMUNITY HEALTH

This is Amendment 2 to the Contract for Services (as amended from time to time, the "Contract"), dated July 01, 2023 between Marion County, a political subdivision of the State of Oregon, hereinafter called County, and Bridgeway Community Health, hereafter called Contractor.

The Contract is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by ~~strikethrough~~):

2. CONSIDERATION

A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **~~$87,014.00~~ $108,767.60.**

EXHIBIT A
STATEMENT OF WORK

2. COMPENSATION

The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is **~~$87,014.00~~ $108,767.60.**

A. METHOD OF PAYMENT FOR SERVICES: County shall pay Contractor up to $87,014.00 per biennium for completing ~~all~~ Services ~~and delivering all Goods~~ required under this Contract.

Except as expressly amended above, all other terms and conditions of the original Contract and any previously executed amendments are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:

_____

Chair Date

_____

Commissioner Date

_____

Commissioner Date

Docusign Envelope ID: DD90BF4F-63A4-4608-B4D9-A3E1E5738C36

Authorized Signature: DocuSigned by: Ryan Matthews 7D28A787656F458... 7/16/2025

Department Director or designee Date

Authorized Signature: DocuSigned by: Jan Fritz DC16351248DE4EC... 7/17/2025

Chief Administrative Officer Date

Reviewed by Signature: Signed by: Scott Norris 60C98A6F708240B... 7/17/2025

Marion County Legal Counsel Date

Reviewed by Signature: DocuSigned by: Sandra L. Hixson C5F72231E6F54E3... 7/16/2025

Marion County Contracts & Procurement Date

BRIDGEWAY COMMUNITY HEALTH SIGNATURE

Authorized Signature: _____

Date

Title: _____

Docusign Envelope ID: 08F9A0EA-BB6F-4401-B53F-E3F3AEFCB1ED

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 8/13/25

Department: Health & Human Services

Title: Amendment 3 to Contract with Gibraltar Medical Staffing

Management Update/Work Session Date: 7/29/25 **Audio/Visual aids** ☐

Time Required: 10 min **Contact:** Kristina Ballow **Phone:** 503-588-5409

Requested Action:

Seeking Approval of Amendment 3 to the contract with Gibraltar Medical Staffing, LLC to add funding to cover current qualified medical staffing personnel.

Issue, Description & Background:

Contractor will provide qualified medical personnel for Marion County Health and Human Services (MCHHS) to provide needed mental health counseling and medication management.

Amendment 3 adds funds of $500,000.00 for a new not to exceed contract amount of $4,250.000.00.

Financial Impacts:

Total contract amount $4,250,000.00

Impacts to Department & External Agencies:

Health and Human Services anticipates no financial impact to other departments.

List of attachments:

Amendments 1-3, Original

Presenter:

Phil Blea

Department Head Signature:

DocuSigned by:
Ryan Matthews
7D28A787656F458...

Docusign Envelope ID: 08F9A0EA-BB6F-4401-B53F-E3F3AEFCB1ED

Contract Review Sheet

Contract for Services **HE-5172-22 - Am3**

Title: **Medical Temporary Personnel**

Contractor's Name: **Gibraltar Medical Staffing LLC**

Department: **Health and Human Services** Contact: **Kristina Ballow**

Analyst: **Chalyce MacDonald** Phone #: **(503) 588-5409**

Term - Date From: **March 15, 2023** Expires: **January 31, 2028**

Original Contract Amount: **$ 500,000.00** Previous Amendments Amount: **$ 3,250,000.00**

Current Amendment: **$ 500,000.00** New Contract Total: **$ 4,250,000.00** Amd% **750%**

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

Source Selection Method: **50-0160 Health Provider Contracts**

Description of Services or Grant Award

Contractor will provide qualified medical personnel for Marion County Health and Human Services (MCHHS) to provide needed mental health counseling and medication management.

Amendment 1 adds $2,250,000.00 and amends the not to exceed amount of contract to $2,750,000.00

Amendment 2 adds funds of $1,000,000.00 for a new not to exceed contract amount of $3,750,000.00

Amendment 3 adds funds of $500,000.00 for a new not to exceed contract amount of $4,250,000.00.

Desired BOC Session Date: **8/13/2025** Contract should be in DocuSign by: **7/23/2025**

Agenda Planning Date **7/31/2025** Printed packets due in Finance: **7/29/2025**

Management Update **7/29/2025** BOC upload / Board Session email: **7/30/2025**

BOC Session Presenter(s) **Phil Blea** Code: **Y**

REQUIRED APPROVALS

DocuSigned by: Sandra L. Fitzsimmons C5F72231E6F54E3... 7/16/2025

Finance - Contracts Date

Signed by: Kristina Ballow A38C58E8078E42B... 7/18/2025

Contract Specialist Date

Signed by: Scott Norris 60C98A6F708240B... 7/16/2025

Legal Counsel Date

DocuSigned by: Jan Fritz DC16351248DE4EC... 7/17/2025

Chief Administrative Officer Date

Docusign Envelope ID: 08F9A0EA-BB6F-4401-B53F-E3F3AEFCB1ED

Marion County
OREGON

AMENDMENT 3 to HE-5172-22
the CONTRACT FOR SERVICES
between
MARION COUNTY and GIBRALTAR MEDICAL STAFFING, LLC

This is Amendment 3 to the Contract for Services (as amended from time to time, the "Contract"), dated March 15, 2023 between Marion County, a political subdivision of the State of Oregon, hereinafter called County, and Gibraltar Medical Staffing, LLC, hereafter called Contractor.

The Contract is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by ~~strikethrough~~):

2. CONSIDERATION.

A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is $4,250,000.00 ~~$3,750,000.00~~.

EXHIBIT A
STATEMENT OF WORK

2. COMPENSATION. The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is $4,250,000.00 ~~$3,750,000.00~~.

Except as expressly amended above, all other terms and conditions of the original Contract and any previously executed amendments are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

Signatures on following page

Docusign Envelope ID: 08F9A0EA-BB6F-4401-B53F-E3F3AEFCB1ED

MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:

_____
Chair Date

_____
Commissioner Date

_____
Commissioner Date

Authorized Signature: DocuSigned by: Ryan Matthews 7D28A787656F458... 7/16/2025
Department Director or designee Date

Authorized Signature: DocuSigned by: Jan Fritz DC16351248DE4EC... 7/17/2025
Chief Administrative Officer Date

Reviewed by Signature: Signed by: Scott Norris 60C98A6F708240B... 7/16/2025
Marion County Legal Counsel Date

Reviewed by Signature: DocuSigned by: Sandra L. Fisher C5F72231E6F54E3... 7/16/2025
Marion County Contracts & Procurement Date

GIBRALTAR MEDICAL STAFFING LLC SIGNATURE

Authorized Signature: _____
Date

Title: _____

Docusign Envelope ID: 90C831F0-8978-4951-967E-DB2CA7D8D1B9

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 6, 2025

Department: Public Works

Title: On-Call Geotechnical Services Contract

Management Update/Work Session Date: 7/22/2024 **Audio/Visual aids** ☐

Time Required: 5 minutes **Contact:** Steven Preszler **Phone:** 503-365-3157

Requested Action:
Approve contract PW-6729-25 with Shannon & Wilson, Inc., to provide on-call geotechnical engineering and related services.

Issue, Description & Background:
Marion County has roads and other facilities in and around slide areas throughout the County. When slides occur, it is important to respond quickly to limit disruptions to access and to limit property damage. It is also important to ensure that damage mitigation and repair is done as safely and efficiently as possible. Having an on-call geotechnical engineering consultant that can respond to these events in a timely manner will help make this possible.

Shannon & Wilson, Inc. was selected to provide these services through a competitive Request for Proposal process based on their qualifications and experience with similar projects.

Financial Impacts:
The total not-to-exceed contract amount is $350,000 for a term of three years, which will be paid using County Road Funds.

Impacts to Department & External Agencies:
Entering into this agreement does not directly impact any other Marion County departments. The contract will benefit the public at large by providing a timely response to slide activity throughout the County.

List of attachments:
Contract PW-6729-25 with Shannon & Wilson, Inc.

Presenter:
Ryan Crowther

Department Head Signature:
Brian Nicholas
Digitally signed by Brian Nicholas
Date: 2025.06.26 13:56:19 -07'00'

Docusign Envelope ID: 90C831F0-8978-4951-967E-DB2CA7D8D1B9

Contract Review Sheet

A&E Standard Prof Svcs Agmnt **PW-6729-25**

Title: **On-call Geotechnical Engineering**

Contractor's Name: **Shannon & Wilson, Inc.**

Department: **Public Works Department** Contact: **Alicia Jones**

Analyst: **Kathleen George** Phone #: **-4388**

Term - Date From: **Execution** Expires: **July 31, 2025**

Original Contract Amount: **$ 350,000.00** Previous Amendments Amount: **$ -**

Current Amendment: **$ -** New Contract Total: **$ 350,000.00** Amd% **0%**

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

Source Selection Method: **30-0220 Formal Selection A&E** **PW1579-25**

Description of Services or Grant Award

On-call Geotechnical Engineering services for use by County to provide rapid response related to unexpected landslides and other naturally occurring events that damage or threaten to damage the County's transportation infrastructure.

Desired BOC Session Date: **8/6/2025** Contract should be in DocuSign by: **7/16/2025**

Agenda Planning Date **7/24/2025** Printed packets due in Finance: **7/22/2025**

Management Update **7/22/2025** BOC upload / Board Session email: **7/23/2025**

BOC Session Presenter(s) **Ryan Crowther** Code: **Y**

REQUIRED APPROVALS

DocuSigned by: A3638E7AEC704F4... 7/11/2025
Finance - Contracts — Date

Signed by: Alicia Jones DA7E8DGC1E7B47D... 7/22/2025
Contract Specialist — Date

Signed by: Scott Norris 00C98A0F708240B... 7/14/2025
Legal Counsel — Date

DocuSigned by: Jan Fritz DG16351248DE4EG...
Chief Administrative Officer — Date

Docusign Envelope ID: 90C831F0-8978-4951-967E-DB2CA7D8D1B9

MARION COUNTY
ENGINEERING AND RELATED SERVICES CONTRACT
Contract Number: PW-6729-25

Project Title: On-Call Geotechnical Services	**County Project Number: Varies**	
Project Location: Throughout Marion County	**Associated RFP Number: PW1579-25**	
Total Not-to-Exceed ("NTE") amount for this Contract. This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) $0.00 for contingency tasks, each of which must be separately authorized by County.		**$ 350,000.00**

This Contract is between Marion County, hereafter called "County" and Shannon and Wilson, Inc., a Washington 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.

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 July 31, 2027.

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 – Example Work Order Form and Attachment 1

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, by its signature on the Contract, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates have made any disclosures required under the COI Disclosure Form (available at: https://www.oregon.gov/ODOT/Business/Procurement/DocsLPA/COI_LPA.docx) or any applicable law; and (ii) if a conflict of interest is discovered during the term of the Contract, Consultant shall timely submit a COI Disclosure Form to County disclosing the conflict(s).

c. 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 self-employed individual.

d. 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 negligent or wrongful 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.

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 to 180.785) 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 understands and has provided to all Associates the COI Disclosure Form available at: https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this Contract or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to County on a properly prepared and submitted form and, if determined necessary by County, a mitigation plan has been approved by County.
(4) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.
(5) 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:

Chair — Date: 8/13/2025

Commissioner — Date: 8/13/25

Commissioner — Date: 8-13-25

Authorized Signature: DocuSigned by: Brian McNolas 9793BA7ACD6B443... — Date: 7/11/2025
Department Director or designee

Authorized Signature: DocuSigned by: Jan Fritz DC163512408DE4EC... — Date: 7/22/2025
Chief Administrative Officer

Reviewed by Signature: Signed by: Scott Morris 60C98A6F7062408... — Date: 7/14/2025
Marion County Legal Counsel

Reviewed by Signature: DocuSigned by: A3538E7AEC704F4... — Date: 7/11/2025
Marion County Contracts & Procurement

CONSULTANT SIGNATURE(s)

Signature: _____ Date: _____

Name: _____ Title: _____

Signature: _____ Date: _____

Name: _____ Title: _____

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EXHIBIT A – STATEMENT OF WORK

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

This Contract is for on-call geotechnical investigation, geotechnical evaluation, and design related to providing rapid response to unexpected landslides and other naturally occurring events that damage or threaten to damage the County's infrastructure. One area of concern is the North Fork Road corridor that was heavily damaged by the Beachie Creek fire of 2020, although the requested services may be needed anywhere in the County and not for the sole purpose of responding to emergencies.

Due to the nature of emergency geotechnical incident response and disaster relief reimbursement some of the work authorized by this contract may be federally funded. Consultant may be required to meet the federal provisions as stated within Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards (See Exhibit H).

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 (RESERVED)

County Responsibilities

- Overall management of the individual Projects.
- 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 Statement 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

AASHTO	American Association of State Highway and Transportation Officials		NTP	Notice to Proceed
County	Marion County		ODOT	Oregon Department of Transportation
CPM	County's Project Manager		ORS	Oregon Revised Statutes
EEO	Equal Employment Opportunity		PM	Consultant's Project Manager
NTE	Not to Exceed		SOW	Statement of Work

B. STANDARDS and GENERAL REQUIREMENTS

1. Standards

Geotechnical investigation and Design Services - The following standards shall apply to the contract and shall be used to guide the support and advice to the County.

- ODOT Geotechnical Design Manual
- AASHTO LRFD Bridge Design Specifications
- All other applicable standards

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'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 competency in the particular area/discipline to which they are assigned. This may include, but is not limited to submittal of license number, resumes, 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.

5. Work Order

Detailed instructions for specific services to be provided by Consultant shall be documented in the form of a sequentially numbered Work Order (see Exhibit G), which must be signed by both parties before Services may commence. The Work Order shall be created through negotiations with the Consultant and shall include a detailed task description, a task-specific schedule and a task-specific not-to-exceed cost. Modifications to the Work Order that are identified subsequent to Work Order execution will be processed as an amendment as set forth in the Contract.

All Services contemplated under this Contract will be on projects directly funded by Marion County and where no federal funds are involved. Each Work Order shall be sequentially numbered and signed by both parties. No work shall begin until both parties have signed the Work Order and the County has issued Notice-to-Proceed.

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:

a. 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.
b. 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. GENERAL STATEMENT OF WORK TASKS

The general Statement of Work includes any combination of the activities described herein. Services on County projects may include a combination of office and field activities as generally listed below. The specific tasks, deliverables and delivery schedule shall be detailed in each Work Order (see Exhibit G).

1. Project management services associated with assigned Work Orders.
2. Geotechnical investigation and design.
    - Initial site evaluation
    - Data review/reconnaissance
    - Exploration and testing work plans
    - Geotechnical and pavement explorations
    - Laboratory testing
    - Mitigation design alternatives
    - Pavement design
    - Geotechnical reports
    - Perform construction observations as required

F. CONTINGENCY TASKS (RESERVED)

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EXHIBIT B – COMPENSATION

Definitions:
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.

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.

The dollar amount for T&M non-contingency Services is: $ 350,000.00

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 State. 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
- Work Order number
- 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 Work Order
- 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 in accordance with ODOT's Billing Rate Policy (as may be revised from time to time by ODOT) available at: https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/brPolicy.pdf. Consultant Certification of compliance with Federal Cost Principles is required per FHWA directive 4470.1a: https://www.fhwa.dot.gov/legsregs/directives/orders/44701a.htm. 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 and/or ODOT 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 FCCM 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 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. WORK ORDER SPECIFIC BREAKDOWN OF COSTS (BOC)

For each Work Order, Consultant shall prepare and submit a BOC based on the approved ODOT Classification Rate Schedule at the time the Work Order is approved for each classification to be used. 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.

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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.

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EXHIBIT D – SPECIAL TERMS AND CONDITIONS (RESERVED)

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

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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 Agency TI and staffed by at least 3 technical experts chosen by the Agency TI from a list of Agency, 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)

Name:	Steven Preszler, PE
Ph:	503-365-3157
E-mail:	spreszler@co.marion.or.us

a.2 * County Contract Administrator for contractual matters:

Name:	Alicia Jones, Grant/Contracts Compliance Analyst
Ph:	503-373-4320
E-mail:	ajones@co.marion.or.us

a.3 County's address for invoicing:

Mailing Address:	Marion County Public Works 5155 Silverton Rd. NE, Building 1 Salem, OR 97305 Attn: Steven Preszler
E-mail:	spreszler@co.marion.or.us

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

Name:	Eric Paslack, PE
Ph:	503-210-4771
E-mail:	Eric.Paslack@shanwil.com

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

Name:	Bianca Giron
Address:	3990 Collins Way, Suite 100 Lake Oswego, OR 97035
Ph:	(503) 210-4883
E-mail:	bianca.giron@shanwil.com

* 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:

Name	Role
Eric Paslack, PE	Principal in Charge
Stephen McLandrich, PE, GE	Project Manager
Cody Sorensen, CEG	Geology Lead
Rex Whistler, PE	Rock Mechanics Lead
Mike Miotke, PE	Structural/Civil Design Lead

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.

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EXHIBIT G – EXAMPLE WORK ORDER

MARION COUNTY CONTRACT NO. PW-XXXX-25

WORK ORDER #_____

On-Call Geotechnical Services

Work Order Title: _____

Date: _____ **Project:** _____

County Project No.: _____ **Project Manager:** _____

This Work Order is executed pursuant to a master Engineering and Related Services contract for On-Call Geotechnical Services ("Contract"), by and between Marion County (County) and Shannon & Wilson, Inc. (Consultant), dated _____. All Terms and Conditions of the Contract shall remain in full force and effect during performance of this Work Order.

Statement of Work:

Consultant shall perform all tasks and prepare all deliverables as described in Attachment 1 to this Work Order on a Time and Materials (T&M), Not-to-Exceed (NTE) basis, according to Consultant's contracted Rate Schedule and the task-specific Breakdown of Costs attached hereto.

The total Work Order NTE amount is $ _____.

Term:

This Work Order shall commence on the date all required signatures are obtained and the County has issued Notice to Proceed to Consultant. All Services shall be completed on or before _____ unless extended by the parties in writing.

Marion County	**Shannon and Wilson, Inc.**
_____	_____
Signature	Signature
_____	_____
Printed Name and Title	Printed Name and Title
_____	_____
Date	Date

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ATTACHMENT 1

TASKS, DELIVERABLES AND SCHEDULE

Consultant shall provide management, subconsultant management, and coordination of Services under this statement of work (SOW) for delivery of Tasks and Deliverables according to the agreed upon delivery schedule. The specific tasks and deliverables are described below.

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EXHIBIT H
APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

- Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian County 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.

- 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.

- 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."

- 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.

- 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

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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.

- 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.

- 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).

- 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.

- 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.

- See §200.322 Domestic preference for procurements.

- Audit Requirements of 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.

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- If Subrecipient expends federal awards in excess of $750,000 in a fiscal year, Subrecipient is subject to audit conducted in accordance with the provisions of 2 CFR part 200, 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.

- System for Award Management. 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.

- Whistleblower Protection Act. 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.

- See § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

- See § 200.323 Procurement of recovered materials.

- 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.

- 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

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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.

- 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.

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

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MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 8/13/2025

Department: Public Works

Title: Grant Agreement SRTS25-24, Scott Elementary School Safe Routes to School Project

Management Update/Work Session Date: 7/22/2025 **Audio/Visual aids** ☐

Time Required: 5 Minutes **Contact:** Ryan Crowther **Phone:** 503-365-3150

Requested Action:
Approve Grant Agreement SRTS25-24 (PW-6769-25) between Marion County and the Oregon Department of Transportation (ODOT) in the amount of $301,977.00 for the Scott Elementary Safe Routes to School Project.

Issue, Description & Background:
Marion County has been awarded a Safe Routes to School (SRTS) grant from the State of Oregon, through Oregon Department of Transportation (ODOT), to construct upgrades to existing pedestrian facilities on the north side of the intersection at Brown Road and Arizona Avenue. Facilities will include a Rapid Response Flashing Beacon, signage and surface markings, and ADA compliant curb ramps. These improvements will enhance the pedestrian facilities along Brown Road and Arizona Ave and provide a safer pedestrian route for students attending Scott Elementary School.

Financial Impacts:
The total estimated project cost is $301,977 which will be paid entirely using SRTS funds. This project requires no matching funds from Marion County.

Impacts to Department & External Agencies:
None.

List of attachments: Grant Agreement Number SRTS25-24

Presenter: Ryan Crowther

Department Head Signature: Brian Nicholas
Digitally signed by Brian Nicholas
Date: 2025.07.10 10:49:13 -07'00'

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Contract Review Sheet

Intergovernmental Agreement **PW-6769-25**

Title: **ODOT SRTS25-24 - Safe Routes to School (SRTS) Program grant for Scott Elementary**

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

Department: **Public Works Department** Contact: **Alicia Jones**

Analyst: **Kathleen George** Phone #: **-4388**

Term - Date From: **Execution** Expires: **August 6, 2030**

Original Contract Amount: **$ 301,977.00** Previous Amendments Amount: **$ -**

Current Amendment: **$ -** New Contract Total: **$ 301,977.00** Amd% **0%**

Incoming 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

ODOT SRTS25-24 - Safe Routes to School (SRTS) Program grant for Scott Elementary.

The Project will construct upgrades to existing pedestrian facilities on the north side of the intersection at Brown Road and Arizona Avenue. Facilities will include a Rapid Response Flashing Beacon, signage and surface markings, and ADA compliant curb ramps. These improvements will enhance the pedestrian facilities along Brown Road and Arizona Ave and provide a safer pedestrian route.

Desired BOC Session Date: **8/13/2025** Contract should be in DocuSign by: **7/23/2025**

Agenda Planning Date **7/31/2025** Printed packets due in Finance: **7/29/2025**

Management Update **7/22/2025** BOC upload / Board Session email: **7/30/2025**

BOC Session Presenter(s) **Ryan Crowther** Code: **Y**

REQUIRED APPROVALS

DocuSigned by: A3539E7AEG784F4... 7/28/2025
Finance - Contracts — Date

Signed by: Alicia Jones DA7EBDCC1E7847D... 8/2/2025
Contract Specialist — Date

Signed by: Scott Norris 60C08A6F708240B... 8/1/2025
Legal Counsel — Date

DocuSigned by: Jan Fritz DC16351248DE4EC... 8/1/2025
Chief Administrative Officer — Date

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Misc. Contracts and Agreements
No. SRTS25-24

(G001-T110420)

GRANT AGREEMENT
OREGON DEPARTMENT OF TRANSPORTATION
SAFE ROUTES TO SCHOOL PROGRAM (SRTS)

Project Name: Scott Elementary School / Brown Road / RRFB / 2025

This Grant Agreement ("Agreement") is made and entered into by and between the **State of Oregon,** acting by and through its Department of Transportation ("ODOT"), and Marion County Public Works, acting by and through its Governing Body, ("Recipient"), both referred to individually or collectively as "Party" or "Parties."

1. **Authority.** By the authority granted in Oregon Revised Statute (ORS) 190.110, a state agency may enter into agreements with units of local government, Oregon state agencies, the United States or with a United States governmental agency, or with an American Indian tribe or an agency of an American Indian tribe for the performance of any or all functions and activities that state agency, its officers, or agents have the authority to perform.

2. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the "Effective Date"). The availability of Grant Funds (as defined in Section 3) shall end five (5) years after the Effective Date (the "Availability Termination Date").

3. **Agreement Documents.** This Agreement consists of this document and the following documents, which are attached hereto and incorporated by reference:

   a. Exhibit A: **Project Description, Key Milestones, Schedule and Budget**
   b. Exhibit B: **Recipient Requirements**
   c. Exhibit C: **Contractor Insurance Requirements**

   In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; and Exhibit C.

4. **Project Cost; Grant Funds.** The total estimated Project cost is $301,977.00. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient grant funds in a total amount not to exceed $301,977.00 (the "Grant Funds"). Recipient will be responsible for all Project costs not covered by the Grant Funds.

5. **Project.**

   a. Use of Grant Funds. The Grant Funds shall be used solely for the Project described in Exhibit A (the "Project") and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODOT approves such changes by amendment pursuant to **Subsection 5.c**.

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b. Eligible Costs. Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement ("Eligible Costs").

i. Eligible Costs are actual costs of Recipient to the extent those costs are:

A. reasonable, necessary and directly used for the Project;

B. permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project; and

C. eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.

ii. Eligible Costs do NOT include:

A. operating and working capital or operating expenditures charged to the Project by Recipient;

B. loans or grants to be made to third parties;

C. any expenditures incurred before the Effective Date or after the Availability Termination Date; or

D. costs associated with the Project that substantially deviate from Exhibit A, Project Description, unless such changes are approved by ODOT by amendment of this Agreement.

c. Project Change Procedures.

i. If Recipient anticipates a change in scope, Key Milestone Dates, or Availability Termination Date, Recipient shall submit a written request to SRTSProgramMailbox@odot.oregon.gov.

ii. Recipient shall not proceed with any changes to scope, Key Milestone Dates, or Availability Termination Date before the execution of an amendment to this Agreement executed in response to ODOT's approval of a Recipient's request for change. A request for change may be rejected at the sole discretion of ODOT.

6. Reimbursement Process and Reporting.

a. ODOT shall reimburse Recipient for 100% of Eligible Costs up to the Grant Fund amount provided in **Section 4**. ODOT shall reimburse Eligible Costs within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors before submitting a request for reimbursement to ODOT for reimbursement. ODOT will not reimburse more than one request for reimbursement per month.

b. Recipient must submit to ODOT its first reimbursement request within two (2) years of the Effective Date.

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c. Each reimbursement request shall be submitted on ODOT's Reimbursement request form https://www.cognitoforms.com/ODOT2/srtsreimbursementrequest2 to the SRTSProgramMailbox@odot.oregon.gov and include the Agreement number, the start and end date of the billing period, and itemize all expenses for which reimbursement is claimed. Upon ODOT's request, Recipient shall provide to ODOT evidence of payment to contractors. Recipient shall also include with each reimbursement request a summary describing the work performed for the period seeking reimbursement and work expected for the next period, if any.

d. Recipient shall, no later than ninety (90) days after the completion of the Project or Availability Termination Date, whichever occurs earlier, submit a final reimbursement request. Failure to submit the final request for reimbursement within ninety (90) days after could result in non-payment.

e. Upon ODOT's receipt of the final reimbursement request, ODOT will conduct a final on-site review of the Project. ODOT will withhold payment of the final reimbursement request until both (i) its SRTS Program Manager, or designee, has completed the final review and accepted the Project as complete and (ii) Recipient and ODOT staff have signed the Recommendation of Acceptance Form (ODOT Form No. 737-3560).

f. ODOT's obligation to disburse Grant Funds to Recipient is subject to the satisfaction, with respect to each disbursement, of each of the following conditions precedent:

i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement.

ii. Recipient is in compliance with the terms of this Agreement.

iii. Recipient's representations and warranties set forth in **Section 7** are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

g. Recovery of Grant Funds.

i. Recovery of Misexpended Funds or Nonexpended Funds. Any Grant Funds disbursed to Recipient under this Agreement that are either (i) disbursed but unexpended at the end of the Availability Termination Date ("Unexpended Funds") or (ii) expended in violation of one or more of the provisions of this Agreement ("Misexpended Funds") must be returned to ODOT. Recipient shall return all Unexpended Funds to ODOT no later than fifteen (15) days after the Availability Termination Date. Recipient shall return all Misexpended Funds to ODOT promptly after ODOT's written demand and no later than fifteen (15) days after ODOT's written demand.

ii. Recovery of Grant Funds upon Termination. If this Agreement is terminated under any of **Subsections 12.b.i, 12.b.ii, 12.b.iii or 12.b.vi**, Recipient shall return to ODOT all Grant Funds disbursed to Recipient within 15 days after ODOT's written demand for the same.

h. Reporting

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i. Quarterly Reports. Recipient shall submit quarterly progress reports to ODOT using a format that ODOT provides. Recipient must submit the reports to SRTSProgramMailbox@odot.oregon.gov by the first Wednesday of March, June, September, and December.

ii. Final Report. Recipient shall submit a final written report (the "Final Report") to SRTSProgramMailbox@odot.oregon.gov that identifies how hazards have been reduced to children walking or bicycling to and from school as a direct result of this Project. Recipient must submit the Final Report within six (6) months after the Project Completion Date. Recipient's obligation to provide the Final Report will survive Agreement expiration.

7. **Representations and Warranties of Recipient.** Recipient represents and warrants to ODOT as follows:

a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors or potential contractors. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

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e. **Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.

The warranties set forth in this **Section 7** are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

a. **Records, Access to Records and Facilities**. Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, as well as generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations, if applicable. Recipient shall ensure that each of its contractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the "Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.

b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a period of six (6) years after final payment. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.

c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

d. This **Section 8** shall survive any expiration or termination of this Agreement.

9. Recipient Contract and Procurements.

Recipient may enter into contracts with contractors for performance of the Project. If Recipient enters into a contract, Recipient agrees to comply with the following:

a. **Contracts.**

i. All contracts must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the contracts(s). Use of a contract does not relieve Recipient of its responsibilities under this Agreement.

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ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third-party beneficiary of Recipient's contract with the contractor.

iii. Recipient shall require its construction contractor to submit a performance bond and payment bond to Recipient for an amount equal to or greater than the estimated cost of the construction contract price. Recipient shall require its construction contractor to name ODOT as an additional or dual obligee on construction contractor's performance and payment bonds.

iv. Recipient shall provide ODOT with a copy of any signed contracts, as well as any other purchasing or contracting documentation, upon ODOT's request at any time. This subparagraph shall survive expiration or termination of this Agreement.

v. Recipient must report to ODOT any material breach of a term or condition of a contract within ten (10) days of Recipient discovering the breach.

b. Contract Indemnification.

i. ***Recipient's contract(s) shall require the other party to such contract(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save, and hold harmless State of Oregon, the Oregon Transportation Commission and its members, and the Oregon Department of Transportation, and its officers, agents and employees, from and against any and all claims, suits, actions, liabilities, damages, losses, cost, and expenses, including attorneys' fees, of any nature whatsoever resulting from, arising out of or relating to, in whole or in part, the negligent or willful acts or omissions of the other party to Recipient's contract or any of such party's officers, agents, employees or contractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's contract(s) from and against any and all Claims.***

ii. Any such indemnification shall also provide that neither Recipient's contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's contractor(s) or subcontractor(s) shall defend any claim in the name of ODOT or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's contractor is prohibited from defending the State, or that Recipient's contractor is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's contractor if the State of Oregon elects to assume its own defense.

iii. Recipient shall include provisions in each of its contracts requiring its contractor(s) to comply with the indemnification requirements within this Contract Indemnification section.

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c. **Contractor Insurance.**

i. Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit C. Recipient shall perform a risk assessment for the work to be performed under its contract(s) and may specify insurance requirements for its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify that each of its contractor(s) meet the minimum insurance requirements in Exhibit C.

ii. Recipient shall require its contractor(s) to require and verify that all contractors carry insurance coverage deemed appropriate based on the risks of the contracted work.

iii. Recipient shall include provisions in each of its contracts requiring its contractor(s) to comply with the insurance requirements within this Contract Insurance section.

d. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) 279 A, B, and C, and rules, ensuring that:

i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and

i. All procurement transactions are conducted in a manner providing full and open competition.

10. **Self-Performing Work.** Recipient must receive prior approval from ODOT Program Manager for any self-performing work.

11. **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.

12. Termination

a. **Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.

b. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:

i. If Recipient fails to perform the Project within the time specified in this Agreement, or any extension of such performance period;

ii. If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;

iii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of ten (10) calendar days after the date ODOT delivers Recipient

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written notice specifying such failure. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action;

iv. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;

v. If Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or

vi. If the Project would not produce results commensurate with the further expenditure of funds.

c. Termination by Either Party. Either Party may terminate this Grant Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Grant Agreement.

d. Rights upon Termination; Remedies. Any termination of this Grant Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Grant Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

13. GENERAL PROVISIONS

a. Contribution and Contract-Related Indemnification.

i. For purposes of this **Section 13.a.**, the term "ODOT" means "the State of Oregon, the Oregon Transportation Commission, the Oregon Department of Transportation, and their respective officers, members, agents, and employees."

ii. Contribution.

A. 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 ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense, and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

B. Except as otherwise provided in **Section 13.iii.** below, with respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees),

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judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient 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 ODOT on the one hand and of Recipient 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. ODOT'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 ODOT had sole liability in the proceeding.

C. Except as otherwise provided in **Section 13.iii.** below, with respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient 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 ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT 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 Recipient on the one hand and of ODOT 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. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

iii. Contract-Related Indemnification. Notwithstanding **Subsection 13.a.ii.**, and subject to any limitations imposed by State law and the Oregon Constitution, Recipient agrees to the following contract-related indemnification for all projects authorized under this Agreement:

Where Recipient contracts for services or performs project management for a project, Recipient shall accept all responsibility, defend lawsuits, indemnify, and hold ODOT harmless, for all contract-related claims and suits. This includes but is not limited to all contract claims or suits brought by any contractor, whether arising out of the contractor's work, Recipient's supervision of any individual project or contract, or Recipient's failure to comply with the terms of this Agreement.

iv. This **Section 13.a**. shall survive expiration or termination of this Agreement.

b. Insurance; Workers' Compensation and Employer's Liability. All employers, including Recipient, that employ subject workers who provide services in the state of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's Liability insurance with coverage limits of not less than $500,000 each accident must be included. Recipient shall ensure that each of its subrecipient(s) or contractor(s) complies with these requirements.

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

d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

e. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

f. **No Third-Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

g. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact or Program Manager at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this **Section 13.g**. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.

h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed 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 ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii)

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the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Recipient agrees to comply with the requirements of ORS 366.514, Use of Highway Fund for footpaths and bicycle trails.

j. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

k. **Severability.** If any term or provision of this Agreement 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 this Agreement did not contain the particular term or provision held to be invalid.

l. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

m. **Integration and Waiver.** This Agreement, including all Exhibits, 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 this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

n. **Survival.** In addition to sections of this Agreement specifically so designated, sections 6(g) (Recovery of Grant Funds), 13(h) (Governing Law; Consent to Jurisdiction) and 13(n) (Survival) survive expiration or termination of this Agreement.

o. **Electronic Signatures.** Signatures showing on PDF documents, including but not limited to PDF copies of the Agreement, Work Orders, and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

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

The Project was approved on June 13, 2025 by the Public Transportation Division Administrator.

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Signature Page to Follow

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MARION COUNTY PUBLIC WORKS, by and through its Governing Body

By SEE ATTACHED MARION COUNTY SIGNATURE PAGE
(Legally designated representative)

Name_____
(printed)

Date_____

By_____

Name_____
(printed)

Date_____

LEGAL REVIEW APPROVAL
(If required in Recipient's process)

By_____
Recipient's Legal Counsel

Date_____

Recipient Contact:
Janelle Shanahan, Transportation Engineer
5155 Silverton Rd NE
Salem, Oregon 97305
(503) 466-4147
jshanahan@co.marion.or.us

STATE OF OREGON, by and through its Department of Transportation

By_____
Public Transportation Division Policy & Strategic Investment Manager

Name_____
(printed)

Date_____

APPROVAL RECOMMENDED

By_____
Program Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(For funding over $250,000)

By Nina R Englander via email
Assistant Attorney General

Date July 1, 2025

SRTS Program Manager:
Xao Posadas
555 13th Street NE
Salem, Oregon 97301
(971) 718-6170
Xao.Posadas@odot.oregon.gov

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SIGNATURE PAGE FOR
ODOT SRTS25-24 - SAFE ROUTES TO SCHOOL (SRTS) PROGRAM GRANT FOR SCOTT ELEMENTARY - PW-6769-25
between
MARION COUNTY and OREGON DEPARTMENT OF TRANSPORTATION

MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:

_____
Chair Date

_____
Commissioner Date

_____
Commissioner Date

Authorized Signature: DocuSigned by: Brian Nicholas 9793BA7ACD6D443... 7/28/2025
Department Director or designee Date

Authorized Signature: DocuSigned by: Jan Fritz DC1635124ODE4EC... 8/1/2025
Chief Administrative Officer Date

Reviewed by Signature: Signed by: Scott Norris 60C98A6F708240B... 8/1/2025
Marion County Legal Counsel Date

Reviewed by Signature: DocuSigned by: A3538E7AEC704F4... 7/28/2025
Marion County Contracts & Procurement Date

OREGON DEPARTMENT OF TRANSPORTATION SIGNATURE

Authorized Signature: _____
Date

Title: _____

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EXHIBIT A

Project Description, Key Milestones, Schedule and Budget

Agreement No. SRTS25-24
Project Name: Scott Elementary School / Brown Road / RRFB / 2025

A. PROJECT DESCRIPTION

Brown Rd NE and Arizona Ave NE

The Project will construct a Rectangular Rapid Flashing Beacon and curb ramps at the intersection of Brown Rd NE and Arizona Ave NE.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, Paragraph 4.

B. PROJECT KEY MILESTONES AND SCHEDULE

The Project has two (2) Key Milestone(s). Key Milestones are used for evaluating performance on the Project as described in the Agreement. Neither Key Milestone 1, Planning, design, permitting and land acquisition, nor Key Milestone 2, Project completion, can be changed without an amendment to the Agreement.

If Recipient anticipates either that Key Milestone 1 will require material changes or that Key Milestone 2 will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order, as described in **Subsection 5.c** of the Agreement, to SRTSProgramMailbox@odot.oregon.gov as soon as Recipient becomes aware of any possible change or delay. Recipient must submit the Request for Change Order before materially changing the project scope (Key Milestone 1) or delaying the Project completion (Key Milestone 2).

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date
1	**Scoping and planning**	10/31/25
2	**Project completion (Project must be completed within 5 years of agreement execution.)**	9/25/26

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EXHIBIT B
Recipient Requirements

1. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.

2. Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.

3. Recipient shall, at its own expense, maintain, operate and provide power to the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation or service demand or both. The Parties agree that the useful life of the Project is defined as ten (10) years from its completion date (the "Project Useful Life"). At the conclusion of the Project Useful Life, Recipient and ODOT shall negotiate any additional maintenance obligations for any features installed on ODOT's right of way. If the Parties are unable to reach a consensus regarding additional maintenance obligations, Recipient shall remove all features installed on ODOT's right of way at no expense to ODOT. This paragraph shall survive the expiration or termination of this Agreement.

3. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried for constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.

4. Americans with Disabilities Act Compliance

a. State Highway: For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):

i. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, pedestrian-activated signals meet current ODOT Highway Design Manual standards;

ii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;

iii. During Project Construction, Recipient must have a contractor with an active ODOT ADA Contractor Certification directly supervise any construction or alteration of curb ramps. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form

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734-5020 to the address on the form for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx

iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.

v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least ten (10) days prior to the start of construction.

b. Local Roads: For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:

i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.

ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx;

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.

iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.

iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.

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c. Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:

i. Pedestrian access is maintained as required by the ADA,

ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,

iii. Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the Project in compliance with the ADA requirements that were in effect at the time the Project was constructed or altered,

iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and

v. Applicable permitting and regulatory actions are consistent with ADA requirements.

d. Maintenance obligations in this Paragraph 5 shall survive termination of this Agreement.

5. Work Performed within ODOT's Right of Way

a. For all improvements within ODOT's right of way, Recipient shall design all work in accordance with the standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects shall be in conformance with standard practices of the State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current ODOT drafting manuals.

b. Prior to advertising the Project for bid, for all improvements within ODOT's right of way, Recipient must receive written approval of the Project's plans and specifications from ODOT's Roadway Engineering Section, in the Engineering and Technical Services Branch. This Agreement is not ODOT's approval of the plans or specifications.

c. In addition to ODOT's approval of the plans and specifications and prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, written permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.

d. Pursuant to OAR 734-020-0430, Recipient shall obtain written approval from the State Traffic Engineer prior to the design, construction, or removal of any traffic signal, traffic control device, or illumination to be installed on a state highway. An engineering study may be required for approval. See *ODOT's Traffic Manual* for the approval process. This Agreement is not the State Traffic Engineer's written approval.

e. Recipient and ODOT shall have an executed maintenance and operations agreement to cover obligations for any signaling devices being installed on a state highway for this Project. This agreement must be in effect prior to receiving design approval from ODOT. Traffic signals on a

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state highway must be designed per the current edition of ODOT's *Traffic Signal Design Manual*.

f. Electrical inspectors used by Recipient or its contractor(s), shall possess a current State Certified Traffic Signal Inspector certificate in order to inspect electrical installations on state highways.

g. ODOT will, at no cost to the Project, perform signal equipment environmental testing. For ODOT-owned or ODOT-maintained signals, ODOT will, at no cost to the Project, perform the signal field testing and turn-on. Traffic signal timing for ODOT-owned and ODOT-operated signals shall be the responsibility of ODOT, unless there is an agreement that specifically allows Recipient to perform that function.

h. Recipient shall ensure that all work involving pedestrian-activated signals performed under this Agreement, including maintenance activities, complies with ODOT's ADA standards. Recipient shall ensure that all traffic signals, illumination poles, and foundations installed on a state highway conform to State's standards, pursuant to the versions of ODOT's Traffic Structures Design Manual and Geotechnical Design Manual in effect at the time the work is conducted.

6. General Standards

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

7. Land Use Decisions

a. Recipient shall obtain all permits, "land use decisions" as that term is defined by ORS 197.015, and any other approvals necessary for Recipient to complete the Project by the Project completion deadline identified in Exhibit A (each a "Land Use Decision" and collectively, "Land Use Decisions").

b. If at any time before the Availability Termination Date identified in **Section 2** of this Agreement ODOT concludes, in its sole discretion, that Recipient is unlikely to obtain one or more Land Use Decisions before the Availability Termination Date, ODOT may (i) suspend the further disbursement of Grant Funds upon written notice to Recipient (a "Disbursement Suspension") and (ii) exercise any of its other rights and remedies under this Agreement, including, without limitation, terminating the Agreement and recovering all Grant Funds previously disbursed to Recipient.

c. If after a Disbursement Suspension ODOT concludes, in its sole discretion and based upon additional information or events, that Recipient is likely to timely obtain the Land Use Decision or Decisions that triggered the Disbursement Suspension, ODOT will recommence disbursing Grant Funds as otherwise provided in this Agreement.

d. This Section 7 is in addition to, and not in lieu of, ODOT's rights and remedies under **Subsection 6.g** ("Recovery of Grant Funds") of this Agreement.

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8. Website

Recipient shall provide ODOT a link to any website created about the Project identified in Exhibit A before any costs being considered eligible for reimbursement. Recipient shall notify the ODOT Contact or Program Manager in writing when the link changes during the term of this Grant Agreement.

9. Photographs

Recipient shall provide pre-construction Project photographs within thirty (30) days of the execution of this Agreement. Recipient shall provide Project photographs thirty (30) days after Project is completed.

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EXHIBIT C
Contractor Insurance Requirements

1. GENERAL.

a. Recipient shall require in its first tier contracts with entities that are not units of local government as defined in ORS 190.003 (if any) that its contractors ("contractor"): i) obtain insurance specified in this Exhibit under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the contract commences, and ii) maintain the insurance in full force throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the state of Oregon and that are acceptable to the Recipient. Recipient shall not authorize work to begin under contracts until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the contract permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a contract when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a contract in which the Recipient is a Party. All references to "contractor" in this Exhibit refer to Recipient's contractor(s) as identified in this Paragraph 1.a.

b. The insurance specified below is a minimum requirement that the Recipient shall require each of its contractors to meet, and shall include such requirement in each of Recipient's contracts with its contractors. Recipient may determine insurance types and amounts in excess of the minimum requirement as deemed appropriate based on the risks of the work outlined within the contract.

c. Recipient shall require each of its contractors to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Recipient's contractors shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing services related to the subcontractor contract(s).

2. TYPES AND AMOUNTS.

a. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.
All employers, including Recipient's contractors, 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). The coverage shall include Employer's Liability insurance with limits not less than $500,000 each accident. **Recipient's contractors shall require compliance with these requirements in each of their subcontractor contracts.**

b. COMMERCIAL GENERAL LIABILITY.
Commercial General Liability insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products

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and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Recipient's contractors shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy.

Amounts below are a minimum requirement as determined by ODOT:

Prime construction contractor:

Coverage shall be written on an occurrence basis in an amount of not less than ☒ **$1,000,000** ☐ **$2,000,000** ☐ **$5,000,000** per occurrence.

Annual aggregate limit shall not be less than ☒ **$2,000,000** ☐ **$4,000,000** ☐ **$10,000,000**.

Other contractor(s):

Coverage shall be written on an occurrence basis in an amount of not less than **$1,000,000** per occurrence.

Annual aggregate limit shall not be less than **$2,000,000**.

c. AUTOMOBILE LIABILITY.
Automobile Liability insurance covering business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than **$1,000,000**.

d. EXCESS/UMBRELLA LIABILITY.
A combination of primary and Excess/Umbrella Liability insurance may be used to meet the minimum required limits of insurance. If any Excess/Umbrella Liability policies are in place, they must be on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance.

e. ADDITIONAL INSURED.
The liability coverages, except Professional Liability and Workers' Compensation/Employer's Liability, if included, must endorse the **"State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the contract. Coverage shall be primary and noncontributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

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Additional Insured Endorsements shall be submitted with the certificate(s) of insurance and must be acceptable to the Recipient.

f. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as Professional Liability insurance or Pollution Liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the contract, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all services required under the contract or, (ii) the expiration of all warranty periods provided under the contract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

3. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

4. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the contract. The certificate(s) or an attached endorsement must endorse: i) **"State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and noncontributory with any other insurance and self-insurance, with exception of Professional Liability and Workers' Compensation/Employer's Liability.

The Recipient shall immediately notify ODOT of any change in insurance coverage.

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 8/13/2025

Department: Public Works

Title: Remove Parks Commission Member

Management Update/Work Session Date: 6/17/2025 **Audio/Visual aids** ☐

Time Required: 0 minutes **Contact:** Kevin Thompson **Phone:** 503-566-4158

Requested Action:
Remove Stephen Staten from the Marion County Parks Commission, effective August 13, 2025.

Issue, Description & Background:
The Marion County Board of Commissioners formed the Parks Commission by order on September 16, 1958 to offer public input on park issues. All members serve at the pleasure of the Board of Commissioners. Parks Commission Bylaws include membership and attendance requirements, which Mr. Staten has not met. The Park Commission recommends the Board remove Mr. Staten from the Park Commission.

Financial Impacts:
None.

Impacts to Department & External Agencies:
There are not impacts to other departments or external agencies.

List of attachments:
(1) Board Order, (2) Parks Commission Roster

Presenter:
Kevin Thompson

Department Head Signature:
Brian Nicholas
Digitally signed by Brian Nicholas
Date: 2025.07.30 05:35:33 -07'00'

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of removing)
Stephen Staten from the Parks Commission)

ORDER NO: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on Wednesday, August 13, 2025 to remove Stephen Staten from the Marion County Parks Commission.

WHEREAS, the Board of Commissioners has established the Parks Commission; and

WHEREAS, the Parks Commission serves as the advisory board on park issues, including strategic directions, future park development, and rules/regulations representing the public's interest; and

WHEREAS, the Parks Commission Bylaws include membership and attendance requirements; and

WHEREAS, it appearing to the Board of Commissioners that Stephen Staten is unable to meet those requirements and therefore unable to complete his term as a member of the Parks Commission; now, therefore,"

IT IS HEREBY ORDERED that Stephen Staten be removed from the Marion County Parks Commission effective today.

DATED this 13th day of August, 2025.

MARION COUNTY BOARD OF COMMISSIONERS

_____

Chair

_____

Commissioner

_____

Commissioner

Marion County Parks Commission Members

July 2025

Name	Term Expires	City of Residence
Alton Hoover, Vice-Chair	6-30-2027	Salem
Steve Staten	9-15-2025	Salem
Herschel Sangster, Chair	3-16-2026	Keizer
Tabitha Henricksen	12-31-2027	Salem
Bryan Hall	12-31-2028	Mt. Angel
VACANT		
VACANT		
VACANT		
VACANT		
VACANT		
VACANT		

Marion County Public Works Parks Staff

Staff	Phone	Email
Russ Dilley	(503) 365-3120	rdilley@co.marion.or.us
Kevin Thompson	(503) 566-4158	kthompson@co.marion.or.us
Dennis Mansfield	(503) 365-3111	dmansfield@co.marion.or.us
Whitney Ned	(503) 566-4153	wned@co.marion.or.us

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 8/13/2025

Department: Public Works

Title: Approve Parks Commission Bylaws Revisions

Management Update/Work Session Date: 6/17/2025 **Audio/Visual aids** ☐

Time Required: 0 minutes **Contact:** Kevin Thompson **Phone:** 503-566-4158

Requested Action:
Approve the attached revisions to the Marion County Parks Commission bylaws as recommended by the Parks Commission.

Issue, Description & Background:
The Marion County Board of Commissioners formed the Parks Commission by order on September 16, 1958, to offer public input on park issues. Per Parks Commission bylaws article 10.1. "Bylaws are to be reviewed every four years, at the time of election of new officers, or as needed." Review is needed due to challenges maintaining a quorum, as well as general administrative changes.

Financial Impacts:
None

Impacts to Department & External Agencies:
The proposed order will allow the Parks Commission to function as well as possible during this period of recruitment and reduced membership.

List of attachments:
(1) Bylaw Revisions and Board Order, (2) Parks Commission Roster

Presenter:
Kevin Thompson

Department Head Signature:
Brian Nicholas
Digitally signed by Brian Nicholas
Date: 2025.07.30 05:32:30 -07'00'

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of revising Bylaws)
For the Marion County Parks Commission)

ORDER NO: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on Wednesday, August 13, 2025 to consider approving revised bylaws for the Marion County Parks Commission.

WHEREAS, the Parks Commission recommends approval of the revised Marion County Parks Commission bylaws; now, therefore,

IT IS HEREBY ORDERED that the revised bylaws of the Marion County Parks Commission are approved.

IT IS FURTHER ORDERED that these bylaws supersede any previously appointed bylaws of the Marion County Parks Commission.

DATED this 13th day of August, 2025.

MARION COUNTY BOARD OF COMMISSIONERS

_____
Chair

_____
Commissioner

_____
Commissioner

REVISED BYLAWS – SHOWING REVISIONS

Marion County Parks Commission Bylaws

1. The name of the advisory board for the Marion County Parks program is the **Marion County Parks Commission**.

2. **Mission Statement**: The Parks Commission will support the Marion County Parks program that provides a broad diversity of natural and developed parks, safe and high quality education and recreational opportunities.

3. **Purpose**: The Parks Commission will serve the public interest in an informed, ethical, and responsible manner by:

- 3.1. Assisting the county in making decisions that will allow the county to produce safe, high quality parks and recreation opportunities.
- 3.2. Receiving information from staff in order to make informed decisions.
- 3.3. Cooperating with local interested groups and state and federal agencies thereby promoting partnerships.
- 3.4. Assisting in accessing funding.
- 3.5. Taking into consideration educational opportunities.
- 3.6. Providing continued support for the Marion County Natural Heritage Parks Program when making decisions.
- 3.7. Reporting and making recommendations to the County Board of Commissioners.

4. **Membership**

- 4.1. The Parks Commission shall consist of not less than ~~seven (7) or more than eleven (11)~~ five (5) or more than seven (7) members.
- 4.2. All members serve at the pleasure of the Marion County Board of Commissioners.
- 4.3. Representation will consist of entirely at-large members of the county. An effort will be made to have commissioners that represent a broad county distribution and a wide range of expertise.
- 4.4. Appointment to the Parks Commission is eligible after a meeting has been attended, an application submitted, and the applicant has been interviewed by staff and the Chair. Applicant's appointment will be recommended by a majority vote of the Parks Commission. The Parks Commission will recommend to the Board of Commissioners to approve appointment of applicant. Staff will present request to the Board of Commissioners for consideration and approval. Terms are to be four (4) years.
- 4.5. Reappointment - Prior to the expiration of a term, a member may submit a written request for reappointment for another four-year term. Staff will present request to the Board of Commissioners for consideration and approval.

5. **Termination**

- 5.1. Meeting attendance requirements: an excused absence includes notification to staff in advance unless proof of unavoidable or emergency circumstances is evidenced. Three unexcused absences within one (1) year shall warrant discussion of the retirement of the commissioner and the opening of the vacancy.
- 5.2. Resignation: A Parks Commissioner's resignation must be submitted in writing to Marion County Parks staff for delivery to the Board of Commissioners.
- 5.3. Reasons for Dismissal: The Parks Commission and/or staff may recommend removal of a member for misrepresentation of or to the Parks Commission, excessive absences from meetings, violation of Parks Commission bylaws, or other inappropriate conduct as determined by the Parks Commission. In the event a recommendation for removal is made, it shall be submitted by the Parks Commission and/or staff for the Board of Commissioners' due consideration.
- 5.4. Removal: The members of the Parks Commission serve at the pleasure of the Board of Commissioners and may be removed at any time by the Board of Commissioners.
- 5.5. Removal by Board of Commissioners or the Parks Commission: The County Board of Commissioners may remove a Parks Commission member on its own motion or upon the recommendation of the Parks Commission. If the Parks Commission determines by a majority vote that a member should be removed, the Chair of the Parks Commission shall report that recommendation to the County Board of Commissioners for its consideration.

6. Meetings

6.1. The Parks Commission is a public body subject to the public meetings and record laws as stated in ORS Chapter 192. All meetings will be open to the public.

6.2. Minutes will be taken in summary form with tape available for review of complete meeting. Minutes will be available online once approved by the Parks Commission.

6.3. Regular meetings shall occur on a bi-monthly basis. Reasonable notice shall be given to all members of the commission and to members of the public reachable through the usual and reasonable means available; this includes media centers, meeting notice sent to media, and posting on Marion County Parks' website. Regular meetings are normally held at Marion County Public Works at 5155 Silverton Rd. NE in Salem, Oregon. Agendas will be made available on the Marion County Parks' website within five days of the meeting. They will also be distributed at the meetings.

6.4. The Chair or Parks Coordinator may call special meetings and all members will be notified. Public notice will be given as soon as possible upon announcement of the meeting.

6.5. Decisions will be made by consensus, with a majority vote as needed.

6.6. A motion must be pending before a decision may be made. Every effort will be made to reach consensus when the Parks Commission is deliberating toward a decision. If consensus cannot be reached, the chairperson or any member may call for a voice vote. In all cases, the minimum number of affirmative votes for any motion to pass must be a majority of the appointed positions on the Commission who are present for the meeting.

6.7. A quorum consists of a majority of the appointed voting membership.

7. Officers

7.1. Selection of officers, the Chair, and the Vice Chair will be done during the first meeting of the year and occur every two years.

7.2. The terms of both the Chair and Vice Chair will be two years.

7.3. Duties of the Chair include opening meetings, presiding over meetings, taking motions, closing meetings, and acting as a spokesperson for the Commission. Duties of the Vice Chair include all of the Chair's duties in their absence.

7.4. The Vice Chair will fill a vacant Chair position. A vacant Vice Chair position will be filled by appointment by the Board of Commissioners on recommendation by the Parks Commission.

7.5. An officer may be removed from office through a majority vote or by consensus by the Parks Commission to recommend to the Board of Commissioners that the individual be removed from office.

8. Subcommittees

8.1. The Parks Commissioners may form a subcommittee as needed and approved by the entire Parks Commission.

8.2. Participants must declare to the entire Parks Commission that they are on a specific subcommittee.

8.3. Ad hoc members may be appointed by the Parks Commission to any sub-committee.

8.4. Any deliberation by any subcommittee must be publicly noticed.

9. Conflicts of Interest

9.1. Declaration: The Parks Commission is subject to ORS 244.020, 244.040(1), and 244.120 to 244.030, defining conflict of interest and establishing protocols for members of public bodies in Oregon. Parks Commission members are expected to declare a conflict of interest prior to consideration of any matter causing a potential or actual conflict.

9.2. Potential conflict defined: A potential conflict of interest exists when a Parks Commission member takes an action that reasonably could be expected to have a financial impact on that member, a relative, or a business with which the member or member's relative is associated. The Parks Commission member may participate in an action after declaring the potential conflict and announcing its nature.

9.3. Actual conflict defined: An actual conflict of interest exists when an action is reasonably certain to result in a special benefit or detriment to the Parks Commission member, a relative, or a business with which the member or member's relative is associated. The member will declare the actual conflict and announce its nature. The member must then refrain from taking any official action. When a vote is necessary to achieve a quorum, the member may vote, but may not participate in any discussion or debate on the issue out of which the actual conflict arises.

10. Revision or amendment of bylaws

10.1. Bylaws are to be reviewed every four years, at the time of election of new officers, or as needed.

10.2. Bylaws revision and/or amendments will be approved by a quorum, providing fourteen (14) days' notice to all members of the Parks Commission. Once approved by the Parks Commission, staff will present the revisions or amendments to the Board of Commissioners for approval.

10.3. Bylaws are to be distributed to Parks Commissioners and appropriate county staff at the time of new membership and upon revision or amendment. Public distribution of bylaws can be made upon request and for the cost of the copies and mailing.

11. Community Relations/Public Input: Any member of the public will be welcome to attend and provide input at Parks Commission meetings. Public comments will be encouraged and will be accepted verbally or in writing. Anyone who wishes to voice an opinion or present information or concerns to the Parks Commission can attend meetings or contact the Parks Commission Chair, the Vice Chair, or Marion County Parks staff. Arrangements will be made and time will be allotted at meetings as appropriate to assure broad public participation.

**Bylaws embedded in handbook*

***Revised: July 2025*

REVISED BYLAWS – FINAL

Marion County Parks Commission Bylaws

1. The name of the advisory board for the Marion County Parks program is the **Marion County Parks Commission**.

2. **Mission Statement**: The Parks Commission will support the Marion County Parks program that provides a broad diversity of natural and developed parks, safe and high quality education and recreational opportunities.

3. **Purpose**: The Parks Commission will serve the public interest in an informed, ethical, and responsible manner by:

- 3.1. Assisting the county in making decisions that will allow the county to produce safe, high quality parks and recreation opportunities.
- 3.2. Receiving information from staff in order to make informed decisions.
- 3.3. Cooperating with local interested groups and state and federal agencies thereby promoting partnerships.
- 3.4. Assisting in accessing funding.
- 3.5. Taking into consideration educational opportunities.
- 3.6. Providing continued support for the Marion County Natural Heritage Parks Program when making decisions.
- 3.7. Reporting and making recommendations to the County Board of Commissioners.

4. **Membership**

- 4.1. The Parks Commission shall consist of not less five (5) or more than seven (7) members.
- 4.2. All members serve at the pleasure of the Marion County Board of Commissioners.
- 4.3. Representation will consist of entirely at-large members of the county. An effort will be made to have commissioners that represent a broad county distribution and a wide range of expertise.
- 4.4. Appointment to the Parks Commission is eligible after a meeting has been attended, an application submitted, and the applicant has been interviewed by staff and the Chair. Applicant's appointment will be recommended by a majority vote of the Parks Commission. The Parks Commission will recommend to the Board of Commissioners to approve appointment of applicant. Staff will present request to the Board of Commissioners for consideration and approval. Terms are to be four (4) years.
- 4.5. Reappointment - Prior to the expiration of a term, a member may submit a written request for reappointment for another four-year term. Staff will present request to the Board of Commissioners for consideration and approval.

5. **Termination**

- 5.1. Meeting attendance requirements: an excused absence includes notification to staff in advance unless proof of unavoidable or emergency circumstances is evidenced. Three unexcused absences within one (1) year shall warrant discussion of the retirement of the commissioner and the opening of the vacancy.
- 5.2. Resignation: A Parks Commissioner's resignation must be submitted in writing to Marion County Parks staff for delivery to the Board of Commissioners.
- 5.3. Reasons for Dismissal: The Parks Commission and/or staff may recommend removal of a member for misrepresentation of or to the Parks Commission, excessive absences from meetings, violation of Parks Commission bylaws, or other inappropriate conduct as determined by the Parks Commission. In the event a recommendation for removal is made, it shall be submitted by the Parks Commission and/or staff for the Board of Commissioners' due consideration.
- 5.4. Removal: The members of the Parks Commission serve at the pleasure of the Board of Commissioners and may be removed at any time by the Board of Commissioners.
- 5.5. Removal by Board of Commissioners or the Parks Commission: The County Board of Commissioners may remove a Parks Commission member on its own motion or upon the recommendation of the Parks Commission. If the Parks Commission determines by a majority vote that a member should be removed, the Chair of the Parks Commission shall report that recommendation to the County Board of Commissioners for its consideration.

6. Meetings

6.1. The Parks Commission is a public body subject to the public meetings and record laws as stated in ORS Chapter 192. All meetings will be open to the public.

6.2. Minutes will be taken in summary form with tape available for review of complete meeting. Minutes will be available online once approved by the Parks Commission.

6.3. Regular meetings shall occur on a bi-monthly basis. Reasonable notice shall be given to all members of the commission and to members of the public reachable through the usual and reasonable means available; this includes media centers, meeting notice sent to media, and posting on Marion County Parks' website. Regular meetings are normally held at Marion County Public Works at 5155 Silverton Rd. NE in Salem, Oregon. Agendas will be made available on the Marion County Parks' website within five days of the meeting. They will also be distributed at the meetings.

6.4. The Chair or Parks Coordinator may call special meetings and all members will be notified. Public notice will be given as soon as possible upon announcement of the meeting.

6.5. Decisions will be made by consensus, with a majority vote as needed.

6.6. A motion must be pending before a decision may be made. Every effort will be made to reach consensus when the Parks Commission is deliberating toward a decision. If consensus cannot be reached, the chairperson or any member may call for a voice vote. In all cases, the minimum number of affirmative votes for any motion to pass must be a majority of the appointed positions on the Commission who are present for the meeting.

6.7. A quorum consists of a majority of the appointed voting membership.

7. Officers

7.1. Selection of officers, the Chair, and the Vice Chair will be done during the first meeting of the year and occur every two years.

7.2. The terms of both the Chair and Vice Chair will be two years.

7.3. Duties of the Chair include opening meetings, presiding over meetings, taking motions, closing meetings, and acting as a spokesperson for the Commission. Duties of the Vice Chair include all of the Chair's duties in their absence.

7.4. The Vice Chair will fill a vacant Chair position. A vacant Vice Chair position will be filled by appointment by the Board of Commissioners on recommendation by the Parks Commission.

7.5. An officer may be removed from office through a majority vote or by consensus by the Parks Commission to recommend to the Board of Commissioners that the individual be removed from office.

8. Subcommittees

8.1. The Parks Commissioners may form a subcommittee as needed and approved by the entire Parks Commission.

8.2. Participants must declare to the entire Parks Commission that they are on a specific subcommittee.

8.3. Ad hoc members may be appointed by the Parks Commission to any sub-committee.

8.4. Any deliberation by any subcommittee must be publicly noticed.

9. Conflicts of Interest

9.1. Declaration: The Parks Commission is subject to ORS 244.020, 244.040(1), and 244.120 to 244.030, defining conflict of interest and establishing protocols for members of public bodies in Oregon. Parks Commission members are expected to declare a conflict of interest prior to consideration of any matter causing a potential or actual conflict.

9.2. Potential conflict defined: A potential conflict of interest exists when a Parks Commission member takes an action that reasonably could be expected to have a financial impact on that member, a relative, or a

business with which the member or member's relative is associated. The Parks Commission member may participate in an action after declaring the potential conflict and announcing its nature.

9.3. Actual conflict defined: An actual conflict of interest exists when an action is reasonably certain to result in a special benefit or detriment to the Parks Commission member, a relative, or a business with which the member or member's relative is associated. The member will declare the actual conflict and announce its nature. The member must then refrain from taking any official action. When a vote is necessary to achieve a quorum, the member may vote, but may not participate in any discussion or debate on the issue out of which the actual conflict arises.

10. Revision or amendment of bylaws

10.1. Bylaws are to be reviewed every four years, at the time of election of new officers, or as needed.

10.2. Bylaws revision and/or amendments will be approved by a quorum, providing fourteen (14) days' notice to all members of the Parks Commission. Once approved by the Parks Commission, staff will present the revisions or amendments to the Board of Commissioners for approval.

10.3. Bylaws are to be distributed to Parks Commissioners and appropriate county staff at the time of new membership and upon revision or amendment. Public distribution of bylaws can be made upon request and for the cost of the copies and mailing.

11. Community Relations/Public Input: Any member of the public will be welcome to attend and provide input at Parks Commission meetings. Public comments will be encouraged and will be accepted verbally or in writing. Anyone who wishes to voice an opinion or present information or concerns to the Parks Commission can attend meetings or contact the Parks Commission Chair, the Vice Chair, or Marion County Parks staff. Arrangements will be made and time will be allotted at meetings as appropriate to assure broad public participation.

**Bylaws embedded in handbook*

***Revised: July 2025*

Marion County Parks Commission Members

July 2025

Name	Term Expires	City of Residence
Alton Hoover, Vice-Chair	6-30-2027	Salem
Steve Staten	9-15-2025	Salem
Herschel Sangster, Chair	3-16-2026	Keizer
Tabitha Henricksen	12-31-2027	Salem
Bryan Hall	12-31-2028	Mt. Angel
VACANT		
VACANT		
VACANT		
VACANT		
VACANT		
VACANT		

Marion County Public Works Parks Staff

Staff	Phone	Email
Russ Dilley	(503) 365-3120	rdilley@co.marion.or.us
Kevin Thompson	(503) 566-4158	kthompson@co.marion.or.us
Dennis Mansfield	(503) 365-3111	dmansfield@co.marion.or.us
Whitney Ned	(503) 566-4153	wned@co.marion.or.us

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MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 13, 2025

Department: Sheriff's Office

Title: Agreement with US Forest Service to provide Law Enforcement Services within Willamette National Forest

Management Update/Work Session Date: Tuesday, August 5, 2025 **Audio/Visual aids** ☐

Time Required: 5 minutes **Contact:** Kristy Witherell **Phone:** x4402

Requested Action:

Staff is requesting approval of an incoming funds Intergovernmental Agreement with the U.S. Department of Agriculture, Forest Service - Willamette National Forest in the amount of $150,000.00 to provide overtime forest patrol services, and other duties and projects discussed and approved between the county and the U.S. Forest Service through July 1, 2028.

Issue, Description & Background:

The U.S. Forest Service and Marion County Sheriff's Office have been partnering for decades to accomplish a multitude of projects including removal of hazardous debris from Detroit Lake and conducting deferred maintenance for recreation facilities. Both agencies dedicate similar resources to the management, maintenance, protection and restoration of facility operations within the general area resulting in parallel, duplicative investments. In recent years, increased recreation usage, wildfire risk and disaster area impacts have resulted in an increase of safety concerns within the district and county. This agreement will assist both agencies to pool their resources for staff efficiency, cost effectiveness, materials, supplies and overall management of the area.

Financial Impacts:

Incoming funds of $150,000.00 through July 1, 2028.

Impacts to Department & External Agencies:

N/A

List of attachments:

Agreement, Exhibit A (Financial Plan)

Presenter:

Commander Bernards and Lieutenant Wilkinson

Department Head Signature:

Signed by:
Nicholas Hunter
574858962EE148C...

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Contract Review Sheet

Intergovernmental Agreement **SO-6776-25**

Title: **USFS - Cost Share Agmt within the Willamette National Forest FS No: 25-CS-11061800-148**

Contractor's Name: **US Department of Agriculture**

Department: **Sheriff's Office** Contact: **Kristy Witherell**

Analyst: **Sandra Fixsen** Phone #: **(503) 373-4402**

Term - Date From: **Upon Signature** Expires: **July 1, 2028**

Original Contract Amount: **$ 150,000.00** Previous Amendments Amount: **$ -**

Current Amendment: **$ -** New Contract Total: **$ 150,000.00** Amd% **0%**

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

Source Selection Method: **ORS190 Intergovernmental Agreement**

Description of Services or Grant Award

MCSO will provide security of the Detroit Ranger District and the Little North Fork Corridor. MCSO will also provide support in assisting with educational courses, forest patrolling, disaster recovery field work and response, evacuations, placement of signage, and assisting with dispersed site cleanup. This agreement also includes the purchase of two readerboard signs for use within the Willamette National Forest. This contract expires on 7/1/2028 and has a not to exceed value of $150,000.00.

Desired BOC Session Date: **9/3/2025** Contract should be in DocuSign by: **8/13/2025**

Agenda Planning Date **8/21/2025** Printed packets due in Finance: **8/19/2025**

Management Update **8/19/2025** BOC upload / Board Session email: **8/20/2025**

BOC Session Presenter(s) **Commander Bernards and Lieutenant Wilkinson** Code: **Y**

REQUIRED APPROVALS

Finance - Contracts Date

Contract Specialist Date

Legal Counsel Date

Chief Administrative Officer Date

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FS Agreement No. 25-CS-11061800-148

Cooperator Agreement No. _____

CHALLENGE COST SHARE AGREEMENT
Between
MARION, COUNTY OF
And The
USDA, FOREST SERVICE
WILLAMETTE NATIONAL FOREST

This CHALLENGE COST SHARE AGREEMENT is hereby made and entered into by and between Marion, County Of, also known as Marion Sheriff's Office, hereinafter referred to as "The County," and the United States Department of Agriculture (USDA), U.S. Forest Service, Willamette National Forest hereinafter referred to as the "U.S. Forest Service," under the authority: Department of Interior and Related Agencies Appropriation Act of 1992, Pub. L. 102-154.

Background: The U.S. Forest Service and Marion County Sheriff's Office (the County) have been partnering for decades to accomplish a multitude of projects including removal of hazardous debris from Detroit Reservoir and conducting deferred maintenance for recreation facilities. Both agencies have responsibility for the management of the health, safety and security of citizens, personnel, and visitors to areas within the Detroit Ranger District and surrounding areas. Both agencies dedicate similar resources to the management, maintenance, protection and restoration of facility operations within the general area resulting in parallel, duplicative investments. In recent years, increasingly prevalent recreation usage, wildfire risk and disaster area impacts have resulted in an increase of safety concerns within the district and county that are shared by both agencies. In response, the parties have worked together to develop a shared vision for future coordinated management of the area. This agreement will assist both agencies to pool their resources for staff efficiency, cost effectiveness, materials, supplies and overall management of the area.

Title: Cooperative Public Safety in Disaster Areas.

I. PURPOSE:

The purpose of this agreement is to document the cooperation between the parties to refine and strategically implement a shared vision for long-term integrated health, safety, and security management and use in the Detroit Ranger District and Marion County area. In accordance with the following provisions and the herby incorporated Financial Plan, attached as exhibit A.

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II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

It is mutually beneficial to enter this agreement for the parties to work together on projects to accomplish their mutual goals. The motto of the U.S. Forest Service is Caring for the Land and Serving People. We deliver this ethos by managing forests for sustainable multiple uses to meet the different needs of people, ensuring the health of our natural resources and providing safe, diverse recreational opportunities for present and future generations.

A core value of the U.S. Forest Service is collaboration and working cooperatively at all levels within and outside the federal government. National Forest System lands provide recreational settings and opportunities, cultural and heritage resources, scenery, and many other services and benefits. Successfully achieving desired results require working with a wide range of partners to complement U.S. Forest Service efforts in land stewardship. Successful stewardship includes operating and maintaining recreation sites and facilities in a sustainable, cost-effective manner, for use and enjoyment by our publics.

The goals of the partnership with the County and the U.S. Forest Service include protecting and enhancing natural and historic resources, providing varied recreation opportunities that are responsive to changing community needs, providing river access opportunities for recreation and development and providing for the joint overall health, safety, security and enforcement of the area while also enhancing community partnerships.

The County's mission is to serve the public to protect, promote, and enhance a positive quality of life. A core value of the County is Stewardship: the County seeks to make the most efficient and effective use of public resources, and work to continuously improve services through collaboration, innovation, and competence. The county strives to create and maintain a fair, transparent and open process of government that actively seeks citizen participation and recognizes the diverse and competing interests of all the county's constituencies.

By initiating this partnership under the terms of this agreement, the Willamette National Forest and the County can better deliver their missions and achieve the goals stated above. Specifically, this partnership affords the opportunity to realize a sustainably managed area and to deliver quality service opportunities to the public. By unifying efforts, expertise, and resources in this popular destination both agencies will realize operational and programmatic efficiencies, improve public safety and create a more seamless experience for the public when they visit the Detroit Ranger District and Marion County areas.

In consideration of the above premises, the parties agree as follows:

III. THE MARION COUNTY SHERIFF'S OFFICE SHALL:

A. LEGAL AUTHORITY. The County shall have the legal authority to enter into this agreement, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the nonfederal share of project costs, when applicable.

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B. USE OF GOVERNMENT OWNED VEHICLES. U.S. Forest Service vehicles may be used for official U.S. Forest Service business only in accordance with FSH 7109.19, Ch. 60, the requirements established by the region in which performance of this agreement takes place, and the terms of this agreement.

C. BUILDING AND COMPUTER ACCESS BY NON-FOREST SERVICE PERSONNEL. The County may be granted access to U.S. Forest Service facilities and/or computer systems to accomplish work described in the Operating Plan or Statement of Work. All non-government employees with unescorted access to U.S. Forest Service facilities and computer systems must have background checks following the procedures established by USDA Directives 3800 series. Those granted computer access must fulfill all U.S. Forest Service requirements for mandatory security awareness and role-base advanced security training and sign all applicable U.S. Forest Service statements of responsibilities.

D. Identify at least one lead program manager or representative from each party in the area to collaborate on committee which will drive this agreement, and decisions to achieve the goals outlined herein and in subsequent future agreements as necessary.

E. Conduct work that may consist of the overall health, safety, and security of the Detroit Ranger District, and the Little North Fork corridor. This includes providing support in assisting with educational courses, forest patrolling, disaster recovery field work and response, motorized recreation patrolling, evacuations, placement of signage, assisting with dispersed site cleanup and other duties and projects discussed and approved between the county and the U.S. Forest Service. Forest Patrolling is outside what is covered in the already established Law Enforcement agreement, patrolling will take place within the disaster recovery area.

F. Perform in accordance with Exhibit A Financial Plan.

G. The County will ensure anything purchased through this agreement is transferred to the U.S. Forest Service at the end of the agreement. The County can utilize items acquired as needed through the life of the agreement.

(1) The County will notify the U.S. Forest service of any repairs, replacement, or disposal of any acquired materials, supplies, equipment, and/or property.

(2) The County shall submit for reimbursement when needed of the following items or categories within the financial plan.

(a) Hours or overtime worked when applicable.
(b) Flagging
(c) Hand tools
(d) Signage
(e) PPE (e.g. saw helmets, water waders etc.)

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(f) Approved equipment
(g) Communication supplies
(h) Miscellaneous materials, supplies as applicable to duties.

IV. THE FOREST SERVICE SHALL:

A. PAYMENT/REIMBURSEMENT. The Forest Service shall reimburse the County for the U.S. Forest Service's share of actual expenses incurred, not to exceed $150,000.00 as shown in the Financial Plan. To approve a Request for Reimbursement, the U.S. Forest Service shall review such requests to ensure payments for reimbursement are in compliance and otherwise consistent with the terms of the agreement. The U.S. Forest Service shall make payment upon receipt of the County's Monthly Invoice. Each invoice from The County shall display the total project costs for the billing period, separated by U.S. Forest Service and the county's share. In-kind contributions must be displayed as a separate line item and must not be included in the total project costs available for reimbursement. The final invoice must display he county's full match towards the project, as shown in the financial plan, and be submitted no later than 120 days from the expiration date.

Each invoice must include, at a minimum:

1. Name, address, and telephone number.
2. U.S. Forest Service agreement number.
3. Invoice date.
4. Performance dates of the work completed (start & end).
5. Total invoice amount for the billing period, separated by U.S. Forest Service and County share with in-kind contributions displayed as a separate line item.
6. Display all costs, both cumulative and for the billing period, by separate cost element as shown on the financial plan.
7. Cumulative amount of U.S. Forest Service payments to date.
8. Statement that the invoice is a request for payment by "reimbursement".
9. If using SF-270, a signature is required.
10. Invoice Number, if applicable.

The invoice must be forwarded to:

EMAIL: SM.FS.ASC_GA@USDA.GOV

FAX: 877-687-4894

POSTAL: USDA Forest Service
Budget & Finance
Grants and Agreements
4000 Masthead St, NE
Albuquerque, NM 87109

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Send copy to Alex Lasher email: Sheldon.Lasher@usda.gov

B. Identify one lead program manager to collaborate on a committee which will drive this agreement, and decisions to achieve the goals outlined in this agreement.

C. Ensure the County performs authorized and agreed upon activities.

D. Be responsible for any repairs, replacement, or disposal of any acquired materials, supplies, equipment, and/or property gained through this agreement.

E. Ensure anything purchased through this agreement is transferred from the county to the U.S. Forest Service at the end of the agreement.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Matt Wilkinson 100 High St Salem, OR 97301 Telephone: (503)932-1397 Email: mwilkinson@co.marion.or.us	Lisa Gabel 100 High St Salem, OR 97301 Telephone: (503)576-7280 Email: lgabel@co.marion.or.us

Principal Forest Service Contacts:

Forest Service Program Manager Contact	Forest Service Administrative Contact
Alex Lasher Rec, Minerals, Lands Staff Officer 44125 N Santiam Hwy Detroit, Oregon, 97360 Telephone: 971-446-8894 Email: Sheldon.Lasher@usda.gov	Jeff Scholten Email: jeff.scholten@usda.gov

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B. NOTICES. Any communications affecting the operations covered by this agreement given by the Forest Service or the County are sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the Forest Service Program Manager, at the address specified in the agreement.

To the County , at the address shown in the agreement or such other address designated within the agreement.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

C. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or the County from participating in similar activities with other public or private agencies, organizations, and individuals.

D. ENDORSEMENT. Any of the County 's contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of the County's products or activities.

E. USE OF FOREST SERVICE INSIGNIA. In order for the County to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications (Washington Office). A written request will be submitted by the Forest Service R6, Willamette National Forest, Detroit Ranger District to the Office of Communications Assistant Director, Visual Information and Publishing Services prior to use of the insignia. The Forest Service R6, Willamette National Forest, Detroit Ranger District will notify the County when permission is granted.

F. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANTS. The County agree(s) that any of the County's employees, volunteers, and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), as the County has hereby willingly agreed to assume these responsibilities.

Further, the County shall provide any necessary training to the County's employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. The County shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.

G. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.

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H. NONDISCRIMINATION. The recipient/cooperator of this award must comply with all applicable Federal anti-discrimination laws and regulations. For more information about USDA Civil Rights requirements, please visit https://www.usda.gov/about-usda/general-information/staff-offices/office-assistant-secretary-civil-rights.

I. ELIGIBLE WORKERS. The County shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). The County shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract awarded under this agreement.

J. PAID SICK LEAVE REQUIREMENTS**.** Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors, and its implementing regulations, including the federal contractor paid sick leave clause at 29 CFR Part 13, Appendix A, apply to the Cooperator and any subcontractors under this agreement. These regulatory requirements are incorporated by reference into this agreement as if fully set forth in this agreement.

K. SYSTEM FOR AWARD MANAGEMENT REGISTRATION REQUIREMENT (SAM). The County shall maintain current organizational information and the original Unique Entity Identifier (UEI) provided for this agreement in the System for Award Management (SAM) until receipt of final payment. This requires annual review and updates, when needed, of organizational information after the initial registration. More frequent review and updates may be required for changes in organizational information or agreement term(s). Any change to the original UEI provided in this agreement will result in termination of this agreement and de-obligation of any remaining funds. For purposes of this agreement, System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a Cooperative. Additional information about registration procedures may be found at the SAM Internet site at www.sam.gov.

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L. STANDARDS FOR FINANCIAL MANAGEMENT.

1. Financial Reporting

shall provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

2. Accounting Records

shall continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the agreement, authorizations, obligations, unobligated balances, assets, outlays, and income.

3. Internal Control

The County shall maintain effective control over and accountability for all U.S. Forest Service funds. The County shall keep effective internal controls to ensure that all United States Federal funds received are separately and properly allocated to the activities described in the award/agreement and used solely for authorized purposes.

4. Source Documentation

The County shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract documents. These documents must be made available to the U.S. Forest Service upon request.

M. INDIRECT COST RATES- PARTNERSHIP. Indirect costs are approved for reimbursement or as a cost-share requirement and have an effective period applicable to the term of this agreement.

1. If has never received or does not currently have a negotiated indirect cost rate, they are eligible for a de minimis indirect cost rate up to 15 percent of modified total direct costs (MTDC). MTDC is defined as all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $50,000 of each subaward (regardless of the period of performance of the subawards under the award).

2. For rates greater than 15 percent and less than 25 percent, the Cooperator shall maintain documentation to support the rate. Documentation may include, but is not limited to, accounting records, audit results, cost allocation plan, letter of indirect cost rate approval from an independent accounting firm, or other Federal agency approved rate notice applicable to agreements.

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3. For a rate greater than 25 percent, the U.S. Forest Service may require that the Cooperator request a federally approved rate from 's cognizant audit agency no later than 3 months after the effective date of the agreement. will be reimbursed for indirect costs or allowed to cost-share at the rate reflected in the agreement until the rate is formalized in the negotiated indirect cost rate (NICRA) at which time, reimbursements for prior indirect costs or cost-sharing may be subject to adjustment.

4. Failure to provide adequate documentation supporting the indirect cost rate, if requested, could result in disallowed costs and repayment to the U.S. Forest Service.

N. OVERPAYMENT. Any funds paid to the County in excess of the amount entitled under the terms and conditions of this agreement constitute a debt to the Federal Government. The following must also be considered as a debt or debts owed by the County to the U.S. Forest Service:

- Any interest or other investment income earned on advances of agreement funds; or

- Any royalties or other special classes of program income which, under the provisions of the agreement, are required to be returned;

If this debt is not paid according to the terms of the bill for collection issued for the overpayment, the U.S. Forest Service may reduce the debt by:

1. Making an administrative offset against other requests for reimbursement.
2. Withholding advance payments otherwise due to .
3. Taking other action permitted by statute (31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B).

Except as otherwise provided by law, the U.S. Forest Service may charge interest on an overdue debt.

O. AGREEMENT CLOSEOUT. Within 120 days after expiration or notice of termination the parties shall close out the agreement.

Any unobligated balance of cash advanced to the County must be immediately refunded to the U.S. Forest Service, including any interest earned in accordance with 2 CFR Part 200, Subpart D, 200.305.

Within a maximum of 120 days following the date of expiration or termination of this agreement, all financial performance and related reports required by the terms of the agreement must be submitted to the U.S. Forest Service by .

If this agreement is closed out without audit, the U.S. Forest Service reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

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P. PROGRAM MONITORING AND PROGRAM PERFORMANCE REPORTS. The parties to this agreement shall monitor the performance of the agreement activities to ensure that performance goals are being achieved.

Performance reports must contain information on the following:

- A comparison of actual accomplishments to the goals established for the period. Wherever the output of the project can be readily expressed in numbers, a computation of the cost per unit of output, if applicable.

- Reason(s) for delay if established goals were not met.

- Additional pertinent information

The County shall submit ANNUAL performance reports to the U.S. Forest Service Program Manager. These reports are due 90 days after the reporting period. The final performance report must be submitted either with the County 's final payment request, or separately, but not later than 120 days from the expiration date of the agreement.

Q. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. The County shall retain all records pertinent to this agreement for a period of no less than 3 years from the expiration or termination date. As used in this provision, records includes books, documents, accounting procedures and practice, and other data, regardless of the type or format. The County shall provide access and the right to examine all records related to this agreement to the U.S. Forest Service Inspector General, or Comptroller General or their authorized representative. The rights of access in this section must not be limited to the required retention period but must last as long as the records are kept.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

Records for nonexpendable property acquired in whole or in part, with Federal funds must be retained for 3 years after its final disposition.

R. FREEDOM OF INFORMATION ACT (FOIA). Public access to agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).). Requests for research data are subject to 2 CFR 215.36.

Public access to culturally sensitive data and information of Federally-recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2009 Farm Bill).

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S. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperators, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.

T. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. The County is/are encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

"Recreation, Lands, and Minerals Program of the U. S. Forest Service, Department of Agriculture"

The County may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. The County is/are requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to U.S. Forest Service's Office of Communications as far in advance of release as possible.

U. PURCHASE OF EQUIPMENT. U.S. Forest Service funds may be used by the County to purchase equipment necessary to accomplish activities described in this agreement. The available funding is displayed in the financial plan. Title to the equipment rests with the U.S. Forest Service, but may be transferred to the County on completion of the project, if appropriate; any equipment or supplies purchased under the line item of "Project Misc Expenses" would be owned out right by the County.

V. GOVERNMENT-FURNISHED PROPERTY. The County may only use U.S. Forest Service property furnished under this agreement for performing tasks assigned in this agreement. The County shall not modify, cannibalize, or make alterations to U.S. Forest Service property. A separate document, Form AD-107, must be completed to document the loan of U.S. Forest Service property. The U.S. Forest Service shall retain title to all U.S. Forest Service-furnished property. Title to U.S. Forest Service property must not be affected by its incorporation into or attachment to any property not owned by the U.S. Forest Service, nor must the property become a fixture or lose its identity as personal property by being attached to any real property.

Cooperator Liability for Government Property.

Docusign Envelope ID: 072152ED-A449-481F-AC8D-E4B9C541CA31

1. Unless otherwise provided for in the agreement, the County shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies:

   a. The risk is covered by insurance or the County is/are otherwise reimbursed (to the extent of such insurance or reimbursement).

   b. The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the County 's managerial personnel. 's managerial personnel, in this clause, means the County's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the County's business; all or substantially all of the County's operation at any one plant or separate location; or a separate and complete major industrial operation.

2. The County shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The County shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.

3. The County shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.

4. Upon the request of the Grants Management Specialist, the County shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of agreements of assignment in favor of the Government in obtaining recovery.

W. OFFSETS, CLAIMS AND RIGHTS. Any and all activities entered into or approved by this agreement will create and support afforestation/ reforestation efforts within the National Forest System without generating carbon credits. The U.S. Forest Service does not make claims of permanence or any guarantees of carbon sequestration on lands reforested or afforested through partner assistance. The U.S. Forest Service will provide for long-term management of reforested and afforested lands, according to applicable Federal statute regulations and forest plans.

X. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. The County shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this agreement.

Y. TRAINING, EVALUATION, AND CERTIFICATION OF SAWYERS USED BY COOPERATORS. Any employee or volunteer of the cooperator who will use chain saws or crosscut saws on National Forest System lands under this agreement must be

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trained, evaluated, and certified in accordance with U.S. Forest Service Manual 2358. The cooperator is responsible for providing sawyer training, evaluation, and certification for the cooperator's employees and volunteers, unless the U.S. Forest Service and the cooperator determine it is not in the best interest of the partnership for the cooperator to provide sawyer training and evaluation. In these circumstances, the U.S. Forest Service, upon request and upon availability of Agency resources, may assist with conducting sawyer training and evaluation for the cooperator's employees and volunteers. Cooperator employees and volunteers who will use chain saws and/or crosscut saws on National Forest System lands must be certified by the cooperator. Only those cooperator organizations with an approved sawyer training, evaluation, and certification program may conduct sawyer training, evaluation, and certification. Any employee or volunteer of the cooperator who will use other types of saws, such as handsaws to cut small diameter material, brush saws, and pole saws, must be trained in accordance with U.S. Forest Service Handbook 6709.12, Chapter 40, section 41.3. The cooperator is responsible for providing that training.

Z. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The County shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

"In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint alleging discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington DC 20250-9410 or call toll free voice (866) 632-9992, TDD (800)877-8339, or voice relay (866) 377-8642. USDA is an equal opportunity provider and employer."

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

AA. REMEDIES FOR COMPLIANCE RELATED ISSUES. If the County materially fail(s) to comply with any term of the agreement, whether stated in a Federal statute or regulation, an assurance, or the agreement, the U.S. Forest Service may take one or more of the following actions:

1. Temporarily withhold cash payments pending correction of the deficiency by or more severe enforcement action by the U.S. Forest Service;

2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

Docusign Envelope ID: 072152ED-A449-481F-AC8D-E4B9C541CA31

3. Wholly or partly suspend or terminate the current agreement for the County's program;

4. Withhold further awards for the program, or

5. Take other remedies that may be legally available, including debarment procedures under 2 CFR Part 417.

BB. TERMINATION BY MUTUAL AGREEMENT. This agreement may be terminated, in whole or part, as follows:

1. When the U.S. Forest Service and the County agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

2. By 30 days written notification by The County to the U.S. Forest Service setting forth the reasons for termination, effective date, and in the case of partial termination, the portion to be terminated. If the U.S. Forest Service decides that the remaining portion of the agreement does not accomplish the purpose for which the award/agreement was made, the U.S. Forest Service may terminate the award upon 30 days written notice in its entirety.

Upon termination of an agreement, the County shall not incur any new obligations for the terminated portion of the agreement after the effective date, and shall cancel as many outstanding obligations as possible. The U.S. Forest Service shall allow full credit to the County for the United States Federal share of the non-cancelable obligations properly incurred by the County up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

CC. ALTERNATE DISPUTE RESOLUTION – PARTNERSHIP AGREEMENT. In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.

DD. DEBARMENT AND SUSPENSION. The County shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the Federal Government according to the terms of 2 CFR Part 180. Additionally, should the County or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

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EE. COPYRIGHTING. The County is/are granted sole and exclusive right to copyright any publications developed as a result of this agreement. This includes the right to publish and vend throughout the world in any language and in all media and forms, in whole or in part, for the full term of copyright and all renewals thereof in accordance with this agreement.

No original text or graphics produced and submitted by the U.S. Forest Service must be copyrighted. The U.S. Forest Service reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Federal Government purposes. This right must be transferred to any sub-agreements or subcontracts.

This provision includes:

- The copyright in any work developed by the County under this agreement.
- Any right of copyright to which the County purchase(s) ownership with any Federal contributions.

FF. PROHIBITION AGAINST INTERNAL CONFIDENTIAL AGREEMENTS. All non federal government entities working on this agreement will adhere to the below provisions found in the Consolidated Appropriations Act, 2016, Pub. L. 114-113, relating to reporting fraud, waste and abuse to authorities:

(a) The recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The recipient must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provision are no longer in effect.

(c) The prohibition in paragraph (a) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d) If the Government determines that the recipient is not in compliance with this award provision, it:

(1) Will prohibit the recipient's use of funds under this award, in accordance with sections 743, 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law; and

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(2) May pursue other remedies available for the recipient's material failure to comply with award terms and conditions.

GG. MODIFICATIONS. Modifications within the scope of this agreement must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 60 days prior to implementation of the requested change. The U.S. Forest Service is not obligated to fund any changes not properly approved in advance.

HH. COMMENCEMENT/EXPIRATION DATE. This agreement is executed as of the date of the last signature and is effective through 07/01/2028 at which time it will expire. The expiration date is the final date for completion of all work activities under this agreement.

II. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this agreement. In witness whereof, the parties hereto have executed this agreement as of the last date written below.

NICK HUNTER, Sheriff — Date
Marion County Sheriff Department

ROBERT SANCHEZ, Forest Supervisor — Date
U.S. Forest Service, Willamette National Forest

The authority and format of this agreement (25-CS-11061800-148) have been reviewed and approved for signature.

ELIZABETH ACEVES — Date
U.S Forest Service Grants Management Specialist

Docusign Envelope ID: 072152ED-A449-481F-AC8D-E4B9C541CA31

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

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U.S. Forest Service

OMB 0596-0217
FS-1500-17B

Exhibit: A

USFS Agreement No.: 25-CS-11061800-148 Mod. No.:

Cooperator Agreement No.:

Note: This Financial Plan may be used when:
(1) No program income is expected and
(2) The Cooperator is not giving cash to the FS and
(3) There is no other Federal funding

Agreements Financial Plan (Short Form)

Financial Plan Matrix: Note: All columns may not be used. Use depends on source and type of contribution(s).

	FOREST SERVICE CONTRIBUTIONS		COOPERATOR CONTRIBUTIONS		
	(a)	(b)	(c)	(d)	
COST ELEMENTS	Noncash	Cash to Cooperator	Noncash	In-Kind	(e) Total
Direct Costs					
Salaries/Labor	$59,609.52	$65,520.00	$60,059.60	$0.00	$185,189.12
Travel	$0.00	$0.00	$0.00	$0.00	$0.00
Equipment	$0.00	$40,000.00	$0.00	$0.00	$40,000.00
Supplies/Materials	$0.00	$23,950.00	$0.00	$0.00	$23,950.00
Printing	$0.00	$0.00	$0.00	$0.00	$0.00
Other	$0.00	$9,664.82	$0.00	$0.00	$9,664.82
Other					$0.00
Subtotal	$59,609.52	$139,134.82	$60,059.60	$0.00	$258,803.94
Coop Indirect Costs		$10,865.18	$6,582.71		$17,447.89
FS Overhead Costs	$8,941.43				$8,941.43
Total	$68,550.95	$150,000.00	$66,642.31	$0.00	
Total Project Value:					$285,193.26

Matching Costs Determination	
Total Forest Service Share = (a+b) ÷ (e) = (f)	(f) 76.63%
Total Cooperator Share (c+d) ÷ (e) = (g)	(g) 23.37%
Total (f+g) = (h)	(h) 100.00%

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WORKSHEET FOR

FS Non-Cash Contribution Cost Analysis, Column (a)

Salaries/Labor					
Standard Calculation					
Job Description		Cost/Day	# of Days		Total
Program Manager (GS09), program admin		$396.36	102.00		$40,428.72
Program Staff (GS11), program oversight		$479.52	40.00		$19,180.80
Non-Standard Calculation					
Total Salaries/Labor					**$59,609.52**

Travel					
Standard Calculation					
Travel Expense	Employees	Cost/Trip	# of Trips		Total
					$0.00
Non-Standard Calculation					
Total Travel					**$0.00**

Equipment					
Standard Calculation					
Piece of Equipment	# of Units	Cost/Day	# of Days		Total
					$0.00
Non-Standard Calculation					
Total Equipment					**$0.00**

Supplies/Materials				
Standard Calculation				
Supplies/Materials		# of Items	Cost/Item	otal
				$0.00
Non-Standard Calculation				
Total Supplies/Materials				**$0.00**

Printing					
Standard Calculation					
Paper Material		# of Units	Cost/Unit		Total
					$0.00
Non-Standard Calculation					
Total Printing					**$0.00**

Other Expenses					
Standard Calculation					
Item		# of Units	Cost/Unit		Total
					$0.00
Non-Standard Calculation					
Total Other					**$0.00**

Subtotal Direct Costs	$59,609.52

Forest Service Overhead Costs				
Current Overhead Rate	Subtotal Direct Costs			otal
15.00%	$59,609.52			$8,941.43
Total FS Overhead Costs				**$8,941.43**

TOTAL COST	**$68,550.95**

Docusign Envelope ID: 072152ED-A449-481F-AC8D-E4B9C541CA31

WORKSHEET FOR

FS Cash to the Cooperator Cost Analysis, Column (b)

Salaries/Labor					
Standard Calculation					
Job Description		Cost/Day	# of Days		Total
Patrol Days/program support		$780.00	84.00		$65,520.00
Non-Standard Calculation					
Total Salaries/Labor					**$65,520.00**

Travel					
Standard Calculation					
Travel Expense	Employees	Cost/Trip	# of Trips		Total
					$0.00
					$0.00
Non-Standard Calculation					
Total Travel					**$0.00**

Equipment					
Standard Calculation					
Piece of Equipment	# of Units	Cost/Unit			Total
Public Safety Information Boards	2.00	$20,000.00			$40,000.00
Non-Standard Calculation					
Total Equipment					**$40,000.00**

Supplies/Materials				
Standard Calculation				
Supplies/Materials		# of Items	Cost/Item	Total
				$0.00
Non-Standard Calculation				
Project Misc Expenses				
Flagging				
Hand tools				
Signage				
PPE (e.g. saw helmets, water waders				
etc.				$23,950.00
Total Supplies/Materials				**$23,950.00**

Printing					
Standard Calculation					
Paper Material		# of Units	Cost/Unit		Total
					$0.00
Non-Standard Calculation					
					$0.00
Total Printing					**$0.00**

Other Expenses					
Standard Calculation					
Item		# of Units	Cost/Unit		Total
					$0.00
Non-Standard Calculation					
Maintenance for Supplies/Equipment					$9,664.82
Total Other					**$9,664.82**

Subtotal Direct Costs	$139,134.82

Cooperator Indirect Costs				
Current Overhead Rate	Subtotal Direct Costs			Total
10.96%	$99,134.82			$10,865.18
Total Coop. Indirect Costs				**$10,865.18**

TOTAL COST	**$150,000.00**

Docusign Envelope ID: 072152ED-A449-481F-AC8D-E4B9C541CA31

WORKSHEET FOR

Cooperator Non-Cash Contribution Cost Analysis, Column (c)

Salaries/Labor

Standard Calculation

Job Description		Cost/Day	# of Days		Total
Lieutenant, program admin		$1,107.90	5.00		$5,539.50
Sergeant, program oversight		$1,180.50	45.00		$53,122.50
Support Services Technician, program staff		$408.20	2.00		$816.40
Budget Analyst 2		$581.20	1.00		$581.20

Non-Standard Calculation

Total Salaries/Labor **$60,059.60**

Travel

Standard Calculation

Travel Expense	Employees	Cost/Trip	# of Trips		Total
					$0.00

Non-Standard Calculation

Total Travel **$0.00**

Equipment

Standard Calculation

Piece of Equipment	# of Units	Cost/Day	# of Days		Total
					$0.00

Non-Standard Calculation

Total Equipment **$0.00**

Supplies/Materials

Standard Calculation

Supplies/Materials		# of Items	Cost/Item		Total
					$0.00

Non-Standard Calculation

Total Supplies/Materials **$0.00**

Printing

Standard Calculation

Paper Material		# of Units	Cost/Unit		Total
					$0.00

Non-Standard Calculation $0.00

Total Printing **$0.00**

Other Expenses

Standard Calculation

Item		# of Units	Cost/Unit		Total
					$0.00

Non-Standard Calculation

Total Other **$0.00**

Subtotal Direct Costs $60,059.60

Cooperator Indirect Costs

Current Overhead Rate	Subtotal Direct Costs			Total
10.96%	$60,059.60			$6,582.71

Total Coop. Indirect Costs **$6,582.71**

TOTAL COST $66,642.31

Docusign Envelope ID: 072152ED-A449-481F-AC8D-E4B9C541CA31

SIGNATURE PAGE FOR
USFS - CHALLENGE COST SHARE AGREEMENT WITHIN THE WILLAMETTE NATIONAL FOREST FS NO: 25-CS-11061800-148 - SO-6776-25
between
MARION COUNTY and US DEPARTMENT OF AGRICULTURE

MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:

_____
Chair Date

_____
Commissioner Date

_____
Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 13, 2025

Department: Public Works

Title: Consider accepting appeal of Hearings Officer decision denying Zone Change 25-002/Creative Electric, 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: Accept the appeal of Hearings Officer's decision denying Zone Change 25-002/Creative Electric, LLC.
Other motion options for consideration are:
1. Deny the appeal and uphold the hearings officer's decision.
2. Remand the matter back to the hearings officer.

Issue, Description & Background:

Zone Change 25-002 is for a zone change from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre parcel located in the 900 block of S Pacific Hwy 99E, Woodburn. The property is within the Urban Growth Boundary of Woodburn. On May 15, 2025 the Hearings Officer held a hearing with an open record and issued a decision on July 8, 2025 denying the request. Applicants appealed the Hearings Officer's decision. The applicants argue that the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement should not be considered as approval criteria. Staff recommends the Board accept the appeal in order that it may consider providing policy direction on the agreement.

Financial Impacts:

None

Impacts to Department & External Agencies:

None

List of attachments:

Appeal, Hearings Officer Decision, City of Woodburn/Marion County Urban Growth Coordination Agreement (2015)

Presenter:

John Speckman

Department Head Signature:

for Brandon Rich

BEFORE THE MARION COUNTY HEARINGS OFFICER

REC'D JUL 23 2025

In the Matter of the Application of	)	Case No. ZC 25-002
	)	
CREATIVE ELECTRIC, LLC	)	**ZONE CHANGE**

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the Application of Creative Electric, LLC, Nestor Zarkoff and Feodor Zharkoff, to change the zone from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre parcel located in the 900 block of S Pacific Hwy 99E, Woodburn T5S; R1W, Section 19A; Tax Lot 1800).

The hearing notice states that the Application was brought by of Grigory Melkomukov RLT c/o Creative Electric, LLC. However, the Application itself references Creative Electric, LLC, Nestor Zarkoff and Feodor Zharkoff as the property owner(s) and applicants.

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code, especially Marion County Urban Zone Code: Chapter 16.07 (Commercial General zone), Chapter 16.19 (Urban Transition zone), Chapter 16.39 (Zone Changes), Oregon Statewide Land Use Planning Goals (particularly Goal 14); City of Woodburn/Marion County Urban Growth Coordination Agreement; Woodburn Comprehensive Plan Policies (Marion County Coordination Goals and Policies, Commercial Lands and Goals and Policies, Workforce and Target Industry Development, Growth Management Goals and Policies)

III. Public Hearing

A public hearing was held on this matter on May 15, 2025. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

1.	John Speckman	Marion County Planning Division
2.	Wendie Kellington	Attorney for Applicant
3.	Brittany Randall	Representative of Applicant
4.	Chris Kerr	Woodburn Community Development Director
5.	Chris Killmer	City of Woodburn, Assistant City Attorney

MARION COUNTY CLERK

No objections were raised as to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing.

The following exhibits were offered and admitted:

25 JUL 23 P3:45

RECEIVED

KELLINGTON
LAW GROUP, PC

Wendie L. Kellington
P.O. Box 2209
Lake Oswego Or
97035

Phone (503) 636-0069
Mobile (503) 804-0535
Email: wk@klgpc.com

July 23, 2025

Hand Delivery

RECEIVED
25 JUL 23

Marion County Board of Commissioners
c/o Marion County Clerk
555 Court Street NE, 2nd Floor
Salem, OR 97301

RE: ZC 25-002: Appeal of Hearings Officer's Decision

Dear County Clerk, Chair Cameron and Members of the Board of Commissioners,

Pursuant to MCZO 16.44.300(B), the Applicant appeals to the Marion County Board of Commissioners the Marion County Hearings Officer decision for ZC 25-002. This appeal is accompanied by the required filing fee. This appeal is timely, having been field within 15 days of the challenged Hearings Officer decision.

The Hearings Officer erroneously denied the Applicant's requested zone change that is simply designed to make the Applicant's property's zone consistent with its Commercial Comprehensive Plan Designation.

The Applicant's appeal asks the Board of Commissioners to reverse the Hearings Officer's denial and approve the requested zone change to enable the Applicant's property zone is consistent with its plan designation.

Request for Hearing

Per MCZO 16.44.300(A), this appeal requests a hearing before the Board of Commissioners.

The Applicant's Proposal

The property has a Comprehensive Plan designation of "Commercial", but it is zoned UT-5. The Applicant seeks a conforming commercial zone for the property to align with its plan designation. Accordingly, Applicant sought a zone change with a limited use overlay[1] or

[1]MCZO 16.22.010 explains the point of a limited use overlay zone: "*** Zones permit a number of uses without notification or opportunity for a hearing, because the uses are considered generally acceptable, although type and intensity of activity may vary. However, on a particular property certain of these uses may conflict with adjacent land uses or may not be considered suitable for a particular site. *Rather than deny a zone change* because the proposed zone would allow an objectionable permitted or conditional use, *the limited use overlay can be used to*

zone change simply approved as a conditional zone change. The County is in charge of this application and has authority to approve it either way.[2] The Applicant proposes no development.

The reason that the Applicant requested conditions to limit the potential uses of the property that could occur under the proposed zone change was to meet a parade of city objections. In doing so, all city objections were resolved in fact but the city still objects. It appears the city's gripe at this point is that they will not be able to extract SDCs from the Applicant because they can only do so for property within their city limits but at the same time don't want to annex the property. Of course, this issue pertains to any development in the UGB regardless of the zone. The zone change does not make that issue worse or better.

The Applicant requested that the County approve the following:

> "The overlay zone shall apply until such time as the subject property is annexed to the City of Woodburn when the City will apply its commercial zone to the property. Until the time of annexation, the overlay zone shall be applied to the subject property and shall authorize the following uses [attended by the following restrictions/conditions]:
>
> > "All of the uses permitted in the UT zone under MCC 16.13.010 (permitted uses) and MCC 16.13.030 (conditional uses).
> >
> > "A single specialty trade contractor and such trade contractor's associated warehousing which is allowed under MCC 16.07.010(3) except that outdoor storage shall be prohibited.
>
> "Creative and its successors shall not object to annexation to the City.
>
> "Creative and its successors will hook up to City water and sewer when it is available at the Subject Property.

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identify the appropriate uses and either require a conditional use permit for other uses normally permitted in the zone or delete objectionable permitted or conditional uses from the zone or to limit, modify or restrict a specific permitted or conditional use. It is the *intent that the maximum number of acceptable uses be permitted so that the use of the property is not unnecessarily limited.*" (Emphases supplied.)

[2] As noted above, MCZO 16.22.010 expressly contemplates the limited use overlay being applied to zone changes to limit their uses so that denial can be avoided. Further, MCC 16.39.060 expressly authorizes conditional zone changes and MCC 16.39.070 imposes limits on conditions on zone changes. MCC 16.39.060(12) allows deferring allowed uses until "the happening of certain events" citing "availability to the subject property of a certain level of service."

"Creative will dedicate right of way along its Highway 99 frontage as shown on the submitted site plan [3], which shall be made an Exhibit to this approval decision. The applicant is not required to develop the subject property under the site plan. The applicant may develop the property with any of the uses allowed in the approved zone under this zone change, as conditioned. Rather, the site plan is provided and attached to the approval decision only to show the area of the required Highway 99 frontage land dedication which Creative has volunteered to provide.

"Prior to the issuance of a building permit, the applicant shall execute and record, on a form approved by the City Attorney, or if the City Attorney does not wish to review and approve then by County Counsel, a Non-Remonstrance Agreement (Agreement). This Agreement shall apply to the subject property and shall:

> "Include a covenant running with the land, binding upon the applicant and all successors, which states that the applicant (and successors) will not object to the formation of, nor withdraw from, any local improvement district (LID) or other public financing mechanism established for the design, acquisition, and/or construction of street or right-of-way improvements benefiting the subject property.
>
> "Acknowledge that the applicant and successors will be responsible for payment of their equitable and proportionate share of the cost of any such improvements. Clarify that the obligation to pay arises if and when the improvements or LID are formed or constructed, and that the share allocated to the property shall be assessed in accordance with applicable laws and regulations.
>
> "Be recorded in the office of the Marion County Recorder."

"Any driveway and parking spaces shall be paved consistently with the requirements of WDC 3.04.04 and 3.05.02F."

The Applicant owns a modest electrical contracting business. He wants to move his modest business to the subject property. The subject property has the right plan designation to support the owner's proposed use, but the zone needs to change to align with the existing Commercial plan designation. The County's code allows zone changes that meet certain standards. The Hearing Officer decision, however, effectively rewrites the County code by interpretation to say that the County can never consider or approve zone changes in the Woodburn UGB.

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[3] A site plan was submitted not for any particular development but to give the city (1) an idea of what would likely be developed, and (2) to provide a way to show the particular land dedication that the Applicant volunteered so that Highway 99 could be widened without having to buy right-of-way when the time came to the width ODOT ultimately contemplates for it.

As noted above, the applicant voluntarily provided a site plan and the above conditions of approval to respond to all of the city concerns.[4] Neither were required, but the Applicant can voluntarily be bound to them and has asked to be bound by them so that the application can be approved.

The Applicant does not seek annexation and in fact due to distance is not eligible for annexation to the city. The Applicant has also not sought access to and is ineligible for regardless ***any*** city urban services. Concerning the latter, the ***only*** evidence is that the applicant's property can be safely and adequately served by onsite septic, an onsite water well and with on-site stormwater control. In fact, that is how any use now allowed in the existing zone would be served. And in fact, that is how everyone else in the area is served.

A zone change in the UGB is expressly allowed by the County's acknowledged land use regulations. The County's land use rules ***expressly state*** that denial of a zone change is ***to be avoided if conditions or limits can be imposed***. MCZO 16.22.010. Conditions or limits can be applied here to resolve all legitimate concerns and should be applied to approve the proposal.

The Challenged Hearings Officer Decision

1. What the Hearings Officer got right.

While the Hearings Officer denied the requested zone change on a variety of mistaken, if not really odd grounds, she got some things right. The following are correct determinations she adopted, that are not disputed:

- "The proposed zone is appropriate for the underlying comprehensive plan designation of Commercial." HO Decision p 9.

[4]For example, the city complained about the possibility of outdoor storage. The only way to deal with that is to forbid any outdoor storage when any use is proposed for County approval. Similarly, the city complained that the CG zone's unconditioned suite of authorized uses is too broad for their liking until the property is annexed and city services are provided. Accordingly, the conditions/overlay zone restrictions are proposed that will clearly and effectively restrict allowed uses uses to what is allowed now in the UT zone, which they city states it has no quarrel with, plus one specialty trade contractor and their associated warehousing. The wholly undisputed evidence in the record is that the impacts from that one additional use type that the zone change would allow would be the same as or less than other uses that are allowed in the existing UT zone and that will continue to be allowable under the proposed zone change. If the proposal is approved, there is simply no possibility that the approval of the proposed zone change can result in any uses or impacts that the city says are objectionable before annexation and provision of city services.

- "The Marion County Plan, the applicable Comprehensive Plan that governs the County CG zone, specifies economic development policies that govern the County's CG zone. The proposal is consistent with the economic goals of the County." HO Decision p 9.
- "The proposed CG zone is appropriate for the underlying Woodburn Comprehensive Plan designation of Commercial. The subject parcel is adjacent to Highway 99E, an area that would be appropriate for warehousing or wholesale commercial sales. The proposed use [of an] electrical contractor's shop is an approved use in CG as per MCC 16.07.01 0(A)(3).
- The location of the subject parcel, and proposed use is consistent with the purpose statement of Commercial General in the Marion County Code." HO Decision p 10.
- "Applicant correctly states that a low-intensity and provisional electrical contractor shop is consistent with uses on adjacent properties ***". HO Decision 11.
- "The subject property is designated Commercial in the Woodburn Comprehensive Plan, and therefore appropriate for the proposed CG zone. The use for an electrical contractor shop is permitted in both Marion County and Woodburn's versions of the Commercial General zone. The city's workforce would be enhanced by approximately 15 electrician positions required by Creative Electric, as well as several support staff. These are high-paying trade jobs that would be created within Woodburn's UGB. The proposal is consistent with this policy." HO Decision p 18.
- "The proposed zone is appropriate for [s]iting adjacent to a highway. Applicant provided a letter from a registered Transportation Engineer stating the proposal will generate trips that are already accounted for within current Transportation Systems Plan for Marion County ***. The proposed zone change is compatible with Goal 12 - Transportation, and the goal is met."

2. Hearings Officer Errors:

A. Executive Summary of Errors: There are a lot of mistakes in the Hearings Official's decision. We get into them in some detail in this appeal. But for ease of understanding, we summarize the Hearings Officer's errors here:

    - The Hearings Officer erred by totally ignoring the limited use overlay zone which limits the allowable uses under the proposed zone change.

    - The Hearings Officer erred in deciding that effectively there can be no zone changes at all in the UGB, rewriting the County code with an implausible interpretation. The County's urban code – Chapter 16 – applies only in UGBs and it contains the zone change provisions here. If there can never be a zone change in the UGB as the Hearings Officer effectively decides, then there is no point in the Chapter 16 (urban) provisions containing zone change standards or processes for land in UGBs. And that is the soul of an implausible and reversible interpretation of the County's code.

- The Hearings Officer improperly decided that the despite the fact that the County is acknowledged, the County's CG zone always violates Goal 14 and can never be applied.

- The Hearings Officer erred in applying the Woodburn/Marion County Urban Growth Coordination Agreement (IGA) as an approval standard for the proposed zone change to trump all of the County's codified rules, to say that no zone changes can be allowed in the UGB because they are always an improper "urban use" (of course zone changes are not "uses). She offers the caveat that a zone change could be allowed if the city were to agree – thus improperly handing the city all authority over zone changes decisions under the County's Chapter 16 code.

  Aside from the implausibility of the Hearings Officer's position, the IGA is not an approval standard for a zone change. It is nothing more than an agreement about coordination between the city and County and the County has behaved entirely consistently with it here. Importantly it imposes no compliance obligations on the Applicant. Moreover, the County's zone change standards are contained in MCC 16.39.050 and *none* of them say that the IGA is an applicable standard.

- Even if the IGA were a standard and even if it applies here, nothing in the IGA by its terms applies to zone changes; rather it only talks about plan amendments and "*uses*" and "development". The proposal is neither a plan amendment nor an application for development or for any use. And regardless even if there were a way to shoehorn a zone change into being a "use" or "development" then that triggers ORS 215.416(8) the "codification rule" that requires that the County only apply standards that are codified in the ***County's*** "zoning ordinance or other appropriate ordinance or regulation of the county" to the "proposed development of land. ORS 214.402 and ORS 215.416(8). The IGA is simply not a standard for zone changes that is codified in any County ordinance. The rules for this zone change are codified in MCC 16.39.050.

- Then the Hearings Officer improperly uses the IGA to apply the ***City's*** Comprehensive Plan to deny this application for a zone change in the County to which only County rules apply. But respectfully, there is no universe in which the City's plan applies as an approval standard here. The County clearly is the approval authority and only the County's rules apply. The proposal meets all *County* rules.

- Related to the above bullet, properly read, while it does not apply, the proposal is entirely consistent with a plausible reading of the city plan.

- In what is perhaps the most bizarre aspect of the decision, the Hearings Officer erroneously takes the position that the proposed zone change would allow "urban

use" and so cannot be allowed because that means the zone change violates Goal 14 (urbanization). That is bizarre for a lot of reasons including because the subject property is in the UGB, and so by definition cannot violate Goal 14 with any use. The land is already "urban" precisely because it is in the UGB. Moreover, all of the uses that are now or can be allowed by the County code in the UGB are by definition "urban" because the County code chapter that applies is Chapter 16 which contains the County's "urban" provisions for zone changes, uses and development of land that is in UGBs as opposed to the "rural" provisions of the County code in chapter 17 that apply outside of UGBs.

- The Hearings Officer erroneously asserts that the proposal will allow more intensive uses on the subject property than are allowed on adjacent properties that are zoned for less intensive uses and would "significantly adversely affect" those adjacent uses. Adjacent properties feature a wrecking yard, construction contractor business, commercial farm and cemetery. In fact, nothing supports this determination. The proposal will allow the uses now allowed on the property plus one specialty contractor and associated warehousing. Nothing more.

  The Hearings Officer ignores that irrefutable fact and imagines with no support that the proposal "would permit uses that would significantly adversely affect uses on adjacent properties zoned for less intensive uses. Uses permitted within the CG zone include intensive uses such as many kinds of retail stores, hotels, amusement parks, and movie theaters. A zone change permitting such uses could negatively affect farming operations to the north and west, and rural residences northeast of the subject parcel due to non-farm conflicts, significantly increased traffic and potential noise." What is so unbelievably frustrating is that the Hearings Officer pretty much ignores the standard she purports to deny under, asserting: "Applicant correctly states that a low-intensity and provisional electrical contractor shop is consistent with uses on adjacent properties, but it is a more intensive use that (sic) other zones appropriate for the land use designation."

- The Hearings Officer wrongly asserts that the property needs City "urban services" that it cannot get and so must be denied on that basis. But that too is wrong and supported by exactly nothing. The property needs and seeks no city "urban" services. The property will be served with an on-site septic and domestic well, just like everyone else in the area.

- The Hearings Officer ignored the ***only*** evidence in the record that demonstrates that the property can and will be served with a perfectly adequate septic system, domestic well and storm water system and that no City services are available or needed.

- Relatedly, the Hearings Officer wrongly asserts and in fact cites nothing in support of her claim that the city has to sign off on a "Land Use Compatibility

Statement" or "LUCS" for the on-site septic system that will eventually be needed and because the city will not sign off on such imagined LUCS, that the proposed zone change cannot be approved. First, a zone change does not need a septic system or domestic well and so this Hearings Officer problem provides no basis to deny the proposed zone change in any case. Second, and more importantly, however, is that fact that there is no rule that says a city "LUCS" or other sign off is required for a septic system to be developed in the County, and the Hearings Officer cites none. The truth is that the city has exactly zero role in the establishment of domestic septic systems or wells located in the County.

Consider this: in the UT-5 zone that applies now a private KL-8 school is allowed on the subject property. That is a pretty intense use. If an engineer decided that such could be developed without needing city water and sewer, it would need a septic system and DEQ would need a LUCS. No one claims the city would have any right whatsoever to interfere with County LUCS approval for such a school. Similarly, there is no basis for the Hearings Officer claim that the city could have any role in vetoing a LUCS for the Applicant here for a use allowed under the proposed zoned change that as a matter of law can be no more intense than anything that is allowed right now in the existing UT-5 zone.

B. Details Demonstrating Hearings Officer Errors

The County's Adopted and Codified Standards

i. MCC 16.39.050(A) requires a demonstration that: "The proposed zone change is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification." The Hearings Officer decided this standard was not met because "it is not consistent with the Growth Management Goals and Policies of Woodburn's Comprehensive Plan." But Woodburn's plan does not apply, the County's does. The proposal easily meets all parts of the County Plan.

As noted above, the proposed zone change conforms to the subject property's Commercial plan designation and is undeniably consistent with that applicable Comprehensive Plan land use classification. That land use classification is an economic one as opposed to a housing, natural resource or other type of classification.

The applicable Comprehensive Plan that governs the County CG zone is the Marion County Plan. The Marion County Plan (MCP) specifies several economic development policies that govern the County's CG zone. The proposal is consistent with the County's economic element policies, as the Hearings Officer decided. MCP "Economic Element" contains nine "major economic goals". The proposal is consistent with all of them.

The proposal meets Economic Element(a), which states that it is a major economic goal of the County to ensure the "Provision of increased employment opportunities for all residents

of the County." The proposal does that by providing the option for not only UT zone uses but also for a badly needed home base for specialty trade contractors who employ residents of the County in family wage jobs.

The proposal is consistent with Economic Element (b), which states that it is a major economic goal of the County to ensure the "maintenance of a strong agricultural economy." The proposal has no impact on this goal and therefore is consistent with it. The proposal does not detract from the agricultural economy because its impacts are deminimus on the only agricultural operator in the area, which is a high intensity commercial operation across Highway 99.[5] The proposal is a modest one that simply allows what is right now allowed in the UT zone and a single specialty trade contractor and associated warehousing. The specialty trade contractor use has either substantially the same or fewer impacts than UT zone uses. For example, the undisputed evidence in the record demonstrates that an allowed use in the UT-5 zone includes a private school (K-8) which generates 822 am peak hour trips. But the only additional allowed use under the proposed zone change – a Specialty Trade Contractor – generates just 6 am peak hour trips.

The proposal is consistent with Economic Element(c), which states that it is a major economic goal of the County to ensure the "Preservation of appropriate areas for timber production." The proposal has no impact on this goal and therefore is consistent with it because there is no land anywhere near the subject property that is now in or appropriate for timber production.

The proposal is consistent with Economic Element(d), which states that it is a major economic goal of the County to ensure "Diversification of the economic base of communities, and expansion of seasonal employment opportunities to year-round status wherever possible." The proposal is consistent with this goal because it allows a variety of year round employment to include a type not now allowed on the property, providing diversification of the economic base of the Marion County community.

The proposal is consistent with Economic Element(e), which states that it is a major economic goal of the County to ensure "Provision of sufficient areas for future industrial land use." The proposal has no impact on this goal and therefore is consistent with it. The property and area are not now designated for industrial use and that is not changing one way or the other under the proposal.

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[5] According to *Digger* Magazine, the commercial farm/nursey operation across Hwy 99 (F & B Farms and Nursey), includes multiple commercial-scale greenhouses, extensive production areas, warehouse structures, administrative offices, employee parking, and designated areas for freight loading and distribution. Product shipments occur twice weekly throughout western Oregon and Washington and weekly to central and eastern Oregon, They employ approximately 25 to 30 full-time staff throughout the year and supplements their workforce with additional seasonal workers during peak planting and shipping seasons.

"The proposal is consistent with Economic Element(f), which states that it is a major economic goal of the County to ensure "Development of a transportation system for the safe and efficient movement of persons and goods for present needs." The proposal is consistent with this goal because it provides the necessary dedication of land for Highway 99 to have its desired width, something that it does not now have.

The proposal meets Economic Element(g), which states that it is a major economic goal of the County to ensure "Coordination of planning and development of public facilities." The proposal is consistent with this goal because it provides a specific mechanism that does not now exist, to ensure annexation and connection to City services occurs when the City wants that to happen as opposed to the City having to deal with an objecting owner. The proposal is also consistent with this goal because it does not seek approval of nor does it require any connection to any City water or sewer before annexation occurs.

The proposal is consistent with Economic Element(h), which states that it is a major economic goal of the County to ensure "Development of a strong tourist economy in appropriate areas." The proposal has no impact on this goal and therefore is consistent with it. The same uses that could be developed on the property now, can be developed on the property in the future (until a new commercial zone is applied upon City annexation), with the one exception the proposal allows of an additional allowed use being provided – a specialty trade contractor and their associated warehousing. The area is not designated by the City or the County as an "appropriate area" for tourist related uses. The fact that there is a wrecking yard next door to the subject property makes it implausible in any case that the property could deliver any sort of benefit or addition to the tourist economy. Tourists are not going to want to hang out next door to a wrecking yard.

The proposal is consistent with Economic Element(i), which states that it is a major economic goal of the County to ensure "Achievement of a natural resource use pattern which provides for tomorrow's needs, today's needs and the protection of the environment." The proposal has no impact on this goal and therefore is consistent with it. The subject property is not in an area with any sort of a "natural resource use pattern" now and given that it is in the City's UGB with no particular natural features on or around it, is not in any position to become a natural resource area.

ii. MCC 16.39.050(B) requires a demonstration that: "Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property." Here, the Hearings Officer wrongfully ignores that the subject property can adequately be served by a private on-site septic system and domestic well and storm water facilities. Similarly, there is no dispute that Highway 99 has plenty of capacity and no limitations at the subject property. In fact, ODOT unremarkably commented only that when development is proposed, that an access permit will be needed.

Instead, in denying the proposal, the Hearings Officer sailed by these irrefutable facts demonstrating compliance to decide instead that no private septic or water can be established on the property for an entirely fallacious reason. Specifically, she incorrectly decided that because

the city says won't sign a LUCS (which city petulance is irrelevant since there is no standard anyone knows about requires they sign a LUCS)[6] and because the city won't provide public water or sewer, that on-site site septic and a domestic well cannot be provided and so cannot be adequate. Never mind that everyone else in the area including next door wrecking yard, construction business and intensive commercial farm all are served with septic and domestic well. This denial basis has no foundation in law, fact or the evidentiary record.

iii. MCC 16.39.050(C) requires a demonstration that: "The request shall be consistent with the purpose statement for the proposed zone." The Hearings Officer agrees that this standard is met. The CG zone purpose (MCC 16.07.000) states that the CG zone will be applied in circumstances present here: "The commercial general zone is appropriate in those areas designated commercial in the applicable urban area comprehensive plan where the location has access to an arterial street or highway for transport of bulk materials and where impacts associated with permitted uses will not create significant adverse impacts on local streets or residential zones."

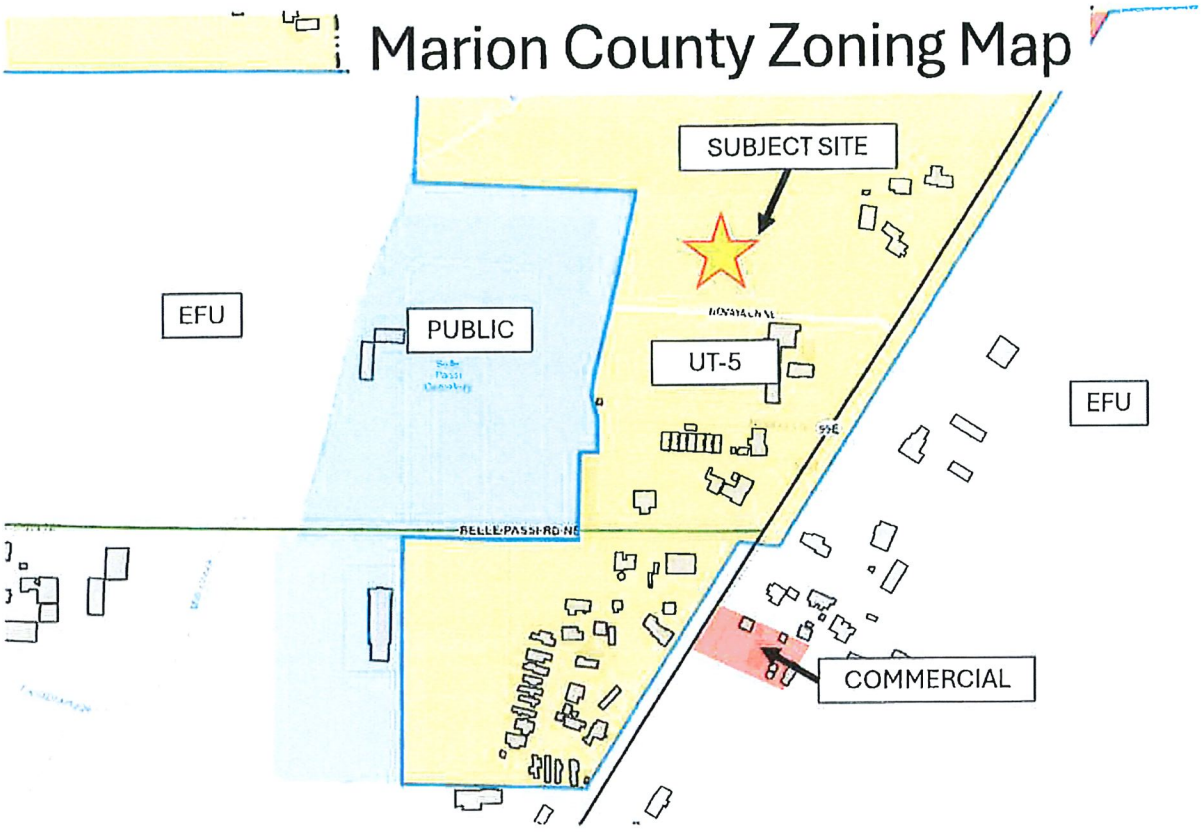
The subject property is designated Commercial in the applicable urban area comprehensive plan.

The property is located on Highway 99, an arterial street.

The impacts associated with permitted uses as a matter of law cannot create significant adverse impacts on local streets, because it has no impact at all on any local street.

The impacts associated with permitted uses as a matter of law cannot create significant adverse impacts on residential zones either, because there are no residential zones anywhere nearby.

[6] The law says that the authority that signs a LUCS is the entity with jurisdiction over approval of the land use and here the only entity with approval authority is the County, not the city. Contrary to the suggestion of the Hearings Officer otherwise, the County has not abandoned its authority or responsibility over land use matters in the UGB.



Regardless, the impacts from the allowed uses under the proposal are no different than and as to the single CG zone use that will be allowed are significantly less than, uses allowed in the existing UT zone.

iv. MCC 16.39.050(D) requires a demonstration that: "If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses."

The proposal meets this standard. It does not allow uses that are more intensive than other zones appropriate for the Commercial land use plan designation. The Hearings Officer decided otherwise, but to do so mostly abandoned what this standard says and requires.

The Hearings Officer mistakenly claims that the proposal will allow uses that are more intensive than uses allowed in the CO zone. This is mistaken and is not supported by *any* evidence in the record.

The CO zone allows elementary and secondary schools, vocational schools, schools and educational services not elsewhere classified, public buildings and structures such as libraries, fire stations and public utilities, nursing care facility, public golf course, automobile parking,

religious organizations, national security and international affairs and so forth. Those uses are *far more intensive* than the single new use introduced by the proposed restricted CG zone (one specialty trade contractor and their warehousing). Further, per MCC 16.05.010(4), the CO zone allows all uses allowed under MCC 16.25.

Note that MCC 16.25 in turn allows as accessory uses, *all of the uses that are allowed in the CR zone* (MCC 16.06.010). Thus, in the CO zone, general merchandise stores, food stores, eating and drinking places, hotels, gas stations, automobile deals etc are all allowed – so long as they are accessory to a MCC 16.05 use. So, for example, there could be automobile parking plus an accessory café, or a international affairs center and associated accessory retail store and café, or a vocational school teaching automotive repair and associated accessory car sale lot with fueling positions, and so forth.

The claim that the CO zone does not authorize uses more intensive than the uses that would be allowed under the proposed zone change with a limited use overlay, is simply implausible.

There are no Other Standards – the IGA is not a Standard or Criteria that Applies

The Hearings Officer incorrectly decided that the IGA is an approval standard for this proposed zone change. It is not. No one ever presented anything that makes the IGA between the city and the County an approval standard for an individual application for this or any proposed zone change. The IGA is not a "standard or criteria" under ORS 214.427(3)(a) or the County's code.

The Hearings Officer's sole basis for concluding that the IGA is an approval standard is her claim that it "was adopted as part of both the Marion County Comprehensive Plan and the City of Woodburn Comprehensive Plan. Because it is adopted as a part of both comprehensive plans, it is a binding land use planning document under Oregon's Statewide Planning Goals, specifically Goal 2 (Land Use Planning) and (Goal 14 (Urbanization). *** The 2015 [IGA] is a binding intergovernmental agreement that applies to the proposal and is enforceable."[7] (HO Decision p 12.)

There are two basic problems with these determinations. First, there is nothing that states anywhere that the IGA "was adopted as a part of" the Marion County Comprehensive Plan. Second, the IGA is a coordination agreement between the city and County that does not apply to

[7] Applicant asked staff to provide the basis for this Hearings Officer determination, since the Applicant is unaware of anything in the County plan stating this particular IGA was adopted as a part of the County plan, much less that it is a standard that applies to the Applicant's application under MCZO Chapter 16. County staff cited County Ordinance 1454, which does not support the Hearings Officer and also cited another unknown ordinance they reported is on microfiche, not generally available to the public, and that they will provide it, but to date they have not been able to do so.

any applicant because they are not parties to it. Rather, it was up to the city and County to take the IGA and turn them into standards that the governing bodies of each signatory decided after public hearings, made sense. Ostensibly the County did so and that is reflected in the County's currently codified and available-to-the-public code which, it turns out, does not support the Hearings Officer's denial.

As the city itself acknowledged, the IGA "required the City and County to agree upon policies and procedures for amending the City UGB and was codified through revisions to both the City and County Comprehensive Plans." In other words, the city itself recognized that the IGA by its terms is not self-executing. Rather, it represents an intergovernmental agreement on coordination and policy, but implementation of its terms requires legislative amendments to each jurisdiction's comprehensive plan and land use regulations.

What is more, this expectation is expressly reflected in the IGA. For example, the IGA provides that:

> "In order to promote consistency and coordination between the City and County, *both the City and County shall review and approve amendments of the Woodburn Comprehensive Plan that apply to the Urban Growth Area*. Such changes shall be considered first by the City and referred to the County prior to final adoption. *If the County approves* a proposed amendment to the Woodburn Comprehensive Plan, *the change shall be adopted by ordinance and made a part of the County's Plan*. IGA at 3 (emphasis supplied).
>
> "Whenever the County proposes an amendment to its zoning map or regulations for lands within the Urban Growth Area, the County shall provide notice and request for comments on the proposed amendment to the City at least 20 days before the County's initial evidentiary public hearing." IGA at 7.
>
> "If a proposed use is not specifically identified in the Marion County Urban Zone Code, and the County is proposing an interpretation classifying the use as permitted in the applicable zone under the interpretation provisions of the Zone Code, the County shall give the City an opportunity to comment before the County makes a final land use decision." IGA at 9.
> "To facilitate coordination between the City and County, the Woodburn Comprehensive Plan has been amended to incorporate applicable policies and guidelines found in the Marion County Urban Growth Management Plan." IGA at 10.

The IGA also requires "the County shall adopt a rural resource zone." IGA at 11.

Each of these provisions confirms that the IGA sets out a framework for future action. The agreement itself does not have the force of law as a land use regulation until its provisions are formally adopted through comprehensive plan or code amendments. The County has made

no amendments to its code or plan for that matter adding the IGA provisions (including of all things a "Whereas" clause), that the Hearings Officer applies to deny the proposal.

This distinction between general policy that guides the adoption of codified rules and the codified rules that can be applied to land use applications is reinforced by state law. Under ORS 197.015(11), a "land use regulation" is defined as:

> "any local government *zoning ordinance, land division ordinance* adopted under ORS 92.044 or 92.046 or *similar general ordinance* establishing standards for implementing a comprehensive plan." ORS 197.015(11) (emphasis supplied).

ORS 197.175(2) further provides that local governments must:

(a) Prepare, adopt, amend, and revise comprehensive plans in compliance with statewide planning goals;
(b) Enact land use regulations to implement their comprehensive plans;
(c) Make land use decisions in compliance with either the goals or acknowledged plans, depending on the status of acknowledgment.

It is therefore insufficient for the Hearings Officer to claim that the IGA qualifies as a land use regulation merely because it was adopted legislatively, if it was. While both intergovernmental agreements (IGAs) and land use regulations may be adopted through legislative action, the procedures and legal consequences differ significantly. For example (by no means exclusive):

- IGAs under ORS chapter 190 do not require public notice, evidentiary hearings, or opportunity for appeal.
- Land use regulations, by contrast, must follow strict procedural requirements, including:
    - Submission of the full proposed text to DLCD prior to adoption (*OAR 660-018-0020(2)-(3)*);[8]
    - A public evidentiary hearing before the local decision-maker (*ORS 197.610*);

[8] "Before a local government adopts a change to an acknowledged comprehensive plan or a land use regulation, unless [an emergency exception applies], the local government shall submit the proposed change to" DLCD, OAR 660-018-0020(1), including "[t]he text of the proposed change to the comprehensive plan or land use regulation implementing the plan, as provided in section (3) of this rule[.]" OAR 660-018-0020(2)(a). "The proposed text submitted to comply with subsection (2)(a) of this rule must include all of the proposed wording to be added to or deleted from the acknowledged plan or land use regulations. A general description of the proposal or its purpose, by itself, is not sufficient." OAR 660-018-0020(3).

- Notice to affected parties and the Department of Land Conservation and Development (DLCD) (*OAR 660-018-0050*);
- Public participation as required by Statewide Planning Goal 2 (*OAR 660-015-0000(2)*);
- Submission of the full final text to DLCD after to adoption (*OAR 660-018-0040(3)*); and
- Opportunity to appeal (*ORS 197.620*), among others.

When two or more local governments are required by coordination agreements to adopt mutually agreed changes to comprehensive plans or land use regulations, all of the above procedural requirements still apply, including joint notice to DLCD. OAR 660-018-0021(1).

Once adopted, the local government must provide DLCD with a copy of the final decision and the amended text of the comprehensive plan or regulation. OAR 660-018-0040(3).

In sum, the IGA does not, by itself, impose land use obligations on the approval of individual land use applications. To convert its provisions to land use obligations on individual quasi-judicial land use applicants in the County, the County must enact the desired through post acknowledgement amendment procedures for adopting or amending comprehensive plans or implementing regulations. Without this step, the IGA remains a coordination framework, not a land use regulation. Only the County's acknowledged regulations apply and none of them include the IGA or any requirement that a zone change to comply with the applicable plan designation be approved by the city or meet city plan policies.

Even if the IGA Were a Standard, it Does not Lead to Denial

All of the provisions to which the Hearings Officer points in the IGA, pertain to the "urban area" which as we explain below, does not include the subject property. Those provisions pertain to an area that is different than the UGB by their express terms. Moreover, many of those provisions pertain to "uses" and "development", and the proposal is not for a use or development. It is just a zone change – no more and no less. Further, the policies that pertain to "urban uses" do not lead to denial even if they could be viewed as standards that apply to this individual development application as opposed to determining policy for subsequent legislation. This is because the property is already "urban" being in the UGB and also being subject to the County code "urban" land use element that lists all "urban uses" which include all of the UT-5 uses now allowed on the subject property. The whole "urban use" basis for denial is entirely implausible.

Further, if we ignore that the proposal is for just a zone change and instead treat it as a proposal for a "use" or "development", then the ORS 214.416(8) codification rule would then apply which then allows the County to apply only those *standards* that are *codified* in the *County's* "zoning ordinance or other appropriate ordinance or regulation" and require that the

County "shall relate approval or denial" to the *County's* codified rules. The IGA is none of that and the City of Woodburn's plan policies that the Hearings Officer leans on is not a codified standard of the *County*. The Hearings Officer's denial is entirely based upon provisions that do not apply. The IGA provides no basis for denial of the application.

The IGA's "Urban Growth Area Policies" do not Lead to Denial in part Because they do not Apply to the Subject Property at all

The IGA provisions cited by the Hearings Officer do not apply to the proposed zone change because they expressly apply only within the "Urban Growth Area." The "Urban Growth Area" is in turn, **expressly defined** as "the area between the city limits and the Urban Growth Boundary." IGA p 1. A close reading of the IGA reveals that distinction was wholly intended. The point of the IGA was to resolve a periodic review issue with LCDC concerning the establishment of the UGB in the first place and its amendment. This is because LCDC's approvals of the UGB had gone to the court of appeals twice based upon industrial land issues and the "market choice" methodology that the City used to justify its UGB amendment a methodology that LCDC had embraced, and the court decided the UGB amendment had been inadequately justified. LCDC in turn remanded to the City and County to give the UGB amendment another shot in a manner that conformed to the court's remand directives. *1000 Friends of Oregon v. LCDC,* 280 Or App 444 (2014) ("we conclude that LCDC did not adequately explain the reasons that led it to conclude the city's UGB amendment complied with applicable law."), *1000 Friends of Oregon v. LCDC*, 237 Or App 213 (2010).

The IGA established a UGB on remand, established some going forward policies that the two entities agreed to reflect in governing documents.[9] In this regard, the IGA expressly states it was designed to "approve a new land use decision" responding to LCDC's "remand order." IGA, p 1. The fourth "WHEREAS"[10] on the IGA's first page, clause lays out the different areas and policy concerns that the IGA applies to: (1) that a UGB was adopted in "Response to Remand", (2) "together with policies and procedures for amending the Urban Growth Boundary", (3) for "revising City and County Comprehensive Plans within the [UGB] and outside the city limits", (4) "a coordination process for county land division and land use decisions within the Urban Growth Area (i.e. the area between the city limits and the [UGB]". None of the first three apply – the proposal does not adopt a UGB, does not amend a UGB and does not amend any comprehensive plan.

The question then becomes whether the proposal is subject to the IGA's provisions about the "Urban Growth Area" which is expressly defined in the IGA as "the area *between* the City limits and the [UGB]", but not *within* the UGB. The subject property is *within* the UGB. It is not in any area *between* the City and the UGB and therefore the subject property is not in the

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[9] The County code was never amended to apply the IGA provisions that the Hearings Officer applies – at least not as she applies them.

[10] "Whereas" clauses are not operative provisions but can provide relevant context for the meaning of operative provisions.

"Urban Area". Therefore, it is obvious if not tautologically clear that the standards that expressly apply only to the Urban Growth Area are not applicable to the subject property.

In addition to the express words making this plain, other interpretive maxims reinforce that the words mean what they say in the IGA. In this regard, the IGA clearly knows how to distinguish between the UGB and Urban Growth Area. And, that is strong evidence corroborating that the different words used in the IGA are intended to have different meanings.

A telling example that this is so, is on p 5 pertaining to "Amendments to the Urban Growth Boundary and the Urban Growth Area." Clearly the UGB and Urban Growth Areas are different things being called out separately in the IGA when it is talking about a variety of things including amendments.

Another example is that policy 6, IGA p 3-4 explains that "the area outside the [UGB] shall be maintained in rural and resource uses" and that certain of those areas "outside the [UGB]" are "designated the Urban Reserve Area" and are "subject to the requirements in Section 6 below."

All of the IGA provisions that the Hearings Officer applied to deny the proposal, apply only to the "Urban Growth Area." None provide a basis for denial because the property is not in the Urban Growth Area, pure and simple.

Whereas Clauses in the IGA are not a Standard or Criteria, or Codified Land Use Rule or Land Use Regulation

In addition to the above, there are other reasons (that the Hearings Officer ignored) that should make it plain that the IGA does not lead to denial. In this regard, the Hearings Officer applies "Whereas" Clauses to deny. HO, p 12-13. However, it is well established that "whereas" clauses are not "standards and criteria". They are aspirational statements that do not have any regulatory force or effect.

Other Policies in the IGA

The Hearings Officer incorrectly determined the proposal can be denied on the basis of IGA policies as described below. In addition to the fact that the IGA does not apply as an individual approval standard for land use applications for zone changes as explained above, the proposal is consistent with the IGA:

- Policy 4 states that "All land use actions within the Urban Growth Area shall be consistent with the Woodburn Comprehensive Plan" and the County's land use regulations." The Hearings Officer mistakenly decides this is a standard for individual land use applications and that they are not met. She is mistaken. The following are the Woodburn Comprehensive Plan provisions that the Hearings Officer improperly imported as approval standards for the application that she then use to deny it.

- RE: City G-1-1 (HO Decision p 18) imposes obligations on the City about managing its growth and coordinated population projections. It has *nothing* to do with the proposal. The Hearings Officer was wrong to interpret it as a basis for denial.
- RE: City G-1.12 "*The County shall retain responsibility/or regulating land use on lands within the urban growth area (unincorporated land inside the UGB) until such lands are annexed by the City. The urban growth area has been identified by the City as urbanizable and is considered to be available, over time, for urban development.*" There is no plausible interpretation of this city plan policy that can lead to the denial of the Application. This policy if it applied would instead compel approval AND the conclusion that it is the County that is entirely in charge here.
- RE: City G-1.14 *All land use actions within the urban growth area and outside the City limits shall be consistent with the City's Comprehensive Plan and the County's land use regulations.*" Contrary to the Hearings Officer decision, the proposal is entirely consistent with the only part of the city's plan that has ever been made applicable to the property by ordinance here. And that is the fact that the city plan designates the subject property as "Commercial." Applying a County "Commercial" zone is entirely consistent with the City plan. In fact, the claims otherwise are themselves wholly contrary to the city plan. The proposal is consistent with that city plan designation. And as explained above, the proposed zone change meets all of the county's codified standards that apply. Respectfully, there is simply no room for a plausible determination otherwise. To get to the Hearings Officer's result, one has to say that the city plan designation for the property is overridden by general plan policies that by their terms do not apply. That can't be right.

- RE G-1.17 states that "*** The County shall not allow urban uses within the [UGB] prior to annexation to the City unless the City agrees in writing. ***." The Hearings Officer basically applies this city plan policy to foreclose the County from ever approving any zone changes in the County and basically to rewrite the County code that expressly allows zone changes, to let the city decide. In doing so, the Hearings Officer abandons any pretense of the County retaining any authority over the UGB, contrary to the express terms of the County plan, code and the IGA itself.

  This provision obviously only makes sense if it is understood to refer first to proposed *uses* and then for those proposed *uses* that require "urban services" like city water and sewer. The proposal *does not* seek approval of *any use* and needs and seeks *no city water or sewer.*

  Making matters worse, the Hearings Officer does not describe what is an "urban use" that she finds objectionable. The term is not defined and outside of uses requiring city water or sewer there is no principled way to figure out what she means. The only "urban use" that could be objectionable is (1) a particular use

proposal, that (2) needs city water and / or sewer and that has impacts that are greater than can happen in the UT zone. If it is a regulatory term, the regulations already describe all of the proposed uses (the UT-5 and the one specialty contractor and associated warehousing) in the "Urban" chapter of the county regulations in chapter 16.

And if a specialty contractor and their associated warehouse is an "urban" use as the Hearings Officer posits, then how is such use acknowledged as a use that is allowed in the rural areas of the County, outside of UGBs. Specifically, in the Rural title of the County code (Chapter 17), there is a Commercial (C) zone. Item (B) under uses: B. Offices for building construction contractors, heavy construction contractors and special trade contractors (SIC 15, 16, and 17);

So, if the RURAL title permits a specialty contractor, how is that same use always necessarily urban?

Further, if discovering an "urban use" flows from an analysis of the use's impacts, then there is no dispute that the impacts of the single specialty contractor and associated warehousing that the zone change would allow as the single new use allowed borrowed from the CG zone to be allowed – including traffic and noise - are far less and certainly no different than what is now allowed in the UT-5 zone. And please recall that the proposal is to continue to allow those UT-5 uses now allowed plus the one CG use of a specialty contractor and associated warehousing that, the evidence only shows, has significantly fewer impacts than allowed UT-5 uses.

Moreover, the term "urban use" is not only undefined, no one in this process has ever been able to come up with a meaning for the term. As noted above, it is especially meaningless given the subject property is already within an UGB and so is by definition under every state statute, goal, rule or case addressing what "urban" means, considered "urban" land that is necessarily available for "urban" land uses. *See DLCD v. Jackson County*, 151 Or App 210 (1997) (if a use is allowed under applicable state laws, it cannot be considered an unlawful use under Goal 14). Even the County code considers the land to be "urban" nesting all the governing regulations in the "urban" segment of the County's land use rules, (Chapter 16), versus the "rural" ones (Chapter 17).

As such, the term "urban" in this context is so vague and ambiguous that applying it to deny the proposal deprives the applicant of any way to know what it is that is expected of it for approval, contrary to ORS 215.416(8) – which applies if the proposal is considered seeking approval for the development of a "use. Further, it grants unfettered discretion to pick and choose what it means based upon really nothing more than whim, contrary to the constitutional due process guarantees provided by the 14th Amendment to the federal constitution. Anderson v. Peden, 284 Or 313, 326, 587 P2d 59 (1978); *Renaissance Development Corp. v. City of*

Lake Oswego, 45 Or LUBA 312 (2003). Such vague and arbitrary standards fail to provide sufficient guidance to applicants and the public about what is required to secure approval, thus inviting arbitrary decision-making. And that violates the federal due process clause.

Moreover, if the term "urban" in this context is not impermissibly vague, it is utterly unintelligible and violates the unintelligibility principle and may not be applied on that basis as well. *LandWatch Lane County v. Lane County*, 335 Or App 543 (2024).

The City suggested in the hearing that it might find a zone change on the property from UT to EFU acceptable, but the County's EFU zone has no place in the UGB. The EFU zone is a Goal 3 implementing zone which is for rural land – meaning for land that is OUTSIDE of UGBs.

Regardless, nothing in the County's acknowledged land use rules governing zone changes contains any prohibition on zone changes to any zone when the request otherwise complies with the County zone change standards, as here. Respectfully, the Hearings Officer is not permitted to make rules up. They must apply the rules that were adopted and codified by the County governing body. When they do that, approval is appropriate because the city plan policy G-1.17 does not govern this County approval, and if it did it is either met or so vague and arbitrary as to be inapplicable to anyone.

- RE: City G-1-18, this provision talks about conversion of land "within the boundary to urban uses shall be based *upon consideration* of orderly provision of public facilities and services." (Emphasis supplied). The Hearings Officer applied this provision to deny the proposed zone change in the same way as she applied the one above. And as such, this provision has all the same problems including of using the term "urban" as discussed above and that discussion is incorporated herein by this reference.

  Regardless, this provision is not a mandatory standard for anyone, in any case because it simply calls for "consideration" of a factor. And even if a "consideration" could be viewed as a standard, "considering" the "orderly provision of public facility and services" is met here because there is no disorder about public facilities and services proposed in this case. Rather, the property will rely on-site septic and a domestic well and is required per the requested conditions of approval to connect to city water and sewer when it is available at the property. That is about as orderly as one can imagine.

- The Hearings Officer then mistakenly proceeds to apply IGA Policy 7 to deny. This policy talks about promoting logical and orderly *development* within the Urban Growth Area in a cost effective manner. It also says that the County "shall not allow uses

requiring a public facility provided by the City" in the Urban Growth Area before annexation. This policy by its terms does not apply regardless of the Urban Growth Area problem discussed above. The proposal is not for either "development" or for a "use." It is for a zone change.

Regardless, even if the proposal were for a "use" or for a "development" it is logical – applying the commercial zone to commercially designated property. It is orderly because the allowed uses are consistent with what is allowed right now adding just one more use type that there is no dispute has fewer impacts than uses allowed right now under the existing UT zone. It is also an orderly thing to conform the zone on the property to its plan designation because the subject property is in an area with an intensive junkyard next door on one side and an intensive construction company on the other, and all of these including the subject property, is directly on Highway 99.

The subject property and allowed uses under the proposed zone change do not *require* any public facility. Rather, ***the only*** evidence in the record is that uses or development that can be allowed on the property under the proposed zone change can be adequately served by on-site water, septic and on-site storm water. They do not *require* any City service. The Hearings Officer's effort to shoehorn a denial into this policy fails.

- RE IGA Policy 9, this policy, reasonably read, says that annexation decisions shall be based upon applicable annexation policies in the City plan. There is no proposal for annexation. The proposal is a zone change for land in the County. The Hearings Officer applies this IGA provision to deny the requested zone change deciding "a zone change to CG is a (sic) conversion of land to urban uses." HO Decision p 15. ***This should be of great concern to the Board of Commissioners.*** Basically, the Hearings Officer is saying that the County's acknowledged CG zone always violates the IGA and always violates Goal 14. She is wrong as a matter of law. And especially here with the limited use overlay the CG zone cannot violate this or any other provision of the IGA or law. Here again, the Hearings Officer is deciding a precedent that there can never be zone changes in the County within a UGB and puts a fine point on it that there can never be a zone change to CG anywhere because it will always be "necessarily a conversion of land to urban uses." The Board should clearly and soundly reverse this determination because it fundamentally undermines the County's acknowledgement of its plan and zoning ordinance that allows the CG zone to be applied by the County in the circumstances that the County code and plan allow. Under the Hearings Officer decision, those circumstances are wiped out and the County's acknowledgement of its rules by LCDC, becomes meaningless.
- RE: IGA Policy 11, this simply says that the City is the provider of public water, sewer and stormwater facilities within the UGB. No one quibbles with that statement. The Hearings Officer denies on the basis of a made up rule that the city must approve a LUCS for the private septic and water that will serve the property and speculates that the city will not do so and so that means that the proposal must be denied. That is wrong and implausible. There is no standard (and the Hearings Officer cites none) that either makes

the city the authority that approves a DEQ LUCs or that would give the city any reason to withhold any such LUCS. Nothing, and that is nothing is being sought from the city.

The proposal complies with all IGA policies even if they applied – which they do not. The Hearings Officer erred in deciding otherwise.

Hearings Officer Seems to Apply "Administration of Zoning and Subdivision Regulations" to Deny

The Hearings Officer at p 16-17 applies an administration provision of the County regulations. She correctly decides they do not apply but then on p 17, gratuitously and erroneously states that "The proposed use requires a zone change to an urban zone because it is an urban use. Establishment of urban uses requires annexation per the [IGA] and Woodburn's Comprehensive Plan." First, there is no "proposed use" and so this sentence proceeds from a wrong and unsupported premise all the way to its wrong and unsupported conclusion. As noted above, nothing requires that property in the county be annexed to the City in order for the County to approve a zone change. The idea is preposterous. The County does not do zone changes in the City. If County zone changes can only happen in the UGB if the property is annexed to the city, then it is tautological that there can never be a County zone change in the UGB because annexed land is not in the UGB. This sentence in the challenged Hearings Officer decision perhaps more than any other betrays that the Hearings Officer did not understand the proposal, the rules that apply or the scope of her, the County or the city authority at issue. The Board should take this appeal as an opportunity to restore its authority and a rational reading of the County's rules.

Statewide Planning Goals

At p 21-22, the Hearings Officer incorrectly decides that the modest zone change for land in the UGB violates Goal 14 because apparently in her view any zone changes in the UGB to acknowledged County zones from the County's acknowledged urban land use code, violates Goal 14. This is wrong as a matter of law and a dangerous precedent that the County should not want to set. The County's acknowledged Chapter 16 zones are not per se roaming violations of Goal 14 waiting to happen. The CG zone is acknowledged by LCDC and is available here if the zone change otherwise meets applicable standards, which it does. Goal 14 is all about allowing urban uses in UGBs. This is a UGB case. There is no danger whatsoever of a Goal 14 violation. The Hearings Officer cites nothing in Goal 14 that is or could be violated and in fact there is nothing in Goal 14 violated by the proposal.

We also note that Goal 14 does not apply to zone changes that are consistent with their Plan designations. The Hearings Officer erred in applying Goal 14 to this or any a zone change at all.

The Hearings Officer also wrongly asserts that the "proposed zone change would permit urban uses without any urban level of services available." The Hearings Officer is tone deaf to the undisputed facts – there is no proposal to use any city services and the only evidence in the

record is that the property can be served with a domestic well and a homely septic system of the type that serves everyone else in the area.

It is respectfully submitted that the proposal meets all relevant standards and should be approved, with the requested conditions. Thank you for your consideration.

Very truly yours,

Wendie L. Kellington

WLK:wlk
CC: Client

MARION COUNTY
BILL BURGESS
MARION COUNTY CLERK

Receipt #: 65641 **Receipt Date:** 07/23/2025 03:45 PM

Station: 3 **Cashier:** SKM

Receipt Name: CREATIVE ELECTRIC, LLC

Comments:

Thank You!
BILL BURGESS, MARION COUNTY CLERK

Please retain this receipt for your records.

Documents are recorded as submitted. The Marion County Clerk's Office assumes no liability for sufficiency, validity, or accuracy.

Miscellaneous Fees		
Appeal Fee	YES	$500.00

Receipt Total	**$500.00**
CREDIT CARD [redacted]	$500.00

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of	)	Case No. ZC 25-002
	)	
CREATIVE ELECTRIC, LLC	)	**ZONE CHANGE**

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the Application of Creative Electric, LLC, Nestor Zarkoff and Feodor Zharkoff, to change the zone from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre parcel located in the 900 block of S Pacific Hwy 99E, Woodburn T5S; R1W, Section 19A; Tax Lot 1800).

The hearing notice states that the Application was brought by of Grigory Melkomukov RLT c/o Creative Electric, LLC. However, the Application itself references Creative Electric, LLC, Nestor Zarkoff and Feodor Zharkoff as the property owner(s) and applicants.

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code, especially Marion County Urban Zone Code: Chapter 16.07 (Commercial General zone), Chapter 16.19 (Urban Transition zone), Chapter 16.39 (Zone Changes), Oregon Statewide Land Use Planning Goals (particularly Goal 14); City of Woodburn/Marion County Urban Growth Coordination Agreement; Woodburn Comprehensive Plan Policies (Marion County Coordination Goals and Policies, Commercial Lands and Goals and Policies, Workforce and Target Industry Development, Growth Management Goals and Policies)

III. Public Hearing

A public hearing was held on this matter on May 15, 2025. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

1.	John Speckman	Marion County Planning Division
2.	Wendie Kellington	Attorney for Applicant
3.	Brittany Randall	Representative of Applicant
4.	Chris Kerr	Woodburn Community Development Director
5.	Chris Killmer	City of Woodburn, Assistant City Attorney

No objections were raised as to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing.

The following exhibits were offered and admitted:

Exhibit 1: Update to TIA (Christopher M. Clemow, PE, PTOE)

Exhibit 2: Email Communications between City of Woodburn Planning and Wendie Kellington from April 15, 2025 through April 18, 2025.

An open record period was allowed for interested parties to submit additional written material. The first open record period extended until May 22, 2025, the second open record period extended until May 29, 2025, and the final open record period extended until June 5, 2025. The following submissions were received:

May 22, 2025: City of Woodburn request to supplement the record (hyperlinks). A hard copy of the letter and documents were also sent on May 22, 2025.

May 27, 2025: Applicant's Motion to Strike and challenge to "rebuttal" material

May 29, 2025: City of Woodburn Rebuttal Testimony

June 5, 2025: Applicant's Final Written Submission

IV. Executive Summary

Applicant seeks to rezone property from Urban Transition (UT) to Commercial General (CG) to develop the property with an office and storage facility for its electric business. Applicant argues that the proposal is limited to a conditional zone change, and does not seek approval for any "use" or "development." Applicant posits that because no particular development is proposed, the standards that apply to "development" or "use" are inapplicable.

The property cannot yet be annexed. Applicant does not seek annexation and has not sought access to City services because it states that the property can be adequately developed with onsite septic, onsite water well, and onsite stormwater control.

Applicant's position is that a zone change is expressly allowed under the Marion County Code (MCC) if it meets county zone change criteria, and Applicant argues that the proposal meets MCC criteria. The City of Woodburn opposes the application and argues that conversion of the property from UT to CG is not permitted by the Urban Growth Coordination Agreement (UGCA), as well as the Marion County Code, Woodburn Comprehensive Plan, and the Marion County Comprehensive Plan.

In 2015, the City of Woodburn expanded its Urban Growth Boundary (UGB) to include various residential, commercial, and industrial lands. The subject property is included in the UGB. On December 23, 2015, the City of Woodburn and Marion County entered into an Urban Growth Coordination Agreement (UGCA). The City of Woodburn argues that approval of ZC 25-002, without express consent from the City of Woodburn, would violate the UGCA.

The Staff Report and the City of Woodburn suggest that the proposed zone change cannot occur in the Urban Growth Boundary because the zone change would be an impermissible "urban" use. Applicant argues that the proposal does not propose development and that there is no standard in the code

that defines "urban use." However, it is the zoning code itself that identifies the uses allowed in the designated zone.

The property, located on Highway 99, is surrounded by an auto wrecking yard, a cemetery, a construction company, and commercial farming. Applicant argues that the proposed zone change would not affect or change the site's setting (except positively). Applicant presents strong arguments that the impact of denial does not protect urbanization goals. It is acknowledged that approval would allow the City of Woodburn to secure right of way designation and ensure future annexation and service extension agreements are in place. The proposed use by one specialty trade contractor is a reasonable proposal consistent with the area. Applicant describes the proposal as a "conditional zone change" limiting the use to those "now allowed in the UT zone plus one specialty trade contractor and associated warehousing." However, such use requires a zone change that is not permitted by the applicable standards and criteria by which the hearings officer is bound.

A zone change from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre parcel located in the 900 block of S Pacific Hwy 99E, Woodburn, Oregon, is not permitted by 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement, is not consistent with the policies of Woodburn's Comprehensive Plan, and does not satisfy Statewide Land Use Planning Goal 14. The application is DENIED.

V. Applicant's Motion to Strike

On May 22, 2025, during the open record period, the City of Woodburn submitted a letter requesting the County to supplement the record to include documents that were not physically provided but rather were a list of hyperlinks to external locations. The open record period closed at the end of May 22, 2025. On May 23, 2025, the City of Woodburn submitted hard copies of documents that appear to be the documents referenced by the hyperlinks included in the letter.

On May 27, 2025, Applicant filed a Motion to Strike seeking to strike from the record the documents reached by the referenced hyperlinks and to strike from the record the hard copies of documents submitted after the open record period closed. Applicant acknowledges that the letter itself is included in the record, but the referenced documents obtained via hyperlink or delivery on May 23, 2025, should be stricken from the record.

On May 28, 2025, City of Woodburn filed a Response to the Motion to Strike. The City argues that the linked documents were submitted timely, and the hard copies were sent on May 22, 2025, while during the open record period.

On May 29, 2025, Applicant filed a Response to the City of Woodburn's Response to Motion to Strike and Second Motion to Strike. Applicant's Second Motion to Strike seeks to strike the City of Woodburn's May 29, 2025 submittal as improper rebuttal argument to issues presented in the hearing.

With respect to the Motions to Strike, the first issue is whether the Marion County Hearings Officer has the authority to strike submitted evidence or materials from the record.

Marion County Code 16.44 addresses general hearing procedures. MCC 16.44 provides that hearings should be conducted "consistent with the requirements of this title and state law." While authority

to manage the record is not explicitly addressed by the MCC, the hearings officer has the general administrative authority to ensure hearings follow established rules and procedures. Under the authority of MCC 16.44, the hearings officer may rule to strike or exclude from consideration any improper, irrelevant, or untimely evidence submitted by a party.

Applicant's first motion to strike the hyperlinked documents is granted.

A Memorandum dated June 10, 2021 from the Planning Division provides that Planning Division staff does not accept links to the internet which requires staff to download documents or other material. This policy was occasioned by the potential for error, and limitations for staff resources and technology. In addition to the Planning Division policy, the argument against hyperlinks being used to put documents into the record is reasonable. A link may produce a document that is not an official one and there is no way to distinguish one from the other. Links can also change over time or can connect to websites with pages that have been modified. Applicant states that the first link submitted by the City of Woodburn in its May 22, 2025 letter, "City of Woodburn UGB and Zoning Maps" (plural) goes to a single map, not maps. The link to "Marion County Comprehensive Plan" links to the title page, as opposed to a specific code provision. The reference to the hyperlinks are broad and include "Marion County Comprehensive Code." Oregon caselaw supports a determination that hyperlinked materials are not submitted exhibits. See, *MacDonald v. Oregon Health & Science University*, No. 3:22-cv-01942-IM (D. Or. July 5, 2024), *Conte v. City of Eugene*, LUBA No. 2021-092, January 14, 2022).

Applicant's second motion to strike the City's May 29, 2025 submittal is denied.

ORS 197.763(6)(c) ensures procedural fairness by requiring that if one party is allowed to submit new evidence or argument, the other party must be allowed to respond. Applicant cites *LandWatch Lane County v. Lane County*, 75 Or LUBA 302 (2017) in support of its position that the second open record period is limited to responses to new evidence or argument from the first open record period.

The parties engaged in a discussion of the timeframe for submittals. The City of Woodburn sought a 14 day response period, but County staff expressed concern with the timeline. Based upon this discussion, the City of Woodburn understood that it had until May 29, 2025 (the end of the second open record period) to submit its argument. The City's May 29, 2025 does not include new evidence or argument. Applicant had an opportunity to respond in its final written submission, and is not prejudiced or subjected to procedural unfairness by the City of Woodburn's submission of May 29, 2025.

VI. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. Creative Electric LLC proposes to change the zone from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre property located in the 900 block of S Pacific Hwy 99E, Woodburn, (T5S; R1W; Section 19A; Tax lot 1800). The subject property is within the Woodburn Urban Growth Boundary (UGB) and designated Commercial in the Woodburn Comprehensive Plan. The property is currently under the zoning jurisdiction of Marion County. The applicant proposes to establish an electrical contractor business on the subject parcel, relocated from its current location in Clackamas County.

2. The subject property is located south of the City of Woodburn on the west side of Highway 99E, off Novaya Ln NE. The subject property is a currently vacant field that was previously farmed. The property consists of three parcels created by Partition recorded in 1989 and approved by Partition case (P88-061). These parcels are all parts of tax lot 1800. The subject property was created in the current configuration by an approved Partition, and is therefore legal for land use purposes.

3. Adjacent properties to the north, and south are zoned UT-5 and within Woodburn's UGB. The northern adjacent parcel is in farm use and contains a homesite. The northeastern adjacent parcel is in rural residential use. The south adjacent parcel is a pre-existing non-conforming auto wrecking yard. To the east, across Highway 99E and outside of the UGB, are parcels zoned Exclusive Farm Use (EFU) and in active farm use. To the west of the subject parcel, outside of the UGB, is the Belle Passi Cemetery which is in a Public (P) zone.

4. The Marion County Planning Division requested comments from various governmental agencies. The following comments were received:

   Marion County Building Inspection commented: "No Building Inspection concerns. Permit(s) are required to be obtained prior to any development and/or utilities installation on private property."

   Marion County Septic Division commented: "A Site Evaluation followed by an installation-Construction permit is required prior to site development."

   Marion County Land Development Engineering and Permits (LDEP) submitted the following:

   ENGINEERING ADVISORIES

   A. PW Engineering has no action items for the proposed Zone Change itself.

   B. The following are PW Engineering advisories for future development:

      • The plat for partitioning case P88-61 pertaining to the subject property is depicted on MCSR 031947 and recorded at Reel 732 / Page 127 in the Clerks records for Marion County. The plat created the private easement named 'Novya Lane' along the south property from S Pacific Hwy 99E, a State Hwy. An access approach to Novya Lane does not appear to have been constructed.

      • The proposed access location in the middle of the subject property does not align with Novya Lane. At the time of application for building permits, Applicant will be required to confirm application having been made for an ODOT approach permit.

      • County Transportation System Development Charges (SDCs) will be assessed at the time of application for building permits.

      • Development of the property as generally depicted on the land use application site plan will require stormwater detention meeting county standards, and possibly also to ODOT standards that could include water quality treatment if discharging to the State Hwy.

• DEQ has jurisdiction over construction erosion for total ground disturbances of 1-acre plus.

• Fire turnaround and pullout easement(s) may be required by the local fire district or State Fire Marshal.

Oregon Department of Transportation (ODOT) commented: "We do not have any comments on the zone change, however we will have comments on future applications for development of the property with respect to frontage improvements and access considerations."

The City of Woodburn Community Planning and Development Department submitted two letters explaining how the proposal is not consistent with either Woodburn Comprehensive Plan or the Woodburn/Marion County Urban Growth Coordination Agreement (UGCA). These letters can both be found in the record. The primary concerns are summarized below:

The subject property is zoned Urban Transition 5-acre minimum (UT-5) because it is withing the UGB and not yet eligible for annexation. The urban growth area is a transitional area for properties that have not yet been annexed. Annexation is required prior to urban development with an urban level of public improvements to Woodburn standards.

The proposal fails to meet several material standards such as frontage improvements, gravel parking and potential outdoor storage. The proposal fails to comply with policies in the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement (UGCA). These specific policies are Section 1. Policies 4, 7, & 9. The proposal fails to comply with Woodburn's Comprehensive plan. The specific Comprehensive Plan goals and policies include: G-1, P1.12, 1.14, 1.17, & 1.18.

The current zoning is appropriate for the parcel until such time that it can be annexed into the city and urban uses established. The subject property is not yet eligible for annexation because it is not adjacent to city limits.

All other agencies either failed to comment or stated no objection to the proposal.

VII. Additional Findings of Fact and Conclusion of Law

1. Applicants have the burden of proving by a ponderance 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).

Applicants 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 is even slightly in Applicant's favor, the burden of proof is met.

2. Pursuant to MCC 16.39.010, the hearings officer is authorized to make the initial decision on zone change applications.

3. Pursuant to MCC 16.39.040, a hearings officer's decision to approve a zone change does not become final until the Board of Commissioners adopts an ordinance implementing the decision.

4. With respect to jurisdiction, the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement (UGCA) provides: "The County shall retain responsibility for regulating land use on lands within the Urban Growth Area until such lands are annexed by the City. The City and County identify the Urban Growth Area as urbanizable and available over time for Urban Development."

Urban Transition Zone (UT)

5. The UT (Urban Transition) zone purpose statement listed under MCC 16.13.000 states:

The UT (urban transition) zone is intended to retain and protect for future urban use properties which are undeveloped or underdeveloped and do not have available urban facilities such as sanitary sewer, water, drainage and streets. The zone allows the continuation of legally established uses and establishment of uses compatible with the plan designation. In areas planned for development relying on urban services, transitional uses may be allowed which will not interfere with the efficient, later use of the land for planned urban uses.

The zone is appropriate in areas designated in the applicable urban area comprehensive plan for future urban residential development, but may also be used to protect lands designated for future commercial, industrial or public uses. In areas designated for urban residential development, the residential density included in the zone is intended to be consistent with the average lot size of the immediate area. In areas planned for other uses, the zone is intended to retain lot sizes conducive to efficient development of planned uses and prevent conflicts associated with development of additional dwellings.

The zone is also intended to encourage the continued practice of commercial agriculture in areas planned for future urban development. The UT zone is intended to be a farm zone consistent with ORS 215.203.

The subject property is within the Urban Growth Boundary for the City of Woodburn. The subject property is not adjacent to lands that have been annexed by Woodburn and is therefore unable to be annexed into the city and/or connect to city water and sewer services at this time. It remains in a transitional zone until such time that it annexes. The property is not "urban" because it is located in the UGB.

The subject property is currently undeveloped and available for farm uses. Images from 2023 on Google streetview show harvested bales of hay on the property. Images from 2016 on Google streetview show row crops on the property. The UT zone is intended to encourage the continued practice of agriculture in areas planned for future urban development. Other permitted uses in the

UT zone are outlined in MCC 16.13.010. Conditional uses in the UT zone are outlined in MCC 16.13.020.

The current Urban Transition zone is intended to retain and protect the subject parcel for further urban development upon annexation into the City of Woodburn. The City of Woodburn Comprehensive Plan designated the subject parcel Commercial. As a conditional use in the Urban Transition zone, uses allowed within the most restrictive corresponding zone may be established. The most restrictive zone in Marion County Code that corresponds with the Commercial designation in Woodburn's Comprehensive Plan is CO (Commercial Office) in MCC 16.05. MCC 16.01.030 explains how urban zones are classified, specifically stating, "The zone classifications below are listed in order of most restrictive to least restrictive under the appropriate plan designation." For the comprehensive plan designation of Commercial, the zone classification list (in order of most restrictive to least restrictive) is, "CO, CR, CG, HC, UT, UD".

Applicant proposes a zone change to CG (Commercial General) because the proposed use is an electrical contractor shop which is neither a permitted nor conditional use in the UT zone. It is likewise neither a permitted nor conditional use in the CO zone which is the most restrictive corresponding zone.

Therefore, the use could not be applied for as a conditional use in the UT zone under MCC 16.13.020(Q).

Within the Urban Growth Coordination Agreement (UGCA) between the City of Woodburn and Marion County is the requirement to annex upon establishment of an urban use. This requirement is mirrored in Woodburn's Comprehensive Plan.

Applicant asserts that the proposed use of the property as an electrical contractor shop is separate from the proposal to change the zone of the subject parcel, and that the zone change is not an urban use.

Applicant argues that the policies in the UGCA and Woodburn Comprehensive Plan regarding establishment of urban uses therefore do not apply to the subject parcel.

The City of Woodburn and Planning Staff suggest that the UGCA policies that pertain to development within the Urban Growth Boundary (UGB) apply to the application. City of Woodburn argues that the application seeks to do exactly what the UGCA was developed to prevent.

Planning Staff states that the interpretation that delineates between this application and the proposed use of the subject parcel would, if adopted, result in a proposal that cannot meet the Marion County's criteria for a zone change. Consideration of every allowed use in the CG zone would be required. Many of the uses allowed in the CG zone would not be appropriate on a parcel that has no public services available and is not eligible for annexation. It is only when Applicant's specific planned use as an electrical contractor's shop is considered, with proposed conditions of approval, that the zone change criteria in MCC 16.39.050 could be satisfied.

Applicant states that the request is a "conditional zone change" limiting allowed uses to those now allowed in the UT zone "plus one specialty trade contractor and trade contractor's associated warehousing."

The most practical interpretation, as stated by Staff, is that the planned use of the subject property post zone-change must be acknowledged. An application to change the zone of the subject property to Commercial General without a use to be considered, could not be approved.

Marion County considers a proposed use when evaluating a zone change in the UGB. In this case, the Applicant seeks to pursue a specific use, that in and of itself, is not unreasonable for the subject property. Regardless, such reasonable usage as is requested by Applicant for "conditional zone change" limiting the use to those "now allowed in the UT zone plus one specialty trade contractor and associated warehousing" is not permitted because it is not allowed under the appropriate approval criteria, which includes the UCGA, addressed further herein.

Zone Change Criteria

6. Under Marion County Code (MCC) 16.39.050, approval of a zone change shall include findings that the change meets the following criteria:

   A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.

   The subject site is located within the City of Woodburn's Urban Growth Boundary and has a Comprehensive Plan designation of Commercial. The proposed zone is appropriate for the underlying comprehensive plan designation of Commercial. Marion County and Woodburn both have Commercial General zones that would be appropriate for the underlying comprehensive plan designation of Commercial.

   The Marion County Plan, the applicable Comprehensive Plan that governs the County CG zone, specifies economic development policies that govern the County's CG zone. The proposal is consistent with the economic goals of the County.

   Applicant provided a detailed comparison between Marion County and Woodburn's Commercial General codes. Applicant demonstrates that Marion County's provisions are consistent with the regulations of Woodburn's version of this zone. In Woodburn's version of CG, outdoor storage for contractor shops is not permitted. Applicant offered a condition of approval limiting outdoor storage to comply with Woodburn's version of CG.

   The proposed zone change is consistent with the Marion County Plan. However, as detailed more fully below, the proposed zone change is not consistent with the Growth Management Goals and Policies of Woodburn's Comprehensive Plan.

   The criterion is not met.

B. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.

The subject parcel is adjacent to Highway 99E. Applicant submitted a letter from registered transportation engineer Chris Clemhow explaining that a detailed transportation analysis is not required for the proposed zone change and use as an electrical contractor's shop. The letter asserts that the trips generated by the proposed use are already accounted for considering the commercial designation in Woodburn's comprehensive plan, and Marion County's Transportation System Plan. There is no dispute that Highway 99 has no capacity or other limitations at the subject property.

Presently, there are neither water nor sewer facilities extended to the subject parcel. The City intends on extending water and sewer at the time of annexation. The use of the subject parcel for a for an electrical contractor's shop requires water and sewer services.

Applicant states that the subject parcel could be adequately served by a private onsite septic system and domestic well, and stormwater facilities. Marion County responds that applications for a commercial well and installation of septic system on the parcel would both require the City of Woodburn's approval by way of a signed Land Use Compatibility Statement (LUCS), and that the City of Woodburn does not approve new uses developing on well and septic within the UGB, and requires annexation for urban uses being established within the UGB.

Development of the parcel with an urban use is not currently possible without the ability to have either public or private water and sewage facilities.

Adequate public facilities are not in place and are planned to be provided concurrently with the development of the property. The criterion is not met.

C. The request shall be consistent with the purpose statement for the proposed zone.

The CG (Commercial General) zone purpose statement listed under MCC 16.07.000 states:

> *The purpose of the CG (commercial general) zone is to provide areas suitable for warehousing, wholesale commercial sales and services with related outdoor storage or retail sales. The commercial general zone is appropriate in those areas designated commercial in the applicable urban area comprehensive plan where the location has access to an arterial street or highway for transport of bulk materials and where impacts associated with permitted uses will not create significant adverse impacts on local streets or residential zones.*

The proposed CG zone is appropriate for the underlying Woodburn Comprehensive Plan designation of Commercial. The subject parcel is adjacent to Highway 99E, an area that would be appropriate for warehousing or wholesale commercial sales. The proposed use as electrical contractor's shop is an approved use in CG as per MCC 16.07.010(A)(3). The location of the subject parcel, and proposed use is consistent with the purpose statement of Commercial General in the Marion County Code. MCC 16.39.050 (C) is met.

D. *If the proposed zone allows uses more intensive than uses in other ones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

The most restrictive zone appropriate for the Commercial designation is the Commercial Office (CO) zone. The proposed zone change to Commercial General (CG) will allow uses that are more intensive than those allowed in the CO zone. In the UT zone, uses permitted in the most restrictive of the corresponding zones may be allowed with an approved Conditional Use permit. An electrical contractor shop is not permitted in the CO zone either as a permitted or as a conditional, use.

Applicant suggests that the zone change application to CG should be considered separately from the planned electrical contractor shop. As clarified by MCC 16.01.030, the Commercial General (CG) zone allows uses that are more intensive than other zones appropriate for the land use designation such as Commercial Office (CO) and Commercial Retail (CR). Without consideration of the proposed use, the proposed zone change could not satisfy this criterion because it would permit uses that would significantly adversely affect uses on adjacent properties zoned for less intensive uses. Uses permitted within the CG zone include intensive uses such as many kinds of retail stores, hotels, amusement parks, and movie theaters. A zone change permitting such uses could negatively affect farming operations to the north and west, and rural residences northeast of the subject parcel due to non-farm conflicts, significantly increased traffic and potential noise. The application materials, including the traffic statement, are all based around the proposed development of an electrical contractor shop because many of the uses permitted in the CG zone are incompatible with the subject parcel.

Applicant indicates its willingness to agree to a condition of approval that would limit the use of the subject property to an electrical contractor shop. An electrical contractor shop is an outright permitted use in the CG zone as per MCC 16.07.010(3).

Applicant proposes conditions of approval to limit storage to inside of the building to comply with Woodburn's version of CG. An electrical contractor shop is not permitted in either the CO or CR zones. The proposed CG zone limited to only permitting an electrical contractor shop would still allow more intensive uses than other zones appropriate for the land use designation.

Applicant correctly states that a low-intensity and provisional electrical contractor shop is consistent with uses on adjacent properties, but it is a more intensive use that other zones appropriate for the land use designation.

Evidence in the record does not support the assertion that the proposed zone and proposed use will not significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses. The criterion is not met.

City of Woodburn/Marion County Urban Growth Coordination Agreement (UCGA)

7. The proposal involves land within the Urban Growth Boundary of Woodburn. Applicant argues that the UCGA is inapplicable to the zone change application, and the City of Woodburn and Planning suggest that the UGCA is applicable.

Applicant argues that pursuant to ORS 215.427(3), only standards and criteria in effect when the application was submitted may be applied to approve or deny zone changes.

Applicant states that the UCGA, also referenced by the applicant as the "IGA" (an Intergovernmental Agreement) cannot be applied as a standard of denial in the Marion County Code. Applicant argues that IGA standards concerning "development" do not apply and that standards concerning "land use actions" are met. Applicant suggests that the UGCA is an intergovernmental agreement between the City and the County, and not a document to govern land use issues.

Applicant also asserts that the UGCA does not apply because the subject property lies within the "Urban Growth Area" which the UGCA defines as the area between the City Limits and the Urban Growth Boundary. Applicant suggests that the Urban Growth Area, defined as the area between the City Limits and the Urban Growth Boundary, is different than the UGB.

The Urban Growth Area is not the same thing as the UGB. However, the subject property is within the UGB, outside of the City Limits, and is within the Urban Growth Area.

ORS 190.010 allows local governments to enter into written agreements with other local governments for the performance of shared functions, which includes land use planning. The terms within a binding intergovernmental agreement become established procedures for land use activities covered by the agreement.

ORS 197.628 requires that all cities and counties in Oregon submit their comprehensive plans to LCDC for periodic review. In 2015, as part of the City's periodic review, LCDC issued a remand to the City, requiring the City to adopt and the County to approve, of a coordination agreement between City and County. The resulting agreement, the UGCA, requires the City and County to agree upon policies and procedures for amending the City UGB and was codified through revisions to both the City and County Comprehensive Plans.

The UCGA, by its express language, applies to "county land use division and land use decisions within the Urban Growth Area. The UCGA requires consistency with Marion County Comprehensive Plan and the Woodburn Comprehensive Plan.

The UCGA was adopted as part of both the Marion County Comprehensive Plan and the City of Woodburn Comprehensive Plan. Because it is adopted as part of both comprehensive plans, it is a binding land use planning document under Oregon's Statewide Planning Goals, specifically Goal 2 (Land Use Planning) and Goal 14 (Urbanization). These planning goals are addressed further below.

The 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement (UCGA) is a binding intergovernmental agreement that applies to the proposal and is enforceable.

The applicable sections of the UCGA are addressed below.

"Whereas" Intent Provisions

Page 2 in the "whereas" section: Whereas, the intent of the urban growth program for the City is as follows:

1. *Promote the orderly and efficient conversion of land from Rural/Resource uses to urban uses within the Urban Growth Area.*

2. *Reduce potential conflicts with resource lands, establishing an Urban Reserve Area and Expansion limitations where necessary.*

3. *Promote the retention of lands in resource production in the Urban Growth Boundary until provided with urban service and developed.*

4. *Coordinate growth in accordance with the Woodburn comprehensive Plan and the Marion County Comprehensive Plan.*

The City of Woodburn challenges the proposal as failing to comply with the intent of the UCGA as reflected in "Whereas" recitals 1 through 3. The City of Woodburn states that it does not find the proposed zone change to be conducive to an orderly and efficient conversion of land from Rural to Urban uses.

The City of Woodburn argues that the transition from Rural to Urban uses with the Woodburn UGB should occur as land is annexed into the city and receives urban levels of service. Annexation of the subject property is not possible at this time, and not proposed by the applicant.

The proposed zone change is inconsistent with the intent of the urban growth program outlined in the UGCA and the Woodburn Comprehensive Plan.

Section I. Coordination Policies and Procedures

1. *The County shall retain responsibility for regulating land use on lands within the Urban Growth Area until such lands are annexed by the City. The City and County identify the Urban Growth Area as urbanizable and available over time for urban development.*

   Marion County recognizes its responsibility.

2. *The City and County shall maintain a process providing for an exchange of information and recommendations relating to land use proposals in the Urban Growth Area. The County shall forward land use activities being considered within the Urban Growth Area by the County to the City for comments and recommendations. The City shall respond within twenty (20) days, unless the City requests and the County grants an extension.*

   The City of Woodburn was provided notice of the application and the opportunity to comment.

3. *Upon receipt of an annexation request or the initiation of annexation proceedings by the City, the City shall forward information regarding the request (including any proposed zone change) to the County for comments and recommendations. The County shall have twenty (20) days to respond unless they request and the City allows additional time to submit comments before the City makes a decision on the annexation proposal.*

   Applicant is not requesting annexation.

4. *All land use actions within the Urban Growth Area shall be consistent with the Woodburn Comprehensive Plan and the County's land use regulations.*

The proposal is not consistent the Woodburn Comprehensive Plan or the County's land use regulations.

5. *In order to promote consistency and coordination between the City and County, both the City and County shall review and approve amendments of the Woodburn Comprehensive Plan that apply to the Urban Growth Area. Such changes shall be considered first by the City and referred to the County prior to final adoption. If the County approves a proposed amendment to the Woodburn Comprehensive Plan, the change shall be adopted by ordinance and made a part of the County's Plan.*

This policy does not apply to the proposal.

6. *The area outside the Urban Growth Boundary shall be maintained in rural and resource uses consistent with Statewide Planning Goals. The area outside the Urban Growth Boundary designated the Urban Reserve Area shall be subject to the requirements in Section V below.*

This policy does not apply to the proposal.

7. *The City and County shall promote logical and orderly development within the Urban Growth Area in a cost-effective manner. The County shall not allow uses requiring a public facility provided by the City within the Urban Growth Area prior to annexation to the City unless agreed to in writing by the City.*

The proposal is for a zone change which would allow an urban level of uses on the subject property. As addressed below, conversion of land within the Urban Growth Area to urban uses shall occur upon annexation. Applicant is not proposing annexation. Applicant is not proposing connection to public facilities, but rather private water and sewage facilities.

Applicant suggests that all land within the UGB is essentially urban. However, the subject property is zoned UT, and the UT zone contemplates future urban use (emphasis added), and is intended to encourage uses consistent with Exclusive Farm Use zoning until such as time as the land is annexed into a city. In this case, the subject property is zoned UT, and exists with the UGB.

Applicant disputes that the county zone change standard includes an analysis of "urban use." Applicant argues that because the property will be served with adequate private water, sewer, and storm facilities, the standard is satisfied. However, the standard demands adequate "public" facilities and services. Public facilities and services are required to provide an urban level of services. Because Applicant proposes an urban use, without an urban level of services, the proposal does not meet the policy.

8. *City sewer and water facilities shall not be extended beyond the Urban Growth Boundary, except as may be agreed to in writing by the City and County, consistent with Oregon Administrative Rules, the Woodburn Comprehensive Plan and the Marion County Comprehensive Plan.*

This policy does not apply to the proposal.

9. *Conversion of land within the Urban Growth Area to urban uses shall occur upon annexation and be based on consideration of applicable annexation policies in the Woodburn Comprehensive Plan.*

   The proposed zone change to CG would allow an urban level of use without annexation to receive an urban level of service. The Woodburn Comprehensive Plan states, "The County shall not allow urban uses within the Urban Growth Boundary prior to annexation to the City unless agreed to in writing by the City." The proposed zone change would make those urban uses allowed in the CG-zone outright permitted on the subject property without those uses being agreed to in writing by the City.

Applicant indicates that it would agree to a condition of approval that would limit the uses allowed by this zone change to SIC 1731, an electrical contractor shop. This use, SIC 17, is not allowed in CO or CR which are more restrictive urban commercial zones.

A zone change to CG is a necessarily a conversion of land to urban uses. The proposal is not consistent with this policy.

10. *The City shall discourage the extension of public facilities into the Urban Growth Area without annexation. However, if the extension of public facilities into the Urban Growth Area is necessary because of an emergency, health hazard or the City determines it is otherwise desirable, the facilities may be extended subject to terms and conditions contained in a service contract between the City and the property owner.*

This policy does not apply to the proposal.

11. *The City shall be the provider of public water, sanitary sewer and stormwater facilities within the Urban Growth Boundary unless otherwise agreed to by the City, the County, and any other applicable party. The City shall be responsible for preparing the public facilities plan for all lands within the Urban Growth Boundary.*

The proposal is for a zone change which would subsequently allow a use on the property that will require services. The services could theoretically be provided with a private well and onsite septic system. The City's intention throughout policies in the comprehensive plan and UGCA is to establish public sewer and water as land in the UGB is annexed. The City of Woodburn has not indicated any agreement to allow for private well and septic on this parcel within the UGB.

Marion County asserts that any well or septic system would require the City of Woodburn to sign a Land Use Compatibility Statement (LUCS) approving the development. The City of Woodburn objects to the proposal. Although it appears that the proposal is not consistent with this policy based upon the City's position, the proposal could be consistent with the policy if a LUCS was required and agreed to by the City of Woodburn.

Section III. Administration of Zoning and Subdivision Regulations

1. *The County shall provide notice and request for comments on conditional uses, variances, adjustments, land divisions, property line adjustments and administrative reviews within the Urban Growth Area to the City at least 20 days before the County's initial evidentiary hearing or land use decision when no hearing is held. The County shall provide the City a notice of decision for all such applications in the Urban Growth Area when requested by the City.*

2. *Applications for uses permitted outright in the applicable County zone, including ministerial actions, will not involve any notice or request for comments to the City.*

Marion County follows these procedures for conditional uses, variances, adjustments, land divisions, property line adjustments and administrative reviews within the Urban Growth Area.

The proposal is for a zone change which does not fall within this regulation. Marion County has, however, followed these procedures in processing this application and notified the City. The City of Woodburn was notified of the public hearing and responded in opposition to the proposal.

3. *The County may require City development standards for development within the Urban Growth Area, including dedication of additional right-of-way or application of special street setbacks when requested by the City. The County may require compliance with City development standards, in lieu of County standards if the development is other than a single-family dwelling.*

The City of Woodburn expressed concern that Applicant would not implement the road development standards in the Woodburn Development Ordinance (WDO). Applicant confirmed that it does not consider road improvements to be reasonable under the rough proportionality standard. Applicant proposed a nonremonstrance agreement instead that the property owners or successors will not object to the formation of a local improvement district or other public financing mechanizing for the improvements required, and furthermore that the property owner or successor will pay their share for the improvements. With approval from the City and a nonremonstrance agreement as a condition of approval, this standard could be met.

4. *For development approved under (1) or (2), if public sewer and water facilities or city limits are located within 300 feet of the subject property, the County shall require that the development connect to the facilities under use of wells or other means are allowed in writing by the City. The City will require any property connecting to City sanitary sewer or water facilities to annex to the City. The City shall provide the County information about the location of public sewer and water. The County may approve development of permitted uses on properties more than 300 feet from the city limits, or from a public sewer or water facility using wells and DEQ approved wastewater disposal systems.*

Applicant references this section as applicable to the proposed zone change. However, this section is only applicable to types of development referenced in (1) or (2) of this subsection of the UGCA. The types of developments referenced in (1) or (2) are all uses that would be permitted outright permitted, permitted subject to review, or require a conditional use permit.

This section does not apply to developments that are not permitted in any way within the current zone, and require a zone change to establish. The proposed use requires a zone change to an urban zone because it is an urban use. Establishment of urban uses requires annexation as per the UGCA and Woodburn's Comprehensive Plan.

5. *If a proposed use is not specifically identified in the Marion County Urban Zone Code, and the County is proposing an interpretation classifying the use as permitted in the applicable zone under the interpretation provisions of the Zone Code, the County shall give the City an opportunity to comment before the County makes a final land use decision.*

Applicant is seeking a zone change to CG to establish a use that is specifically permitted in the CG zone. No interpretation of the use is required.

Woodburn Comprehensive Plan

8. Woodburn Comprehensive Plan Goals apply to the proposal.

Marion County Coordination Goals and Policies

C-1. To coordinate with Marion County regarding planning issues that extend beyond the boundaries of the City of Woodburn, including population allocations, amendments to acknowledged comprehensive plans and transportation system plans, and achievement of a compact urban growth form, as required by Statewide Planning Goals 2 (Land Use Planning and Coordination), 12 (Transportation) and 14 (Urbanization).

Woodburn has coordinated with Marion County regarding planning issues beyond city limits by working together to create the 2015 UGCA, and communicating regarding land use applications within the UGB, including the proposed zone change addressed herein.

C-1.1 Marion County Framework Plan goals, policies and guidelines will be considered when the City considers plan amendments that require Marion County concurrence.

This policy does not apply to the proposal.

C-1.2 The City of Woodburn shall have primary responsibility to plan for community growth within its Urban Growth Boundary, and recognizes its responsibility to coordinate with Marion County to ensure the efficient use of urbanizable land within the Woodburn Urban Growth Boundary.

Marion County recognized this goal with the 2015 UGCA. The City Woodburn has coordinated with Applicant and with Marion County to discuss this project.

The City of Woodburn submitted comments explaining that the proposal is not consistent with their comprehensive plan or the 2015 UGCA.

Commercial Lands Goals and Policies

During the 1990s, Woodburn experienced large-scale commercial growth near Interstate 5. Although commercial development has provided jobs for many Woodburn residents, this growth

has contributed to congestion at the 1-5/Highway 214 Interchange, which has constrained the City's ability to attract basic industrial employment that requires 1-5 access. Woodburn will encourage infill and redevelopment of existing commercial sites, and will encourage neighborhood-serving commercial developments in Nodal Development areas.

F-1. Identify, promote, and regulate to bring about urban infill and redevelopment of existing commercial areas within the community, as well as development of neighborhood nodes, to meet future development needs, support potential additional housing, and reduce traffic congestion and reliance on motor vehicles for basic commercial services.

This policy does not apply to the proposal.

F-1.1 The City should at all times have sufficient land to accommodate the retail needs of the City and the surrounding market area while encouraging commercial infill and redevelopment. The City presently has five major commercial areas: Highway 99E, 1-5 Interchange, the downtown area, the Nodal Neighborhood Commercial area (along Parr Road), and the 214/211/99E Four Corners intersection area. No new areas should be established.

This policy does not apply to the proposal.

F-1.8 Ensure that existing commercial sites are used efficiently. Consider the potential for reuse, re-tenanting, or redevelopment of existing commercial sites and modifications to zoning regulations that urbanize development to attract new investment.

This policy does not apply to the proposal.

Workforce and Target Industry Development

F-2 Enhance the quality of the city workforce and support development of target industries.

The applicant points out that the construction sector is identified as a target industry in the City of Woodburn's Economic Opportunities Analysis (EOA). The proposed zone change would allow the applicant to move their base of operations to the subject property. The subject property is designated Commercial in the Woodburn Comprehensive Plan, and therefore appropriate for the proposed CG zone. The use for an electrical contractor shop is permitted in both Marion County and Woodburn's versions of the Commercial General zone. The city's workforce would be enhanced by approximately 15 electrician positions required by Creative Electric, as well as several support staff. These are high-paying trade jobs that would be created within Woodburn's UGB. The proposal is consistent with this policy.

Growth Management Goals and Policies

G-1.1 The City's goal is to manage growth in a balanced, orderly, and efficient manner, consistent with the City's coordinated population projection.

The proposal is for a zone change to a zone that matches the underlying designation in the Woodburn Comprehensive Plan. Applicant has offered several conditions of approval that would

ensure future annexation of the property, future connection to public water and sewer, and future contributions towards frontage improvements.

The City of Woodburn does not extend urban services without either annexation, or written agreement, as outlined in the UGCA and their Comprehensive Plan. Annexation is not currently possible because the subject property is not adjacent to land in the City of Woodburn.

The proposal is not consistent with this goal.

G-1.7 The City's policy is to accommodate industrial and commercial growth consistent with Woodburn Economic Opportunities Analysis (EOA).

Applicant states that the proposal is consistent with the EOA. The construction industry is listed as a target industry on page 21 of the 2023 EOA. The proposal is consistent with this policy.

G-1.8 Woodburn's policy is to diversify the local economy. Woodburn seeks to diversify the local economy so that the community will prosper and can weather swings in the business cycle, seasonal fluctuations, and other economic variables. The intent is to provide a broad spectrum of commercial and industrial enterprises. The variety of enterprises will not only provide insulation from negative business factors, but a choice in employment opportunities that in turn allows for the diversification in income types.

Applicant states that the establishment of the electrical contractor's shop, as a result of the proposed zone change, will employ approximately 15 electricians and several administrative staff. The City of Woodburn did not comment on whether it considers the proposal a means to diversification of the local economy. The proposal is consistent with this policy.

G-1.12 The County shall retain responsibility for regulating land use on lands within the urban growth area (unincorporated land inside the UGB) until such lands are annexed by the City. The urban growth area has been identified by the City as urbanizable and is considered to be available, over time, for urban development.

The County retains this responsibility. The subject parcel is not yet eligible for annexation, which is a requirement for urbanization. The current zoning, Urban Transition, is a transitional zone that permits continuation of pre-existing or resource uses between the time a property is brought within an Urban Growth Boundary and the time it is annexed into the city.

The proposed zone change is to an urban zone, for the purpose of establishing an urban use, without annexation as required by the UGCA and the Woodburn Comprehensive Plan. The proposal is not consistent with this policy.

G-1.13 The City and County shall maintain a process providing for an exchange of information and recommendations relating to land use proposals in the urban growth area. Land use activities being considered within the urban growth area by the County shall be forwarded by the County to the City for comments and recommendations.

This process for an exchange of information is maintained.

G-1.14 All land use actions within the urban growth area and outside the City limits shall be consistent with the City's Comprehensive Plan and the County's land use regulations.

The proposed zone change is not consistent with the Woodburn Comprehensive Plan and does not satisfy the zone change criteria in Marion County Code. The proposal is not consistent with this policy.

G-1.17 The City and County shall strive to enhance the livability and promote logical and orderly development of the urban growth area in a cost effective manner. The County shall not allow urban uses within the Urban Growth Boundary prior to annexation to the City unless agreed to in writing by the City. City sewer and water facilities shall not be extended beyond the City limits, except as may be agreed to in writing by the City and the property owner and the owner consents to annex. The City shall be responsible for preparing the public facilities plan.

The proposed zone change, and subsequent use, are consistent with the underlying designation in the City of Woodburn Comprehensive Plan. The proposed zone change is sought in order to establish an urban use and, therefore, requires annexation. The proposal is not consistent with this policy.

G-1.18 Conversion of land within the boundary to urban uses shall be based on a consideration of: (a) Orderly, economic provision for public facilities and services;

Applicant proposed a condition requiring an agreement to utilize public facilities and services once available. The City of Woodburn objects and does not approve of a new use relying on private water and septic facilities in the UGB. The city plans to provide services at the time of annexation. The subject parcel is not eligible for annexation. An orderly economic provision for public facilities and uses will be completed at the time of annexation.

(b) Availability of sufficient land for the various uses to ensure choices in the market place;

The proposal is for a zone change to a zone that is consistent with the Woodburn Comprehensive Plan designation for this property. Establishment of urban use requires annexation. The subject parcel is not eligible for annexation. The proposal will not increase the availability of land for various urban uses until such time that it annexes into the City of Woodburn.

(c) LCDC Goals;

The LCDC Goals applicable to this proposal are considered in the next section of this document (10).

As addressed further below, the proposal is not consistent with Goal 14.

(d) Further development of vacant and underutilized residential land within the City's buildable land inventory before annexing additional territory for conversion to residential use at urban densities; and

This subsection does not apply to the proposal.

(e) Applicable provisions of the Marion County and City Comprehensive Plans.

The proposal fails to fully comply with Marion County Code and the City of Woodburn Comprehensive Plan. The proposed zone change is to an urban zone for the establishment of an urban use. Annexation is not possible at this time. The proposal is not consistent with the Woodburn Comprehensive Plan.

Statewide Planning Goals

9. The relevant Statewide Planning Goals for consideration are Goals 2, 12, and 14:

Goal 2 – Land Use Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The process for evaluating the proposed zone change is outlined in MCC 16.39.050. The process allows the opportunity for public comment, staff review, and requires review by a hearings officer. This process implements policy frameworks of the Marion County Code, the underlying City of Woodburn comprehensive plan, and the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement. The planning process is consistent with Goal 2 – Land Use Planning, and the goal is met.

Goal 12 – Transportation: To provide and encourage a safe, convenient and economic transportation system.

The subject property of the proposed zone change is adjacent to Highway 99E, which is classified as an Arterial road. The proposed zone is appropriate for citing adjacent to a highway. Applicant provided a letter from a registered Transportation Engineer stating the proposal will generate trips that are already accounted for within current Transportation Systems Plan for Marion County, as well as Exhibit 1. The proposed zone change is compatible with Goal 12 – Transportation, and the goal is met.

Goal 14 – Urbanization: To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The proposed zone change to Commercial General under Marion County is not consistent with the Growth Management Goals and Policies of the Woodburn Comprehensive Plan. The proposed

zone change is not consistent with the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement. The UCGA between Woodburn and Marion County ensures the orderly and efficient transition from rural to urban land uses within the urban growth boundary for Woodburn. The proposal is not consistent with the agreement, which is an enforceable agreement under ORS 190.010. The subject parcel is not eligible for annexation and has no public water nor sanitary sewer services available. The proposed zone change would permit urban uses without an urban level of services available. Therefore, the proposal is not consistent with Goal 14.

10. The proposal does not meet the criteria required for a zone change in the Marion County Code. The proposal is not consistent with the policies of Woodburn's Comprehensive Plan. The proposal is not consistent with the policies of the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement. The proposal is not consistent with Statewide Land Use Planning Goal 14. Because the proposal does not meet criteria and is not consistent with planning goals, the Application is DENIED.

VIII. 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 Street NE, Salem, Oregon), by 5:00 p.m. on the **23rd day of July, 2025** (15 days of the date of mailing of this decision). The appeal must be in writing, must be filed in duplicate, and must be accompanied by a payment of $500.00, and must state wherein this order fails to conform to the provisions of the applicable ordinance and/or criteria. If the Board denies the appeal, $300 of the fee will be refunded.

DATED this 8th day of July, 2025.

Jill F. Foster

Jill F. Foster, Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Wendie Kellington
1335 Chandler Rd.
Lake Oswego, OR 97034

Chris Killmer
270 Montgomery Street
Woodburn, OR 97071

Chris Kerr
270 Montgomery Street
Woodburn, OR 97071

Josh Wells
3841 Fairview Industrial Dr. SE
Suite 100
Salem, OR 97302

Britany Randall
170 Liberty St SE
Salem, OR 97071

City: Woodburn *(via email)*
Chris.Kerr@ci.woodburn.or.us
dan.handel@ci.woodburn.or.us
Heather.pierson@ci.woodburn.or.us

Area Advisory Committee 6:
Ben Williams
Friends of French Prairie
Fofp99@gmail.com

County Agencies Notified:

Assessor's Office *(via email)*
assessor@co.marion.or.us
Tax Collector *(via email)*
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us

Surveyor's Office *(via email)*
KInman@co.marion.or.us

Fire District: *(via email)*
gibbsj@woodburnfire.com

Planning Division *(via email)*
breich@co.marion.or.us
abarnes@co.marion.or.us
jspeckman@co.marion.or.us
ediaz@co.marion.or.us

Building Inspection *(via email)*
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
CTate@co.marion.or.us

Public Works LDEP Section *(via email)*
jrasmussen@co.marion.or.us
mcldep@co.marion.or.us
JShanahan@co.marion.or.us

School District: *(via email)*
Woodburn School District
sbishop@woodburnsd.org

State Agencies Notified: *(via email)*
angela.carnahan@state.or.us
hilary.foote@dlcd.oregon.gov
sarah.marvin@state.or.us
karen.grosulak-mccord@dlcd.org
ODOTr2planmgr@odot.state.or.us

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 8th day of July, 2025 and that the postage thereon was prepaid.

Administrative Assistant to the
Hearings Officer

CITY OF WOODBURN/MARION COUNTY
URBAN GROWTH COORDINATION AGREEMENT

This Agreement made and entered into this 23rd day of December, 2015, by and between the City of Woodburn, a municipal corporation, hereinafter called "City" and Marion County, a political subdivision of the State of Oregon, hereinafter called "County."

WITNESSETH:

WHEREAS, IT APPEARING to the City and County that ORS Chapter 197, the Land Conservation and Development Commission ("LCDC"), and Statewide Planning Goal 14: Urbanization require that an Urban Growth Boundary be established around each incorporated city in the State of Oregon, and that the "establishment and change of the boundary shall be a cooperative process between a city and the county or counties that surround it"; and

WHEREAS, on May 21, 2015, LCDC remanded Work Task 2 of the Woodburn Periodic Review and Urban Growth Boundary amendment to the City; and

WHEREAS, in order to respond to LCDC's remand order it is necessary for the City to make, and the County to approve, a new land use decision on the existing record ("the Decision on Remand"); and

WHEREAS, in response to LCDC's remand, Goal 14, and the authority granted by ORS Chapter 190 concerning intergovernmental agreements, City and County have adopted an Urban Growth Boundary in Response to Remand, which is appended as Attachment 1, together with policies and procedures for amending the Urban Growth Boundary, revising City and County comprehensive plans within the Urban Growth Boundary and outside the city limits, and a coordination process for county land division and land use decisions within the Urban Growth Area (i.e., the area between the city limits and the Urban Growth Boundary); and

WHEREAS, both the City and County believe that this Agreement must be amended so that the Decision on Remand can be addressed; and

WHEREAS, the City and County may designate an Urban Reserve Area pursuant to Oregon Administrative Rule 660-021 where there is a demonstrated long-term need for land for a city's future Urban Growth Boundary expansion and a consideration of the cost-effective provision of public facilities and services to lands to be included in a Urban Growth Boundary; and

WHEREAS, Marion County has areas of significant and high-value farmland that should be preserved by preventing future expansion of the City onto those lands for a certain number of years; and

WHEREAS, the intent of the urban growth program for the City is as follows:

1. Promote the orderly and efficient conversion of land from Rural/Resource uses to urban uses within the Urban Growth Area.

2. Reduce potential conflicts with resource lands, establishing an Urban Reserve Area and expansion limitations where necessary.

3. Promote the retention of lands in resource production in the Urban Growth Boundary until provided with urban services and developed.

4. Coordinate growth in accordance with the Woodburn Comprehensive Plan and the Marion County Comprehensive Plan.

NOW, THEREFORE, the City and County adopt the following coordination and revision procedures and policies that, along with the policies of the Woodburn Comprehensive Plan, shall serve as the basis for land use decisions within the Urban Growth Area and within the Urban Reserve Area. It is the intent of the parties that the boundary and coordination policies and procedures expressed in this Agreement shall be consistent with Oregon State Laws, the Marion County Comprehensive Plan and the Woodburn Comprehensive Plan.

I. COORDINATION POLICIES AND PROCEDURES

1. The County shall retain responsibility for regulating land use on lands within the Urban Growth Area until such lands are annexed by the City. The City and County identify the Urban Growth Area as urbanizable and available over time for urban development.

2. The City and County shall maintain a process providing for an exchange of information and recommendations relating to land use proposals in the Urban Growth Area. The County shall forward land use activities being considered within the Urban Growth Area by the County to the City for comments and recommendations. The City shall respond within twenty (20) days, unless the City requests and the County grants an extension.

3. Upon receipt of an annexation request or the initiation of annexation proceedings by the City, the City shall forward information regarding the request (including any proposed zone change) to the County for comments and recommendations. The County shall have twenty (20) days to respond unless they request and the City allows additional time to submit comments before the City makes a decision on the annexation proposal.

4. All land use actions within the Urban Growth Area shall be consistent with the Woodburn Comprehensive Plan and the County's land use regulations.

5. In order to promote consistency and coordination between the City and County, both the City and County shall review and approve amendments of the Woodburn Comprehensive Plan that apply to the Urban Growth Area. Such changes shall be considered first by the City and referred to the County prior to final adoption. If the County approves a proposed amendment to the Woodburn Comprehensive Plan, the change shall be adopted by ordinance and made a part of the County's Plan.

6. The area outside the Urban Growth Boundary shall be maintained in rural and resource uses consistent with Statewide Planning Goals. The area outside the Urban Growth

Boundary designated the Urban Reserve Area shall be subject to the requirements in Section V below.

7. The City and County shall promote logical and orderly development within the Urban Growth Area in a cost effective manner. The County shall not allow uses requiring a public facility provided by the City within the Urban Growth Area prior to annexation to the City unless agreed to in writing by the City.

8. City sewer and water facilities shall not be extended beyond the Urban Growth Boundary, except as may be agreed to in writing by the City and County, consistent with Oregon Administrative Rules, the Woodburn Comprehensive Plan and the Marion County Comprehensive Plan.

9. Conversion of land within the Urban Growth Area to urban uses shall occur upon annexation and be based on consideration of applicable annexation policies in the Woodburn Comprehensive Plan.

10. The City shall discourage the extension of public facilities into the Urban Growth Area without annexation. However, if the extension of public facilities into the Urban Growth Area is necessary because of an emergency, health hazard or the City determines it is otherwise desirable, the facilities may be extended subject to terms and conditions contained in a service contract between the City and the property owner.

11. The City shall be the provider of public water, sanitary sewer and stormwater facilities within the Urban Growth Boundary unless otherwise agreed to by the City, the County, and any other applicable party. The City shall be responsible for preparing the public facilities plan for all lands within the Urban Growth Boundary.

II. AMENDMENTS TO THE URBAN GROWTH BOUNDARY AND THE URBAN GROWTH AREA

The Urban Growth Boundary and all Comprehensive Plan designations applicable to land within the Urban Growth Area shall be reviewed by the City and County as required by LCDC under its Periodic Review rules or as the City updates its Comprehensive Plan where County concurrence is necessary. These, and any other amendments to the Urban Growth Boundary, Comprehensive Plan or zoning in the Urban Growth Area shall be reviewed and approved in the manner provided below.

1. City initiated Comprehensive Plan Amendments for land within the city limits:

   Whenever the City proposes an amendment to its Comprehensive Plan for land within the city limits, the City shall provide notice and request for comments on the proposed amendment to the County at least 20 days before the City's initial evidentiary public hearing.

2. City initiated Comprehensive Plan amendments within the Urban Growth Area and proposed Urban Growth Boundary and Urban Reserve Area amendments:

   A. Upon receipt of notice of Periodic Review, the City shall review its Comprehensive Plan to determine if it needs to be updated. The City may also propose Comprehensive Plan amendments, including Urban Growth Boundary and Urban Reserve Area amendments, at times other than those specified by LCDC's Periodic Review Order.

      The City shall forward proposed amendments together with all exhibits, findings of fact, and conclusions of law regarding the amendments to the County for review and comments at least 20 days before the City's initial evidentiary public hearing. The City shall be responsible for providing necessary notice of amendments to the Department of Land Conservation and Development ("DLCD").

The City and County shall jointly submit one notice of a proposed Urban Growth Boundary or Urban Reserve Area amendment to DLCD, as required by administrative rule, at least 35 days before the City's first evidentiary hearing.

The City shall hold one or more Planning Commission and one or more City Council hearings. Upon conclusion of its deliberations, if the City Council concludes it will approve a proposed amendment, it shall adopt a resolution stating its intent and adopt findings of fact and conclusions of law supporting the Council's decision.

B. After adopting a resolution of intent to amend its comprehensive plan the City shall forward the proposed amendment to the County for hearing along with any comments from DLCD or other interested parties received by the City. Within 90 days after the date the City provides its resolution of intent along with all supporting studies, exhibits, comments and findings of fact and conclusions of law to the County, the County shall hold a public hearing on the City's proposal. If the County decides to reject the proposal or wishes to propose modifications, either party may request a joint meeting to resolve differences.

C. Upon concurrence by the County, both the City and County shall formally amend their respective Comprehensive Plans to reflect the agreed upon change. The County shall forward its signed ordinance approving an Urban Growth Boundary or Urban Reserve Area amendment to the City, and the City shall submit a joint notice of adoption to DLCD as required by administrative rule.

3. County initiated Comprehensive Plan Amendments within the Urban Growth Area or Urban Growth Boundary Amendments:

A. Upon receipt of notice of Periodic Review, the County shall review its Comprehensive Plan to determine if it needs to be updated. The County may

also propose amendments at times other than those specified by LCDC's Periodic Review Order.

The County shall develop proposed amendments and forward them together with all exhibits, findings of fact and conclusions of law regarding the amendments to the City for review and comments at least 20 days before the County's initial evidentiary public hearing. Within 90 days after the County provides the proposed amendments to the City, the City shall schedule at least one public hearing by the City Planning Commission. The County shall be responsible for providing necessary notice of amendments to DLCD.

B. The City Planning Commission shall hold one or more public hearings. After the Planning Commission has concluded its hearing(s), it shall make a recommendation to the City Council. The City Council and the County Board of Commissioners shall each hold a public hearing or may jointly conduct one or more public hearings. The two governing bodies may deliberate together on the proposed amendment(s). At the conclusion of those deliberations, if the conclusion is to approve the proposed amendment(s), the City Council and the Board of Commissioners shall each adopt an ordinance to amend their respective comprehensive plans accompanied by agreed upon findings of fact and conclusions of law.

4. County Zoning Amendments in Urban Growth Area: Whenever the County proposes an amendment to its zoning map or regulations for lands within the Urban Growth Area, the County shall provide notice and request for comments on the proposed amendment to the City at least 20 days before the County's initial evidentiary public hearing.

5. City Zoning Amendments in city limits: Whenever the City proposes an amendment to its zoning map or regulations for lands within the city limits, the City shall provide notice and request for comments on the proposed amendment to the County at least 20 days before the City's initial evidentiary public hearing.

6. In amending the Urban Growth Boundary, the city limits or their respective comprehensive plans, the City and County shall follow all procedures as required by Oregon State Law. In the case of an amendment to Urban Growth Boundary, the governing bodies shall base the amendment on consideration of Goal 14 (Urbanization), applicable planning statutes and Administrative Rules.

III. ADMINISTRATION OF ZONING AND SUBDIVISION REGULATIONS

In making land use decisions within the Urban Growth Area, the City and County agree to the following:

1. The County shall provide notice and request for comments on conditional uses, variances, adjustments, land divisions, property line adjustments and administrative reviews within the Urban Growth Area to the City at least 20 days before the County's initial evidentiary hearing or land use decision when no hearing is held. The County shall provide the City a notice of decision for all such applications in the Urban Growth Area when requested by the City.

2. Applications for uses permitted outright in the applicable County zone, including ministerial actions, will not involve any notice or request for comments to the City.

3. The County may require City development standards for development within the Urban Growth Area, including dedication of additional right-of-way or application of special street setbacks when requested by the City. The County may require compliance with City development standards, in lieu of County standards if the development is other than a single-family dwelling.

4. For development approved under (1) or (2), if public sewer and water facilities or city limits are located within 300 feet of the subject property, the County shall require that the development connect to the facilities unless use of wells or other means are allowed in writing by the City. The City will require any property connecting to City sanitary sewer or water facilities to annex to the City. The City shall provide the County

information about the location of public sewer and water. The County may approve development of permitted uses on properties more than 300 feet from the city limits, or from a public sewer or water facility using wells and DEQ approved wastewater disposal systems.

5. If a proposed use is not specifically identified in the Marion County Urban Zone Code, and the County is proposing an interpretation classifying the use as permitted in the applicable zone under the interpretation provisions of the Zone Code, the County shall give the City an opportunity to comment before the County makes a final land use decision.

IV. MARION COUNTY URBAN GROWTH MANAGEMENT FRAMEWORK

This Agreement is required to be consistent with the Urban Growth Management Framework of the Marion County Comprehensive Plan. The Framework is a coordination planning strategy that provides guidelines a city may choose to follow when coordinating urban growth boundary needs with the County. The decision on how to use any applicable coordination guidelines of the Framework is up to a city and there can be several approaches taken by cities to coordinate planning efforts with the County consistent with the Framework.

To facilitate coordination between the City and County, the Woodburn Comprehensive Plan has been amended to incorporate applicable policies and guidelines found in the Marion County Urban Growth Management Plan. The City shall consider applicable Woodburn Comprehensive Plan policies and guidelines when making land use decisions within the Urban Growth Area.

V. EXPANSION LIMITS AND URBAN RESERVE AREA

1. For 20 years from the date the Decision on Remand is final and acknowledged by LCDC, neither the City nor County will seek, consider, or approve an expansion of the Woodburn Urban Growth Boundary in the following areas:

    - West of the portion of Butteville Road NE, as depicted on Attachment 2.

- Northeast of Highway 99E located at the northeast edge of the existing Urban Growth Boundary, as depicted on Attachment 2.

2. Woodburn intends the Urban Growth Boundary expansion area known as the Southwest Industrial Reserve comprising approximately 190 acres, located, east of Butteville Road and north of Parr Road to be used for larger industrial users. Specific lot size standards shall be established limiting the size and number of future lots for these properties.

3. Woodburn recognizes that residential uses present the most adverse conflicts with both agricultural practices and with many industrial uses, especially those that use trucks as part of their regular business practice. Woodburn and Marion County recognize that the land to the west of Butteville Road NE is a critical part of the irreplaceable land base of the region's agricultural industry. Therefore, to minimize conflicts between urban and agricultural uses and to minimize conflicts between the industrial uses in Southwest Industrial Reserve and other urban uses, the City and County will:

   - Ensure that the design of and any improvements to the portion of Butteville Road NE serving the Southwest Industrial Reserve not encourage any urban traffic unrelated to the industrial use in the immediate area and unrelated to agricultural uses west of Butteville Road.
   - As industrial development is planned for in the Southwest Industrial Reserve consideration shall be given to methods to mitigate impacts from development and adjacent agricultural activities this can include buffers or increased setbacks along Butteville Road, provide that any buffers needed to reduce conflicts between the industrial uses and agricultural activity west of Butteville Road NE are located inside the Urban Growth Boundary.

4. As part of the Decision on Remand the Urban Reserve Area depicted on Attachment 3 is created:

A. The County shall apply a rural resource zone that establishes a minimum parcel size of at least 80 acres, notwithstanding provisions for the division of land into smaller parcels for certain non-resource uses as allowed by the zoning.

B. Dwellings on any new parcels created shall be clustered to the maximum extent possible, taking into account parcel dimensions, natural hazards, proximity to roadways, natural features, future platting potential, nearby dwellings and other similar features.

C. The County shall continue to be responsible for building code administration and land use regulation until such time as the property is annexed into the City.

D. No sewer or water service will be provided while the property remains outside the Urban Growth Boundary. Fire protection will continue to be provided by the Woodburn Fire District. While remaining outside the Urban Growth Boundary, parks and transportation facilities will be provided by the County. While remaining outside the Urban Growth Boundary, stormwater requirements will continue to be applied by the County.

VI. AREA OF MUTUAL CONCERN

The area of land identified in Attachment 4, attached to this Agreement, lies outside the Woodburn Urban Growth Boundary and shall be known as the Area of Mutual Concern. Land use decisions within this area may have a significant impact on future growth plans of the City of Woodburn. The County recognizes this interest and agrees to coordinate with the City as follows:

1. The County shall retain responsibility for land use decisions and actions concerning and affecting lands within the Area of Mutual Concern.

2. The County shall provide notice and request for comments of pending land use actions within the Area of Mutual Concern to the City at least 20 days before the initial evidentiary hearing or land use decision when no public hearing is held. Where the first

scheduled action on a proposal is a public hearing and the City responds in writing within 10 days requesting additional time in which to review the proposal, the City's time for submitting comments may be extended until the next regularly scheduled hearing before that body. If no additional hearing is involved, the City shall be allowed an additional 10 days to submit comments.

3. The County shall discourage development that would preclude future redevelopment and urbanization of the area. The County shall encourage applicants for land divisions to submit plans for the efficient future re-division of the land to urban densities.

4. The County shall send notice of land use decisions within the Area of Mutual Concern to the City when requested by the City, when such decisions are issued. Applicable appeal periods set by County ordinance or State statute shall apply to such decisions.

5. The County shall send notice of public hearings to the City within the times prescribed by County ordinance or State law prior to hearings on appeals of such decisions, when requested by the City.

6. The City may at its discretion develop studies as to the suitability, feasibility, and effectiveness of extending urban facilities such as water and sewer service to land within the Area of Mutual Concern. Such studies shall not be construed by the County or others as being a violation of the City's or County's Comprehensive Plans. The City will not, however, extend such facilities into this area without first obtaining appropriate amendments to the City and County's Comprehensive Plans. This provision is intended to recognize that certain facility planning requires consideration of timetables that extend beyond the 20-year planning period recognized in the City and it is therefore appropriate for specialized facility planning to be undertaken for the Area of Mutual Concern.

VII. APPEALS

If no mutual agreement can be achieved in the course of reviewing amendments or land use applications as noted in Sections II, III and V, each party retains its right to appeal as provided in State law.

IT IS HEREBY UNDERSTOOD AND AGREED that this Agreement shall remain in effect unless terminated by one of the parties giving the other party a thirty day (30) termination notice, in writing. It is further understood that this Agreement may be reviewed by the City and County every year.

The City and County shall authorize the execution of this Agreement.

IN WITNESS THEREOF, the respective parties hereto have caused this Agreement to be signed in their behalf the day and year first above written.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

APPROVED AS TO FORM:

Marion County Legal Counsel

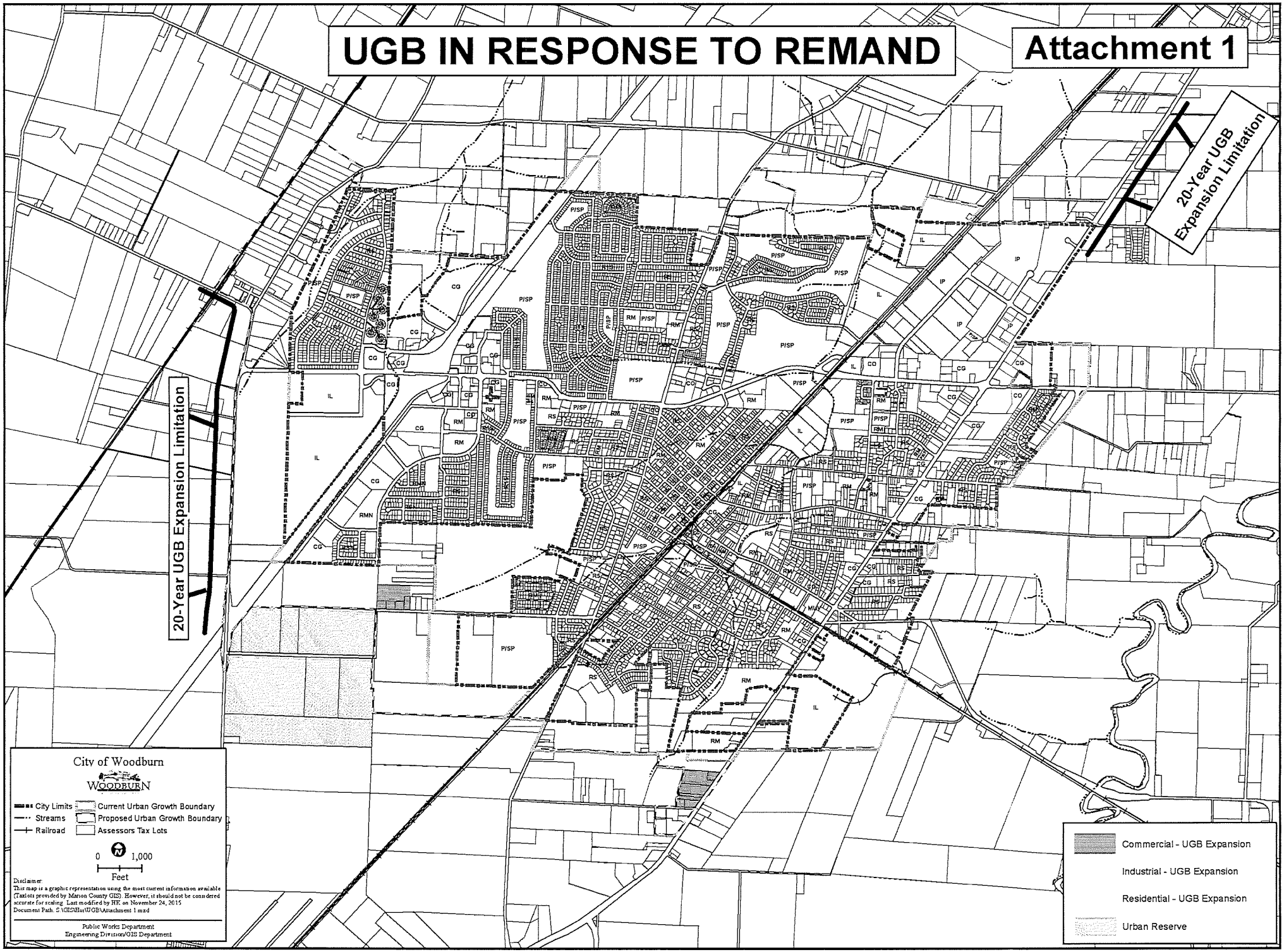
CITY OF WOODBURN

Mayor

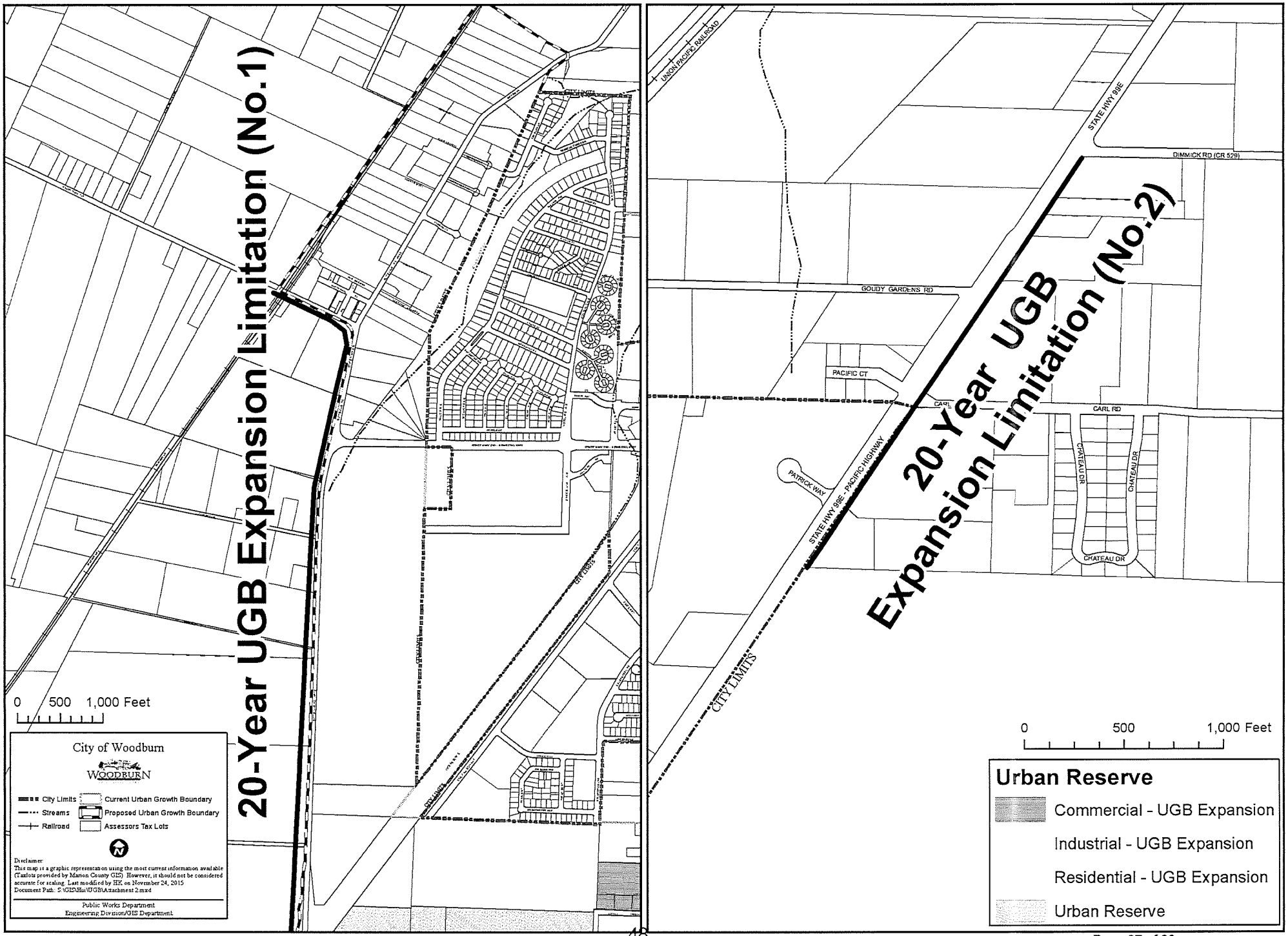
City Recorder

APPROVED AS TO FORM:

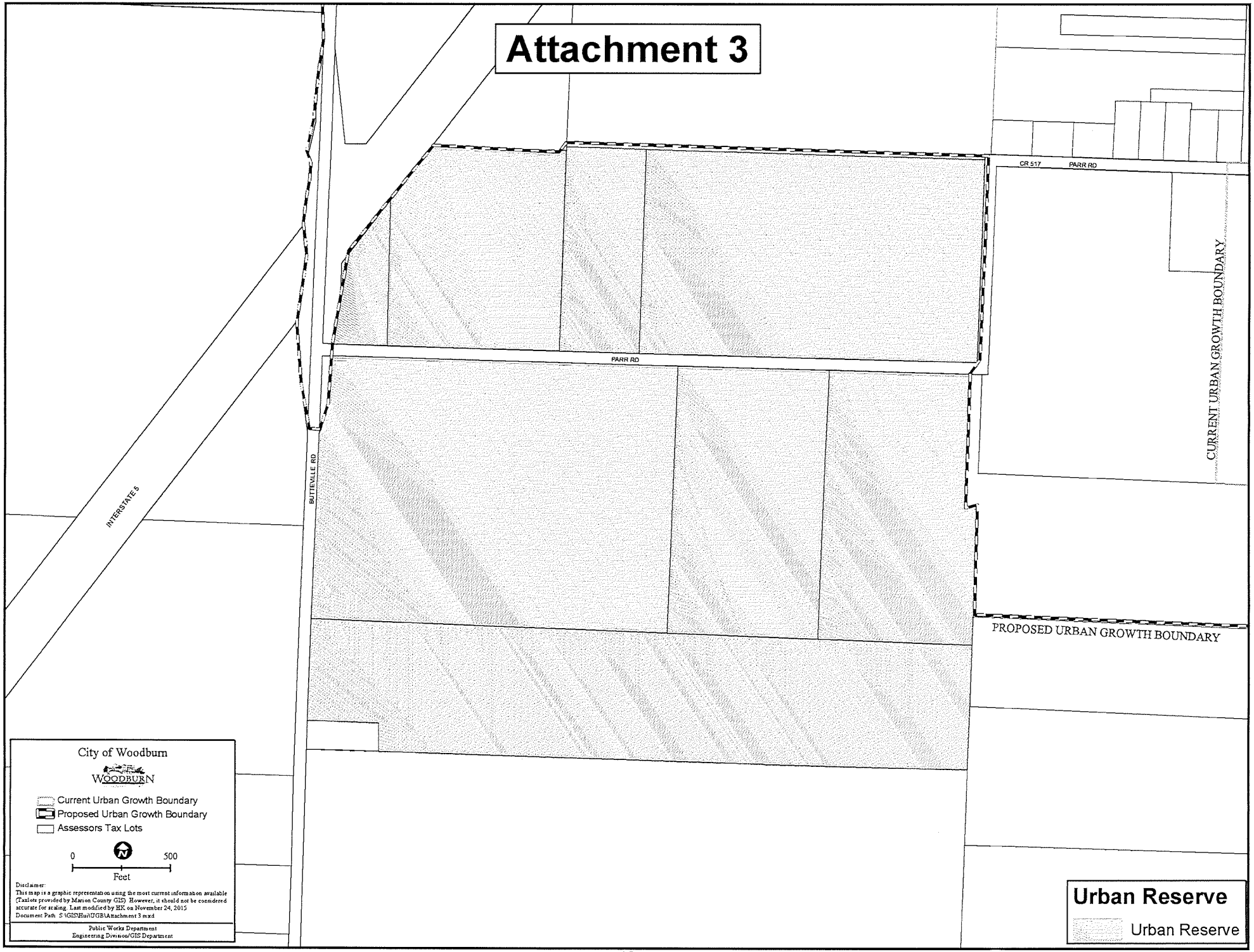
Woodburn City Attorney

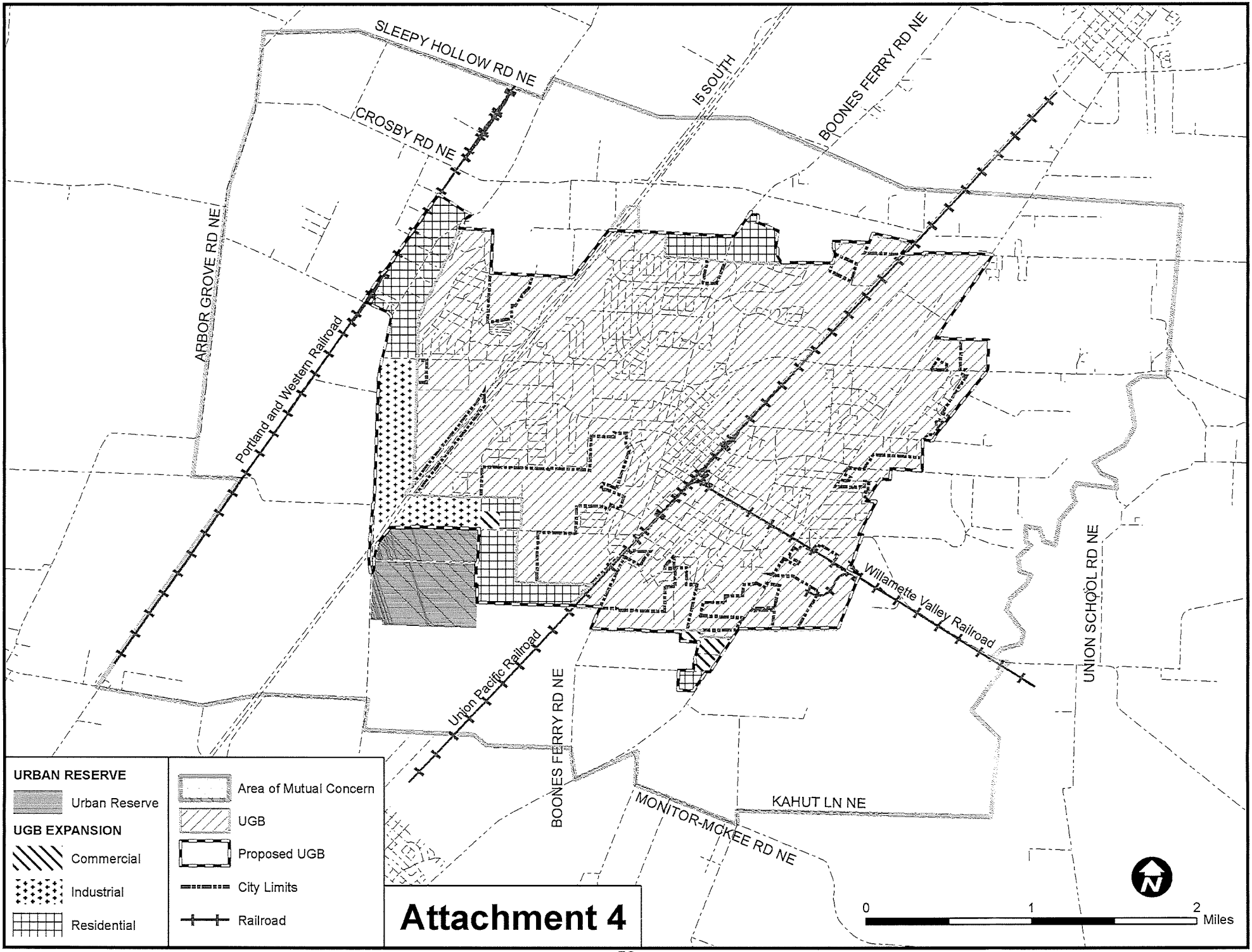

UGB IN RESPONSE TO REMAND
Attachment 1
20-Year UGB Expansion Limitation
20-Year UGB Expansion Limitation
City of Woodburn
WOODBURN
City Limits
Streams
Railroad
Current Urban Growth Boundary
Proposed Urban Growth Boundary
Assessors Tax Lots
0
1,000
Feet
Disclaimer:
This map is a graphic representation using the most current information available (Tax lots provided by Marion County GIS). However, it should not be considered accurate for scaling. Last modified by HK on November 24, 2015
Document Path: S:\GIS\Hui\UGB\Attachment 1.mxd
Public Works Department
Engineering Division/GIS Department
Commercial - UGB Expansion
Industrial - UGB Expansion
Residential - UGB Expansion
Urban Reserve

Attachment 2



Attachment 3





Attachment 4

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MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 13, 2025

Department: Public Works

Title: Scotts Mills Road: Butte Creek Bridge Historic Agreement

Management Update/Work Session Date: 5/27/2025 **Audio/Visual aids** ☐

Time Required: 5 minutes **Contact:** Steven Preszler **Phone:** 503-365-3157

Requested Action:
Approve Section 106 Memorandum of Agreement PO-73000-00045706 between the Federal Highway Administration, the Oregon State Historic Preservation Office, the Oregon Department of Transportation and Marion County committing to historic mitigation measures for the Butte Creek Bridge #6207 replacement project located in Scotts Mills.

Issue, Description & Background:
Marion County is replacing the Butte Creek Bridge #6207 located on Third Street NE (Scotts Mills Road) in Scotts Mills using Federal funds. To close-out the environmental process and proceed to the right-of-way phase, ODOT requires entering into an agreement between ODOT, the State Historic Preservation Office, the Federal Highway Administration and the County committing to specific historic mitigation measures. under this agreement, Marion County will install an interpretive kiosk adjacent to the bridge, stamp depictions of the existing and original bridges into the bridge concrete, install a plaque on the new bridge, and construct decorative railing on the new bridge. These mitigation measures were discussed with the community at an open house, and those in attendance were generally supportive.

Financial Impacts:
It is estimated that the additional cost for these mitigation measures will not exceed $50,000. Federal funds will cover 89.73% of this total and the County will provide the remaining 10.27% match. The total project budget is $4,381,500.00.

Impacts to Department & External Agencies:
There are no impacts to other County Departments.

List of attachments: Section 106 Memorandum of Agreement PO-73000-00045706

Presenter: Ryan Crowther

Department Head Signature: Brian Nicholas
Digitally signed by Brian Nicholas
Date: 2025.07.10 10:41:20 -07'00'

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Contract Review Sheet

Memorandum of Understanding **PW-6636-25**

Title: **MOA - Scotts Mills Rd: Butte Creek Bridge Replacement**

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

Department: **Public Works Department** Contact: **Alicia Jones**

Analyst: **Kathleen George** Phone #: **-4388**

Term - Date From: **Execution** Expires: **June 30, 2035**

Original Contract Amount: **$ -** Previous Amendments Amount: **$ -**

Current Amendment: **$ -** New Contract Total: **$ -** Amd% **0%**

No Funds Exchanged ☐ 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

Historic mitigation agreement for the Scotts Mills Rd: Butte Creek Bridge Replacement.

Memorandum of Agreement (MOA) No. PO-73000-00045706 is to document the Parties' plans and obligations regarding the mitigation strategy for the Project.

MOA with County/FHWA and SHPO (Federal Highway Administration and State Historic Preservation Office)

Desired BOC Session Date: **8/13/2025** Contract should be in DocuSign by: **7/23/2025**

Agenda Planning Date **7/31/2025** Printed packets due in Finance: **7/29/2025**

Management Update **5/27/2025** BOC upload / Board Session email: **7/30/2025**

BOC Session Presenter(s) **Ryan Crowther** Code: **Y**

REQUIRED APPROVALS

DocuSigned by:

7/28/2025

Finance - Contracts Date

Contract Specialist Date

Legal Counsel Date

Chief Administrative Officer Date

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ODOT Misc. Contracts & Agreements
No. PO-73000-00045706

A164-G062124

SECTION 106 MEMORANDUM OF AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, AND THE OREGON STATE HISTORIC PRESERVATION OFFICE, AND THE OREGON DEPARTMENT OF TRANSPORTATION, AND MARION COUNTY, REGARDING THE SCOTTS MILLS ROAD: BUTTE CREEK BRIDGE PROJECT, SCOTTS MILLS, MARION COUNTY, OREGON, ODOT KEY NO. 21998, ODOT FEDERAL-AID NO. C047(101), OREGON SHPO CASE NO. 23-0004

THIS MEMORANDUM OF AGREEMENT is made and entered into by and among the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" the STATE OF OREGON, acting by and through its State Historic Preservation Office, hereinafter referred to as "SHPO;" United States Federal Government, acting by and through its Federal Highway Administration, hereinafter referred to as "FHWA;" Marion County, acting by and through its elected officials, hereinafter referred to as "County;" each herein referred to individually as "Party" or "Signatory" and all collectively referred to as "Parties" or "Signatories."

RECITALS:

1. WHEREAS, by the authority granted in Oregon Revised Statutes (ORS) 190.110 and 283.110, an Oregon state agency may enter into agreements with units of local government or other state agencies or the United States federal government for any lawful purpose in performing a duty imposed upon it, in exercising a power conferred upon it, or in administering a policy or program delegated to it; and

2. WHEREAS, by the authority granted in ORS 366.558, the ODOT may enter into cooperative agreements with the United States Federal Government for the performance of work on improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting Parties; and

3. WHEREAS, ODOT is overseeing delivery of Scotts Mills Road: Butte Creek Bridge Project (the "Undertaking"); and

4. WHEREAS, the Undertaking consists of the proposed replacement of the Butte Creek Bridge No. 06207A; and

5. WHEREAS, FHWA is the lead Federal agency providing financial assistance for the Undertaking; and

6. WHEREAS, the County has jurisdiction over the historic resource, and is coordinating the design of and contributing funds to the Undertaking; and

7. WHEREAS, the Undertaking's area of potential effect (APE) is identified in Attachment A, attached hereto and incorporated herein by this reference]; and

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8. WHEREAS, FHWA determined that the Undertaking will adversely affect the Butte Creek Bridge No. 06207A, which is eligible for listing in the National Register of Historic Places, on January 11th, 2024, and consulted with SHPO pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) ("Section 106"); and

9. WHEREAS, the Butte Creek Bridge No. 06207A is eligible for listing in the National Register of Historic Places as described in the Finding of Effect for the Undertaking.

10. WHEREAS, the purpose of this Memorandum of Agreement (MOA) is to document the Parties' plans and obligations regarding the mitigation strategy for the Project. The Parties intend that the mitigation strategy will meet the requirements of Section 106; and

11. WHEREAS, the Signatories identified in the preamble of this MOA include both Signatories and Invited Signatories as identified in 36 Code of Federal Regulations (CFR) 800.6(c)(1)-(2), and each has the authority to amend or terminate this MOA; and

12. WHEREAS, FHWA consulted with ODOT and has requested ODOT to be an Invited Signatory to this MOA; and

13. WHEREAS, ODOT, on behalf of FHWA, consulted with the Confederated Tribes of the Grand Ronde Community of Oregon and the Confederated Tribes of Siletz Indians early and throughout the Section 106 process. No Tribe expressed concern with the Undertaking, nor did any Tribe identify any properties of religious and cultural significance. Neither Tribe opted to participate in the MOA process; and

14. WHEREAS, FHWA invited the following entities to be consulting Parties regarding the effects of the Undertaking on historic properties and has invited some consulting Parties to sign this MOA as Invited Signatories, as identified below:

Name of Consulting Party Invited	Accepted Invitation?	Invited Signatory?
ODOT	Yes	Invited Signatory
SHPO	Yes	Signatory
County	Yes	Invited Signatory
City of Scotts Mills	Yes	No
Scotts Mills Historical Society	Yes	No

WHEREAS, County and ODOT conducted public community engagement in the form of an initial public meeting in November 2021, a virtual open house occurring in November 2023, and a public meeting and presentation conducted on February 7th, 2024. The public was offered the opportunity to provide input on the design of the new bridge, which is the proposed alternative. County has also consulted with adjacent landowners and residents regarding the effects of the Undertaking throughout the life of the project.

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More information regarding these events can be found on the project website, located at:
https://www.co.marion.or.us/PW/Engineering/Projects/Pages/Scotts.aspx; and

15. WHEREAS, FHWA and ODOT acknowledge their continued responsibility to engage in meaningful consultation with Indian tribes (e.g., Executive Order 13175, United States Code (USC) 470a(d)(6)(B), the November 5, 2009 Presidential Memorandum on Tribal Consultation, and 36 CFR 800.2(c)(2)) throughout the process of carrying out the stipulations of this agreement regardless whether an Indian tribe is or is not a signatory or consulting party to this agreement. This agreement does not alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of an Indian tribe. This agreement also does not alter the existing government-to-government relationship between the federal and state governments and Indian tribes; and

16. WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FHWA notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination on December 17th, 2024 with specific documentation, and through its January 6th, 2025 response, the ACHP chose not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, the Parties agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties:

STIPULATIONS:

1. FHWA, in coordination with ODOT, intends to provide federal-aid funding as determined eligible for the following measures, and shall ensure that the following measures are carried out:

   a) Comprehensive photographic and historical documentation
      i. County, in coordination with FHWA and ODOT, will select a consultant to perform the scope of work for comprehensive documentation of the design and history of the Butte Creek Bridge No. 06207A, in lieu of official Historic American Engineering Record (HAER) recordation. This will include, but not be limited to, high-resolution digital photographs, a historic context and description of significance, and original historic drawings and plans. Copies of this documentation will be available for internal ODOT use and distributed to the Oregon Historical Society and the Scotts Mills Historical Society. This document can be formatted according to HAER Short Format Guidelines.
      ii. The draft documentation will be completed prior to the demolition of the property.
      iii. The final documentation will be submitted to the above-named parties within five (5) years of the signature of this MOA.

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b) Development of an ESRI StoryMap
   i. ODOT will be responsible for producing and hosting an online ESRI StoryMap.
   ii. The StoryMap shall include information about the history of Scotts Mills and the surrounding area, and a history of all crossings at the current site of the Butte Creek Bridge No. 06207A.
   iii. The Scotts Mills Historical Society shall be provided the opportunity to have input on the design and content.

c) Interpretive signage
   i. County, in coordination with FHWA and ODOT, will select one or more consultants to produce an outdoor-grade interpretive sign (no smaller than 4 ft x 3 ft) and/or kiosk mounted to the ground. The signage should be removable/interchangeable within the kiosk frame.
      1. The signage will include information about the history of Scotts Mills and the surrounding area, as well as the history of the crossings at Butte Creek.
      2. Two additional copies will be produced as replacements as they deteriorate.
   ii. County will be responsible for identifying the location of the interpretive signage in coordination with the City of Scotts Mills and installing the panel in the vicinity of the new bridge.
   iii. County will be responsible for maintaining the signage throughout its usable lifespan and replacing the interpretive panel as needed for a minimum of 10 years after installation.

d) Bridge design elements
   i. County shall construct the bridge according to the agreed upon design in project delivery meetings with ODOT. This is the "Art Deco" design which may include any or all of the following features: obelisks/pylons at each corner, a 3-tube rail, and Art Deco pilasters.
   ii. County shall also incorporate stamped concrete renderings into the design of the bridge: possibly including the original 1906 wooden covered bridge, the steel-truss Butte Creek Bridge No. 02607A, and a historically inspired contractor plaque.

2. FHWA and ODOT will ensure that these stipulations are carried out under this MOA is conducted by or under direct supervision of a person or persons meeting the appropriate *Secretary of the Interior's Professional Qualifications Standards* (36 CFR 61, Appendix A).

3. All activities carried out pursuant to this MOA shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 as revised)

as well as current standards and guidelines for archaeology and historic preservation activities established by SHPO.

4. SHPO agrees that the Mitigation required under this MOA is satisfactory and meets requirements for compliance with Section 106 for the Undertaking.

5. Execution of this MOA by FHWA, ODOT, SHPO, and County and implementation of its terms evidences that FHWA has taken into account the effects of the Undertaking on historic properties and has afforded the ACHP an opportunity to comment.

6. The County will be carrying out the construction of the new bridge and oversee the contractor to follow the designs stipulated in this MOA.

7. The County acknowledges the Butte Creek Bridge No. 02607A, once removed from the state highway system, may be ineligible for future federal funds if repurposed for a transportation purpose.

8. County agrees to enter into a separate maintenance agreement with ODOT for maintaining the interpretive panels and the bridge, consistent with the terms of this Agreement.

9. ODOT will oversee the development of the comprehensive historical documentation, the StoryMap, and the interpretive signage, while the County will be overseeing the implementation of the agreed-upon bridge design and installation of the interpretive panels.

10. Signatories agree to keep sensitive cultural resources information confidential to the extent allowed by state and Federal statutes and regulations, including but not limited to, ORS 192.311 to 192.401, 36 CFR 800.6(a)(5), 36 CFR 800.11(c), and 36 CFR 296.18.

11. REVIEW OF MITIGATION MATERIALS

FHWA and ODOT shall provide the Signatories and Consulting Parties at least one opportunity lasting a minimum of thirty (30) calendar days to comment on the completeness of the mitigation materials specified in the stipulations described in Stipulation 1 of this document before final submission. Comments provided by the Signatories and Consulting Parties shall be taken into consideration within the limits of the project, as described in the stipulations.

12. MONITORING AND REPORTING

Each year following the execution date of this MOA, until it expires or is terminated, or is satisfied, ODOT shall provide all Parties to this MOA a summary report briefly detailing work undertaken pursuant to its terms. Such report shall include a description of work completed, ongoing, and planned as required under the stipulations; any schedule changes proposed; and any problems encountered. The report shall also summarize any disputes, objections, or comments received from the Signatories, Consulting Parties, local governments, interested parties, and the general public related to FHWA and ODOT's efforts to carry out the terms of this MOA, and how concerns were responded to. Inadvertent discoveries shall be briefly

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summarized in the annual report, but otherwise documented and reported as required in Stipulation 14 - Post Review Discoveries.

13. POST-REVIEW DISCOVERIES

Per ODOT standard construction specification 290.51, in the event any additional cultural resources are encountered or previously unanticipated effects on historic properties found, ODOT will cease activities in the area and an appropriate cultural resources professional will be contacted to evaluate the discovery.

14. DISPUTE RESOLUTION

a) The Signatories shall attempt in good faith to resolve any dispute arising out of this MOA.

b) A Signatory or Concurring Party to this MOA may object at any time to any actions proposed, or the manner in which the terms of this MOA are implemented, by submitting the concern in writing to FHWA. Upon receipt, FHWA shall consult with the objecting party for (30) calendar days, or another time period agreed upon, to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:

i. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP, in accordance with 36 CFR 800.2(b)(2). The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Within thirty (30) calendar days of the close of the comment opportunity and prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Concurring Parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.

ii. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, FHWA may make a final decision on the dispute and proceed accordingly. Within thirty (30) calendar days of the close of the comment opportunity and prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Concurring Parties to the MOA, and provide the Signatories and Concurring Parties and the ACHP with a copy of such written responses.

iii. FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

15. AMENDMENTS

Any signatory may request that this MOA be amended by submitting the text of the proposed amendment to FHWA in writing. FHWA and ODOT shall consult with the Signatories and Concurring Parties for up to thirty (30) calendar days after receiving the request for amendment, or another time period agreed to by all Signatories in writing, concerning the

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necessity and appropriateness of the proposed amendment. Any Signatory or Consulting Party may request the involvement of the ACHP during the amendment process. At the end of the consultation period FHWA shall provide an MOA amendment for signature by the Signatories and Concurring Parties or a written statement describing why agreement could not be reached regarding an amendment to this MOA. The amendment shall be effective on the date the amendment is signed by all of the Signatories.

16. TERMINATION

If any Signatory to this MOA determines that its terms will not or cannot be carried out, that Signatory shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation 15, above. If, within thirty (30) days of initial consultation on termination, or another time period agreed to by all signatories, an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories. Termination shall be effective the day FHWA receives written notification.

Once the MOA is terminated, and prior to work continuing on the Undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the Signatories as to the course of action it will pursue within thirty (30) calendar days of the termination of this MOA, or within another time period agreed to by all Signatories in writing.

17. DURATION

This MOA is effective on the date all required signatures are obtained ("Effective Date") and will remain in effect until the Undertaking is complete or ten (10) years from the Effective Date, whichever occurs sooner. Prior to the expiration of this MOA, FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation 15 above.

18. CONTRIBUTION

a) Contribution between FHWA and State: FHWA shall be responsible to the extent permitted by the Federal Tort Claims Act only for the acts, omissions, or negligence of its own officers, employees, or agents. The State (ODOT and SHPO) shall be responsible to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act (ORS 30.260 – 30.300) only for the acts, omissions, or negligence of the State's own officers, employees, or agents.

b) Contribution between State of Oregon Agencies:

i. ODOT and SHPO agree that any tort liability, claim, suit, or loss resulting from or arising out of the Parties' performance of and activities under this MOA shall be allocated, as between ODOT and SHPO, in accordance with law by Oregon Department of Administrative Services' (DAS) Risk Management, for purposes of their respective loss experiences and subsequent allocation of self-insurance assessments

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under ORS 278.435. ODOT and SHPO each agree to notify the DAS Risk Management Division and the other state agency in the event it receives notice or knowledge of any claims arising out of the performance of, or the state agencies' activities under this MOA.

ii. ODOT and SHPO understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS Chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300). ODOT and SHPO each agree to accept that coverage as adequate insurance of the other with respect to personal injury and property damage.

c) Contribution between State and County:

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 State or County with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

ii. With respect to a Third Party Claim for which State is jointly liable with County (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 County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of County 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 County 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 County is jointly liable with State (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement

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

d) This Section 18 shall survive the termination of this MOA.

19. COUNTERPARTS

This MOA may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement, notwithstanding that all Signatories and Concurring Parties do not sign the same counterpart. Each copy of this MOA so executed shall constitute an original.

20. COMPLIANCE WITH LAW

Each Signatory agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this MOA, including, without limitation, the provisions of ORS Chapters 279A, 279B, and 279C, incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, the Signatories expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 as amended and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

21. CONTACT PERSONS

a) ODOT's contact for this MOA is Tobin Bottman, Cultural Resources Program Manager, Oregon Department of Transportation, 4040 Fairview Industrial Drive SE, Salem, Oregon 97302, 503-877-8491, tobin.c.bottman@odot.oregon.gov, or assigned designee upon individual's absence. ODOT may notify the other Signatories in writing of any contact information changes during the term of this MOA.

b) FHWA's contact for this MOA is Misty Thorsgard, Environmental Protection Specialist/Tribal Liaison, 530 Center Street, NE, Suite 420, Salem, OR, 97301 503-316-2557, misty.thorsgard@dot.gov, or assigned designee upon individual's absence. FHWA may notify the other Signatories in writing of any contact information changes during the term of this MOA.

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c) SHPO's contact for this MOA is Ian Johnson, Associate Deputy State Historic Preservation Officer, 725 Summer Street NE, Suite C, Salem, OR 97301, 971-718-1137, ian.johnson@oprd.oregon.gov or assigned designee upon individual's absence. SHPO may notify the other Signatories in writing of any contact information changes during the term of this MOA.

d) County's contact for this MOA is Steven Preszler, Project Manager, 5155 Silverton Rd NE, Salem, OR 97305, 503-365-3157, spreszler@co.marion.or.us, or assigned designee upon individual's absence. County may notify the other Signatories in writing of any contact information changes during the term of this MOA.

22. EXECUTION

Execution of this MOA by FHWA and SHPO and implementation of its terms evidence that FHWA took into account the effects of the undertaking on historic properties and afforded the ACHP an opportunity to comment.

23. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

SIGNATORIES:

United States Federal Government, by and through its **Federal Highway Administration**

By _____
Keith Lynch, FHWA Division Administrator

Date _____

FHWA Contact:
Misty Thorsgard, Environmental Protection Specialist/Tribal Liaison
530 Center Street, NE, Suite 420
Salem, OR, 97301
503-316-2557
Misty.thorsgard@dot.gov

STATE OF OREGON, by and through its **State Historic Preservation Office**

By Ian Johnson (Jul 7, 2025 20:23 PDT)
Christina Curran, Deputy State Historic Preservation Officer

Date 07/07/25

SHPO Contact:
Ian Johnson, Associate Deputy State Historic Preservation Officer
725 Summer Street NE, Suite C
Salem, OR 97301
971-718-1137
ian.johnson@oprd.oregon.gov

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FHWA/SHPO/ODOT/County
Agreement No. PO-73000-00045706

INVITED SIGNATORIES:

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

By See page 12 below

Title See page 12 below

Date See page 12 below

County Contact:
Steven Preszler, Project Manager
5155 Silverton Rd NE
Salem, OR 97305
503-365-3157
spreszler@co.marion.or.us

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

By _____
Savannah Crawford, Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By Tobin C. Bottman
Tobin Bottman, Cultural Resources Manager

Date 6/6/2025

ODOT Contact:
Tobin Bottman, Cultural Resources Program Manager
Environmental Section
4040 Fairview Industrial Drive, SE
MS-6
Salem, OR 97302
503-877-8491
tobin.c.bottman@odot.oregon.gov

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FHWA/SHPO/ODOT/County
Agreement No. PO-73000-00045706

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

By SEE ATTACHED MARION COUNTY SIGNATURE PAGE

_____

Title

_____

Date

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By

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Title

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By

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Title

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Date

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Docusign Envelope ID: 4BA8A1CD-00EE-4C21-BA24-99161UEE3BDD

SIGNATURE PAGE FOR
MOA - SCOTTS MILLS RD: BUTTE CREEK BRIDGE REPLACEMENT - PW-6636-25
between
MARION COUNTY and OREGON DEPARTMENT OF TRANSPORTATION

MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:

_____
Chair Date

_____
Commissioner Date

_____
Commissioner Date

Authorized Signature: DocuSigned by: Brian Nicholas 0793BA7ACD6D443... 7/28/2025
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: DocuSigned by: A3536E7AEC704F4... 7/28/2025
Marion County Contracts & Procurement Date

OREGON DEPARTMENT OF TRANSPORTATION SIGNATURE

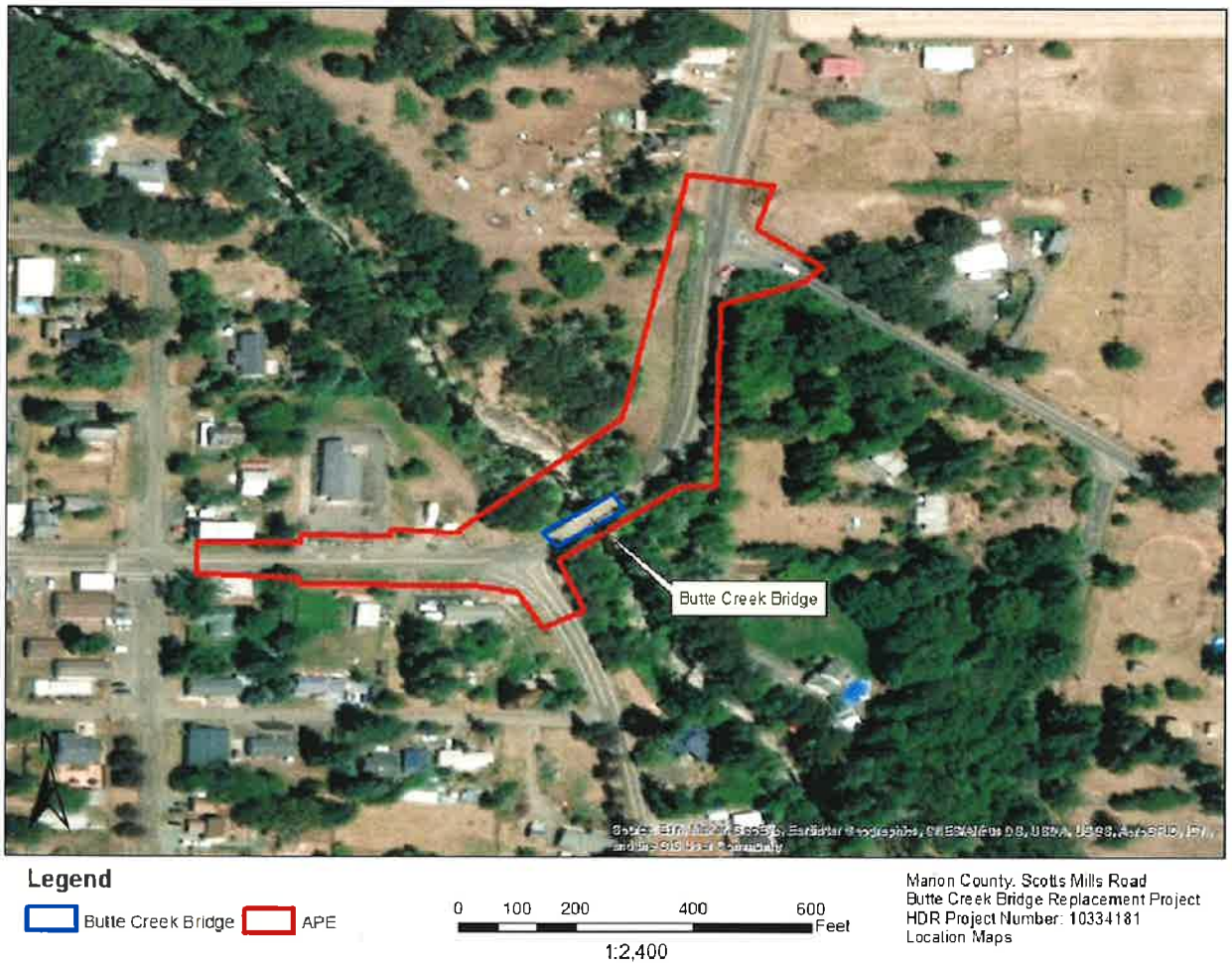
Authorized Signature: _____
Date

Title: _____

Docusign Envelope ID: 4BA8A1CD-00EE-4C21-BA24-99161CEE3BDD

FHWA/SHPO/ODOT/County
Agreement No. PO-73000-00045706

ATTACHMENT A
Area of Potential Effect



Aerial map indicating Butte Creek Bridge's boundary (blue) and project APE (red). Map adapted from the Finding of Effect prepared by HDR, Inc. (2022).

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 08/13/2025

Department: Public Works

Title: Materials Management Advisory Council (MMAC) Bylaws Amendment

Management Update/Work Session Date: 08/05/2025 **Audio/Visual aids** ☐

Time Required: 5 minutes **Contact:** Cory Swartwout **Phone:** 503-365-3178

Requested Action:

Approve the amended Bylaws for the Materials Management Advisory Council (Previously known as the Solid Waste Management Advisory Council)

Issue, Description & Background:

The Solid Waste Management Advisory Council (SWMAC) has historically provided guidance on Marion County's solid waste system. However, recent changes in state and local materials management priorities—particularly those driven by the implementation of the Recycling Modernization Act—have prompted a reevaluation of the Council's structure and focus. To better reflect these evolving needs and to align with a broader, more integrated approach to waste reduction, recycling, and sustainable materials management, SWMAC is being renamed the Materials Management Advisory Council (MMAC). This change supports a modernized mission and membership framework that is better suited to address current and future materials management challenges.

As part of this restructure, the bylaws have been updated to reflect the name, mission, and membership changes.

Financial Impacts:

N/A

Impacts to Department & External Agencies:

N/A

List of attachments:

Bylaws, Order

Presenter:

Brian May

Department Head Signature:

Dennis Mansfield

Digitally signed by Dennis Mansfield
Date: 2025.07.31 15:25:02 -07'00'

MARION COUNTY
MATERIALS MANAGEMENT ADVISORY COUNCIL
(FORMERLY SOLID WASTE MANAGEMENT ADVISORY COUNCIL)
BYLAWS

1. NAME

This Marion County body, formerly known as the Solid Waste Management Advisory Council ("SWMAC"), is now known as the Materials Management Advisory Council ("MMAC") pursuant to Order 25-XX.

2. MISSION

To provide input to the Marion County Board of Commissioners ("Commissioners") regarding an integrated materials management system that is financially feasible, promotes sustainability, enhances environmental protection and public health in Marion County, and supports education on responsible material use. MMAC also provides recommendations, reports, position papers, and other information as requested by the Commissioners.

3. PURPOSE OF ADVISORY COUNCIL

3.1. The Commissioners formed the Solid Waste Management Advisory Council (SWMAC) by Board Order on February 1, 1989. In 2025, the Council's name was updated to the Materials Management Advisory Council (MMAC) pursuant to Order 25-XX to better reflect the broader goals of sustainable materials management beyond traditional waste disposal.

3.2. MMAC members represent the public interest and are expected to preserve the public trust by acting in an ethical and responsible manner.

4. GOALS

4.1. To provide a forum for input to the Commissioners and a clearinghouse for information regarding materials management.

4.2. To further develop the materials management system in accordance with the Marion County Materials Management Plan.

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5. MEMBERSHIP

The MMAC shall have no more than nineteen members.

5.1. VOTING MEMBERS **(16):**

- Marion County Commissioner **(1)**
- Incorporated Cities with Populations Greater Than 4,000 (9)
  - City of Keizer **(2)**
    - Elected Official
    - Staff Member
  - City of Salem **(2)**
    - Elected Official
    - Staff Member
  - City of Woodburn **(2)**
    - Elected Official
    - Staff Member
  - City of Aumsville **(1)**
    - Elected Official
  - City of Silverton **(1)**
    - Elected Official
  - City of Stayton **(1)**
    - Elected Official
- Incorporated Cities with Populations Less Than 4,000 **(2)**
- Marion County Citizens **(2)**
  - Rural (1)
  - Urban (1)
- Marion County Businesses **(2)**
  - Food Service/Grocery Industry
  - Home Builders Association

5.2. NON-VOTING MEMBERS **(3):**

- Materials Management Industry **(1)**
- Recycling Industry **(1)**
- Community Organization **(1)**

5.3. VACANCY: MMAC shall not be prohibited from taking any action solely because of a vacancy in any member position for any reason.

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6. APPOINTMENT

6.1. Members of the MMAC shall be appointed by the Commissioners to serve a four-year term from date of appointment. All members shall serve at the pleasure of the Commissioners.

6.2. Terms shall commence on the date of appointment by the Commissioners.

6.3. Members wishing to be reappointed shall submit a written request within 120 days prior to their term's expiration to the Director of Public Works ("Director") or the Director's designee. Failure to submit a written request for reappointment under this subsection shall not prevent the Commissioners from reappointing the member.

6.4. Members may be reappointed by the Commissioners.

6.5. The Director or the Director's designee shall be an ex-officio member of MMAC and vested with responsibility for assisting the chairperson in coordinating MMAC activities.

7. MEMBER'S DUTIES & EXPECTATIONS

The Director or the Director's designee shall provide new MMAC members with an orientation within 60 days of the appointment. The orientation shall include, but not be limited to:

- Bylaws
- Recycling Guide
- Marion Resoucers Program, if available, is encouraged
- Materials Management Facilities
  - North Marion Recycling & Transfer Station (NMRTS)
  - Salem Keizer Recycling & Transfer Station (SKRTS)
  - Re:Source
- Materials Management Plan(s)
- Environmental Services Budget
- Volunteer Handbook/Packet
- Oregon Public Meetings Law and Public Records Law
- Media Interaction Policy

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Members are expected to attend meetings regularly, participate in discussions on topics brought before the MMAC, work collaboratively with other MMAC members and the public, inform themselves and the MMAC on related topics through reading of handout materials and other sources of information, and participate in the decision-making process. Members who represent an organization are also responsible for communicating relevant information from MMAC meetings back to their organization and, where appropriate, bringing perspectives or feedback from their organization to MMAC. Additionally, MMAC members are expected to abide by Oregon Public Meetings, Public Records, and Conflict of Interest Laws.

8. TERMINATION

MMAC shall recommend to the Commissioners removal of any member who it believes warrants termination from the MMAC pursuant to subsection 8.4.

8.1. Attendance:

More than three unexcused absences by any member from scheduled meetings during a consecutive twelve-month period may cause the MMAC to recommend to the Commissioners that this member be removed. Following the second unexcused absence during a consecutive twelve-month period from an MMAC meeting, the member shall be reminded by the chairperson of the absence removal policy.

8.2. Member Absences:

- If a member will not be able to attend a scheduled MMAC meeting, the member is to contact the Marion County Department of Public Works prior to the meeting and inform the Director or the Director's designee or the chair and/or vice-chair of the absence.
- The MMAC vice-chairperson will notify the meeting recorder of the absences at the end of the meeting for inclusion in the minutes.
- The absence will be reviewed by the MMAC vice-chairperson and will take action in accordance with section 8, if needed.
- The record of absences will be kept on a twelve-month basis that will coincide with each member's date of appointment.

8.3. Resignations:

Resignations by members shall be submitted in writing to the MMAC chairperson and staff, which shall be announced at the next meeting. A copy of the resignation shall be

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forwarded to the Director or the Director's designee and the Commissioners for the appropriate action.

8.4. Reasons for Dismissal:
The MMAC may recommend removal of a member for misrepresentation of the MMAC, excessive absences from meetings, violation of MMAC Bylaws, or other inappropriate conduct. Any recommendation for removal shall be submitted to the MMAC for a recommendation to the Commissioners pursuant to subsection 9.4.

8.5. Removal:
The members of the MMAC serve at the pleasure of the Commissioners and may be removed at any time by the Commissioners.

9. MEETINGS

9.1. All meetings of the MMAC shall be in accordance with the requirements of the Oregon Public Meetings Law (ORS 192.610 to 192.710).

9.2. Regular & Special Meetings:
Tentative agenda, time, and location for the next MMAC meeting[s] shall be set at the end of each meeting, as mutually agreed by the chairperson and the members. The Marion County Department of Public Works may submit items for the agenda.

- Notice of the meeting time, place, and agenda shall be provided to all MMAC members, interested persons who have requested notice and the local news media at least three (3) days in advance of a scheduled meeting.
- Additional meetings may be scheduled as needed by the MMAC, the chairperson, or the Director or the Director's designee, with appropriate notice.
- Meetings for subcommittees shall be scheduled by staff, after consultation with the subcommittee members, with appropriate public notice.

9.3. Minutes:

- Minutes shall be a summary of the actual discussions and proceedings that transpired at the MMAC meeting or subcommittee meeting.
- Minutes shall be distributed to all members and interested persons prior to the next scheduled meeting. They will also be placed on the county website, after approval.
- MMAC members may submit clarification of their own comments, positions, votes, or other member activity before or at the next regularly scheduled meeting for inclusion in the minutes of the meeting being clarified.

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9.4. Decision Making Method:

- A motion must be pending before a decision may be made. Every effort will be made to reach consensus when the MMAC is deliberating toward a decision. If consensus cannot be reached, the chairperson or any member may call for a voice vote. In all cases, the minimum number of affirmative votes for any motion to pass must be a majority of the appointed positions.
- A quorum shall be present in order to conduct business of the MMAC.

9.5. Quorum:

- A quorum shall be a majority of the voting positions. A vacancy in a voting position for any reason shall not be considered in determining a quorum.

9.6. A member must declare any conflicts of interest at a public meeting (ORS chapter 244). A conflict exists if a recommendation by the MMAC may potentially or actually affect the finances of the MMAC member or a direct family member, defined as a spouse, child or stepchild, parents, or siblings. If an **actual conflict** exists, the member must declare this fact before voting on an issue that is discussed, and the member must refrain from discussing or voting on the matter. For a **potential conflict** of interest, the member must declare this fact before voting on an issue that is discussed, however the member may still discuss and vote on the issue.

For represented positions on the MMAC, there is no conflict of interest if the decision or action would affect the business or industry for which the individual is seated on the MMAC to represent.

10. OFFICERS

10.1. Appointment of Officers:

- MMAC shall nominate and recommend to the Commissioners, voting members for the positions of chairperson and vice-chairperson. The Commissioners shall appoint the chairperson and vice-chairperson of the MMAC, who shall serve at the pleasure of the Commissioners.
- The chairperson shall serve a one-year term. Should the chair be unable to complete their term, the vice-chairperson may serve the remainer of the term as chair.
- In the event that neither the chairperson nor vice-chairperson is present, the MMAC shall designate a voting member to act as the chair for that meeting.

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10.2. Duties of Officers:

- The chairperson shall:
  - Preside at all meetings of the MMAC.
  - Be the official representative of the MMAC.
  - Assign a mentor for each newly appointed MMAC member.
  - Coordinate members for various subcommittees.

- The vice-chairperson shall:
  - Have the authority to preside as chairperson in the absence of the chairperson.
  - Be the Parliamentarian for each meeting.
  - Review member absences.

10.3. Orientation for the Chairperson and Vice-Chairperson:

- The Marion County Department of Public Works shall provide an orientation for the chairperson and vice-chairperson within sixty (60) days from the assumption of duties by a new chairperson or vice-chairperson.
- The orientation content shall provide the chairperson and vice-chairperson with information concerning the conduct of meetings and the responsibilities and duties of the chairperson and vice-chairperson. The information to be provided to the chairperson and vice-chairperson by staff includes, but is not limited to:
  - Bylaws
  - Public Meetings Law
  - Roberts Rules of Order
  - Code of Ethics

10.4. Removal of Officers:

The Board of Commissioners may remove a chairperson or vice-chairperson on its own motion or upon the recommendation of the MMAC when it determines that it is in the interest of the MMAC or the county to do so. If the chair is removed, the vice-chair may serve the remainer of the term as chair. If the vice-chair is removed, the MMAC will recommend a member, as defined by 10.1, for appointment to the position.

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11. SPECIAL COMMITTEES

11.1. The MMAC may authorize the chairperson to appoint special subcommittees, as necessary, to deal with specific problems or issues the MMAC believes appropriate.

11.2. All appointed subcommittees are required to report their information and/or recommendation to the MMAC.

12. CHANGE IN BYLAWS

12.1. Changes to the Bylaws may be proposed by the MMAC. Any recommendations agreed upon by the MMAC shall be forwarded to the Commissioners for their approval.

12.2. The Commissioners may initiate changes to the Bylaws. These changes will be submitted to the MMAC for review and consultation prior to the Commissioners' adoption.

12.3. Upon the Commissioners approving the Bylaw amendments, the Marion County Department of Public Works will update the Bylaws and distribute them to all members of the MMAC.

13. GUIDELINES FOR COMMUNITY RELATIONS

13.1. Any member of the public is welcome to attend, participate, and provide input at MMAC meetings, at the approved agenda time.

13.2. Public comments may be limited to 3 minutes or accepted in writing.

13.3. Anyone who wishes to voice an opinion or present information or concerns to the MMAC may:

- Come to the meetings.
- Contact the Marion County Environmental Services Division Manager.

13.4. The chairperson shall make arrangements, as appropriate, to ensure public participation.

DRAFT

First Revision July 1989
Second Revision Sept 1990
Third Revision May 1993
Fourth Revision July 1996
Fifth Revision July 1999
Sixth Revision May 2003
Seventh Revision June 2004
Eighth Revision Aug 2005
Ninth Revision Aug 2015
Tenth Revision Nov 2016
Eleventh Revision Feb 2019
Twelfth Review Jan 2023
Thirteenth Revision August 2025

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BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of the revised Bylaws for the Materials Management Advisory Council (MMAC)	)))	Department of Public Works - Environmental Services

O R D E R

This matter came before the Board of Commissioners at its regular scheduled public meeting of August 13, 2025, to accept the revised Bylaws of the Materials Management Advisory Council.

IT APPEARING that the Board of Commissioners have established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board of Commissioners hereby enters the following order:

IT IS HEREBY ORDERED that the Board of Commissioners accept the revisions made to the Bylaws of the Marion County Materials Management Advisory Council.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

_____
Chair

_____
Commissioner

_____
Commissioner

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 8/13/2025

Department: Public Works

Title: Consider the Appointment of Members to the Materials Management Advisory Council (MMAC)

Management Update/Work Session Date: 08/05/2025 **Audio/Visual aids** ☐

Time Required: 10 minutes **Contact:** Cory Swartwout **Phone:** 503-365-3178

Requested Action:
Appoint members to the Materials Management Advisory Council (MMAC).

Issue, Description & Background:
The Marion County Board of Commissioners formed the MMAC (Formerly SWMAC) on February 1, 1989. Council membership consists of 16 voting members and four non-voting members, each serving a four-year term. The MMAC is a public body which, under its bylaws, makes recommendations to the Marion County Board of Commissioners. County policy and the MMAC by-laws require that the Marion County Board of Commissioners make membership appointments.

Financial Impacts:
N/A

Impacts to Department & External Agencies:
N/A

List of attachments:
Membership Applications and Board Orders

Presenter:
Brian May

Department Head Signature:
Brian Nicholas
Digitally signed by Brian Nicholas
Date: 2025.07.30 05:25:23 -07'00'

5. MEMBERSHIP

The MMAC shall have no more than nineteen members.

5.1. VOTING MEMBERS **(16):**

- Marion County Commissioner **(1)**
- Incorporated Cities with Populations Greater Than 4,000 (9)
  - City of Keizer **(2)**
    - Elected Official
    - Staff Member
  - City of Salem **(2)**
    - Elected Official
    - Staff Member
  - City of Woodburn **(2)**
    - Elected Official
    - Staff Member
  - City of Aumsville **(1)**
    - Elected Official
  - City of Silverton **(1)**
    - Elected Official
  - City of Stayton **(1)**
    - Elected Official
- Incorporated Cities with Populations Less Than 4,000 **(2)**
- Marion County Citizens **(2)**
  - Rural (1)
  - Urban (1)
- Marion County Businesses **(2)**
  - Food Service/Grocery Industry
  - Home Builders Association

5.2. NON-VOTING MEMBERS **(3):**

- Materials Management Industry **(1)**
- Recycling Industry **(1)**
- Community Organization **(1)**

5.3. VACANCY: MMAC shall not be prohibited from taking any action solely because of a vacancy in any member position for any reason.

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Materials Management Advisory Council (MMAC)

Applicants

Voting members (16):

- Marion County Commissioner **(1)** – Kevin Cameron
- Incorporated Cities with Populations Greater Than 4,000 (9)
  - City of Keizer **(2)**
    - Elected Official – Dan Kohler (Councilor)
    - Staff Member – Jenny Ammon (Environmental & Technical Division Manager)
  - City of Salem **(2)**
    - Elected Official – Linda Nishioka (Councilor)
    - Staff Member – Ryan Zink (Franchise Administrator)
  - City of Woodburn **(2)**
    - Elected Official – Frank Lonergan (Mayor)
    - Staff Member – Jim Row (Assistant City Administrator)
  - City of Aumsville **(1)**
    - Elected Official – Walter Wick (Councilor)
  - City of Silverton **(1)**
    - Elected Official – **TBD**
  - City of Stayton **(1)**
    - Elected Official – Jordan Ohrt (Councilor)
- Incorporated Cities with Populations Less Than 4,000 **(2)**
  - Aurora - Brian Asher (Mayor)
  - Jefferson - Walter Perry (Councilor)
- Marion County Citizens **(2)**
  - Rural (1) - **TBD**
  - Urban (1) - **TBD**
- Marion County Businesses **(2)**
  - Food Service/Grocery Industry - Treva Gambs (Owner, Gamberetti's)
  - Home Builders Association - Duane West (Owner, 3R's Construction)

Non-voting members (3):

- Materials Management Industry **(1)** – Shane Kuenzi (MVHA President)
- Recycling Industry **(1)** – Julie Jackson (Municipal Manager, Garten)
- Community Organization **(1)** - **TBD**

Advisory Board Application

Applicant's Name: **Jenny Ammon**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Salem**
Occupation: **Environmental & Technical Division Manager, City of Keizer**
Application Rcd: **July 11, 2025**

The reason I am applying:
permit requirements and compliance for DEQ's RMA and OTR programs

More about my personal and professional interests:
I am interested in conservation and water health, I serve the community of Keizer with pride in the Environmental and Technical Division under Public Works.

Tell us more about your community involvement:
I am a board member on Salem Audubon Society

Previous board service at Marion County:
N/A

Qualifications and Skills:
OTR/RMA permit reports, programs associated with OTR/RMA, DEQ connections

More about yourself and why you are applying:
I am looking to collaborate with the County on waste issues that affect water, stormwater, drinking water and ultimately our residents.

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Mayor Brian Asher**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Aurora**
Occupation: **Mayor**
Application Rcd: **June 20, 2025**

The reason I am applying:

Help get to zero Waste

More about my personal and professional interests:

Make the word a better place!

Tell us more about your community involvement:

Mayor of Aurora

Previous board service at Marion County:

No

Qualifications and Skills:

Good listener, Work well with others.

More about yourself and why you are applying:

Improve life for our local and state residents

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Treva Gambs**
Adv. Board: **Solid Waste Management Advisory Council**
City of Residence: **Sublimity**
Occupation: **Owner/President, Gamberettis**
Application Rcd: **June 18, 2025**

The reason I am applying:

asked by Commissioner Cameron

More about my personal and professional interests:

Restauranteur that cares about Salem and community.

Tell us more about your community involvement:

previous board member of ORLA, Previous CASA volunteer, current Salem Chamber board member.

Previous board service at Marion County:

current board member of Salem Chamber

Qualifications and Skills:

15 year small business owner downtown Salem restaurant, owner of 3 restaurants in total.

More about yourself and why you are applying:

To help serve my community.

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Julie Jackson**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Albany**
Occupation: **Municipal Manager, Republic Services**
Application Rcd: **July 22, 2025**

The reason I am applying:
How we manage waste and reduce waste is important to me and I look forward to participating in the Marion County process.

More about my personal and professional interests:
I have worked in the waste industry for 20 years and have seen many changes in that time. I believe my experience and knowledge will be an asset for this board.

Tell us more about your community involvement:
ORRA Board Member, AOR Board Member, Oregon Green Schools Board Member, SWMAC Member, Corvallis Sustainability Coalition, Corvallis Chamber Governmental Affairs Committee, Albany Downtown Association Board Member. I have also been actively involved with ORRA and DEQ in the RMA process since 2021.

Previous board service at Marion County:
Yes, I served on the Marion County SWMAC as a representative from the solid waste industry.

Qualifications and Skills:
My degree is in education and I have used that for the last 20 years as I speak to community groups and help communities to understand the waste industry.

More about yourself and why you are applying:
I believe in order to make informed decisions; it is important to have many voices on this advisory board. Representing the waste industry is a vital role and one that I have experience in.

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Daniel R. Kohler**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Keizer**
Occupation: **Council member, City of Keizer**
Application Rcd: **July 17, 2025**

The reason I am applying:

Mayoral appointment

More about my personal and professional interests:

Like freedom

Tell us more about your community involvement:

City council

Previous board service at Marion County:

Just in projects

Qualifications and Skills:

Jack of all trades, master of one

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Shane Kuenzi**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Salem**
Occupation: **General Manager, Suburban Garbage Service**
Application Rcd: **July 7, 2025**

The reason I am applying:
I am the President for the Mid-Valley Haulers, and will be representing all the haulers operating in Marion County. I am applying so I can articulate the waste and recycling industry from the haulers perspective.

More about my personal and professional interests:
My interest is to do my part in working with all involved, to find the most efficient, cost effective, and environmentally conscious ways to reasonably service waste and recycling for all residents of Marion County.

Tell us more about your community involvement:
I was born and raised in Salem, and have chosen to live in this community as my carreer has progressed. I look forward to getting more involved as my young family grows.

Previous board service at Marion County:
n/a

Qualifications and Skills:
I currently serve as the President of the Mid-Valley Haulers Association, which represents all the franchised garbage and recycling haulers operating in Marion County. As President, one of my roles is to help facilitate the cost of service reporting, consolidation, and communication to Marion County staff as well as Marion County Commionsers for rate adjustments. This experience gives me a great understanding of how the waste and recycling system works in Marion County. This would allow me to give good insight to the others on this board from the haulers perspective.

More about yourself and why you are applying:
As stated earlier, I am the general manager for Suburban Garbage Service, as well as President for the Mid-Valley Haulers Association. I'm also a resident, and have lived in this community the majority of my life. I want the best for Marion County residents, and this appoinment would give me an opportunity to utilize my skills and passion to do my part.

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Frank J. Lonergan**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Woodburn**
Occupation: **Mayor, City of Woodburn**
Application Rcd: **July 14, 2025**

The reason I am applying:

I like Waste

More about my personal and professional interests:

I 'm enamored with waste and recycling

Tell us more about your community involvement:

Woodburn city council

Previous board service at Marion County:

Public safety coordinating council

Qualifications and Skills:

Drive a truck

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Linda T. Nishioka**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Salem**
Occupation: **Retired, current City of Salem Councilor**
Application Rcd: **July 8, 2025**

The reason I am applying:

I am applying for this board following a presentation by Commissioner Cameron to the City of Salem's Solid Waste Committee regarding the newly formed Mid-Willamette Materials Advisory Committee (MMAC). After that presentation, the committee unanimously nominated me—Councilor Linda Nishioka—to represent Salem on the MMAC, pending official appointment by Mayor Hoy, which has since been confirmed. I currently serve as Chair of the City of Salem's Solid Waste Committee, and I'm committed to advancing responsible, collaborative regional solutions to waste reduction, recycling, and sustainable materials management. I look forward to contributing Salem's perspective and actively participating in the important work of the MMAC alongside fellow appointee Ryan Zink, who is serving as the City's staff representative.

More about my personal and professional interests:

I am a certified Master Recycler and have a long-standing commitment to sustainability. While working at a medical clinic and outpatient surgery center, I initiated a medical materials recycling program to reduce waste and promote responsible disposal practices. My home was featured on the Green Home Tour, reflecting my personal commitment to environmentally conscious living. Additionally, I served on the board of the Friends of Straub Environmental Learning Center, supporting community education around environmental stewardship.

Tell us more about your community involvement:

VOLUNTEER ACTIVITIES

2022-present City of Salem City Councilor Ward 2

2019-present City of Salem Downtown Advisory Board

2021-2022 Salem Main Street Board

2017-2022 Salem Main Street Design Committee

2019 City of Salem Historic Preservation Plan Committee

2018 City of Salem Riverfront Park Committee

2017-2018 City of Salem Streetscape Committee

2009-2014 Board of Directors member, Vice President and President, Committee Chair for Green Awards Event of Friends of Straub Environmental Learning Center, Salem, OR

2008 Salem Green Home Tour-my remodeled home was opened for viewing.

2007-Present Master Recycler, Marion County, Salem, OR

2004-2007 Member and VP of the Fine Arts Parents Group, Blanchet High School, Salem, OR

2004 Medical/Dental Mission Trip to Havana, Cuba

1999-2001 Chairman of Senior Class Fundraising, Abiqua School, Salem, OR

1998-1999 Parent Volunteer at Abiqua School, Salem, OR

1996-1998 Chairman for International Night, Event at Island Park School, Mercer Island, WA

1994-1996 Soccer Coach, Columbia, MO and Mercer Island, WA

1984-1985 Alamo Area Rape Crisis Center, San Antonio, TX

1983-2004 Various Dental Hygiene volunteer activities, OR, TX, MO, and WA

Previous board service at Marion County:

N/A

Qualifications and Skills:

I bring a strong combination of public service, environmental leadership, and collaborative problem-solving experience that I believe would be valuable in this volunteer role. I currently serve as Chair of the City of Salem's Solid Waste Committee and as a Salem City Councilor, where I've worked on issues related to waste management, sustainability, and community education. I'm also a certified Master Recycler with hands-on experience establishing a medical materials recycling program in a clinical setting.

More about yourself and why you are applying:

I'm a longtime Salem resident and current City Councilor for Ward 2 with a strong commitment to public service and community engagement. My background in healthcare, environmental advocacy, and civic leadership reflects my dedication to improving livability and sustainability in our city. I'm applying for this volunteer position because I believe in the value of collaboration and citizen involvement to create meaningful, lasting change.

Signature

Agreement Statement:

I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Jordan Ohrt**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Stayton**
Occupation: **Stayton City Councilor**
Application Rcd: **July 23, 2025**

The reason I am applying: To gain more knowledge about the solid waste legislation and processes to better inform our City and Council.

More about my personal and professional interests: My interests are to serve my community by being on this board I believe it will help me keep up to date in this area.

Tell us more about your community involvement: Foothills VBS volunteer, Women in Networking Board Director, City Councilor, volunteered for various Veterans events.

Previous board service at Marion County:N/a

Qualifications and Skills:I am a good listener, a problem solver, work well in groups with all different types of people. I have a Bachelor in Business Administration

More about yourself and why you are applying:I am applying because I serve on the Stayton City Council and I believe having this opportunity to expand our knowledge and collaborate with other in Marion County will be beneficial to Stayton.

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Walter Perry**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Jefferson**
Occupation: **Retired contractor; Home Care Provider**
Application Rcd: **August 4, 2025**

The reason I am applying:

To offer a small city's incite regarding waste management to be unified throughout the county.

More about my personal and professional interests:

Solid Waste disposal/repurposing affects more that a means of controlling our refuse, its proper management can correct the ongoing pollution of of our roadways and waterways.

Tell us more about your community involvement:

Active member of the Jefferson Area Chamber of Commerce.

Previous board service at Marion County:

Mid Willamette Area Commission on Transportation,

Albany Area Metropolitan Planning Organization

Jefferson Planning Commision

Jefferson Budget Committee

Qualifications and Skills:

I have been an active volunteer in and for Jefferson for the past 17 years coupling with my 30+ years as a business owner hopefully has given me incite that can be helpful to this advisory board.

More about yourself and why you are applying:

My motivation is to my home, my city and to the county in which I reside...all being connected to each other and hopefully in support of each other.

Signature

Agreement Statement:

I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Jim Row**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Eagle Creek**
Occupation: **Assistant City Administrator, City of Woodburn**
Application Rcd: **July 3, 2025**

The reason I am applying:
Representing Woodburn on MMAC

More about my personal and professional interests:
Request from Commissioner Cameron for Woodburn representation

Tell us more about your community involvement:
N/A

Previous board service at Marion County:
No

Qualifications and Skills:
Responsible for managing Woodburn's solid waste franchise

More about yourself and why you are applying:
Responsible for managing Woodburn's solid waste franchise

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Duane West**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Salem**
Occupation: **CEO and Founder, 3Rs Construction and Remodeling**
Application Rcd: **June 27, 2025**

The reason I am applying:

I serve on the home builders board, and we were asked if anyone was willing and able to serve in this capacity.

More about my personal and professional interests:

General contractor for over 30 years. Native Oregonian with strong ties and deep roots in this community.

Tell us more about your community involvement:

Board of Directors roles:

National: IEA; Indoor Environments Association, formerly AARST Association of American Radon Scientists and Technologists.

Regional: HBA - (Home Builders Association of Marion and Polk Counties)

Regional: Northwest Radon Coalition: Chair

Local: Tandem Northwest

I have served on dozens of committees in every capacity from Chair to member.

Previous board service at Marion County:

NA

Qualifications and Skills:
Extensive experience in board and committee work

Collaborative by nature

Listening and problem-solving skills

Focused on making things efficient and productive.

Advisory Board Application

More about yourself and why you are applying:

We were asked as a board who was available and willing. I read your bylaws and reviewed your last meeting minutes and can contribute in this setting.

Signature

Agreement Statement:

I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Walter Wick**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Aumsville**
Occupation: **Marion County Public Works, Urban Stormwater Crew Leader and Aumsville City Councilor**
Application Rcd: **June 24, 2025**

The reason I am applying:

I want to continue serving our constituents in as many ways as I can.

More about my personal and professional interests:

I enjoy spending time with my wife, 3 children, and 4 grandchildren. I like to camp, work on old cars and bicycles.

Tell us more about your community involvement:

I have been an Aumsville city councilor since January of 2020, I was on the Aumsville planning commission for several years before that. I have served as Aumsville Corn Festival committee Vice president for a year. I am currently the Vice President of Marion County Employees Association local 294. I volunteer for a number of events in Aumsville and in Marion County and enjoy serving my peers.

Previous board service at Marion County:

N/A

Qualifications and Skills:

I have my GED and a year of college. I am good with taking to people and participating in respectful discussions. I have the ability to listen well as well as communicate well. I have been on a commission and a council as well as in leadership roles in several different positions.

More about yourself and why you are applying:

I have been an avid recycler for many years and I want to help Marion County Create a recycling solutions program that will actually work and help our community.

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

Advisory Board Application

Applicant's Name: **Ryan Zink**
Adv. Board: **Solid Waste Management Adv. Council**
City of Residence: **Salem**
Occupation: **Sr. Fiscal Analyst / Franchise Administrator, City of Salem**
Application Rcd: **July 8, 2025**

The reason I am applying:
I served on the SWMAC from 9/2020-4/2025 as a representative of a community organization (City of Salem). I feel that this experience was beneficial to my work with the City and look forward to continuing this work as part of the Materials Management Advisory Council.

More about my personal and professional interests:
In my professional life, I work within the City to educate residents on how to reduce, reuse, and recycle. In my personal life, I'm work to reduce my and my families waste footprint through our purchase choices, reusing items for multiple uses, and repairing broken items when possible.

Tell us more about your community involvement:
Professionally, I work to share information about solid waste services available in Salem. This occurs at neighborhood association meetings, City Council meetings, and community events.

Previous board service at Marion County:
Solid Waste Management Advisory Council: September 2020 to April 2025

Qualifications and Skills:
Approximately 12 years as Franchise Administrator for the City of Salem and 4.5 years with SWMAC.

More about yourself and why you are applying:
I enjoy working with my hands and reusing materials when possible to complete projects, not only to save money, but to reduce the amount of waste disposed.

Signature

Agreement Statement:
I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

☑ I Agree *

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Jenny Ammon to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Jenny Ammon to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Jenny Ammon, the staff member representing the City of Keizer, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Brian Asher to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Brian Asher to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Brian Asher, the elected official representing the City of Aurora, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Kevin Cameron to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Kevin Cameron to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on December 31, 2025.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Kevin Cameron, the elected official representing Marion County, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on December 31, 2025. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Treva Gambs to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Treva Gambs to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Treva Gambs, representing the Food Service/Grocery Industry, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Julie Jackson to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Julie Jackson to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Julie Jackson, as the Recycling Industry representative, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Daniel Kohler to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Daniel Kohler to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Daniel Kohler, the elected official representing the City of Keizer, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Shane Kuenzi to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Shane Kuenzi to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Shane Kuenzi, representing the Materials Management Industry, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Frank Lonergan to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Frank Lonergan to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Frank Lonergan, the elected official representing the City of Woodburn, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Linda Nishioka to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Linda Nishioka to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Linda Nishioka, the elected official representing the City of Salem, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Jordan Ohrt to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Jordan Ohrt to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Jordan Ohrt, the elected official representing the City of Stayton, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Walter Perry to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Walter Perry to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Walter Perry, the elected official representing the City of Jefferson, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Jim Row to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Jim Row to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Jim Row, the staff member representing the City of Woodburn, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Duane West to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Duane West to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Duane West, representing the Home Builders Association, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Walter Wick to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Walter Wick to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Walter Wick, the elected official representing the City of Aumsville, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

MARION COUNTY
BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of the appointment of Ryan Zink to the Materials Management Advisory Council	)))	Department of Public Works

O R D E R #: _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting of August 13, 2025, to appoint Ryan Zink to the Marion County Materials Management Advisory Council with a term beginning August 13, 2025, and ending on July 31, 2029.

IT APPEARING that the Board of Commissioners has established the Materials Management Advisory Council.

IT FURTHER APPEARING that in the planning, coordination, and implementation of a materials management system, the Board may give consideration to the concerns of interested citizen and representatives of affected communities, agencies, and organizations. After due consideration, the Board hereby enters the following order:

IT IS HEREBY ORDERED that the Board appoint Ryan Zink, the staff member representing the City of Salem, to the Marion County Materials Management Advisory Council.

This appointment shall be for a term beginning August 13, 2025, and ending on July 31, 2029. The appointed members are to serve at the pleasure of the Marion County Board of Commissioners.

DATED at Salem, Oregon, this 13th day of August, 2025.

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: August 13, 2025

Department: Public Works

Title: Public hearing for Conditional Use/Comprehensive Plan Amendment 24-038/TLM Holdings, LLC

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

Time Required: 10 min **Contact:** John Speckman **Phone:** 503-566-4173

Requested Action:

Staff recommends the application be approved. Other motion options for consideration 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 approve, modify, or deny the request.
4. Remand the matter back to the hearings officer.

Issue, Description & Background:

TLM Holdings, LLC submitted an application for a conditional use to expand an existing airport to allow a vertical takeoff and landing facility for aircrafts and a comprehensive plan amendment to amend the airport plan on a 16.54-acre parcel in an EFU (Exclusive Farm Use) zone located at 22515 Airport Rd NE, Aurora (T4S; R1W; Section 02D; Tax Lots 800 & 900).

The Marion County Hearings Officer held a duly noticed public hearing on March 6, 2025 and, after an open record period closed, on May 20, 2025 issued a recommendation to approve CU/CP24-038/TLM Holdings, LLC. As a part of the land use process, 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: Hearing Officer Recommendation

Presenter: John Speckman

Department Head Signature: for Brandon Reich

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:	)	Case No. CU/CPA 24-038
	)	**CONDITIONAL USE /**
TLM HOLDINGS, LLC	)	**COMPREHENSIVE PLAN AMENDMENT**

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of TLM Holdings, LLC for a conditional use to expand an existing airport to allow a vertical takeoff and landing facility for aircraft and a comprehensive plan amendment to amend the airport plan on a 16.54 acre parcel in an EFU (Exclusive Farm Use) zone located at 22515 Airport Rd. NE, Aurora.

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code, including MCC 17.119 (Conditional Use), CCC 17.136 (EFU Zone), MCC 17.177 (Airport Overlay Zone), the Marion County Comprehensive Plan Goals and Policies, Statewide Planning Goals, Oregon Revised Statutes Chapters 215 and 836, and Oregon Administrative Rules, including OAR 660-012 (Transportation Rule), and OAR 660-013 (Airport Planning Rule).

III. Public Hearing

A public hearing was held on this matter on March 6, 2025. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

1.	John Speckman	Marion County Planning Division
2.	Wendie Kellington	Applicant's Attorney
3.	Ted Millar	Applicant Representative
4.	Aron Faegre	Proponent of Application
5.	Tony Helbling	Proponent of Application
6.	Kevin Ferrasci O'Malley	Proponent of Application
7.	Betsy Johnson	Proponent of Application
8.	Mercedes Rhoden-Feeley	Individual Capacity / Opponent
9.	Mercedes Rhoden-Feeley	Representative Capacity for Aurora / Opponent
10.	Nancy Snyder	Opponent of Application
11.	James Snyder	Opponent of Application

No objections were raised as to notice, jurisdiction, or conflict of interest, or to evidence or testimony presented at the hearing. The following documents were presented, marked and entered into the record as exhibits:

Exhibits 1-6 were submitted by Wendie Kellington on behalf of Applicant and include:

Exhibit 1:	Correspondence from Irl M. Davis, PhD addressing opponents' concerns.
Exhibit 2:	Correspondence from Aron Faegre, Airport Planning and Design, addressing buildings for support services and indicating there will be no stand-alone offices and including test results for potable water quality.
Exhibit 3:	Correspondence from DKS Associates regarding 2024 TIS findings, traffic planning rule and addressing opponents concerns.
Exhibit 4:	Article regarding Orlando International Airport eVTOL vertiport development plans and vertiport development benefit.
Exhibit 5:	Correspondence in support of the application from Jason Montecucco, an owner of Montecucco Farms, LLC, which operates a farm along airport property on drone usage and details minimal farm impact.
Exhibit 6:	Master Plan Map of Airport Expansion proposal

Additional exhibits were presented during the hearing from multiple individuals and were marked alphabetically:

Exhibit A:	Parking analysis and summary from Aron Faegre
Exhibit B:	Letter of support for application from Wilsonville Area Chamber of Commerce
Exhibit C:	Letter in opposition from Mercedes Rhoden-Feely regarding failure to seek Goal exceptions and noncompliance with statewide planning goals
Exhibit D:	Correspondence from Nancy Snyder addressing objection to proposal, specifically noise and safety concerns, and with photographs illustrating proximity of helicopters and decibel counter.

An open record period was requested. The original open record period was permitted with the record open to all parties for seven days, seven additional days to allow responses to new evidence, and an additional seven days for the applicant to submit final written arguments.

On March 17, 2025, the open record periods were extended by one week to accommodate the large submission that was received from the City of Aurora on March 11, 2025. Based upon the size of the submission (approximately 4,800 pages), on March 19, 2025, the open record periods were extended by one week.

First Open Record Period:

March 11, 2025:	City of Aurora Submission (4,836 pages including substantive analysis from City of Aurora, Development alternatives from other aviation facilities, Public Utility Commission of Oregon Order)
March 14, 2025:	Friends of Marion County statement in opposition
March 19, 2025:	Applicant's Supplement to Exhibit 6
March 20, 2025:	Submission from Bruce Bennett in support of the application
March 24, 2025:	Statement in support from Philip Mandel
March 26, 2025:	Annual Board of Directors Meeting for HDSE Association Members (January 15, 2025)
March 27, 2025:	Submission from Association for Uncrewed Vehicle Systems International in support of the application.

March 27, 2025: Written submission and videos/photographs from Nancy Snyder detailing low flying aircraft and noise concerns

Second Open Record Period:

March 28, 2025: October 2000 Master Plan Update prepared for Oregon Department of Aviation for the Aurora State Airport, including Chapters 1 through 7

April 10, 2025: Documents submitted by Wendie Kellington on behalf of Applicant with Exhibits, including Response letter from HDS President Lukas Nickerson; Response letter from Fournier (HTS Chief Pilot and Director of Flight Operations), Response letter from Tony Helbling, Response Letter from Oregon Department of Aviation Director Kenji Sugahara, Response Letter from Life Flight CEO Ben Clayton, and HTS Land Use Approval

On April 19, 2025, pursuant to the request of Applicant and based upon the complexity of the issues in the exceedingly large record, Applicant's time to submit its final written argument was extended until May 1, 2025.

Final Open Record Period:

May 1, 2025: Applicant's Final Submission

IV. Executive Summary

Applicant TLM Holdings, LLC proposes to expand the airport boundary for the Aurora State Airport to include the subject property and to allow airport uses (as identified in ORS 835.616(2) and OAR 660-013-0100) to be developed with the expanded airport boundary. The site plan illustrates the proposal's layout of airport uses, facilities and services directed at electric-powered aircraft both electric vertical take-off and landing aircraft ("eVTOL"), electric powered fixed-wing aircraft, as well as traditional helicopters and fixed-wing aircraft. The proposal does not seek to change the plan designation or zoning for the property.

The consolidated application includes a conditional use permit for the airport boundary expansion and airport uses, a comprehensive plan amendment to amend the airport boundary map for the Aurora State Airport, and to otherwise comply with the requirements of the Airport Planning Rule. Applicant states that it is not required to take an exception to Goals 3, 4, 11, or 14, essentially because the proposed expansion does not permit service to a larger class of airplane but rather will accommodate aircraft that already use the airport. The proposal, however, must demonstrate compliance with the farm impacts test (ORS 215.296). Applicant must otherwise comply with the aviation facility planning requirements set forth in OAR 660-013-0040.

Applicant provided background information regarding the subject property. The subject property has been used as a retreat facility for more than 40 years. However, ever since the adoption of the Aurora State Airport Master Plan in 1976 which includes the 1976 Airport Layout Plan as part of the acknowledged Marion County Comprehensive Plan, the subject property has been designated for development with aviation uses. Following closure of the retreat facility, Application sought to put the subject property into productive aeronautical use consistent with the designation for it adopted in the 1976 Aurora State Airport Master Plan.

The 1976 Aurora State Airport Master Plan, including its airport layout plan, which is a map of the airport, is part of the Marion County Comprehensive Plan. The Airport Master Plan was coordinated with the City of Aurora, City of Wilsonville, and with Marion County. The 1976 Aurora State Airport Master Plan, including its airport layout plan, designates the subject property as suitable for airport related development under private ownership.

Applicant seeks approval by the County and completion of the required Oregon Department of Aviation (ODAV) processes to operate as a "through-the fence" ("TTF") operation at the Aurora State Airport. ODAV supports the proposal. The TTF operation would allow the business located on private property adjacent to the Aurora State Airport access to the airport's facilities without being physically located on airport property.

The Application, including its 63 exhibits, and the evidence entered into the record demonstrates that the proposal satisfies all applicable state and local land use regulations necessary for approving an expansion of the Aurora State Airport and to authorize airport uses within the expanded airport boundary. As detailed below, the Hearings Officer finds that Applicant has met the burden of establishing compliance with the applicable standards and criteria for a conditional use and comprehensive plan amendment to amend the airport plan at 22515 Airport Rd. NE, Aurora.

Therefore, the hearings officer recommends the Marion County Board of Commissioners **GRANT** the conditional use and comprehensive plan amendment applications, subject to the conditions of approval necessary for the public health, safety, and welfare.

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 subject property is 16.54 acres in size and is designated Primary Agriculture in the Marion County Comprehensive Plan, and correspondingly zoned Exclusive Farm Use (EFU). The property consists of tax lots 800 & 900 of Section 2D of Township 4 South, Range 1 West.

2. The subject property is on the west side of Airport Rd NE. The property is vacant and, in neither farm, nor forest use. There are no rivers, streams, wetlands, floodplains or other natural hazards on the parcel or within the immediate vicinity. The property is entirely within the Airport Overlay (AO) Zone. Special Exception 77-37 (SE77-37) approved the property's current configuration and therefore the property is considered a legal parcel for land use purposes.

3. The subject property is roughly level and is presently undeveloped. Structures from the previous use have been removed. An internal roadway for the former use was graveled and partially remains. The subject property has metered electricity and is connected to a gas main from when the property was used as a church camp and then a retreat.

4. The subject parcel is bordered to the north, west and south by parcels in the Public (P) zone that are part of the Aurora Airport. To the east, on the other side of Airport Rd NE, are EFU zoned lands in primarily agricultural use that stretch to woodlands adjacent to the Pudding River which is the county line between Marion and Clackamas counties. The properties to the south and west are part of the Southend Corporate Airpark and include a number of hangars, offices,

maintenance, repair, engineering and design facilities for various aviation related businesses and several Fixed Base Operators ("FBO"). One of those operators is Life Flight Networks.

The property to the south of the subject property is the site of HTS, which charters heavy lift and fire suppression helicopters and has repair and training facilities on-site. Like Columbia Helicopters, HTS is not within the Aurora State Airport boundary and does not have through-the-fence (TTF) access to the Aurora State Airport.

5. The subject property is within the Horizontal Surface District of the Aurora State Airport and is subject to the AO zone's use and development restrictions. The subject property has a taxi lane easement to the Aurora Airport's runway and rights to access the runway over a strip of property that TLM sold to ODAV several years ago. The Airport also holds a Flight Strip Easement over portions of the subject property, which grants the United States and the State of Oregon use of the easement area for aircraft use and further provides the United States and the State of Oregon the right to limit, control, and remove obstructions extending into the space above the subject property. The southwest corner of the subject property touches upon an airport access way that allows for through-the-fence (TTF) operations as envisioned by Aurora State Airport master planning, including the 1976 master plan that is an acknowledged part of the County's Comprehensive Plan

6. Applicant's proposal is for a conditional use permit to expand the Aurora Airport boundary to include the subject parcel, and to approve the airport uses identified in Oregon Revise Statute (ORS) 836.616(2) and Oregon Administrative Rule (OAR) 660-013-0100 and related development on the subject property. The application also includes a proposed comprehensive plan change to amend the Aurora Airport boundary map in Marion County Comprehensive Plan to include the subject property, concurrent with the expansion.

   The proposal does not involve service to a larger class of airplanes than already served by the Aurora Airport. Therefore, no goal exception is required for the proposal as per OAR 660-012-0065 *Transportation Improvements on Rural Lands* section (3) *"The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule"*, subsection (n) "*Expansions or alterations of public use airports that do not permit service to a larger class of airplanes"*.

   Airport uses are allowed as a conditional use in the EFU zone as an "other transportation facilit[y]" in MCC 17.136.050(J)(4), "*Roads, highways, and other transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 12."*

   Applicant states that MCC 17.136.050(J)(4) implements ORS 215.283(3), "*Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:*

   (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

   (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993."

Applicant is required to meet the farm impacts test of ORS 215.296, which is implemented in MCC 17.136.060(A)(1), to for approval to expand Aurora Airport to include, and develop airport uses on, the subject property.

ORS 836.625(1) states, "*The limitations on uses made of land in exclusive farm use zones described in ORS 215.213 and 215.283 do not apply to the provisions of ORS 836.600 to 836.630 regarding airport uses.*" The proposed uses on the subject parcel are included in ORS 836.616(2) and OAR 660-013-100 as uses that shall be authorized within airport boundaries.

Expansions of airport boundaries are guided by OAR 660-013. The application is not subject to the Transportation Planning Rules in OAR 660-012 as per OAR 660-013-160(3), "*Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 related Airport Planning.*"

The Application addresses MCC 17.119.070 *Conditional Use,* MCC 17.136.060(A) *Conditional use criteria in EFU*, MCC 17.177 *Airport Overlay Zone*, applicable policies in the Marion County Comprehensive Plan, Oregon Statewide Planning Goals, and applicable Oregon Administrative rules in 660-13.

7. The Planning Division requested comments from various governmental agencies. The comments received from the various agencies are summarized below:

Marion County Land Development, Engineering, and Permits requested that the following be included:

ENGINEERING CONDITIONS

Condition A – Prior to building permit issuance, design rural type frontage improvements along the Airport Road subject property frontage that are anticipated to include a new access, removing prior existing accesses, vegetation clearing, 5-foot gravel road shoulder, proper foreslope and drainage ditch relocation, and obtain a Major Construction Permit for same. Prior to issuance of a Building Department Certificate of Occupancy, acquire final inspection approval of the public roadway related improvements.

Condition B – Prior to building permit issuance, contribute a proportional share in the amount of $24,000 as presented in the February 2024 TIS Update toward the cost of planning, designing, and constructing signalization and turn lane improvements at the intersection of Ehlen Road and Airport Road as identified in the County RSTP and in the City of Aurora TSP, as a traffic mitigation measure.

ENGINEERING REQUIREMENTS

C. A maximum of one (1) direct driveway access point to Airport Road, not including Stenbock Lane, will be allowed. Access locations must meet the Major Collector minimum centerline spacing standard of 300 feet.

D. Storm water detention will be required; however, water quality treatment is not and therefore optional. Acceptable drainage and detention systems must be designed and approved prior to

issuance of a building permit. Any such system as required must be constructed and approved prior to issuance of a building Certificate of Occupancy.

E. Transportation System Development Charges (TSDCs) will be assessed upon application for building permits.

F. Evidence of a recorded Road Maintenance Agreement regarding Stenbock Lane, from which access is shown to be taken, is required prior to issuance of building permits.

ENGINEERING ADVISORIES

G. DEQ regulates ground disturbing activities of > 1 acre for construction stormwater erosion.

H. Airport Road is functionally classified a Major Collector and as such has a Special Setback of 40 feet from which building setbacks are to be measured.

Marion County Building Inspection commented: Permit(s) are required to be obtained prior to development and/or utilities installation on private property.

Oregon Department of Aviation (ODAV) reviewed the proposal and prepared the following comments:

(1) Prior to the construction or establishment of the proposed vertical takeoff and landing facility, the applicant must submit an application for approval of the airport site to ODAV, as described in Oregon Revised Statutes (ORS) 836.090.

(2) Prior to the construction or establishment of the proposed facility, the application fee must be paid to ODAV, as described in ORS 836.085.

(3) The proposed development must adhere to the approval criteria for the establishment of an airport as described in ORS 836.095 and OAR 738-020 (Minimum Standards for Airports).

(4) In accordance with FAR Part 77.9 and OAR 738-070-0060, the proposed development is required to undergo aeronautical evaluations by the FAA and ODAV. The aeronautical evaluations are initiated by the applicant providing separate notices to both the FAA and ODAV to determine if the proposal poses an obstruction to aviation safety. The applicant should receive the resulting aeronautical determination letters from the FAA and ODAV prior to approval of any building permits.

(5) The height of any new structures, trees, and other planted vegetation shall not penetrate FAR Part 77 Imaginary Surfaces, as determined by the FAA and ODAV.

(6) Any proposed external lights shall be designed so as not to interfere with aircraft or airport operations.

Additionally, the applicant is advised to review the FAA's webpage which outlines procedures for establishing private-use airports: https://www.faa.gov/faq/what-procedures-must-i-follow-build-private-use-airport. This includes the submittal of FAA Form 7480-1.

All other agencies either had no comment or did not respond.

8. In addition to the Application, submissions in support of and in opposition to the Application were received, and included in the record.

9. Friends of Marion County submitted a statement in opposition to the application. Friends of Marion County opposes the application based on safety and security concerns with respect to the use and development of eVTOLS. Friends of Marion County argue that the application seeks an urban use not related to agriculture and is not in harmony with the purpose of the EFU zone, and that there are other available sites that can more reasonably accommodate the proposed use. Friends of Marion County notes a conflict with the use and the ongoing use of agricultural drones in the area.

10. Joseph Schaefer objects to the application on the basis that the proposal is neither a public use airport nor an expansion of the Aurora State Airport boundary so OAR 660-12-0065(3)(n) does not apply and that the proposal violates ORS 215.283(3)(b). Mr. Schaefer also argues that the proposal is not consistent with Goals 3, 11, and 14 without an exception.

11. Friends of French Prairie opposes the application on the basis that the proposal is a private development on private land adjacent to the Aurora State Airport and is neither a public use airport nor an expansion of the Aurora State Airport. Friends of French Prairie argue that the proposal is for a transportation facility which is not consistent with Goals 3, 4, 11, and 14, and cannot be approved of rural lands without an exception.

12. Irl M. Davis, PhD, submitted a response to the objections brought by Friends of Marion County, Joseph Schaefer, and Friends of French Prairie. Dr. Davis states that the introduction of new rotorcraft pads will have no impact on current use of agricultural zones. Dr. Davis also responds to allegations of safety and security concerns noting that commercial eVTOLs are not ultralights and any use is subject to oversight through FAA regulations.

13. Michael Weimer, Chief Operating Officer for Lifeflight Network submitted a statement in support of the proposal. Mr. Weimer encourages approval of the application because the proposed facility will strengthen Life Flight's operational capacity to meet service demands. Mr. Weimer notes that Life Flight Network has outgrown its existing space and is actively evaluating relocation options.

14. The Aurora Airport Improvement Association submitted a statement in support of the proposal. President Tony Helbling states that the site presents a unique opportunity to allow an industry "cluster" of companies operating vertical lift aircraft. Currently, Life Flight, Columbia Helicopters, Winco Powerline Services, Wilson Construction Company, Helicopter Transport Services, Portland General Electric, and Teledyne/FLIR operate vertical lift aircraft at the location, and the proposal would support the Oregon Business Plan in promoting the concentration of these similar firms will bring development and jobs to a "long-time unproductive property."

15. The City of Aurora submitted comments in opposition to the airport boundary expansion. The City of Aurora objects to an extension of the two-year limitation in MCC 17.119.190 in general, asserts that an exception to Goal 12 is required, and that the proposal conflicts with ORS 215.283(3)(a).

16. The City of Wilsonville objects to the application. The City of Wilsonville does not support conversion of EFU land to non-agricultural uses in the French Prairie area of the Willamette Valley, and particularly to intensification of airport uses based upon existing environmental and infrastructure issues which could negatively impact the City of Wilsonville. The City of Wilsonville has a particular concern about the downstream impacts of stormwater discharge from the proposed facility.

17. Testimony was received at the public hearing held on March 6, 2025.

18. Wendie Kellington (Kellington Law Group), attorney for Applicant addressed the complex application, and discussed the exhibits presented with the application.

19. Ted Millar, principal of TLM Holdings, LLC, testified in favor of the application. Mr. Millar testified that the property was purchased from "Beyond the Reef" church camp with the understanding that it was intended as airport property. Mr. Millar noted that the property was never on tax rolls, but if approved, will contribute approximately $350,000.00 in tax revenue.

20. Aron Faegre testified in favor of the application. Mr. Faegre is an architect and civil engineer who worked on airport development. Mr. Faegre testified about the noise study and indicated that the new eVTOL aircraft is significantly less noisy than helicopters. Mr. Faegre stated that the noise impacts from this use are already captured and are lesser than existing noises.

21. Tony Helbling, an air ambulance and helicopter pilot, testified in favor of the application. Mr. Helbling testified that the proposal creates a place to allow more use for helicopters in medical transportation and construction. Mr. Helbling testified about the "clusters" of similar use companies that use helicopters and are centered at the Aurora Airport. The "cluster" of companies, including direct competitors, benefit by their proximity to services and workforce. Mr. Helbling noted that the industry "clusters" also reduce impact to surrounding areas.

22. Kevin Ferrasci O'Malley, CEO of the Wilsonville Chamber of Commerce, testified in favor of the application. Mr. Ferrasci O'Malley will have a significant economic impact on the area in revenue and jobs. The proposal, if approved, will capitalize on emerging technology, and will be a strategic investment in the County's growth.

23. Betsy Johnson testified at the hearing in favor of the application. Ms. Johnson has worked with the Department of Aviation, is a commercial helicopter pilot, and is on the Board of the Life Flight Network. Ms. Johnson encourages approval and supports the development of the next stage of aeronautical development and air operations in Marion County. Ms. Johnson noted the economic development and the benefit of "through the fence" legislation.

24. Mercedes Rhoden-Feely testified in opposition to the application in her individual capacity with the submission of Exhibit C, and in her representative capacity with the City of Aurora.

25. Nancy Snyder testified in opposition to the application. Ms. Snyder owns a house and farm across the street from the Aurora Airport. Ms. Snyder is a descendant of the Aurora Colony. Ms. Snyder testified that she objects to the application based upon environmental concerns, noise concerns, and impacts on surrounding farms and community. Ms. Snyder submitted Exhibit D, and addressed her concern regarding an incident in which fluids were dropped over her field from existing operations.

26. James Snyder testified in opposition to the application. Mr. Snyder, Nancy Snyder's brother, opposes the application because of the impact of the helicopter operations on his life and farm on his property that is across from the subject property. Mr. Snyder stated concerns about road maintenance and the noise from the increased helicopter presence.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met.

CONDITIONAL USE STANDARDS

2. MCC Chapter 17.136 EFU (Exclusive Farm Use) zone allows conditional uses in the EFU zone. MCC 17.136.050(J) allows certain transportation uses, to include:

(4) [O]ther transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 12.

This standard implements ORS 215.283(3), quoted above, and must be interpreted consistently with the statute. *Wetherell v. Douglas County*, 209 Or App 1 (2006). The standard allows transportation facilities and transportation improvements not otherwise allowed under the code (or statute) to be approved if certain requirements are met. Here, the expansion of an airport boundary (an airport is a transportation facility) is a transportation facility and/or improvement not otherwise allowed under the code.

The standard provides that an "other transportation facility or improvement" is subject to OAR Chapter 660, Division 12 and, if necessary, an exception to applicable goals. Here OAR 660-012-0065(3)(n) allows:

"(n) Expansions or alterations of public use airports that do not permit service to a larger class of airplane[.]"

The proposal does not permit service to a larger class of airplane as that phrase has been defined by the Court of Appeals. See Application Exhibit 4 (*Schaefer v. Oregon Aviation Board*, 312 Or App at 345 (discussing what is meant by different class of airplane)). All the rotorcraft and fixed-wing aircraft that would use the proposed facility are permitted service at the airport – the proposed facility does not permit the airport to service to any different aircraft than are otherwise permitted at the airport. The taxiway access to the property is limited to 82 feet in width due to existing structures, which precludes larger aircraft than those already permitted at the airport to access the subject property – the largest fixed-wing aircraft that could utilize the subject property's taxi lane access to the taxiway and runway under the proposal would be those with wingspans no larger than 75 feet which generally describe Class B-II aircraft. Last, nothing about the proposal requires the airport to implement any design standards to permit a larger class of airplane to use the Airport.

Therefore, the expansion is deemed to be consistent with Goals 3, 4, 11 and 14 and exceptions to Statewide Goals 3, 11 and 14 are not required. This finding is addressed further below.

ORS 836.625(1) provides that the limitations on uses in EFU zones described in ORS 215.283 do not apply regarding airport uses within airport boundaries. Consequently, the airport uses described in ORS 836.616(2) are allowed conditional uses within an airport boundary in the EFU zone.

The proposed expansion of the airport boundary and proposed airport uses are permitted conditional uses under MCC 17.136.0050.

3. Under MCC 17.119.020, a conditional use application may only be filed by certain people, including the owner of the property subject to the application. The application has been filed by the property owner as allowed. The application was filed by appropriate persons. MCC 17.119.020 is satisfied.

4. Under MCC 17.119.025, a conditional use application shall include signatures of certain people, including all owners of the subject property. The application for conditional use has been signed by the owner of the subject property. MCC 17.119.025 is satisfied.

5. Under MCC 17.119.060, the hearings officer may prescribe restrictions or limitations for the proposed conditional use but may not reduce any requirement or standard specified by this title as a condition of the use. The hearings officer shall impose conditions only after it has been determined that such conditions are necessary for the public health, safety or general welfare. Conditions of approval that relate to approval criteria and ensure the proposal complies with the mandatory approval criteria are appropriate. Applicant indicates that it does not oppose appropriate conditions of approval.

6. Under MCC 17.119.070, before granting a conditional use, the director, planning commission or hearings officer shall determine:

   A. That is has the power to grant the conditional use;

   MCC 17.110.680 grants the planning director the authority to handle all matters pertaining to conditional uses and other administrative matters as prescribed by the Marion County Code. However, this proposal is a consolidated request involving a comprehensive plan map amendment that the Marion County Code requires to be decided by the Board of Commissioners following a hearing before the Hearings Officer. The proposal is consistent with MCC 17.119.070(A).

   B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;

   MCC 17.136.010 provides the purpose for the EFU zone and provides in part "The purpose of the EFU zone is to provide areas for continued practice of commercial agriculture. The policy statement includes that the EFU zone is intended to be a farm zone consistent with OAR 660, Division 033, and ORS 215.283. The proposed expansion of the airport boundary and permitted uses is authorized by and is therefore consistent with ORS 215.283(3)(a), which is implemented by MCC 17.136.050(J)(4).

According to MCC 17.136.010, the purpose of the EFU zone is to provide areas for continued practice of commercial agriculture. The purpose of the zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water, and land resources of the county.

As a conditional use in the EFU zone, MCC 17.136.050(J)(4) lists "Roads, highways, and other transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject of OAR Chapter 660, Division 12."

MCC 17.136.050(j)(4) implements ORS 215.283(3), which provides:

"Roads, highways and *other transportation facilities and improvements* not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993." (Emphasis added)

This standard allows transportation facilities and transportations improvements not otherwise allowed under the code or statue to be approved if certain requirements are met. An expansion of an airport boundary and permitted airport uses are an "other transportation facilities and improvements" not otherwise allowed under the Statute or MCC.

The administrative rules referenced by the above code provision and statute are OAR 660-012-0065(3):

"The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:

"* * * *

"(n) Expansions or alterations of public use airports that do not permit service to a larger class of airplane[.]"

In order to determine that the proposed conditional use for airport expansion and airport uses is in harmony with the purpose and intent of the zone, the proposal will be evaluated with the specific criteria for a conditional use in the EFU zone and criteria for the AO zone.

The proposed expansion and alterations of the airport do not permit service to a larger class of airplane but rather will accommodate aircraft that use the airport. Nothing about the proposal requires the airport to implement any design standards to permit a larger class of planes to use the airport. As such, the proposal can be approved as a conditional use without taking an exception to Goals 3, 4, 11 and 14.

Opponents claim that the proposal is not the "expansion or alteration of *a public use airport*," because the subject land is privately owned. The Court of Appeals determined that the subject property must be brought into the Aurora Airport public use boundary in order to utilize the "through the fence" statutes that apply to privately owned property adjacent to the airport, which statute specifically names the Aurora Airport as a place for development of significant private airport related uses. *Schaefer v. Marion County*, 318 Or App 617, at 620 (2022).

"Requests for comprehensive plan amendments and zone changes, like the ones at issue here, sought by private parties without corresponding expansion of the airport boundary through the airport planning process are not expansions of public use airports within the meaning of OAR 660-012-0065(3)(n)." (Emphasis added) *Id.*

Airport expert Aron Faegre explained that the Aurora Airport is a public use airport under the federal definition of the term. Mr. Faegre states that even on the land at the airport that ODAV owns, there are numerous private developments that while operated as private business, they are considered a part of the KUAO public use airport. (March 27, 2025 Submission, Exhibit 15). Mr Faegre notes the unique Oregon public private partnership at public use airports in the "through the fence" statutes that the court of appeals described and addressed. He reinforces that those statutes (ORS 836.640-642) specifically govern by name the Aurora State Airport and its adjacent privately owned properties like the subject property. He points out that ORS 836.640 states that the "airport boundary" that OAR 660-12-0065(3)(n) permits to be expanded without goal exceptions, "includes the combined public and private properties that are permitted to have direct access to the airport runway by aircraft."

A proposal to include "through the fence" areas within the boundary of the Aurora Airport is, as a matter of law, the expansion of that public use airport under OAR 660-012-0065(3)(n).

MCC 17.136.010 recognizes that a broad range of non-agricultural uses are allowed on agricultural land that are deemed to be consistent with Goal 3 and harmonious with zones that implement Goal 3. OAR 660.012-0065(3)(n). The proposal is consistent with the standard.

C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

This criterion can be met by ensuring that any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

Conditional Use Review Criteria

7. The criteria for a conditional use in the EFU zone are found in MCC 17.136.060(A):

1. The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in

exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.

This criterion implements the farm impacts test of ORS 215.296. Farms near the Aurora State Airport have operated for decades. The evidence does not support that significant changes in practices or increases in costs of farm operations with the proposal that are different from the existing airport and helicopter-based operations immediately adjacent to and in the vicinity of the subject property. The proposal does not differ significantly from those uses immediately north or south of the subject property in terms of potential impacts to the land to the east of Airport Road that are devoted to farm use.

The specific assertion in the record about farm conflicts is from Aurora Farms' objection that the proposed facility will foreclose or make it more difficult or expensive to use drones in farming missions, and the proposed facility's traffic will make it hard or unsafe for farm equipment to move around. Friends of French Prairie (FOFP) and Friends of Marion County (FOMC) make similar assertions, as does Nancy Snyder. Nothing submitted in opposition to the application demonstrates significant increases in the costs of accepted farming practices or causes a significant change in accepted farming practices.

Aurora Farms does not use drones in its farming operations because it will have to start getting ATC permission to use drones in agriculture if the proposal is approved. However, the evidence indicates that ATC permission is currently required for drone operation. (Applicant's March 6 Hearing Exhibit 1, p 6.). Any drone flight for agriculture applications or monitoring or any other use for that matter right now, regardless of the proposal, must get approval from ATC to fly because of the proximity to the Aurora Airport and the fact that the area around the airport is strictly controlled airspace. Dr. Davis states that "[a]ny drone operator – on a farm or otherwise – who is within controlled airspace is now required to get approval from the Air Traffic Control Tower before undertaking almost any drone mission. *** Drones are aircraft. The airspace around Aurora Airport to include over the property of the farmer who wrote the objection (Aurora Farms) is controlled airspace. ***" and also "*** The particular farmer's drone operations are already significantly constrained by the Aurora State Airport's controlled airspace. The proposal does not change the controls that apply to the farmer's potential drone use at all.***"

An area farmer, Jason Montecucco of Montecucco Farms), farms directly across Airport Road from Columbia Helicopter, as well as on other land around the airport. Mr. Montecucco submitted a letter of support for the record and stated that the airport has not presented any problems whatsoever for his farming operations and he supports the proposal. (Applicant's March 6, 2025 Hearing Exhibit 5) Mr. Montecucco explained that he in fact uses drones in his farm operations and that getting ATC permission to fly drones for his farm-related missions is seamless and fast. He also explained that he has never experienced any problems with slow moving farm equipment conflicting with traffic on airport road, does not expect to have any such issues under the proposal, and importantly "no activity at the airport has ever hindered our ability to farm." Moreover, the Applicant's TIA explains that at most, farm equipment moving on Airport Road will experience a 5-second delay and the proposal presents no traffic safety concerns.

This testimony from Dr. Davis, Jason Montecucco of Montecucco Farms and DKS (DKS re traffic) is credible and is more persuasive than that from Aurora Farms and FOFP and FOMC.

Ms. Snyder's objections, while understandable, are not reasonable concerning HTS', lawful aviation activity at the airport that occur as authorized in the national airspace system. HTS' letter in the record (Exhibit 2) states that HTS has never flown over Ms. Snyder's residence, which her family recently built next to one of Oregon's busiest airport. HTS' chief pilot explains that "there is ADS-B information (available as public record) showing our flight paths on every flight", and there is nothing that supports any of those flights are over the Synder house. He explains that the water that Snyder has seen drip from helicopters is river water from practice missions over the Willamette River and that HTS does "endeavor to fly neighborly for all operations[they] conduct. Aircraft operations are typically more frequent at an airport, as to be expected. ***", he explains that HTS is committed to "being considerate to our neighbors within the confines of the flying we must absolutely do as a minimum to accomplish *** federally mandated life and property critical contractors. This flying is done at the Aurora Airport, within the parameters of our approved land use agreement and in compliance with the rules and regulations set forth by the [FAA]. ***." The other helicopter missions operate out of Aurora to include those associated with LifeFlight (whose headquarters are at Aurora) and Columbia Helicopters.

Because the proposal seeks to attract and support electric aircraft which are quieter, it is expected that the proposal will involve aircraft operations that will likely be less noisy than those experienced by Snyder's concerning HTS' operations. It cannot be said that the proposal either increases costs of farming or accepted farming practices because all the impacts referenced by the statements in opposition are presently occurring and have not been established to increase with approval.

Determining whether a use will force a significant change in, or significantly increase the cost of farm practices on surrounding lands devoted to farm use requires applying a three-part analysis set out in *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991). Under that test an applicant must (1) identify the accepted farm and forest practices occurring on surrounding farmland and forestland; (2) explain why the proposed use will not force a significant change in the identified accepted farm and forest practices; and (3) explain why the proposed use will not significantly increase the cost of those practices.

The closest farmland in the area is to the east of the subject property, across Airport Road. There, six large parcels are engaged in farming activity, growing hay or grass seed. To the south, south of Keil Road, there are several farms in orchard and row crop use. To the north, north of Arndt Road, are a variety of farms ranging from growing hay and grass seed to ornamentals, nursery trees, plants and row crops. Opponents Friends of French Prairie focus on farm operations distant from the proposed facility (on the west side of the Aurora Airport), and on Arndt Rd.
The proposal will not have a significant adverse impact on either the accepted farming farm practices on any farm identified in the record or cost of farm practices on those operations.

Each of these properties is encumbered by the County's existing AO Airport Overlay zone (*see* Exhibit 20 (AO Zone Map)), which imposes restrictions on those properties unrelated to the proposed airport boundary expansion and proposed uses. The accepted practices on these farms include the operating of large farm machinery to plant, irrigate and harvest crops. And as noted, the use of drones in farm practices.

Given that the proposal will allow rotorcraft operations similar to the rotorcraft uses presently occurring at the Columbia Helicopters, LifeFlight and HTS properties, which have co-existing with all area farm uses, the proposed use will be difficult to discern from those existing uses. As

noted, the farming operations have not had to significantly change or bear significant cost increases as a result of those rotorcraft operations. Similarly, any airplane operations on the subject property will involve ground movement from the subject property to the taxi ways to utilize the Aurora State Airport's runway. Such movement is similar to the existing ground movement on property immediately north of the subject property. That activity also has not forced a significant change in farm operations or increased the cost of those operations.

The potential adverse impacts that could flow from the proposal include noise, dust, air, water and transportation impacts both on the ground and in the air and are addressed herein.

Noise impacts are discussed in greater detail under the findings for MCC 17.136.060(A)(4) below. Aircraft, whether rotorcraft or fixed-wing aircraft, generate noise. However, agricultural uses, such as farm uses in the vicinity of the subject property, are generally not noise sensitive uses and the associated agricultural practices are not significantly impacted by rotorcraft or airplane operations.

The application mitigates potential noise impacts to farm operations and the cost of farm operations by placing the rotorcraft take-off and landing pad on the western portion of the parcel, farther away from farm activities and separated from farm activities not only by distance, but by buildings, parking areas and Airport Road. The noise generated by rotorcraft are greatest at landing and takeoff. The fixed wing aircraft based at the facility will take off and land from the existing runway at the airport. Any noise impacts from the proposed use on farm practices cannot be said to be significantly increased, given the similarity in the proposal's rotorcraft uses with historic, existing surrounding uses from Columbia Helicopters. LifeFlight and HTS as demonstrated by the submitted noise impact study and noise contour diagram. (Exhibit 35) The noise contour diagram from Exhibit 35 shows the 55Ldn noise contour for helicopter operations falls within the existing Aurora Airport 55 noise contour, which means the noise impacts will be similar to the airport's existing noise impacts, which have had no significant adverse impacts to farm operations or the cost thereof.

As for airplane noise and potential impacts, airplanes are noisiest when taking off. As noted, no fixed-wing aircraft will take off from the subject property, rather they will taxi to the KUAO runway and takeoff there as does every airplane at the airport. Given the extensive number of flights that currently take off from the airport runway, the additional airplane flights generated by the proposal is, at most, minor and the impacts to farm practices or cost of operations from such aircraft cannot be said to be significant.

Regarding dust, dust impacts will likely be decreased by the development when compared to the property's current status as undeveloped land. The subject property is currently undeveloped with little vegetation, which can create, theoretically at least, dust clouds in certain weather conditions. The paving of extensive areas of the property, needed for landing pads, tiedown areas, buildings and parking, will reduce the potential for dust being generated on the property. This decrease in dust from the subject property will not force a significant change in or significantly increase the cost of accepted farm practices in the area.

As established by the technical materials submitted with the application (Exhibits 36 and 37 re: stormwater and wastewater respectively), the proposal's environmental impact will be nominal and will not force a change on farm uses or significantly increase the cost of farm practices. The proposed uses have feasible wastewater and stormwater systems that will comply with all DEQ

requirements for wastewater and all requirements for stormwater metering and discharge such that the individual impacts and cumulative impacts from stormwater and wastewater are mitigated. This will ensure that there are no detrimental environmental impacts on the surrounding farm practices, nor will any environmental impacts create conditions that would increase the cost of farm uses.

The final consideration relates to transportation impacts. Vehicular traffic is further discussed below in the proposed findings addressing Goal 12, which are herein incorporated. In summary, Applicant's transportation impact study prepared by DKS demonstrates that the increased trips created by the proposal will not force a significant change in accepted farm practices or significantly increase the cost of those practices. (Exhibit 39, TIA) During the day, the TIA indicates that, at most, the increased traffic from the proposed use will cause a less than 5 second delay for farm vehicles when driving half-way around the entire Aurora State Airport. (Exhibit 39, page 32) This slight delay in transit on the surrounding streets cannot be enough to change farm practices or to significantly increase the cost of those practices, nonetheless, constitute a significant change or cost.

Public comments raised the issue of potential traffic conflicts with slow-moving farm vehicles along Airport Road, citing the high speeds reached by drivers largely commuting from the City of Aurora to work in Clackamas County. Those farm vehicle – high-speed driver conflicts are existing and are not the result of the proposed use. Vehicles departing from the subject property will, like farm vehicles entering Airport Road, initially be starting at a slow speed, and vehicles bringing persons to the subject property will be slowing down to enter the subject property, not traveling at high speeds. The proposed use will not be generating the type of high-speed through traffic about which comments expressed concern.

Finally, there are comments from opponents, in particular Friends of Marion County (FOMC) that helicopters and eVTOLs cannot function safely at airports with fixed wing aircraft. Along the same lines, they assert that eVTOLs are unregulated aircraft that will be used by terrorists as an attack mechanism to spur invasion of surrounding communities. Such assertions are wildly speculative and without merit.

Dr. Davis observes that the proposed facility is for commercial aircraft, not recreational aircraft and explains that eVTOLs are not ultralights and must operate consistently with FAA rules. (March 6, 2025 Hearing Exhibit 1, p 3-5) The Airport Director of the Chehalis Centralia Airport in Washington State, also an expert, reinforces this truism explaining "I am advised there have been concerns expressed that commercial eVTOL and eCTOLs are unregulated ultralight aircraft that cause safety concerns. That is incorrect. These aircraft are not unregulated ultralights in any respect and are strictly regulated by the FAA. The most recent FAA regulated program for 'Powered-Lift' aircraft came out in October 2024 and established requirements for pilot training and operations. The eVTOLs and/or eCTOLs planned on the subject property at Aurora are certified aircraft subject to a network of FAA safety, aircraft and flight rules." (Applicant's Post Hearing Submittal, Exhibit 11) The Association for Uncrewed Vehicle Systems International (AUVSI) stated the same thing in its expert support letter also in the record "FAA strictly controls the national airspace system which means no electric aircraft autonomous or otherwise, will be allowed to fly unless FAA determines that it is safe for them to do so." (Applicant's Post Hearing Submittal submitted March 27, 2025)

Dr. Davis further explains that any autonomous eVTOLs will not be allowed to fly until the FAA approves type certification for them. When drones or any other aircraft fly, they are governed by FAA's airspace rules, particularly when operating near airports. All operations at the subject property will have to coordinate with the KUAO ATC, including all autonomous or piloted operations within a 5-mile range of the tower, while flying below an altitude of 2,700 feet. Furthermore, the subject property and the surrounding farms are already within the horizontal surface areas of the airport and, under 14 CFR Part 107 (Application Exhibit 38), are required to have ATC (air traffic control) authorization to operate drones on their farms. Operations under the proposed expanded airport boundary changes none of these requirements and does not introduce any conflicts not already present because of the helicopter operations at Columbia Helicopter, LifeFlight and HTS, the Aurora State Airport generally, or airplane operations from the KUAO runway which have been operating safely under these same regulations for decades. Second, he explains that there are no documented reports of drones causing accidents at airports and there is no justification for opponents' conclusion that eVTOLs cannot safely operate at the Aurora Airport. In fact, the Orlando International Airport is developing eVTOL vertiport facilities at that very busy airport that has existing fixed wing and helicopter operations and the "Greater Orlando Aviation Authority (GOAA) is quoted as explaining "Developing a vertiport at Orlando International Airport is a key step in advancing our mission to be the global leader in the evolution of mobility." (Applicant's March 6 Hearing Exhibit 4, p 3)

Mr. Helbling, the President of the Aurora Airport Improvement Association (AAIA) and also an expert who works at Wilson Construction at the Aurora Airport, holding an FAA Commercial Instrument Multi-Engine Airplane and FAA Commercial Instrument Helicopter license for over 30 years, to include army night vision operations, explains in his expert letter (Applicant's April 10, Exhibit 3), that helicopters and fixed wing aircraft routinely operate successfully in extremely close proximity to one another. Mr. Helbling explains that HTS and Columbia's operations that abut the Aurora Airport are "two of the busiest heliports in the state" and are the bases for several types of heavy lift helicopters. He explains that four other companies maintain significant helicopter operations adjacent to the Aurora Airport runway to include Wilson Construction, LifeFlight, WINCO Powerline Services, and PGE. He explains that according to the FAA there have been no reported events of conflicts between helicopters and airplanes, except for a report where an incoming small airplane approaching the airport reported that "approximately 5 miles away, he could see a departing helicopter" and that such distance is "well outside the allowed minimum separation found in FAA flight regulations." He explains that helicopter operations at airports are important to successful missions, citing examples that he "has personally participated in" such as of "a patient is picked up by a rescue helicopter in the field and flown to an airport where a waiting airplane is going to move the patient to an appropriate care facility." And another of "a firefighting helicopter is grounded for a mechanical
reason and awaits delivery of a critical part" that is "delivered by airplane where a waiting helicopter delivers the part to a remote firebase where the grounded firefighting helicopter gets repaired and goes back to firefighting" and "critical electrical infrastructure parts are flown via airplane where a helicopter awaits at the ready to fly the part to a remote electrical substation in mountainous terrain – all to get the power restored to millions of people."

The Director of ODAV, explains that "[t]he Aurora State Airport is an "ideal site" for the proposal because the airport "already serves as a hub for aviation in Oregon and is uniquely positioned due to its existing infrastructure and public-private partnership opportunities" and that "the proposed project leverages Aurora's strategic role in the state's aviation ecosystem – particularly through its 'through the fence' agreements – to create a key node in the emerging electric aviation grid." He

explains his support for the project because "it is "vital that Oregon" prepares for" the transition to electric powered aircraft." He closes his letter explaining "Supporting this project is an important step toward" a future "where electric aircraft safely, cleanly and efficiently connect communities across Oregon – from the coast to the high desert" and the project "will contribute to economic development, environmental sustainability and a more connected Oregon."

The Director of the Utah Department of Aviation, Matt Maas, explains that Utah has a robust program supporting eVTOLs development at airports as a part of the state's "Advanced Air Mobility program" and that "[a]irports are prime locations for AAM programs because they are already aviation centers and provide a logical destination for refueling (re-electrification), maintenance, resting, loading unloading both cargo and customers" and that [e]nhancing the electrification of the airport is critical in supporting this new mode of propulsion, which will enable these aircraft to charge in 30-40 minutes." Mr. Maas explains that "Aurora is a unique aeronautical asset positioned to play a positive infrastructure role for this technology as Aurora is a site for Oregon's legislative partnership between private and public aviation enterprises under a specific 'through the fence' program designed to support aeronautical innovation and economic development."

The Airport Director of the Chehalis Centralia Airport in Washington State writes that his airport is one of "six electric aircraft beta test sites in the state" based upon a Washington State "Electric Aircraft Feasibility Study" that "identified the benefits of electric aircraft" to include "efficient and affordable transportation for people and goods, economic growth, good jobs, additional business revenues for communities, and significant assistance to emergency preparedness and resilience in times of crisis." He further points out that the Study points out "that electric aircraft significantly reduce noise and emissions as compared to existing combustion-powered aircraft." (Applicant's Post Hearing Submittal, Exhibit 11)

Ben Clayton, the CEO of LifeFlight, explains "The concerns expressed by [FOMC] regarding rotary-wing activity mischaracterize both the nature of helicopter operations and the existing aviation environment at [the Aurora Airport.]" (Applicant's April 10 2025 submission Exhibit 5) Mr. Clayton states, "Helicopters have long coexisted safely with fixed-wing aircraft at this airport under FAA-established procedures" and that Life Flight Network alone has operated out of Aurora since 2007, providing thousands of life-saving flights to hospitals across Oregon – often under urgent or time-sensitive conditions when helicopters are the only viable options." Mr. Clayton explains that "Aurora is already home to multiple helicopter operators, including those supporting firefighting, utility restoration, and law enforcement missions. To claim that helicopters are someone incompatible with this airport is inconsistent with both the current reality and the broader public interest." He closes by stating "[l]imiting helicopter access at or near Aurora would undermine the state's emergency response infrastructure and delay access to critical care for Oregonians in need" and asks that "the County *** recognize the vital public service air medical operators provide" and that such service is "not compromised by misinformation or mischaracterization."

There is insufficient evidence presented by the opponents to establish that the proposed use would cause any of the surrounding farm operations to change their farm practices in any way and nothing that would require farmers to incur additional costs, nonetheless significant costs, as a result of the proposed uses or development. The area farms have been successfully operating in close proximity to airport uses which includes robust helicopter operations for decades and nothing about the

proposal would require these farm operations to change their practices or incur additional expenses.

The proposed airport boundary expansion and airport uses will not force a significant change in, or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Based upon the evidence in the record and the analysis provided above, the proposal is consistent with this standard.

2. *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The subject parcel is served by the Aurora Fire Department and Marion County Sheriff's Department. Both already serve the adjacent properties within the Aurora airport. There are no indications of barriers that would preclude the same level of existing service being extended to the subject parcel. Applicant proposes inclusion of the subject property within the Aurora Airport land use boundary, which would place it within the existing Water Control District for the Aurora Airport that ensures adequate water supply is available to fight fires. Given the nature and scale of the proposed use and the availability of fire protection and other rural services that already exist on the property, there is no need to extend urban public facilities or services to the property. The criterion is met.

3. *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*

The subject parcel is flat, vacant and devoid of any identified fish or wildlife habitat. The stormwater and wastewater analyses submitted by the applicant show that neither system will cause significant adverse impact on the groundwater or watershed. The uses proposed include both gas and electric aircraft, but the applicant expresses specific intent in utilizing the subject property for the siting of electric vertical take-off and landing aircraft (eVTOLs) and electric fixed-wing aircraft which do not produce emissions.

Opponents raise concerns that the proposal may produce a significant adverse impact on the Pudding River which is just over a half mile east of the subject parcel. The floodplain of the Pudding is almost exactly half a mile east of the subject parcel. The section of the Pudding directly east of the subject parcel is buffered by a wooded area 600-feet wide at its narrowest point.

The subject property does not have an immediate direct link to the Pudding River and is only connected to the river via a stormwater ditch. There is also a perennial stream that connects the Pudding which is mapped as beginning roughly 700-feet east of the southeast corner of the subject parcel. The ODAV and FAA requirements will include preparation for potential spills. Applicant will be required to obtain permits to install and operate any of the waste or stormwater systems and Applicant will be required to comply with state and federal standards. This compliance will ensure that there will not be any significant adverse impact on any of the resources identified in the standard. There is no indication that the proposed use will have a significant adverse impact on the Pudding River.

The FAA imposes standards for all rotorcraft and fixed-wing aircraft with respect to exhaust emissions to ensure that there is not a significant adverse impact to air quality. Also, Applicant notes that eVTOLs and electric fixed-wing airplanes are not expected to have any emissions

because they are electric or hydrogen powered, which Applicant indicates presents an environmental improvement for air transportation. The criterion is met.

4. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

The uses to the North, West, and South of the subject parcel are part of the Aurora Airport, noise intensive, and will not be significantly impacted by the proposal. Applicant attests that fixed wing aircraft will not take off on the subject parcel itself. These aircraft will be stored on the subject parcel will be taxied over to the runway on ODAV property. Rotorcraft will be taking off and landing on the subject parcel. Rotorcraft also currently take off and land on the south adjacent parcel, creating noise that does not have significant adverse impact on nearby land uses. There are several residences amongst the farms to the east of the subject parcel. The closest are two home sites directly across from Airport Rd NE. One is 550-feet east, and another is 150-feet southeast from the eastern property line of the subject parcel.

Applicant's site plan shows hangers positioned on the northeastern side of the subject parcel, with take-off and land pads located on the western side of these hangers. Applicant attests that the structures will create barriers to help deflect noise from the neighbors. Applicant states that three flight paths have been proposed that orient to roughly correspond with established flight paths that avoid residential uses. The rotorcraft that will be taking off from the subject parcel will rise to an elevation of 600-feet above grade before leaving the horizontal bounds of the subject parcel, which will decrease the decibels reaching the ground after leaving horizontal bounds.

Applicant will be required to comply with DEQ's noise control regulations for airports set forth in OAR 340-035-0045. This compliance requires an approved application from DEQ. DEQ approval will ensure the noise mitigation practices on the subject parcel are sufficient to avoid significant adverse impacts on nearby parcels.

Based on the noise contours submitted by Applicant the noise from the proposal will be less than the noise already created by the Aurora Airport. The proposal will not increase the noise neighbors are already experiencing, nor cause any new adverse impacts resulting from noise.

The criterion may be met by compliance with conditions of approval.

5. *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

There are no nearby water impoundments of significant mineral and aggregate sites identified around the subject parcel. As such, the proposal will not have a significant impact on any resources. The criterion is met.

8. MCC 17.119.180.190 guides the effective date of the Conditional Use:

17.119.180 Effective date of conditional use.

Conditional uses granted by the director, planning commission or hearings officer under the provisions of this title shall not be effective until 15 days after the mailing of the notice of decision; provided, however, in case call up of the proceedings has been requested by the board or an appeal has been taken as herein provided, the conditional use shall not be effective until the planning commission, hearings officer or board has acted on the call up or appeal.

17.119.190 Conditional use right must be exercised to be effective.
Conditional uses granted under this title shall be effective only when the exercise of the right granted thereunder shall be commenced within two years from the effective date of that conditional use, unless a longer period be specified or thereafter allowed by the director, planning commission, hearings officer, or board. In case the right has not been exercised, or extension obtained, the conditional use shall be void. A written request for an extension of time filed with the director prior to the expiration of the conditional use shall extend the running of the conditional use period until the director, planning commission, hearings officer or board has acted on the request.

Applicant requests that discretion be exercised to specify what will amount to a longer period for the conditional use approval. Applicant requests a delayed effective date pending final decisions from this land use application, Oregon Department of Aviation (ODAV) and Oregon Department of Environmental Quality (DEQ) approvals.

MCC 17.119.180 specifies that the conditional use is not effective until the planning commission, hearings officer or board of commissioners has acted on a call up or appeal of the decision. MCC 17.119.190 explains that the rights granted by a conditional use decision must be enacted within two years of the effective date or receive an extension.

Applicant anticipates appeals beyond the Board of Commissioners based on the history of previous land use applications on the subject parcel. The required ODAV and DEQ approvals may also be appealed. In the event of land use approval that occurs before, or during, appeals of the ODAV and DEQ approvals, the exercise period for the conditional use permit may lapse due to these other appeals. The result would be a null decision on a technicality.

Marion County Planning Staff agrees that it reasonable to accommodate the entire process by postponing the effective date of this conditional use permit, and the two-year exercise period, until such time that the ODAV and DEQ permit processes have completed. Applicant specifically requests that the effective date for the commencement of the 2-year exercise period be the latter of either the date of the final order or decision by the County, LUBA, Oregon Court of Appeals, Oregon Supreme Court, or the date of the ODAV decision approving development of the site, or the DEQ decision approving the noise plan becomes final following all administrative and/or judicial appeals of those agency decisions, whichever of these dates occurs last. Staff recommended that the Board include this delayed effective date as a condition of approval and that any extensions to the 2-year period will also be based on the effective date as specified in MCC 17.119.190.

Opponents argue that an extension is not reasonable when the reason for granting the extension is based upon the Applicant obtaining permits. However, opponent's objection is misplaced because Applicant anticipates a lengthy appeal process as opposed to seeking time to allow it to simply obtain permits.

The hearings officer agrees that the appeal process could likely result in the lapse of a conditional use permit on a technicality. It is reasonable that the 2-year exercise period be extended as a condition of approval as the latter of either the date of the final order or decision by the County, LUBA, Oregon Court of Appeals, Oregon Supreme Court, or the date of the ODAV decision approving development of the site, or the DEQ decision approving the noise plan becomes final following all administrative and/or judicial appeals of those agency decision.

Airport Overlay (AO) Zone

9. The standards for the Airport Overlay (AO) zone are found in MCC 17.117.

17.177.010 Purpose.
The airport overlay zone is intended to minimize potential dangers from, and conflicts with, the use of aircraft at public airports based on the adopted master plans for each airport. It is to be used in conjunction with the underlying zone. If any conflict in regulation or procedure occurs with the underlying zoning districts, the more restrictive provisions shall govern. This section is intended to comply with Federal Aviation Agency Regulation FAR-77 and all other applicable federal and state laws regulating hazards to air navigation.

The proposal would expand the Aurora Airport boundary to include the subject parcel. The proposed use would therefore be coordinated with the existing operations to minimize potential dangers and conflicts resulting from the use of aircraft. In most cases the more restrictive applicable provisions are those within the underlying EFU zone. The proposed expansion and airport use may be permitted as conditional use in the EFU zone as per MCC 17.136.050(J)(4).

The proposal includes expanding the airport boundary to include the subject property to facilitate both rotorcraft and coordinated airplane operations. Regarding rotorcraft, Application Exhibit 2A shows the approach and departure paths that are consistent with FAA standards. The historic safe coexistence of helicopter operations at Columbia Helicopters and HTS and airport operations is evidence that helicopter operations, even those on properties adjacent to the Aurora Airport runway area, can be conducted safely and consistent with the purpose of the AO zone.

Regarding fixed-wing aircraft, the subject property has direct access to a taxiway, used by other TTF operations, that leads to the Airport main taxiway and runway. Aircraft using the taxiway will operate similarly to the other TTF operations, which have operated safely.

Applicant states that rotorcraft operations from the subject property will have their own imaginary surfaces. However, because the imaginary surfaces for vertiports/heliports are smaller than those for public use airports, the imaginary surfaces fall within the AO overlay zone established for the Aurora State Airport. Applicant posits that all development in close proximity to operations on the subject property will be safely regulated and no additional properties will be burdened by the AO overlay zone. (Application Exhibit 59) (14 CFR Part 77 (showing heliport imaginary surfaces at FAR 77.23 and civil airport imaginary surfaces at FAR 77.19); (Application Exhibit 60) (Aurora State Airport FAR Part 77 Airspace Diagram); and Application Exhibit 61 (Exhibits for OAR Chapter 660 division 13 Airport Zone Standards (showing required distances for approach surfaces, transitional surfaces, horizontal surfaces and conical surfaces for public use airports and heliports).

All aircraft departing from, arriving to, or operating in the vicinity of the Aurora State Airport must coordinate operations with the ATC or follow communications protocols when the control tower is not operating, the potential dangers or conflicts between the proposed uses and existing operations will be minimized.

There do not appear to be conflicts between the underlying zoning and the AO zone, and the proposal minimizes potential dangers from or conflicts with existing airport and airport related uses. Therefore, proposal is consistent with the purpose of the AO zone.

10. Airport Districts are addressed in Marion County Code 17.177.030.

MCC 17.177.030 Airport districts.

In order to carry out the provisions of this airport overlay zone, three airport development districts are provided within the airport overlay zone. These three districts are shown on the official zoning map showing the height limits adopted at the time the airport overlay zone is applied.

A. Airport Development District. This district consists of those lands, waters and airspace area at or below the primary, transitional and approach surfaces described in MCC 17.177.020(C).

1. Use Limitations. Any use, accessory use, buildings and structures otherwise allowed in the underlying zone shall be permitted provided the following requirements are satisfied:

a. No obstruction or object shall be permitted if it extends above the transitional and approach surfaces as defined in MCC 17.177.020(C).

b. Roadways, parking areas and storage yards shall be located in such a manner that vehicle lights will not result in glare in the eyes of the pilots, or in any other way impair visibility in the vicinity of the runway approach.

c. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.

d. No game preserve or game reservation shall be permitted if the animals or birds have the potential to become a hazard to air navigation.

e. No structure or use intended for public assembly shall be allowed except by a conditional use permit.

B. Horizontal Surface District. This district consists of the land, water and airspace underneath the horizontal surface as described in MCC 17.177.020(C).

1. Use Limitations. Any use, accessory use, building and structure allowed in the underlying zone shall be permitted provided the following requirements are satisfied:

a. No obstruction shall penetrate the horizontal surface as defined in MCC 17.177.020(C).

b. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.

c. Conical Surface District. This district consists of the land, water and airspace underneath the conical surface as described in MCC 17.177.020(C).

The subject property is within the transitional surface area for the Aurora Airport and is, therefore, within the Airport Development District as defined in MCC 17.177.020. Any development on the subject property shall be designed consistently with the listed standards that negate potential hazards to air navigation. The uses and developments proposed are consistent with these standards.

11. MCC 17.177.040 provides the required information for an applicant seeking a building permit in an Airport Overlay Zone.

MCC 17.177.040 Procedure.

A. An applicant seeking a building permit involving any use or structure regulated by the airport overlay zone shall provide the following information in addition to any other information required in the permit application:

1. Property boundary lines as they relate to the airport approach and the end of the runway;
2. Location and height of all existing and proposed buildings, structures, utility lines and roads.

Applicant is not seeking a building permit involving any use or structure. This standard does not apply to this proposal. Applicant will comply with this requirement at the time a building permit is sought. The proposal is consistent with this standard.

B. Proposed buildings or structures shall be approved by the building inspector if it is determined that they will not extend above the airport surfaces as defined in MCC 17.177.020(C).

Applicant is not seeking a building permit involving any use or structure. This standard does not apply to this proposal. As the site plan shown on Application Exhibit 1, as modified at the March 6, 2025 hearing, and building descriptions in Exhibit 1B as modified at the March 6, 2025 hearing demonstrate, Applicant can and will comply with this requirement at the time a building permit is sought. The proposal is consistent with this standard.

C. An applicant seeking rezoning, a conditional use permit or a variance involving any use, building or structure regulated by the underlying zone or the airport overlay zone shall be reviewed in accordance with the applicable procedure in this title. During this review process, the State Aeronautics Division shall be notified of the proposal and any public hearing, be given an opportunity to comment and be notified of the decision.

Applicant is seeking a conditional use permit for uses within the AO zone. This standard applies. Applicant has submitted the required application materials for the proposed use within the proposed expanded airport boundary. The evidence in the record demonstrates that the proposal is consistent with the limitations on development imposed by the Airport Development District. ODAV has been notified of the proposal and will be subsequently notified of public hearings regarding the proposal.

The proposal is consistent with the requirements of the AO zone.

Statewide Planning Goals

12. The proposal involves a comprehensive plan amendment to the boundary of the Aurora Airport in the County's Transportation Systems Plan (TSP). The MCCP does not contain specific review criteria for plan amendments, however, amendments to a comprehensive plan, to include adding a map of an expanded airport, must demonstrate that the proposal is consistent with all the Statewide Planning Goals as well as demonstrate consistency with other portions of the Comprehensive Plan and with OAR 660-013-0040 Aviation Facility Planning Requirements. The relevance of each goal in this proposal is discussed below.

Goal 1: Citizen Involvement

The County's procedures for notice and public hearings provide opportunities for citizen involvement. The goal is satisfied.

Goal 2: Land Use Planning

The application for expansion of the airport boundary to include the subject parcel, and airport uses on the subject parcel, has been submitted with Marion County Planning Department to review compliance with applicable zoning ordinances. Comments received on the application are included in the record. The Marion County Planning Staff recommendation was presented to the Hearings Officer for consideration and application of applicable case law. The Hearings Officer makes this recommendation to the Marion County Board of Commissioners who will make the decision for the County. The goal is satisfied.

Goal 3: Agricultural Lands

The proposal seeks to expand an airport boundary onto EFU land and to allow airport uses within the airport boundary. The Oregon Legislature has adopted a statute that allows on land zoned EFU transportation facilities and improvements not otherwise allowed by the statute subject to LCDC rule and a demonstration of compliance with ORS 215.296, the farm impacts test.

The relevant LCDC rule is OAR 660-012-0065(3), which is addressed in detail above and which provides, in relevant part:

"The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:
* * * *
(n) Expansions or alterations of public use airports that do not permit service to a larger class of airplane[.]"

As stated, the proposed airport boundary expansion will not permit service to a larger class of airplane. Application Exhibit 40. The Court of Appeals has explained that this means to include in the Aurora State Airport boundary the private through the fence operations like that proposed on the subject property. The court also explained that the type of expansion that does not fall within the rule – that provides service to a larger class of airplane – refers to an expansion that increases the design standards or otherwise permits the airport to serve a group of fixed-wing aircraft that have a greater variety of approach speeds, a greater variety of maximum takeoff weights or a greater variety of wingspans or tail heights. *Schaefer v. Oregon Aviation Department*, 312 Or App at 345 (Exhibit 4).

The proposal does not increase the design standards for the airport or otherwise permit the airport to serve groups of fixed-wing aircraft beyond those the airport has historically served. Therefore, under OAR 660-012-065(3), the proposed expansion of the airport and airport uses are consistent with Goal 3 as a matter of law.

The farm impacts test of ORS 215.296 is mirrored in MCC 17.136.060(A)(1)'s "force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding land devoted to farm or forest use" wording. The demonstration of compliance with that standard from the conditional use section above is hereby incorporated. Because the proposal satisfies the farm impacts test as explained above and is consistent with the requirements of OAR 660-012-0065(3)(n) as is also explained above, the proposed airport boundary expansion is consistent with the statute that implements Goal 3.

Likewise, OAR 660-012-0065(3)(n) allows alterations in uses and development within a public use airport boundary such as the airport uses proposed here. Generally, uses allowed on exclusive farm use land, and under what conditions, are regulated by ORS 215.283. However, the Court of Appeals has explained:

> "ORS 836.625(1) clarifies that '[t]he limitations on uses made of land in exclusive farm use zones described in ORS 215.213 and 215.283 do not apply to the provisions of ORS 836.600 to 836.630 regarding airport uses'
>
> * * *. As explained above, the provisions of ORS 836.600 to 836.630 allow airport uses and supersede ORS 215.213 and 215.283 "[w]ithin airport boundaries." ORS 836.616(2); *see also* OAR 660-013-0100 (requiring local governments to 'adopt land use regulations for areas within the airport boundaries' that authorize the airport uses enumerated in ORS 836.616." *Schaefer v. Oregon Aviation Board*, 312 Or App at 334-35 (brackets in original) (Exhibit 4).

The proposed airport uses are specifically allowed uses within airport boundaries and are allowed uses on EFU land. Because they also comply with the significant impacts test, they are consistent with Goal 3.

The proposed expansion of the airport boundary for the public use airport and the proposed airport uses are consistent with Goal 3.

Goal 4: Forest lands.

The subject parcel is not itself, nor adjacent to, forest lands. Applicant asserts that as a result of the proposed development, remote firefighting capabilities may be expanded which would contribute to conservation of forest lands. The goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources

The subject property is not affected by this goal, the goal does not apply.

Goal 6: Air, Water and Land Resources Quality

Compliance with Goal 6 requires evidence that it is reasonable to expect a proposal will be able to comply with applicable state and federal environmental quality standards. The applicant suggests that the proposed use of electric powered aircraft will result in far less emissions than the existing petroleum powered aircraft used at the Aurora Airport. As a result of the airport boundary being expanded, Applicant will have to meet all state and federal standards for aviation uses.

The subject property is not located within an identified air or watershed protected area. The proposed uses within the expanded airport boundary are not the type of uses that will result in significant particulate discharges into the air inconsistent with federal and state air pollution regulations. As the evidence in the record shows and as discussed above, one of the drivers for this proposal is to provide facilities for emerging electric-powered eVTOLs and electric fixed-wing aircraft, which are by far more environmentally benign than conventional piston-powered aircraft. Furthermore, federal regulations prohibit the application of state or local standards to regulate emissions from rotorcraft and other aircraft engines that are not identical to corresponding federal standards. (Application Exhibit 41, 40 CFR Part 1031 Control of Air Pollution from Aircraft Engines). Aircraft operating at the expanded airport can and will comply with those standards.

The evidence entered into the record from EMS demonstrates that there are a variety of feasible solutions to handle the wastewater expected to be produced by development of the property within the expanded airport boundary. The EMS materials establish that each approach could comply with State and County regulations governing septic disposal and can be approved by DEQ. Exhibit 37 (EMS Wastewater Analysis). Applicant explains how each of these potential solutions are both feasible and comply with DEQ standards. Applicant's evidence also explains why there will not be adverse cumulative effects under the identified systems. Compliance with these environmental quality regulations will be administered through the County and will ensure consistency with this goal. Contrary to the Schaefer letter, the fact that the property has feasible septic options necessarily means that the proposal does not exceed the carrying capacity of the subject property and is not contrary to Goal 6.

Evidence submitted by Applicant's engineer and consultants demonstrates that the subject property can have its own, safe and adequate water system supported by an on-site well. The well was tested and found to be a high-volume, producing a steady 40 gallons per minute for two hours. Application Exhibit 42 (Water Analysis (Shiloh Water Systems test results)). The water was also of good quality water, with the only contaminant above the EPA's maximum prescribed level being arsenic. Applicant's Exhibit 42 (Water Analysis (Edge Analytical test)). Applicant has

submitted evidence of a filtration system that will remove arsenic from the water and the cost for such a system, which is feasible to implement. (Application Exhibits 42-43) Applicant entered evidence into the record that proposes a pump and filtration system designed to provide adequate water flow and quality necessary for the site and proposed uses and includes provisions for maintenance and services of a certified water systems operator. As Mr. Faegre explained in Applicant's March 6 Hearing Exhibit 2, there is arsenic in both City water and groundwater in the area and it is completely feasible and normative to filter it out as is proposed here.

There are no MCCP identified wetlands or streams on the subject property. As explained above, the applicant has submitted a stormwater report and design, prepared by a registered professional engineer, into the record. Comments from the project manager notes, and Applicant accepts, the need for a stormwater drainage and detention improvements and DEQ NPDES permitting. Application Exhibit 36 (Mackenzie Stormwater Analysis). Those materials demonstrate that a feasible solution exists for managing stormwater runoff from the property that complies with state and federal environmental quality standards. Opponents assert that storm water from the proposal will adversely affect the Pudding River, ignoring that "[t]he proposed site can detain the required amount of volume" utilizing "a combination of 18" strip drains, detention pipes, and detention ponds" that will "detain water ahead of release off site and allow some surface ponding to occur," and that when released, water will be released at a such that a post-developed 10-year storm will be discharged at the existing 5-year runoff rate and will not exceed "the 5-year design discharge" for the 6,426 feet (1.2 miles) it then travels along Airport way in the existing ditch. Application Exhibit 6, p 2. It is unlikely that such stormwater run-off from the proposed facility will harm salmonids in the Pudding River more than a mile away from the subject property.

The stormwater analysis contains basin-wide data and analysis that demonstrates that the basin has sufficient capacity to handle permitted levels of stormwater discharge from the subject property and other properties within the basin such that there will not be adverse cumulative impacts from the proposed and potential development within the basin.

Regarding issues concerning air quality such as potential dust or smoke discharges, many of the uses proposed resemble those of the adjacent helicopter businesses and aircraft operations and there has been no complaints of adverse air quality impacts from those rotorcraft businesses or the airport. The same is true for aircraft movement within the adjacent TTF areas or from the TTF areas to the runway. Further, as demonstrated in the letters in the record from the various aviation experts, the proposal's focus on providing infrastructure for electric aircraft means that there will be next to no emissions because electric motors create virtually no emissions.

The evidence in the record demonstrates that the proposal will not result in water or air waste discharges that, individually or collectively with other discharges in the area, will threaten to violate or violate applicable state or federal environmental quality statutes, rules and standards.

Applicant provides evidence that both well and septic are feasible on the property. DEQ approval of the septic system will ensure compliance with state standards.

Applicant states that stormwater drainage, detention improvements and a DEQ National Pollutant Discharge Elimination System (NPDES) permit will be required to mitigate and manage stormwater runoff. The applicant provided a stormwater analysis demonstrating a feasible solution for managing stormwater that will comply with state and federal standards.

The cumulative effects of both stormwater and septic drainage were taken into account by the respective consultants hired by the applicant. Evidence was provided that the stormwater runoff will not exceed the capacity of the existing drainage system. Evidence was also provided that septic can be provided without discharge contributing to a cumulative negative impact on the soil or groundwater.

Applicant addresses several different potential solutions for the septic system. Applicant's consultant addresses the two options for septic dispersal on the subject parcel itself. The first option addressed is a holding tank, a system which involves total removal of wastewater from the property for processing at a wastewater treatment plan. The second is a septic system meeting the standards for a Water Pollution Control Facilities (WPCF) permit. The latter system suggested by the consultant would be built to a higher standard than the minimum standards for a WPCF permit, including effluent released with lower biochemical oxygen demand, lower total suspended solids, and a higher standard of bacteria treatment by ultraviolet light treatment at 99% efficiency prior to discharge.

Applicant has provided evidence that the proposal will be able to comply with all applicable state and federal environmental standards and will not decrease air, water, or land resource quality either by itself or cumulatively with the rest of the Aurora Airport. Goal 6 is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards

The subject property is not within either the floodplain or geohazard overlays. Applicant suggests that the establishment of rotorcraft on the subject parcel may enhance the Aurora Airport's ability to assist in emergency response during the next Cascadian subduction earthquake.

Applicant's consultant, GeoDesign, conducted geotechnical analysis at two other sites within the airport area, namely the Lima North Hangar Site to the west of the subject property and the Fuel Farm Site to the southwest of the subject property, for which GeoDesign did a site-specific seismic hazard evaluation. (Exhibit 44) The consultant is familiar with the site-specific conditions of the immediate area, which were supplemented by an exploratory soil boring and a cone penetration (CPT) probe on the subject property site.

Analysis of the samples gathered from those two on-site probes indicate that the soil conditions of interbedded seams and layers of sand, silty sand, clay and silt at the subject property are similar to the geology and subsurface conditions from the Lima North Hangar site and the Fuel Farm site. Significantly, although the general Relative Earthquake Hazard Maps (Madlin, Ian P. and Wang, Zhenming, 1999) indicate an intermediate to high hazard earthquake risk to the southern portion of the airport (located beyond the subject property more than 2,000 feet away from the subject property), the work completed by GeoDesign on the subject property indicates a relatively low seismic risk exists for development on the subject property.

Goal 7 is satisfied.

Goal 8: Recreation needs

No recreational space is present on the subject property. Applicant notes that potential private recreational aircraft or eVTOL use would be possible on the subject parcel but is not specifically being proposed. The subject property is not designated for recreational use and is not currently used for recreational purposes. Goal 8 does not apply.

Goal 9: Economic Development

This goal does not apply outside of an urban growth boundary. However, Applicant explains that the proposed development will create jobs and will likely attract early adopters of electric aircraft that may have direct or indirect positive economic impacts on the surrounding area and County as a whole. The private side of Aurora State Airport annually contributes $1.9 million into the local schools, police, fire and other Marion County services through various tax payments made by the businesses and their employees. Private development as proposed will add to those annual contributions. The proposal is consistent with Goal 9.

Goal 10: Housing

This goal applies to land within urban growth boundaries. This goal does not apply.

Goal 11: Public Facilities and Services

Applicant is not proposing the need for public water or sewage services to be extended. Applicant provided evidence that on-site water, wastewater, and stormwater facilities are all feasible. Applicant submitted expert technical evidence that demonstrates that it is feasible to design and maintain a pump and filtration system that provides adequate water flow and quality necessary for the site and proposed uses. Similar technical evidence demonstrates that adequate sewer and stormwater systems can be designed that meet state and federal requirements. The subject property presently has electrical service and gas service provided to it.

Existing fire and police services for the subject property are adequate for the proposed use. The proposal does not include any community or public facilities or services that will serve other properties.

The evidence in the record supports the conclusion that multiple development options to appropriately manage wastewater are feasible and practicable, with the latter options requiring appropriate subsequent additional land use approval.

Finally, and most specifically, OAR 660-012-0065(3)(n) which allows for expansions and alterations to a public use airport as consistent with Goals 3, 4, and 11. Goal 11 is satisfied.

Goal 12: Transportation

Goal 12 is implemented through the Goal 12 rule at OAR chapter 660, division 12. Airports are transportation facilities under Goal 12 and are subject to compliance with the Airport Planning Rule at OAR Chapter 660, Division 13.

OAR 660-013-0160(3) provides:

Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 regarding Airport Planning.

Direct compliance with Goal 12 and OAR 660-012 (the Transportation Planning Rule or TPR), are not required because the proposal demonstrates compliance with OAR 660 Division 13, which therefore deems the proposal to be consistent with Goal 12 and the TPR. Therefore, findings demonstrate compliance with the Airport Planning Rule for the proposed expansion of the Aurora State Airport and the proposed airport-related uses within the expanded airport boundary.

The proposed airport expansion and proposed airport uses within the airport boundary are allowed under the present zoning as a conditional use and there is no accompanying change to either the zoning or plan designation for the property to trigger the TPR. Accordingly, because the zoning and the plan designation for the subject property remain the same after approval of this Application, the allowed airport boundary expansion and airport uses are deemed to have already been factored into the transportation impacts analysis for the TSP and the County can reasonably conclude that the Goal 12 rule's significant impacts analysis is not triggered on the basis of the terms of the TPR as well. *See Ooten v. Clackamas County*, 70 Or LUBA 338 (2014), *aff'd*, 270 Or App 214, 349 P3d 1305 (2015) (to determine whether a redesignation "significantly affects" a transportation facility, a local government should compare the most traffic-generative use reasonably allowed in the current zone with the most traffic-generative use reasonably allowed in the new zone).

The current Marion County Transportation System Plan (TSP) was adopted on December 21, 2005. Pursuant to OAR 660-012-0005(40), the planning period for the TSP is the 20-year period following the date of adoption, which makes the end of the planning period December 21, 2025.

Applicant's transportation consultant, DKS Associates, conducted transportation studies related to the subject property and to the Aurora State Airport. The most recent of those studies is the 2024 TIA (Exhibit 39)

Based on the analysis contained in the 2024 TIA, the proposed development does not have a significant effect on any transportation facilities. The 2024 TIA (Exhibit 39) analyzes seven (7) different transportation facilities/intersections involving five (5) roads in the vicinity of the subject property and the three (3) entrances/exits to the subject property. The TIA includes an analysis of the existing conditions for each of the relevant intersections, as well as a safety analysis based on the most recently available data.

The evidence in the record supports the conclusion that the proposal will not have a significant effect on transportation facilities and that the proposal complies with the requirements of Goal 12 and the Transportation Planning Rule.

Goal 12 is satisfied.

Goal 13: Energy Conservation

The proposal is consistent with the goal of conserving energy in several ways. The proposal involves electric powered aircraft which will require less non-renewable petroleum resources. The expansion of the Aurora Airport to include the subject parcel for airport uses is more energy efficient than establishing the proposal elsewhere, considering the aviation related travel. The subject property's proximity to major established transportation routes in the County ensures efficient travel times and distances to and from the subject parcel. The proposal is consistent with Goal 13.

Goal 14: Urbanization

As with Goals 3, 4, and 11 above, OAR 660-012-0065(3)(n) provides that this proposed expansion and alteration of the public use Aurora State Airport, because it does not permit a larger class of airplane and so is deemed to be consistent with Goal 14.

The Airport Layout Plan (ALP) Aurora State Airport Master Plan adopted in 1976 and that is included as an acknowledged part of the Marion County Comprehensive Plan envisioned the subject property as appropriate for the type of airport uses and related development proposed here, whether one considers it urban or rural. This proposal represents the orderly and efficient transition to the use for which it is designated by the County Plan. The proposal is consistent with Goal 14.

Goal 15: Willamette River Greenway
Goal 16: Estuarine Resources
Goal 17: Coastal Shorelands
Goal 18: Beaches and dunes
Goal 19: Ocean Resources

The subject property and proposal will not affect the Willamette River Greenway, any estuary, coast or ocean. These goals do not apply.

Marion County Comprehensive Plan

13. The Marion County Comprehensive plan outlines policies to guide development. As noted, the MCCP does not contain specific review criteria for plan amendments, but plan amendments bust be consistent with applicable MCCP goals and policies.

The following policies are relevant or applicable to the proposal. Excluded policies are those found to be inapplicable.

Rural Lands

14. The general development policies applicable to rural lands in Marion County are:

1. All land divisions should be reviewed by Marion County for their compatibility with County goals and policies.

The applicant is not proposing a land division, this policy does not apply.

2. "Strip-type" commercial or residential development along roads in rural areas shall be discouraged.

The proposal is for neither commercial nor residential development that could be described as "strip-type." Hangars similar to those proposed here are found throughout adjacent properties and are typical for aviation-based transportation facilities and related uses. The use of such buildings will not appear out of context given the development of the adjacent surrounding properties.

3. Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.

The proposed expansion is compatible with the existing airport development to the north, west, and south of the subject parcel. The airport use is better suited for siting near similar uses, and those uses that are not noise sensitive such as crop farming, than near dense urban residential development. The proposal's compatibility with agricultural goals is accomplished by compliance with the farm impacts test administered as part of the Conditional Use criteria (MCC 17.136.060(A)(1)). The proposal is consistent with this policy.

Agricultural Lands Policies

15. The proposal must be consistent with the County Plan's agricultural goals and policies.

1. Preserve lands designated as Primary Agriculture by zoning them EFU (Exclusive Farm Use). Lands designated as Special Agriculture should be protected by the corresponding SA zone and farmland in the Farm/Timber designation should be protected by the Farm/Timber zone.

The proposal does not involve changing the zoning or designation of the subject property, which is zoned EFU. The proposal seeks a use that is identified as a permitted conditional use in the EFU zone that OAR 660-012-0065(3)(n) states is consistent with Goal 3, Agriculture. The proposal is consistent with this policy.

Marion County's acknowledged Comprehensive Plan specifically designates the subject property as being appropriate for airport related uses under private ownership, even though it is zoned EFU because the County's Plan includes the 1976 Aurora Airport Master plan as an element and that 1976 airport master plan designates the subject property for airport related development and recommends that it be zoned "Airport Development." (See Application Exhibit 6, p 50)

2. Maintain primary agricultural lands in the largest areas with large tract to encourage larger scale commercial agricultural production.

The subject property consists of two tax lots totaling 16.54-acres zoned EFU. The property is surrounded by airport uses to the north, west, and south. Airport Rd NE borders the eastern edge of the property, and on the other side of the road is a large tract of land in agricultural use. The property was not historically utilized for agricultural purposes, but rather as a church camp and retreat since at least sometime prior to 1970. The proposed use does not infringe on the agricultural uses to the east, nor does it remove agricultural land that could be utilized for large scale commercial agricultural production. Therefore, the proposal is consistent with this policy.

3. Discourage development of non-farm uses on high-value farmland and ensure that if such uses are allowed that they do not cause adverse impacts on farm uses.

Applicant acknowledges that non-farm uses on high-value farmland are discouraged, and notes that this policy is discretionary. The subject parcel is surrounded on three sides by the Aurora Airport. The proposed use is one that the EFU zone expressly allows and so is not properly characterized as a "nonfarm use" because ORS 215.283 treats it as an appropriate use of land zoned EFU. As discussed above, the criteria in MCC 17.136.060(A) for a conditional use, which includes the farm impacts test, has been met. Therefore, the proposal is consistent with this policy.

Rural Services Policies

16. The proposal must be consistent with the County Plan's rural services policies.

1. The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.

The proposal includes explanations of feasible onsite water and stormwater services and no extensions onto other properties will be required for these services. The applicant provides expert testimony to affirm that DEQ approved wastewater treatment is feasible onsite. The 2024 Traffic Impact Analysis (TIA) shows that the proposal will not result in significant impact on a transportation facility. The applicant proposes a condition of approval of ½ street frontage improvements on Airport Rd and paying a fee in-lieu. The proposal is consistent with this policy.

2. It is the intent of Marion County to maintain the rural character of the areas outside of urban growth boundaries by only allowing those uses that do not increase the potential for urban services.

The subject property is within the area designated in the 1976 Aurora Airport master plan as being appropriate for airport related uses under private ownership. This does not conflict with the general policy of maintaining the rural character of areas outside of urban growth boundaries.

The proposal is also contemplated per ORS 836.640 and 642 which states that "through the fence" areas as proposed at the Aurora Airport are to be encouraged and included in the airport boundary. The proposal is authorized and contemplated by state law and does not require the extension of urban services to the site. All services will be provided on site or within the airport boundary. Evidence in the record demonstrates that the subject property has adequate onsite capacity and resources to serve the proposal's water, sewer and stormwater needs. Application Exhibits 42, 43, 36, 37 respectively.

The subject property is located immediately adjacent to other aviation-oriented TTF operations within the airport boundary and an adjacent rotorcraft-oriented business (HTS) that are presently not connected to urban services other than the existing HDSE wastewater system that serves multiple Aurora State Airport parcels and that is still performing at well below capacity.

The proposal is consistent with this policy.

3. Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.

The proposal is designated as appropriate for the use within the Aurora Airport master plan. The proposed expansion of the airport boundary would allow the property to enact uses appropriate within the Aurora Airport. No new facilities or services to serve the proposed development would be required. In addition to finding that onsite wastewater is feasible, Applicant proposed the other possibilities of connecting to the existing HDSE wastewater system which is located entirely within the Aurora Airport boundary, or the southern adjacent Columbia Helicopters drain field which is also within the Aurora Airport boundary. The proposal will not encourage development inconsistent with maintaining the rural density and character of the area and will not promote the increased development on other rural properties. The proposal is consistent with this policy.

4. The sizing of public or private service facilities shall be based on maintaining the rural character of the area. Systems that cannot be cost effective without exceeding the rural densities specified in this Plan shall not be approved. The County shall coordinate with private utilities to ensure that rural development can be serviced efficiently.

Applicant has established that onsite services are feasible, and that there is also the potential for alternative wastewater options within the Aurora Airport boundary. No public facilities are required, and the private systems would not be incongruous with rural character of the area. Services scaled to meet the requirements of the proposed airport uses within the expanded airport boundary will not require exceeding the rural densities specified in the MCCP. The proposal is consistent with this policy.

Air, Rail, Water, Energy and Pipeline Transportation Policies

17. The proposal must be consistent with the County Plan's Air, Rail, Water, Energy and Pipeline Transportation Policies as these modes are an important part of the existing and future transportation network in terms of moving freight, passengers, services and information in the County.

1. Airports and airstrips shall be located in areas that are safe for air operations and should be compatible with surrounding uses.

The proposal would expand the Aurora Airport boundary to encompass the subject parcel, which is itself designated within the Aurora Airport master plan as appropriate for airport uses. The southern adjacent parcel accommodates takeoff and landing of helicopters, and the north and western parcels contain hangers with aircraft that utilize the Airports runway. The parcel is within an area that has proven to be safe for air operations and is compatible with the surrounding uses.

The helicopter-based operations at the HTS and Columbia Helicopters properties demonstrate that rotorcraft can safely take off, land and operate near the Aurora State Airport fixed-wing airplane operations as well as with the surrounding agricultural lands. The fixed-wing airplane operations at the surrounding TTF operations and ODAV-owned parts of the airport demonstrate that the area is safe for fixed-wing operations and are compatible with surrounding uses.

The range of proposed airport uses is compatible with the surrounding uses – both at the airport and on agricultural land. The proposal is consistent with this policy.

2. The County should review and take appropriate actions to adopt State master plans for public airports in Marion County.

The proposal is consistent with Aurora Airport Master Plan of 1976 which is adopted into the County's comprehensive plan. The area is specifically designated as acceptable for airport related development under private ownership. The proposal is consistent with this policy.

3. The County will adopt appropriate provisions (including plans, ordinances and intergovernmental agreements) to protect the public airports from incompatible structures and uses. These provisions will be consistent with Federal Aviation Administration guidelines.

These provisions are provided for within MCC 17.177 Airport Overlay zone. The subject property falls within the Horizontal Surface District of the Aurora State Airport. A demonstration of compliance with the AO zone requirements is provided above and is herein incorporated. The proposal is consistent with this policy.

4. The County will discourage noise-sensitive uses from locating in close proximity to public airports.

The proposed expansion would be within the Aurora State Airport's Ldn 55-65 dBA noise contour, and the aircraft uses on the property would be compatible with those noise levels. The proposal is consistent with this policy.

Transportation System Management Policies

18. The proposal must be consistent with the County Plan's Transportation System Management Policies. The purpose of Transportation System Management (TSM) strategies is to maximize the capacity, safety, and efficiency of the existing transportation system through the application of traffic control improvements, access management, and land use controls. The relevant policies related to access management are addressed below.

7. Land use changes that could result in increased development levels and thus higher traffic levels will be assessed for their impact to current and future traffic volume and flow, and these impacts must be appropriately mitigated (as determined by the Public Works Director in accordance with applicable standards and practices) in order for the development to be allowed.

The County will use this policy to determine potential requirements to mitigate traffic impacts (as opposed to being an approval standard). Applicant has submitted a TIA and other supporting evidence to demonstrate that the mitigation of potential traffic impacts. The proposal is consistent with this policy.

Development and Access Policies

19. The proposal must be consistent with the County Plan's Development and Access policies which provide guidelines for linking transportation and land use in an attempt to provide suitable

transportation facilities while protecting and preserving the agricultural and rural nature of the County. The policies also outline right-of-way and roadway improvement requirements for new developments in the County.

Policy 7. To prevent exceeding the function and capacity of any component of the transportation system, the County will consider roadway functional classification, capacity and current conditions as primary criteria for proposed changes in land use designations and proposed land use developments. In addition, present and anticipated safety issues shall also be significant criteria.

Applicant submitted a Traffic Impact Analysis in which the roadway classifications are addressed. Applicant acknowledges the County will use this policy to determine potential requirements to mitigate traffic impacts. The proposal is consistent with this policy.

Policy 8. The County shall review land use actions, development proposals and large transportation projects in the region for impacts to the transportation system and facilities. If the impacts are deemed significant by the County and cannot be mitigated to the County's satisfaction, the action shall be denied or modified until the impacts are acceptable. The County shall also consider the impact these actions have on affected communities and urban areas.

The TIA submitted by the applicant confirms that the proposal is consistent with this policy. Additional standards, and any mitigation, will be required by Marion County Public Works.

Policy 9. Access to developments must be from roadways with appropriate functional classifications and improved to appropriate standards. (Table 10-3 in the RTSP shows the maximum trip generation for new or expanded developments based on the functional classification and character of the roadway from which it gains access.)

The subject property would take access from Airport Road NE and Stenbock Way NE. The Rural Transportation Systems Plan (RTSP) indicates capacity for an additional 3,000 daily drips on Airport Road NE, which is classified as a major collector. The TIA submitted by the applicant suggests that the proposal will not generate trips that could exceed the capacity of Airport Road NE. All access points to the subject property will operate consistently with the functional classification of Airport Road. The proposal is consistent with this policy.

Policy 10. (A) The number of access points on arterial and major collector roadways shall be kept to a minimum to reduce the interruption to traffic flow and to promote safety. All new or expanded-use accesses must meet the access management standards in the RTSP (see Section 10.1.3).

The obligation to minimize access points is not an approval criterion, rather the controlling criteria is the access management standards. The County will ensure that the Applicant complies with access management standards through the site review process. Applicant's site plan, TIA, and related analysis demonstrates that compliance with the County's access management standards is feasible for the proposed uses on the subject property. The proposal is consistent with this policy.

Policy 25. All new developments shall be reviewed to ensure that they have an adequate storm water system. Specific requirements can be found in Marion County's Engineering Standards (or subsequent document).

Applicant submitted an engineer's report regarding stormwater management requirements and a proposed system design for review by Marion County Public Works. (Exhibit 36) The proposal is consistent with this policy.

Right-of-Way Policies

20. The proposal must be consistent with the County Plan's right-of way policies. There is a significant amount of public right-of-way in Marion County. Much of it is occupied by roads, while some remain undeveloped. Policies with respect to use of this public right-of-way include:

Policy 2. New transportation facilities of all types should use existing rights-of-way to the extent possible to minimize disruption to existing land use.

The proposal is for an aircraft transportation facility that would only utilize existing rights-of-way to for access and egress onto the subject property. There is no indication that access to the parcel will result in significant disruption to existing land use in the area. The proposal is consistent with this policy.

Marion County Economic Development Goals

21. The proposal must be consistent with Marion County Economic Development Goals. Marion County's major economic goals are:

a. Provision of increased employment opportunities for all residents of the County;

The findings establishing Goal 9 compliance above are herein incorporated. The proposed airport expansion and airport uses will provide increased employment opportunities. Construction related to building the proposed airport uses will require employment of skilled workers during the period of development and once the project is developed as well. The services provided at the airport uses will provide a range of employment opportunities for white collar, skilled and unskilled workers. Services related to expanded operations and services related to eVTOL and other electric-powered aircraft services will require the creation of new employment opportunities as will any expansion provided to companies such as Columbia Helicopters and Life Flight that are seeking locations for expansion. Also, as the ODAV 2014 economic analysis demonstrates, aviation-based activity creates economic opportunities in the area immediately around the activity as well as the greater region. (Exhibit 46) ODAV's 2021 economic analysis for the Airport showed similar economic benefits. (Exhibit 47) The proposed airport uses will provide increased employment opportunities. The proposal is consistent with this policy.

b. Maintenance of a strong agricultural economy;

The proposal has met the conditional use criteria, that includes the farm impacts test, in MCC 17.136.060(A) and will therefore not be detrimental to the agricultural economy. Neighboring agricultural operations may now, and in the future are likely to, utilize electric takeoff and

landing vehicles in their operations. The proximate location of the proposed vertical takeoff and landing aircraft facility where such aircraft can be hangered/stored for lease to farmers, will enable neighboring agricultural operations easy access to such aircraft that they are otherwise unable to afford to own or lack storage capacity or maintenance expertise. The proposed facility could serve as a leasing hub for aircraft such as large agricultural drones. The proposal is consistent with this policy.

d. Diversification of the economic base of communities, and expansion of seasonal employment opportunities to year-round status wherever possible;

The proposal would allow for development of a site for the next-generation of eVTOLs and electric-powered fixed-wing aircraft. This diversification of aerial vehicles will create a diversification of job opportunities at the Aurora Airport, for the County as a whole. The Aurora Airport is well-known to be a significant source of tax, wage and direct and indirect tourist and other spending revenue for Marion County and the immediately surrounding communities. However, the Airport does not currently have the capability to serve electric aircraft. The proposal enables the airport to diversify to include electric aircraft facilities served by the proposed hydrogen electricity source that otherwise does not exist at the airport. The proposal is consistent with this policy.

f. Development of a transportation system for the safe and efficient movement of persons and goods for present needs;

The 1976 Aurora Airport master plan indicates the need for growth in helicopter operations. The applicant submitted letters from potential users of the proposed facilities supporting the present need for an eVTOL site which is not currently available at the Aurora Airport.

There is a need for facilities for electric aircraft, in particular eVTOL aircraft. *See*, e.g., Exhibit 7 (Draft Master Plan Update); Applicant's Post Hearing Submittal Exhibit 6, Exhibit 52 (Aurora State Airport constrained Operations Runway Justification Study); Exhibit 53 (TransportUp, "Oregon will use up to 126 Jump eVTOL aircraft for emergency response"); Exhibit 54 (Flying Magazine, "More than 100 Electric Aircraft for First Responders May be Headed to Oregon"); Exhibit 51 (FAA, "Advanced Air Mobility (AAM) Implementation Plan, July 2023); Exhibit 56 (Deloitte, "Advanced Air Mobility: Can the United States afford to lose the race?"); Exhibit 57 (Aviation International News, "Textron eAviation Shows Off FAA-Approved Velis, Works on Nexus eVTOL"); *and see* Exhibit 63.

There are currently no facilities at the Aurora State Airport or other airports that can provide power to or maintain eVTOLs and electric-powered fixed-wing aircraft, technologies that will be rolling out over the next several years. (Application Exhibit 51, FAA, AAM-I28 Implementation Plan) The evidence indicates that eVTOLs will be hitting the market by 2025, and there is a hard need for facilities and pilot studies by 2028), and see Letters from ODAV Sugahara (stating he supports the proposal recognizes it enables Oregon to not fall behind on the emerging electric aircraft program). See, Applicant April 10, 2025 Exhibit 4, Utah Aviation Director letter at Applicant Post Hearing Submittal, Exhibit 10, Chehalis-Centralia Airport Director letter at Applicant Post Hearing Submittal Exhibit 11.

The planning and development of public facilities to address the growing demand for the proposed airport uses has not been met and is largely being left to the private sector to address. (Exhibit 58 ODAV, Aurora State Airport Assessment Report, December 2018, p. 42-43) The proposed airport uses within an expanded airport boundary is consistent with this approach of allowing the private sector to address pressing needs and addresses a need identified by existing commercial rotorcraft operations and particularly with respect to the recent rapid development in eVTOL technology.

The proposal is consistent with this policy.

g. Coordination of planning and development of public facilities;

The proposal is for a public facility in the sense that it is for the expansion of a public use airport. The Aurora Airport master plan indicates that the subject property is appropriate for airport related uses in private ownership. The proposal is for an airport related use in private ownership. Applicant provides supporting documentation to show that public airport facilities are not being developed to sufficiently meet the growing demand for airport uses and more specifically eVTOL uses. The proposed expansion to the airport boundary, and establishment of airport uses, would allow the private sector to meet some of the demand for electric aircraft. The proposal is consistent with this policy.

Energy Policies

22. The proposal must be consistent with Energy Policies.

Policy 1. Future development should progress in the most energy efficient manner possible.
d. Development should progress in an orderly manner. It is more energy efficient to develop adjacent vacant lands rather than to allow continued "leap frog" development patterns.

The proposal is to expand the boundary of the Aurora Airport to provide a new electric aircraft use. As this policy specifies, it is more energy efficient to develop the subject vacant adjacent land to the existing airport rather than to "leapfrog" development of such use elsewhere.

The County's acknowledged Comprehensive Plan includes the Aurora Airport 1976 Master Plan that identifies the subject property as suitable for airport related uses under private ownership. As this policy recognizes, development of the subject property to include it in the airport boundary and to develop the proposed airport uses is a more energy efficient approach to developing this vacant land versus any proposal to develop similar airport uses on some other vacant rural land located away from existing development. The "orderly manner" component of the policy is satisfied by the fact that the subject property has been identified in the relevant acknowledged airport master plan, as suitable to support aviation-based activities. The proposal is consistent with this policy.

23. Applicant has shown that the proposal is consistent with all applicable policies within the Marion County Comprehensive Plan.

Airport Planning Rule (OAR 660-013-0010 through OAR 660-013-0160)

24. The airport planning rule set forth under OAR Chapter 660 division 13 provides several planning requirements for the County with respect to the planning and development of airports. While the County has completed the initial requirements for the Aurora State Airport, and consistent with ORS 836.640 and 642, the rule provides requirements for expansion of airport boundaries such as the proposal here.

The Court of Appeals in *Schaefer v. Marion County*, 318 Or App 617 (2022) explained the requirements for expanding an airport boundary under the airport planning rule and the proposal is consistent with the court's directives. The findings below address the requirements of the Airport Planning Rule.

25. *OAR 660-013-0010 Purpose and Policy*

(1) This division implements ORS 836.600 through 836.630 and Statewide Planning Goal 12 (Transportation). The policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon's airports. These rules are intended to promote a convenient and economic system of airports in the state and for land use planning to reduce risks to aircraft operations and nearby land uses.

(2) Ensuring the vitality and continued operation of Oregon's system of airports is linked to the vitality of the local economy where the airports are located. This division recognizes the interdependence between transportation systems and the communities on which they depend.

The proposal is consistent with the stated purpose and policy of the airport planning rule. Airport vitality depends in large part upon airports remaining current and responsive to aeronautical innovation. The evidence in the record demonstrates that the proposed airport expansion will address present and near-future airport needs for electric aircraft facilities that will enable the Aurora Airport to maintain its vitality in the state's airport ecosystem. *See* ODAV Sugahara Letter, Applicant's April 10, 2025 Exhibit 4, Maas Utah Director Letter, Applicant's Post Hearing Submittal Exhibit 10, Chehalis-Centralia Airport Director Letter, Applicant's Post Hearing Submittal Exhibit 10.

Applicant has submitted evidence demonstrating that aviation-related employment is a significant benefit to the County, provides above-average wage jobs and contributes significantly to the County's tax base. (Exhibit 46) Mr. O'Malley's March 5, 2025 letter explains that the proposal is "expected to generate approximately $341,840 in annual tax revenue (in 2025 dollars)" and explains that investments in "eVTOL infrastructure, including vertiports, could create tens of thousands of new jobs over the next decade." Many jobs are expected to result from the proposed airport expansion and proposed airport uses.

The existing acknowledged County Comprehensive Plan includes the 1976 Airport Master Plan ALP that designates the subject property as suitable for airport-related uses on private property. The County expected the subject property to develop as proposed to deliver exactly the electrical charging infrastructure and specific facilities for electric aircraft, the County and indeed the state needs – but lacks - for its airport infrastructure.

Applicant has submitted evidence that the proposed airport rotorcraft uses can be operated in a safe manner in conjunction with the Aurora State Airport runway using flight paths for rotorcraft taking off and landing from the subject property that do not interfere with any airport operations, similar to the existing Columbia Helicopters and HTS operations.

The proposed fixed-wing aircraft access to the airport is similar to the other safe through the fence operations at the airport. The evidence in the record demonstrates that the proposal is consistent with adopted County land use plans and state level aviation planning. In addition to the Aurora State Airport AMP and ALP discussed above, the Oregon Aviation Plan v 6.0 identifies the Aurora State Airport as one of the busiest airports in Oregon. The proposal is consistent with the Oregon Aviation Plan's forecast for continued growth, particularly helicopter growth for the airport and anticipated introduction of new aviation technologies. (Exhibit 22)

The proposal is consistent with this purpose and policy statement.

26. *OAR 660-013-0020 Definitions (in relevant part)*

* * *

(1) "Airport" means the strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses.

(2) "Aircraft" means helicopters and fixed-wing aircraft, but not hot air balloons or ultralights.

(3) "Airport Uses" means those uses described in OAR 660-013-0100.

(4) "Non-Towered Airport" means an airport without an existing or approved control tower on June 5, 1995.

The above definition for "aircraft" makes no reference to the power source of the aircraft, which means it includes piston-powered and electric powered rotorcraft and fixed wing fixed-wing aircraft such as the eVTOLS and electric-powered fixed-wing aircraft the proposal seeks to attract to the airport. As the Court of Appeals explained, the current airport boundary includes the public and privately owned land shown on the 1976 ALP as the "ultimate airport property," which is the ODAV-owned property and the developed TTF area properties. *Schaefer*, 318 Or App at 620-21. (Exhibit 5, 1976 Airport Layout Plan)

The subject property is situated where the ALP designates property as suitable for airport related uses under private ownership. *Id.* The subject property is also where the 1976 "Aurora State Airport Land Use Plan says is designated for "Airport Development". Application Exhibit 6, p 50. Because this Aurora State Airport Land Use Plan is an acknowledged part of the County Comprehensive Plan, it is relevant to demonstrates that the subject property is intended to develop with "Airport Development". The proposal seeks to expand the airport boundary consistently with the 1976 Plan, as well as the requirements in ORS 836.640 and 642 to include the subject property in the airport boundary and to allow for the proposed airport related uses so that rotorcraft can land and depart from the subject property and fixed wing aircraft will have access the Airport's runway and both, if electric, have places to charge.

All the proposed uses fall into those described in OAR 660-013-0100 as airport uses. Last, as noted in the beginning of these findings, the *Schaefer* court concluded that the Aurora State Airport is a "non-towered airport" as that term is used by the rule which refers to a snapshot in time before the tower was established and despite the Aurora Airport currently having an ATC. *Schaefer,* 318 Or App at 625 n 8.

The proposal is consistent with these definitions.

27. *OAR 660-013-0030 Preparation and Coordination of Aviation Plans*

* * *

*(2) A city or county with planning authority for one or more airports, or areas within safety zones or compatibility zones described in this division, shall adopt comprehensive plan and land use regulations for airports consistent with the requirements of this division and ORS 836.600 through 836.630. Local comprehensive plan and land use regulation requirements shall be coordinated with acknowledged transportation system plans for the city, county, and Metropolitan Planning Organization (MPO) required by OAR 660, division 12. Local comprehensive plan and land use regulation requirements shall be consistent with adopted elements of the state ASP and shall be coordinated with affected state and federal agencies, local governments, airport sponsors, and special districts. * * *. Local comprehensive plan and land use regulation requirements shall encourage and support the continued operation and vitality of airports consistent with the requirements of ORS 836.600 through 836.630.*

Consistent with OAR 660-013-0030(2), Marion County has already adopted comprehensive plan and land use requirements for the Aurora Airport and the airspace at issue consistent with the airport planning rule and ORS 836.600 through 836.630. Those standards from, in part, the AO approval criteria for this application. The County has also adopted the 1976 Aurora Airport Master Plan which governs compatible uses of the subject property visa vi the airport. Neither need to be adjusted to accommodate the proposal. The proposal is consistent with this provision.

28. *OAR 660-013-0040 Aviation Facility Planning Requirements*

A local government shall adopt comprehensive plan and land use regulation requirements for each state or local aviation facility subject to the requirements of ORS 836.610(1). Planning requirements for airports identified in ORS 836.610(1) shall include:

(1) A map, adopted by the local government, showing the location of the airport boundary. The airport boundary shall include the following areas, but does not necessarily include all land within the airport ownership:

(a) Existing and planned runways, taxiways, aircraft storage (excluding aircraft storage accessory to residential airpark type development), maintenance, sales, and repair facilities;

(b) Areas needed for existing and planned airport operations; and

(c) Areas at non-towered airports needed for existing and planned airport uses that:

(A) Require a location on or adjacent to the airport property;

(B) Are compatible with existing and planned land uses surrounding the airport; and

(C) Are otherwise consistent with provisions of the acknowledged comprehensive plan, land use regulations, and any applicable statewide planning goals.

(d) "Compatible," as used in this rule, is not intended as an absolute term meaning no interference or adverse impacts of any type with surrounding land uses.

(2) A map or description of the location of existing and planned runways, taxiways, aprons, tiedown areas, and navigational aids;

(3) A map or description of the general location of existing and planned buildings and facilities;

(4) A projection of aeronautical facility and service needs;

(5) Provisions for airport uses not currently located at the airport or expansion of existing airport uses:

(a) Based on the projected needs for such uses over the planning period;

(b) Based on economic and use forecasts supported by market data;

(c) When such uses can be supported by adequate types and levels of public facilities and services and transportation facilities or systems authorized by applicable statewide planning goals;

(d) When such uses can be sited in a manner that does not create a hazard for aircraft operations; and

(e) When the uses can be sited in a manner that is:

(A) Compatible with existing and planned land uses surrounding the airport; and

(B) Consistent with applicable provisions of the acknowledged comprehensive plan, land use regulations, and any applicable statewide planning goals.

(6) When compatibility issues arise, the decision maker shall take reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions. A decision on compatibility pursuant to this rule shall further the policy in ORS 836.600.

(7) A description of the types and levels of public facilities and services necessary to support development located at or planned for the airport including transportation facilities and services. Provision of public facilities and services and transportation facilities or systems shall be consistent with applicable state and local planning requirements.

(8) Maps delineating the location of safety zones, compatibility zones, and existing noise impact boundaries that are identified pursuant to OAR 340, division 35.

(9) Local government shall request the airport sponsor to provide the economic and use forecast information required by this rule. The economic and use forecast information submitted by the sponsor shall be subject to local government review, modification and approval as part of the planning process outlined in this rule. Where the sponsor declines to provide such information, the local government may limit the airport boundary to areas currently devoted to airport uses described in OAR 660-013-0100.

Because this proposal is for an expansion of the airport boundary to allow airport uses, many of the materials required by this standard already exist to a large extent, such as the existing and planned airport facilities within the present airport boundary and will be referred to in the following responses.

The Oregon Court of Appeals in *Schaefer v. Marion County* held that "an expansion of a public use airport occurs when, pursuant to OAR chapter 660, division 13, a local government adopts a map showing an airport boundary that includes a larger area than the boundary shown on the previously adopted map of the airport." 318 Or App at 619-20.

The airport boundary map cited in the quote is the map identified under OAR 660-013-0040(1).

Applicant has submitted maps showing both the present airport boundary, consistent with the Court of Appeals description of the Aurora State Airport boundary, as well as the proposed expanded airport boundary to include the subject property. (Proposed Airport Boundary Map, updated version presented at the March 6, 2025 hearing). The map shows the areas that are proposed to be used for all of the facilities, structures and uses identified at OAR 660-013-0040(1)(a) through (c). Other maps, discussed below, identify the existing and planned facilities and structures.

The hearings officer recommends that Marion County adopt the submitted Exhibit 1A airport boundary map submitted for the March 6, 2025 hearing and incorporate it into the Marion County Comprehensive Plan as part of the Transportation Plan to supplement the other adopted Aurora State Airport documents.

Applicant has also submitted a site plan that shows the proposed development on the vacant subject property, to include the planned rotorcraft takeoff and landing area, on-site taxiways, the connection to the adjacent taxiway to the Aurora State Airport's runway, aprons, tiedown areas, navigational aids, and planned buildings and facilities to include power stations for eVTOLs and electric-powered fixed-wing aircraft. *See* Exhibit 1. This site plan, together with Exhibits 1B, 2, and 2A, fulfills the requirements of OAR 660-013-0040(2) and (3).

As with the airport boundary map, the hearings officer recommends that Marion County adopt and incorporate these plans at Exhibit 1 as updated at the March 6, 2025 hearing, into the Comprehensive Plan. These plans, along with the expanded airport boundary map, will supplement the existing Aurora State Airport Master Plan and ALP already incorporated into the Comprehensive Plan, to give a full planning picture of the development of the Airport.

OAR 660-013-0040(4) requires a projection of aeronautical facility and service needs. Consistent with OAR 660-013-0040(9), ODAV has advised that the information to be used for that projection is that which is contained in the current version of the current master plan update which is in the

record at Application Exhibits 7-10 and also Applicant's Post Hearing Submittal Exhibit 6, and Unmarked Applicant Exhibit submitted 4.10.25 containing the most recent ODAV ALP, and see Applicant's Post Hearing Submittal Exhibit 5 (Oregon State Airports Manager Tony Beach stating "the economic and forecast information in the recent UAO draft master plan is the most up to date."

The Oregon Department of Aviation Director provided a letter in support of the proposal to include advising that it helps the state to meet a state aviation need. (Exhibit 4) Applicant also supplemented the information from ODAV with additional market-based evidence regarding aeronautical facility and service needs that will arise within the next 5 years and continue to grow throughout the planning period for the Aurora State Airport that ends in 2041.

The ODAV supplied materials anticipate a growth in helicopter (rotorcraft) based aircraft and operations at the airport in the period between 2021 and 2041. (Exhibit 7) The present draft ODAV airport planning at the airport focuses on the ODAV-owned property. The preliminary alternatives study of the landside needs at the Airport, prepared by ODAV, explains that, "Aurora State Airport is located on a constrained site and as such, it may not be possible to fully address every facility requirement." (Exhibit 9) None of the three landside alternatives that ODAV considered by ODAV show any meaningful amount of additional helicopter facilities.

To supplement ODAV's analysis, Applicant submitted letters from Columbia Helicopter and Life Flight that express interest in expanding their operations to the subject property to serve their demand for more facilities to accommodate rotorcraft operations. (Exhibits 26, 27)

Neither the ODAV economic and use forecast information nor the Draft AMP estimate the facility needs that will arise from emerging aeronautical technologies such as electric-powered fixed-wing aircraft and electric helicopter/eVTOL aircraft. FAA Advisory Circular (AC) 150/5070-6B Change 2 Airport Master Plans (1/27/2015) mandates that airport planners consider emerging trends and accommodate future demand for evolving technologies in the aviation industry. (Exhibit 55) The materials submitted by the Applicant, as well as ODAV Director's letter, demonstrate that electric-powered aircraft are a reality and that new eVTOL aircraft will be increasingly entering the market between 2025 and 2028, and are anticipated to become mainstream by 2030, with extensive growth thereafter. (Exhibits 51, 53 and 63)

The evidence in the record demonstrates that the aeronautical and service needs at the Aurora State Airport continue to grow and evolve, and that there is a particular need for increased rotorcraft facilities and facilities to provide power to and maintain and repair the burgeoning electric aircraft market, both fixed-wing aircraft (eVTOLs) and electric helicopter/eVTOLs. Furthermore, to maximize meeting identified existing and near-future needs, the application is seeking approval for full development of the site with the proposed airport uses. The proposal is consistent with OAR 660-013-0040(4).

Within the proposed expanded airport boundary, Applicant proposes providing airport uses and facilities either not currently located at the airport or projected as needed that cannot be met within the existing airport boundary within the planning period. OAR 660-013-0040(5). The proposed airport uses and facilities concentrate on providing facilities for present and near-future rotorcraft needs and eVTOL and electric airplane needs, which will grow in the coming years. To address these needs, the proposal includes charging stations for eVTOLs and electric fixed-wing aircraft as well as on-site capacity to address peak demand periods for electricity, a landing pad for

eVTOLs and other rotorcraft, tiedown areas and hangar areas for all types of aircraft and operations and maintenance facilities for aircraft on the subject property. OAR 660-013-0040(5)(a) and (b).

Applicant provided evidence to establish that proposed uses can be supported by adequate types and levels of public facilities and services, to include transportation facilities, consistent with applicable statewide planning goals. (Exhibits 36, 37, 39, 42, 43) OAR 660-013-0040(5)(c).

The evidence in the record and the analysis and findings provided under the conditional use standards demonstrates that proposed rotorcraft or fixed-wing aircraft operations on the subject property will not create a hazard for existing aircraft operations at the Airport. The ODAV and FAA review and approval of proposed operations from the subject property will confirm that this air traffic safety requirement is met before any operations take place. OAR 660-013-0040(5)(d).

The findings for the conditional use standards above as well as the additional findings of compliance with comprehensive plan, Statewide Planning Goals and other applicable land use regulations demonstrate that the proposal is compatible with existing and planned uses surrounding the airport expansion and is consistent with other applicable land use regulations. OAR 660-013-0040(5)(e).

The analysis provided under the conditional use standards above demonstrates that there are no unaddressed compatibility issues. Compatibility concerns that were raised during the proceedings, like noise, and inciting terrorist activity have been addressed by Applicant in these findings.

The proposal can and will operate within the 55 dBL noise contour under which the Snyders built their home and there is no reason to think that the proposal will incite terrorists or otherwise be unsafe. It is merely the addition of airport related uses of the type that the County plan has envisioned for the subject property since 1976 from the adoption and DLCD's acknowledgement of the Aurora Airport 1976 Airport Master Plan. However, if there are impacts that the County decides should be addressed that have not been (something not anticipated), then subsection (6) requires the county decision maker to take reasonable steps to minimize or eliminate the incompatibility through location, design or conditions.

The application materials identify and describe the types and levels of public facilities and services needed for the proposed airport expansion and airport uses as required by subsection (7). (Exhibits 40, 41, 45 and 46) These application materials demonstrate that such facilities and services are feasible and such systems are consistent with applicable state and local planning requirements.

Applicant submitted an imaginary surfaces diagram delineating the location of safety zones and compatibility zones for the rotorcraft takeoff and landing pad located on the subject property, pursuant to OAR chapter 340, division 35, as required by subsection (8). Application Exhibit 1; *see also* Application Exhibit 61 (Exhibits for OAR Chapter 660 division 13 Airport Zone Standards (diagrams showing overlay zones)). A condition of approval requires Applicant to submit to the County a clean copy of that diagram. Applicant has also prepared and submitted a noise impact boundaries map consistent with the DEQ rule as part of the submitted noise impact study. Application Exhibit 35. As also conditioned below, the Applicant is required to provide the County a DEQ approved Noise Impact Boundary Diagram, and if required by the DEQ, an approved Airport Noise Abatement Program as required by this subsection.

Consistent with subsection (9), the Applicant has requested and received from ODAV, as the Aurora State Airport sponsor, economic and use forecast information as required by the Airport Planning Rule and as Applicant's Post Hearting Submittal Exhibit 5 demonstrates, that information is contained in the draft master plan update that is in the record (contained in the current version of the current master plan update which is in the record at Application Exhibits 7-10 and also Applicant's Post Hearing Submittal Exhibit 6, and Unmarked Applicant Exhibit submitted 4.10.25 containing the most recent ODAV ALP), and well as the ODAV Director's Letter in the record at Applicant's April 10, 2025 Exhibit 4.

The proposal is consistent with this standard.

29. *OAR 660-013-0050 Implementation of Local Airport Planning*

A local government with planning responsibility for one or more airports or areas within safety zones or compatibility zones described in this division or subject to requirements identified in ORS 836.608 shall adopt land use regulations to carry out the requirements of this division, or applicable requirements of ORS 836.608, consistent with the applicable elements of the adopted state ASP and applicable statewide planning requirements.

Marion County has adopted land use regulations to carry out the identified state and administrative rule requirements that are consistent with the adopted state ASP and applicable statewide planning requirements. The County has adopted into its acknowledged Comprehensive Plan the 1976 Aurora Airport Master Plan which identifies the subject property for airport-related uses under private ownership on its ALP and identifies the subject property on the Aurora State Airport Land Use Plan as "Airport Development." Exhibit 6, p 40 and 50. The County has already complied with this standard.

30. *OAR 660-013-0070 Local Government Safety Zones for Imaginary Surfaces*

(1) A local government shall adopt an Airport Safety Overlay Zone to promote aviation safety by prohibiting structures, trees, and other objects of natural growth from penetrating airport imaginary surfaces.

(a) The overlay zone for public use airports shall be based on Exhibit 1 incorporated herein by reference.

(b) The overlay zone for airports described in ORS 836.608(2) shall be based on Exhibit 2 incorporated herein by reference.

(c) The overlay zone for heliports shall be based on Exhibit 3 incorporated herein by reference.

(2) For areas in the safety overlay zone, but outside the approach and transition surface, where the terrain is at higher elevations than the airport runway surface such that existing structures and planned development exceed the height requirements of this rule, a local government may authorize structures up to 35 feet in height. A local government may adopt other height exceptions or approve a height variance when supported by the airport sponsor, the Oregon Department of Aviation, and the FAA.

Marion County has adopted the AO Airport Overlay zone consistent with OAR 660-013-0070 and applied it to the existing Aurora State Airport area. The evidence in the record and the findings above demonstrate that the proposal complies with those existing standards because any area that would require the application of the AO Airport Overlay zone as a result of the proposed rotorcraft uses within the expanded airport boundary already have the AO Airport Overlay zone applied to them. The analysis demonstrating this in the findings for the AO Airport Overlay Zone standards above is herein incorporated. Applicant submitted a map for the proposed rotorcraft uses within the expanded airport boundary that complies with OAR 660-013-0070(1)(c). (Exhibit 2) No new properties will be required to have the AO Airport Overlay zone applied as a result of this application being approved. The proposal is consistent with this requirement. The surrounding terrain is relatively flat and does not present any context under which subsection (2) might apply.

31. *OAR 660-013-0080. Local Government Land Use Compatibility Requirements for Public Use Airports*

(1) A local government shall adopt airport compatibility requirements for each public use airport identified in ORS 836.610(1). The requirements shall:

(a) Prohibit new residential development and public assembly uses within the Runway Protection Zone (RPZ) identified in Exhibit 4;

(b) Limit the establishment of uses identified in Exhibit 5 within a noise impact boundary that has been identified pursuant to OAR 340, division 35 consistent with the levels identified in Exhibit 5;

(c) Prohibit the siting of new industrial uses and the expansion of existing industrial uses where either, as a part of regular operations, would cause emissions of smoke, dust, or steam that would obscure visibility within airport approach corridors;

(d) Limit outdoor lighting for new industrial, commercial, or recreational uses or the expansion of such uses to prevent light from projecting directly onto an existing runway or taxiway or into existing airport approach corridors except where necessary for safe and convenient air travel;

(e) Coordinate the review of all radio, radiotelephone, and television transmission facilities and electrical transmission lines with the Oregon Department of Aviation;

(f) Regulate water impoundments consistent with the requirements of ORS 836.623(2) through (6); and

(g) Prohibit the establishment of new landfills near airports, consistent with Department of Environmental Quality (DEQ) rules.

(2) A local government may adopt more stringent regulations than the minimum requirements in section (1)(a) through (e) and (g) based on the requirements of ORS 836.623(1).

Marion County has complied with the requirements of OAR 660-013-0080 through the adoption of MCC Chapter 17.177 Airport Overlay Zone, which addresses each of these requirements. Given

that the subject property is adjacent to and will be incorporated into the Aurora State Airport Boundary, the AO overlay zone does not need to be applied to any new land within the County. Implementation of MCC Chapter 17.177 to applications proposing development in close proximity to the proposed rotorcraft take-off and landing pad within the expanded airport boundary will be based, in part, on the various relevant maps and diagrams submitted as part of this application proposal and approved by the County. As noted above, conditions of approval require the Applicant to submit a clean copy of the submitted imaginary surfaces diagram and, following DEQ approval, a copy of the Noise Impact Boundary Diagram and, if required, approved Noise Abatement Program. The proposal complies with this requirement.

32. *OAR 660-013-0100 Airport Uses at Non-Towered Airports*

Local government shall adopt land use regulations for areas within the airport boundary of non-towered airports identified in ORS 836.610(1) that authorize the following uses and activities:

(1) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

(2) Emergency Medical Flight Services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. "Emergency Medical Flight Services" does not include hospitals, medical offices, medical labs, medical equipment sales, and similar uses.

(3) Law Enforcement and Firefighting Activities, including aircraft and ground based activities, facilities and accessory structures necessary to support federal, state or local law enforcement and land management agencies engaged in law enforcement or firefighting activities. These activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant and supplies.

(4) Flight Instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. "Flight Instruction" does not include schools for flight attendants, ticket agents, or similar personnel.

(5) Aircraft Service, Maintenance and Training, including activities, facilities, and accessory structures provided to teach aircraft service and maintenance skills, maintain, service and repair aircraft and aircraft components, but not including activities, structures, and facilities for the manufacturing of aircraft for sale to the public or the manufacturing of aircraft related products for sale to the public. "Aircraft Service, Maintenance and Training" includes the construction of aircraft and aircraft components for personal use. The assembly of aircraft and aircraft components is allowed as part of servicing, maintaining, or repairing aircraft and aircraft components.

(6) Aircraft Rental, including activities, facilities, and accessory structures that support the provision of aircraft for rent or lease to the public.

(7) Aircraft Sales and the sale of aeronautic equipment and supplies, including activities, facilities, and accessory structures for the storage, display, demonstration and sale of aircraft and aeronautic equipment and supplies to the public.

(8) Aeronautic Recreational and Sporting Activities, including activities, facilities and accessory structures at airports that support recreational use of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic Recreation and Sporting Activities on airport property shall be subject to approval of the airport sponsor. Aeronautic recreation and sporting activities include but are not limited to: fly-ins; glider flights; hot air ballooning; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests; gyrocopter flights; flights carrying parachutists; and parachute drops onto an airport. As used in this rule, parachuting and parachute drops includes all forms of skydiving. Parachuting businesses may be allowed only where they have secured approval to use a drop zone that is at least 10 contiguous acres. A local government may establish a larger size for the required drop zone where evidence of missed landings and dropped equipment supports the need for the larger area. The configuration of 10 acre minimum drop zone shall roughly approximate a square or circle and may contain structures, trees, or other obstacles if the remainder of the drop zone provides adequate areas for parachutists to safely land.

(9) Crop Dusting Activities, including activities, facilities and structures accessory to crop dusting operations. These include, but are not limited to: aerial application of chemicals, seed, fertilizer, pesticide, defoliant and other activities and chemicals used in a commercial agricultural, forestry or rangeland management setting.

(10) Agricultural and Forestry Activities, including activities, facilities and accessory structures that qualify as a "farm use" as defined in ORS 215.203 or "farming practice" as defined in ORS 30.930.

(11) Air passenger and air freight services and facilities at public use airports at levels consistent with the classification and needs identified in the state ASP.

The proposed airport expansion is for a "non-towered airport" as defined by OAR 660-013-0020(4). *See also*, *Schaefer v. Marion County*, 318 Or App at 625 n 8 (concluding, "For purposes of the rule, the Aurora State Airport is a non-towered airport.").

The proposed uses within the proposed expanded airport boundary consists only of uses expressly allowed under OAR 660-013-100 as detailed above in Section 1 under the subheading "Proposed Airport Uses Within the Airport Boundary." These include: customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities and activities incidental to the normal operation of the airport related uses on the property (subsection (1)); emergency medical flight services as described in subsection (2); firefighting activities and law enforcement activities as described in subsection (3); flight instruction and training (subsection (4)); aircraft service maintenance and training (subsection (5)); (6) aircraft rental (subsection (subsection (6)), aircraft sales, sales of aeronautical equipment and supplies (subsection (7)), forestry and agricultural related activities, to include crop dusting as prescribed in subsections (9) and (10). Each of the uses described in Section 1 above fall into one or more of the above categories of permitted airport uses.

The proposal does not include any residential, commercial, industrial, manufacturing or uses other than described above.

The proposal complies with this standard.

33. *OAR 660-013-0110 Other Uses Within the Airport Boundary*

Notwithstanding the provisions of OAR 660-013-0100, a local government may authorize commercial, industrial, manufacturing and other uses in addition to those listed in OAR 660-013-0100 within the airport boundary where such uses are consistent with applicable provisions of the acknowledged comprehensive plan, statewide planning goals and LCDC administrative rules and where the uses do not create a safety hazard or otherwise limit approved airport uses.

Applicant does not request local government authorization of commercial, industrial, manufacturing or other uses not identified as permitted under OAR 660-013-0100 as an airport use. Any future request for uses that are not airport uses described in OAR 660-013-0100 will require a land use application requesting those uses and approval by the county. The proposal is consistent with this standard.

34. *OAR 660-013-0140 Safe Harbors*

A "safe harbor" is a course of action that satisfies certain requirements of this division. Local governments may follow safe harbor requirements rather than addressing certain requirements in these rules. The following are considered to be "safe harbors":

The proposal does not seek any safe harbors. The proposal is consistent with this standard.

35. *OAR 660-013-0155 Planning Requirements for Small Airports*

(1) Airports described in ORS 836.608(2) shall be subject to the planning and zoning requirements described in ORS 836.608(2) through (6) and (8).

(2) The provisions of OAR 660-013-0100 shall be used in conjunction with ORS 836.608 to determine appropriate types of uses authorized within airport boundaries for airports described in 836.608(2).

(3) The provisions of OAR 660-013-0070(1)(b) shall be used to protect approach corridors at airports described in ORS 836.608(2).

(4) Airport boundaries for airports described in ORS 836.608(2) shall be adopted by local government pursuant to the requirements in ORS 836.608(2).

The Aurora State Airport is not an airport described in ORS 836.608(2); it is a public airport described in ORS 836.610(1). By its express terms, this standard does not pertain to the application.

36. *OAR 660-013-0160 Applicability*

This division applies as follows:

(1) Local government plans and land use regulations shall be updated to conform to this division at periodic review, except for provisions of chapter 859, OR Laws 1997 that became effective on passage. Prior to the adoption of the list of airports required by ORS 836.610(3), a local government shall be required to include a periodic review work task to comply with this division. However, the periodic review work task shall not begin prior to the Oregon Department of Aviation's adoption of the list of airports required by ORS 836.610(3). For airports affecting more than one local government, applicable requirements of this division shall be included in a coordinated work program developed for all affected local governments concurrent with the timing of periodic review for the jurisdiction with the most land area devoted to airport uses.

(2) Amendments to plan and land use regulations may be accomplished through plan amendment requirements of ORS 197.610 to 197.625 in advance of periodic review where such amendments include coordination with and adoption by all local governments with responsibility for areas of the airport subject to the requirements of this division.

(3) Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 related Airport Planning.

(4) Uses authorized by this division shall comply with all applicable requirements of other laws.

(5) Notwithstanding the provisions of OAR 660-013-0140 amendments to acknowledged comprehensive plans and land use regulations, including map amendments and zone changes, require full compliance with the provisions of this division, except where the requirements of the new regulation or designation are the same as the requirements they replace.

The planning and periodic review requirements of subsections (1) and (2) do not pertain to this application. By addressing the requirements of OAR Chapter 660 division 13, the County is deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR Chapter 660 division 12 related to airport planning as stated by subsection (3).

Subsection (4) requires that uses authorized by OAR Chapter 660 division 13 comply with all applicable requirements of other laws. The approval standards included in these findings represent the applicable land use standards for the proposed airport expansion and airport uses. As discussed in these findings, the proposed airport uses will be required to submit additional applications that pertain to aviation with ODAV and the FAA, and environmental quality with the DEQ, and to receive approvals from those agencies before the proposed uses within the expanded airport boundary are permitted to operate.

The above findings demonstrate that the proposal complies with the provisions of OAR Chapter 660 division 13 as required by subsection (5).

VII. Recommendation

It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval of a conditional use to expand an existing airport to allow a vertical takeoff and

landing facility for aircrafts and a comprehensive plan amendment to amend the airport plan on a 16.54 acre parcel in an EFU (Exclusive Farm Use) zone located at 22515 Airport Rd. NE, Aurora. Therefore, the hearings officer recommends the Marion County Board of Commissioners **GRANT** the conditional use and comprehensive plan amendment, subject to the conditions set forth below. The conditions are necessary for the public health, safety and welfare.

Conditions of Approval

1. Applicant shall obtain any building and septic permits required.

2. Applicant shall submit evidence of compliance with all required agencies to planning staff.

3. Prior to building permit issuance, design rural type frontage improvements along the Airport Road subject property frontage that are anticipated to include a new access, removing prior existing accesses, vegetation clearing, 5-foot gravel road shoulder, proper foreslope and drainage ditch relocation, and obtain a Major Construction Permit for same. Prior to issuance of a Building Department Certificate of Occupancy, acquire final inspection approval of the public roadway related improvements.

4. Prior to building permit issuance, contribute a proportional share in the amount of $24,000 as presented in the February 2024 TIS Update toward the cost of planning, designing, and constructing signalization and turn lane improvements at the intersection of Ehlen Road and Airport Road as identified in the County RSTP and in the City of Aurora TSP, as a traffic mitigation measure.

5. The MCC 117.119.180 effective date for the start of the MCC 117.119.190 2-year period for exercising a conditional use right shall be the latter of: (1) the date of the final order or decision by the County, LUBA, the Court of Appeals or the Oregon Supreme Court, beyond which there can be no further appeals and this land use decision become final; (2) the date the ODAV site approval decision become final following any administrative and judicial appeals, if any; or (3) the date the DEQ noise plan decision becomes final following any administrative or judicial appeals. If this local decision and the ODAV site approval decision and the DEQ decision are not appealed, the effective date for the start of the MCC 117.119.190 2-year period for exercising the conditional use right begins on the latest of the three approval dates.

6. The uses allowed on the subject property are limited to airport uses identified under ORS 836.616(2) and OAR 660-013-0100 as uses that shall be authorized within airport boundaries and as shown on the submitted site plan Exhibit 1B and described in the application materials. Uses not listed under the statute or rule, or expansion of the approved uses or development must be approved through a separate land use application.

7. Applicant will supply to the County clean copies of the airport boundary map (Exhibit 1A) and other maps required by OAR 660-013-0040 to be incorporated into the Marion County Comprehensive Plan.

8. Prior to the issuance of any building permit, Applicant shall provide to the County consistent with the requirements set forth under OAR 340-035-0045, a DEQ approved Noise Impact Boundary Diagram and, if required by DEQ, an approved Airport Noise Abatement Program for the uses authorized within the expanded airport boundary. All development and operations on the subject property must conform to the DEQ Noise Impact approval.

9. Prior to the issuance of any building permit for stormwater or wastewater facilities on the subject property, Applicant will provide a copy of the DEQ approvals for the requested system.

10. Applicant must submit a facility site plan for the proposed airport uses as required by OAR 738-014-0050 for Through the Fence Operations and receive approval from the Oregon Department of Aviation of the proposed site plan prior to applying for a building permit to develop the approved airport uses.

11. Applicant must submit to the County a written contract with ODAV, the Aurora State Airport sponsor, that meets the requirements of OAR 738-014-0050(3) before airport operations on the subject property begin.

12. Prior to the construction or establishment of the proposed vertical takeoff and landing facility, the applicant must submit an application for approval of the airport site to ODAV, as described in Oregon Revised Statutes (ORS) 836.090.

13. Prior to the construction or establishment of the proposed facility, the application fee must be paid to ODAV, as described in ORS 836.085.

14. The proposed development must adhere to the approval criteria for the establishment of an airport as described in ORS 836.095 and OAR 738-020 (Minimum Standards for Airports).

15. In accordance with FAR Part 77.9 and OAR 738-070-0060, the proposed development is required to undergo aeronautical evaluations by the FAA and ODAV. The aeronautical evaluations are initiated by the applicant providing separate notices to both the FAA and ODAV to determine if the proposal poses an obstruction to aviation safety. Applicant should receive the resulting aeronautical determination letters from the FAA and ODAV prior to approval of any building permits.

16. The height of any new structures, trees of planted vegetation shall not penetrate FAR Part 77 Imaginary Surfaces, as determined by the FAA and ODAV for the Aurora State Airport. Applicant shall submit to the County a clean copy of the imaginary surfaces diagram for the approved rotorcraft operations on the subject property, prepared consistent with OAR 660 division 13 Exhibit #3.

17. Any proposed external lights shall be designed so as to not interfere with aircraft or airport operations.

18. Any proposed external lights shall be designed so as to not interfere with any adjacent uses.

19. Prior to any airport operations on the subject property, Applicant shall apply for and receive required ODAV or FAA licenses or approvals for such operations.

20. Connection to either the HDSE or Columbia Helicopters wastewater systems, while approved by this decision, is not authorized until such properties and uses obtain final land use approvals that permit those facilities to serve other parcels such as the subject property. If either HDSE or Columbia Helicopters obtain the necessary land use approvals, the subject property is authorized by this decision to connect to the wastewater system without the need to obtain additional land use approvals to allow such connection.

VIII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED this 20th day of May, 2025.

Jill F. Foster

Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

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By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 20th day of May, 2025 and that the postage thereon was prepaid.

Administrative Assistant to the
Hearings Officer