

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, October 19, 2022

9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97301

PRESENT: Commissioner Danielle Bethell, Commissioner Colm Willis, and Commissioner Kevin Cameron. Also present were Jan Fritz, chief administrative officer, Jane Vetto as county counsel, and Brenda Koenig as recorder.

Commissioner Bethell called the meeting to order at 9:00 a.m.

(Video Time 00:01:14)

PUBLIC COMMENT

None.

(Video Time 00:01:19)

PRESENTATION

1. Wildfire recovery update. –Chris Eppley

Summary of presentation:

- It has been 25 months since the 2020 wildfires;
- The canyon's statistics have started to slow down:
 - The housing market has cooled off;
 - Interest rates continue to climb;
 - The big push to recover may have been accomplished; and
 - Any recovery that is left will slow down from this point forward as properties change hands or people's conditions change.
- An estimated 56 percent of homes in the Santiam Canyon needing to be repaired or replaced have been issued dwelling permits;
- An estimated 70 percent of properties needing to reconnect or repair their septic systems have been issued septic permits:
 - Individuals who apply for septic permits generally have plans for their property.
- The following are updates on county led recovery projects:
 - Housing:
 - The county now owns property in the City of Mill City that will be developed with housing for low to moderate income households:
 - A site plan is being developed for Santiam Meadows:

- The site will entail approximately 60 units, including owner occupied and rental housing; and
 - Preference will be given to wildfire victims.
- Septic Repair and Replacement in the City of Detroit:
 - The sewer and commercial septic project is starting its design work.
- The Fire Hardening Grant program:
 - There is approximately \$1.5 million in funding;
 - Approximately \$225,000 in funding has been paid out; and
 - The funds help property owners choose materials that will make their property less susceptible to fire.
- Environmental Protection Agency (EPA) Technical Assistance Grant:
 - The EPA has hired a consultant to help Marion County consolidate the information gathered to date, and to use that information in developing a disaster recovery plan:
 - The consultant has been doing interviews in the community;
 - There will be a public forum on November 5, 2022, at the City of Detroit Community Center;
 - Residents and community members are encouraged to attend; and
 - It is anticipated that follow-up for program will be presented to the board in the spring of 2023.
- The City of Detroit is getting ready to build a water treatment facility:
 - The Request for Proposals (RFP) is out bid for the construction of the water treatment plant building, with a due date in mid-November; and
 - RFPs are out for bid for the actual water treatment plant equipment:
 - There is approximately a one-year lead time from when the equipment is ordered to when it is delivered.
- Taylor's Grove is a small community that shares a community well:
 - The community has been without water since the 2020 wildfires;
 - Community members are receiving emergency water deliveries;
 - They have been accepted for a U.S. Department of Agriculture grant that will pay for the reconstruction of the system and a new well; and
 - Engineering for the project is underway.
- There has been a lot of vegetation regrowth in the areas that were burned;
- The Forest Service is concerned about hazard trees if some of the areas are opened for winter recreation:
 - Trees will remain a hazard in the area for the next 20 to 30 years.
- The Long-Term Recovery Group (LTRG) has started a program to recognize individuals who have helped with the recovery;
- The Santiam Service Integration Team (SIT) currently has 198 families in active in case management:
 - SIT has successfully closed 158 cases; and
 - They have 15 cases waiting to be assigned to a case manager.
- Funding assistance for victims is coming from multiple organizations and sources.

(Video Time 00:14:28)

CONSENT

FINANCE

2. Approve a quitclaim deed for the property transfer of Tax Account ID #526097 from Marion County to the City of Salem.

HEALTH AND HUMAN SERVICES

3. Approve an order establishing behavioral health fee schedules for the Marion County Health and Human Services Department.

HUMAN RESOURCES

4. Approve a recommendation to update the classification and adjust upward the pay grade for class codes #320, Sales Data Analyst 1; #326, Sales Data Analyst 3; #327, Sales Data Analyst 2; #331, Property Appraiser 1; #332, Property Appraiser 2; #333, Property Appraiser Senior; and #334, Appraisal Section Supervisor.

PUBLIC WORKS

5. Approve Amendment #1 to the Contract for Services with Keller Associates, Inc. to add \$67,680 in American Rescue Plan Act (ARPA) funds for a new contract total of \$128,640 for the North Santiam Sewer Project through December 31, 2026.

MOTION: Commissioner Cameron moved for approval of the consent agenda. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

(Video Time 00:15:37)

ACTION

HEALTH AND HUMAN SERVICES

6. Consider approval of the Contract for Services with Salem Health in the amount of \$475,000 for acute psychiatric inpatient services retroactive to January 1, 2022, through December 31, 2022. –Ryan Matthews

Summary of presentation:

- The contract was previously presented to the board on July 27, 2022:
 - This is the same contract; and
 - Salem Health requested that the old language be revised.
- The services provided are related to the county's Intergovernmental Agreement (IGA) with the Oregon Health Authority for mental health services;
- The services are for individuals who do not have Medicaid, including underinsured and uninsured individuals;
- The services are for individuals who are suffering from acute mental illness that require a hospital inpatient setting;

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- The contract is for up to \$475,000:
 - Salem Health bills the county a daily bed rate for individuals who qualify.
- Salem Health works to get the individuals onto Medicaid;
- Historically the contract is underspent;
- Marion County Health and Human Services (MCHHS) tries to retain a certain sum in reserve in case large hospital bills come through;
- In total MCHHS received approximately \$800,000 in funding;
- An estimated \$475,000 is contracted to Salem Health;
- MCHHS does utilize some of the funding to make referrals to other hospitals across the state.

Board discussion:

None.

MOTION: Commissioner Willis moved to approve the Contract for Services with Salem Health in the amount of \$475,000 for acute psychiatric inpatient services retroactive to January 1, 2022. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:18:16)

SHERIFF'S OFFICE

7. Consider approval of the Purchase Order with DePaul Industries, Inc. in the amount of \$835,681 to provide unarmed court security through October 31, 2024.

–Commander Kevin Karvandi

Summary of presentation:

- The request is to purchase court security services for Marion County courts;
- The purchase order is through an Oregon state price agreement;
- DePaul Industries has been providing unarmed court security for three of the following primary courthouses in Marion County for over a decade:
 - The court annex on the Marion County Jail campus;
 - The Marion County Juvenile Court; and
 - The Marion County Circuit Court.
- The funding stream for the purchase order comes from the state general funds and the criminal fines account;
- The funds contribute to staffing the security screeners on the front end of the courthouses; and
- The contract is retroactive to July 1, 2022, through October 31, 2024.

Board discussion:

None.

MOTION: Commissioner Cameron moved to approve the Purchase Order with DePaul Industries, Inc. in the amount of \$835,681 to provide unarmed court security through October 31, 2024. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

(Video Time 00:20:41)

PUBLIC WORKS

8. Consider approval of the Contract for Services with Valley Landfills Inc. in the amount of \$14,000,000 for the evaluation of incinerator ash for use as Alternate Daily Cover (ADC) through September 30, 2032. –Brian May

Summary of presentation:

- The county started looking at utilizing the material as Alternate Daily Cover (ADC) in 2010:
 - The county went through a formal bid process with a Request For Proposal (RFP);
 - Valley Landfills Inc., also known as Coffin Butte Landfill, was awarded the contract; and
 - The county had to demonstrate to the Department of Environmental Quality (DEQ) the benefit of using ash as an ADC:
 - The demonstration took twelve months as it entailed all seasons and all types of weather environments; and
 - DEQ approved the use of ash as an ADC in May 2012.
- The county has had a good relationship with Valley Landfills Inc. for the past ten years;
- There is a recovery benefit to using the ash as ADC:
 - Coffin Butte Landfill utilizes less soil for their cover material on a daily basis.
- The agreement expired in May 2022;
- Coffin Butte is the only landfill approved by DEQ to use ash as ADC;
- A sole source procurement process has been completed:
 - No objections were received.
- The new contract is for ten years;
- Under the contract Valley Landfills will take the incinerator ash from Covanta Marion to use as ADC;
- The rate starts at \$22.68 per ton, and will escalate annually based on the consumer price index;
- The county does not send all of the material to the Coffin Butte Landfill:
 - In the summer months the product is taken internally to the county's ash monofil to assist with regrading efforts and avoid leachate regeneration.
- Under the new agreement with Covanta Marion the county is reimbursed for the disposal and transportation cost of the material.

Board discussion:

- Covanta Marion continues to research alternate uses for the ash; and
- Commissioner Willis expressed the following to help alleviate concerns over the cost of the contract:
 - The contract is for \$14 million over 10 years:
 - It is estimated at \$1.4 million per year.
 - Covanta Marion reimburses the county for the funds; and
 - This is not property tax dollars.

MOTION: Commissioner Willis moved to approve the Contract for Services with Valley Landfills Inc. in the amount of \$14,000,000 for the evaluation of incinerator ash for use as Alternate Daily Cover (ADC) through September 30, 2032. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:25:50)

9. Consider approval of the Construction Contract with Emery and Sons Construction Group, LLC, in the amount of \$116,025 for concrete floor repair at the North Marion Recycling and Transfer Station through December 30, 2023.

–Lani Radtke and Andrew Johnson

Summary of presentation:

- The transfer station is located at in the City of Woodburn;
- The work is performed every couple of years as part of the maintenance of the facility;
- The project scope includes the following:
 - Sawcutting and removing existing concrete and rebar;
 - Hauling the removed materials off-site for disposal; and
 - Constructing new rebar and concrete.
- The lowest bid of \$116,025 was received from Emery and Sons; and
- Construction is anticipated to start soon and will be done by the end of the calendar year.

Board discussion:

- Approximately 4,000 square feet of existing concrete will be removed and replaced;
- The site will remain open during the project which will take approximately two weeks; and
- Repairs are being performed in the pit area.

MOTION: Commissioner Cameron moved to approve the Construction Contract with Emery and Sons Construction Group, LLC, in the amount of \$116,025 for concrete floor repair at the North Marion Recycling and Transfer Station through December 30, 2023. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

(Video Time 00:29:47)

10. Consider approval of the Construction Contract with Emery and Sons Construction Group, LLC, in the amount of \$248,826 for the construction of American with Disabilities Act (ADA) improvements on 39th Avenue, NE, through October 31, 2025. –Lani Radtke

Summary of presentation:

- Existing ramps will be replaced with American with Disabilities Act (ADA) compliant facilities in northeast Salem at three different intersections on 39th Avenue;
- Existing conditions are not ADA compliant;
- The scope of work includes the following:
 - Construct 20 new ramps that meet ADA standards; and
 - Construct miscellaneous improvements required to complete the upgrade.
- Construction is anticipated to start soon and will be complete by the spring of 2023.

Board discussion:

- Commissioner Bethell requested information be provided for the public as to why the improvements are occurring:
 - The county passed its ADA Transition Plan earlier this year;
 - Federal law requires ADA compliant facilities be provided;
 - The changes will provide accessible routes for all users;
 - The county will continue working to making facilities ADA compliant; and
 - It is anticipated that a new project will be presented to the board every year.
- The county does try to make transportation routes accessible and comfortable for all community members.

MOTION: Commissioner Willis moved to approve the Construction Contract with Emery and Sons Construction Group, LLC, in the amount of \$248,826 for the construction of American with Disabilities Act (ADA) improvements on 39th Avenue, NE, through October 31, 2025. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:33:21)

11. Consider approval of Amendment #1 to the Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) to add \$1,688,413 of which an estimated \$1,016,520 will be paid in federal funds and an estimated \$671,893 will be paid by Marion County and the City of Salem for a new contract total of \$3,002,413 for traffic signal interconnects through September 1, 2026.

–Brian Nicholas

Summary of presentation:

- The funding is for a project that is already under construction and is scheduled to be completed by the end of the calendar year;

- The project ties together all of east Salem’s rural traffic signals and several of the county’s campuses into a single fiber optic backbone:
 - The following county campuses are included in the project:
 - The sheriff’s office public safety building campus;
 - The public works campus located on Silverton Road;
 - The courthouse;
 - Courthouse Square; and
 - The health and juvenile campus located on Center Street.
- The county has been aware of the funding opportunity for some time:
 - The funding revenue is already included in the budget; and
 - It takes time for the county to receive funding agreements.
- Once the amendment is approved the county can invoice the state for the costs that the county has been incurring for the project.

Board discussion:

- The project has been in the works for approximately seven years.

MOTION: Commissioner Cameron moved to approve Amendment #1 to the Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) to add \$1,688,413 of which an estimated \$1,016,520 will be paid in federal funds and an estimated \$671,893 will be paid by Marion County and the City of Salem for a new contract total of \$3,002,413 for traffic signal interconnects through September 1, 2026. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

(Video Time 00:36:42)

12. Consider approval of an order approving Conditional Use Permit (CU) Case #21-062/Allied Rock, LLC. –Austin Barnes

Summary of presentation:

- The item is an application for a Conditional Use (CU) permit to expand an existing quarry from 50 acres to 187 acres;
- The hearings officer held a noticed public hearing on April 14, 2022, and approved the application;
- The application was appealed, and the board held a noticed public hearing on July 27, 2022;
- The board considered all the evidence and approved the application;
- The board has the following options:
 - Adopt the order as written;
 - Direct staff to prepare a modified order; or
 - Choose not to sign and adopt the order as written.
- Staff recommends that the board adopt the order as written.

Board discussion:

- Commissioner Willis expressed the following:
 - He is happy with the findings because he felt like some of the agencies were asking the board to interpret the law in a way that we could not; and
 - He appreciates that Mr. Barnes highlighted that the rule expressly provides that the requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations.
- Ms. Vetto clarified that an order, not an ordinance, was submitted for consideration.

MOTION: Commissioner Willis moved to approve an order as written approving Conditional Use Permit (CU) Case #21-062/Allied Rock, LLC. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:39:39)

13. Consider an appeal of the hearings officer's decision denying Administrative Review (AR) Case #22-001/Dustin and Kanoe Barth. –Austin Barnes

Summary of presentation:

- The item is for an application for an Administrative Review (AR) to place a primary farm dwelling on a 20-acre parcel in an Exclusive Farm Use (EFU) zone;
- The parcel is located in the 8000 block of Dennison Road SE just outside of the City of Sublimity:
 - The property is located on the east side of Dennison Road, .3 miles north of its intersection with Coon Hollow Road.
- The applicants are proposing to place a primary farm dwelling on the subject property using the farm income standards;
- The property is vacant and is farmed in conjunction with the parcel directly to the south;
- The property is being farmed with Christmas trees;
- At the time of application, the property had approximately two acres of Christmas trees planted;
- The property was described by deed in its present configuration on June 5, 1974, and is legal for land use purposes;
- Surrounding uses are farm uses in all directions, with all adjacent parcels zoned EFU and planted with various farm crops;
- The area has a mix of farm parcels with dwellings, and farm parcels without dwellings;
- Most parcels in the area are over 40 acres, with a few smaller parcels to the west created through Measure 37 and Measure 49 approvals;
- The applicants were first denied by staff, and then they filed for a reconsideration that was also denied;
- The application was appealed to the hearings officer who also denied the application;
- The hearings officer's decision was appealed to the board;

- The board held a noticed public hearing on September 14, 2022;
- After receiving testimony, the board closed the public hearing and left the record open for the opponents for seven days, and an additional seven days for the applicants to present final arguments; and
- Now that the open record period time has passed the board must deliberate and make a decision on the appeal of the hearings officer's decision denying Administrative Review Case #22-001.

Board discussion:

- Everything that was presented at the September 14, 2022, public hearing was in a file that was given to Commissioner Cameron who was not at the public hearing;
- Commissioner Willis expressed the following:
 - He would like to decide in favor of the Barths, but he has concerns with the evidence in the record;
 - Commissioner Willis was hoping that the Barths' attorneys would be able to provide more evidence that this was actually income from the sale of farm products:
 - He is not convinced that it is; and
 - He feels that the Land Use Board of Appeals (LUBA) or the Court of Appeals will not think that it is either.
 - Commissioner Willis feels that the hearings officer was right when she said the sale is not commercially reasonable, potentially unenforceable, and not credible:
 - He feels this is the issue.
 - The law requires that it be income from the sale of farm products:
 - His interpretation of the evidence shows that it is at best a loan not secured by a lien on the property, and without any interest or anything attached to it.
 - He is not satisfied that this is income from the sale of farm products:
 - Even if the property is being farmed;
 - Even if they intend to farm it; and
 - Even if someday, they reach their goal:
 - He does not think that the evidence provided supports the request.
 - He is concerned that if they do vote in favor, that it will be like other cases that go to LUBA where cases are sent back to the county:
 - The applicants may be spending all their time in land use hearings, rather than actually building their house.
 - Commissioner Willis expressed that he will not be voting in favor of this because he does not feel that the evidence supports the farm income test.
- Commissioner Bethell agrees that the documentation provided does not seem overly legitimate for a business transaction;
- The income test does not explicitly state that there must be a contract between the seller and the buyer:
 - The word "contract" is not in the code.

- The income test does not explicitly state what type of transaction is acceptable in the sale farm products:
 - It is essentially saying that the farm product needs to meet the definition of farm use:
 - Christmas trees are considered farm product.
- During Mr. Barnes' time at the county doing land use over the past three years he has not had a future sales contract come in for a primary farm dwelling:
 - Everything has been sold already, accounted for, and taxed in that year; but
 - There are farm operations that will sell one to two years into the future.
- Mr. Barnes expressed that he is not an expert on Christmas trees and selling the trees in the future:
 - He believes that it is unreasonable to sell a product eight years ahead at a specified rate:
 - The rate may not be applicable in eight years;
 - The product may not be grown to maturity and harvestable in eight years.
- Commissioner Cameron expressed that this is a concern for him, based on the price that was used per tree:
 - A lot of things can happen within eight years; and
 - The trees may not potentially reach the value when they are harvested.
- Commissioner Bethell expressed that the risk of a buyer's investment in the purchase of a product has nothing to do with the income test:
 - Her understanding of the income test is that money changes hands and bank accounts regardless of when the product is received; and
 - This is the risk to the buyer.
- Commissioner Cameron expressed concern with the fact that the trees were sold in advance to family members:
 - They were not sold in advance on the open market.
- Commissioner Bethell expressed the following:
 - The income test rule requirements are clear, and she believes that the applicants have met those requirements;
 - There is not a clear guideline and a clear path in the rule to get a new system established;
 - She intends to vote in favor of the applicants receiving their permit specifically because she believes the applicants have met the requirements;
 - The way the contract was written is not relevant for her decision; and
 - She is not a contract lawyer, and she is not here to approve a contract.
- Commissioner Willis expressed the following:
 - He is having an issue with the same thing that the hearings officer did:
 - The law says it has to be income from the sale of farm products;
 - County staff interpreted that as income from farm products being harvested from your property, and taken away from your property;
 - He knows farmers who get paid a little before harvest, and then they harvest and they get paid the balance;

- He does not know any farmers who get paid full price five to eight years in advance of harvesting their crop without a lien or some sort of interest payment on it; and
- He cannot see this as income from the sale of farm products:
 - It is either a gift or an interest free loan without any security, and it is not a commercially viable transaction in the free market.
- Income from the sale of farm products should have a commercial basis.
- Business transactions can be between family members:
 - If family members did not transact business together then Marion County would not have a farm industry.
- Farm products do not have to be harvested before the income is counted:
 - People can receive income before products are harvested.
- Commissioner Cameron expressed he did not see anything in the file regarding tax returns that would show the income:
 - The information would verify that the applicants did claim the income on a tax return.
- Commissioner Willis expressed he would like to have seen some sort of additional evidence, either income tax statements, a lien, or something that he could rely on to say yes, this a valid transaction; and
- Mr. Barnes verified that there is a 2021 Schedule F showing the income for that year in the file:
 - The taxes for the second year's income have not been filed yet; and
 - The full 2021 tax return was not submitted.

MOTION: Commissioner Cameron moved to approve Administrative Review Case #22-001/Dustin and Kanoe Barth. Seconded by Commissioner Bethell; motion carried 2 to 1 with Commissioner Willis voting no.

Commissioner Bethell noted for the record that the Commissioners believe that Mr. and Mrs. Barth have an uphill climb, and that the second tax return and more documentation may be helpful.

(Video Time 01:00:13)

***Recess as Board of Commissioners.
Convene as Contract Review Board.***

CONTRACT REVIEW BOARD ACTION

CLERK'S OFFICE

1. Consider approval of an order granting an exemption to reinstate an expired Contract for Services with Avenue Insights and Analytics, LLC for the Marion County Licensing and Recording Project. –Toby Giddings

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Summary of presentation:

- The request is for approval of an exemption to reinstate the Avenue Insights contract beyond its 90-day limit to continue services through the implementation of the new land records management system.

Board discussion:

- The item was previously discussed in detail during a Management Update meeting;
- Commissioner Willis made the following comment on the record because the Board is granting an exemption to reinstate an expired contract:
 - The county did go through a request for proposals (RFP) for a new contractor for the services:
 - A company was awarded the RFP and the county is working towards implementing that contract, so this is an extension only until the new service comes online.
- The Clerk's Office has to continue filing and recording documentation during the transition.

MOTION: Commissioner Willis moved to approve an order granting an exemption to reinstate an expired Contract for Services with Avenue Insights and Analytics, LLC for the Marion County Licensing and Recording Project. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 01:02:30)

***Adjourn as Contract Review Board.
Reconvene as Board of Commissioners.***

ACTION

CLERK'S OFFICE

14. Consider approval of Amendment #8 to the Contract for Services with Avenue Insights and Analytics, LLC, to add \$290,000 for a new contract total of \$2,141,853 to provide equipment, support, and software for licensing and recording through August 31, 2023.

Summary of presentation:

There was no presentation.

Board discussion:

None.

MOTION: Commissioner Cameron moved to approve Amendment #8 to the Contract for Services with Avenue Insights and Analytics, LLC, to add \$290,000 for a new contract total of \$2,141,853 to provide equipment, support, and

software for licensing and recording through August 31, 2023. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

(Video Time 01:03:27)

Commissioner Cameron expressed on the record the following related to property taxes:


- The taxes are paid to the “Marion County Tax Collector”, so individuals assume that the entire tax amount is going to the county;
- Commissioner Cameron computed the percentage of a total tax bill that goes to Marion County:
 - An estimated 20 percent of the total tax bill goes to Marion County; and
 - For a property in the City of Salem the amount that goes to Marion County is estimated at 14 percent of the total tax bill.
- The total property tax bill does not all come to the county;
- Some of the money for a property in Salem goes to the following:
 - Education, including Salem-Keizer, Willamette Education Service District, and Chemeketa;
 - City of Salem; and
 - Salem Transit and other small jurisdictions.
- Commissioner Cameron wanted to make the point that it is property tax time, and hopefully everyone is looking at their bill and understanding what they are paying for;
- It is really important, and the county appreciates individuals paying their taxes and every dollar that Marion County receives in the general fund;
- Approximately 78 percent of the general fund is spent on public safety for the sheriff, jail, district attorney, juvenile department, and the courts:
 - Safety first and last.
- Property taxes are important;
- Commissioner Bethell added that the Board does not set the tax rate, it comes from the state legislature; and
- The county collects the tax, and then disperses it to other governing bodies.


PUBLIC HEARINGS
9:30 A.M.


None.

(Video Time 01:09:55)

Commissioner Bethell adjourned the meeting at 10:10 a.m.



CHAIR


COMMISSIONER


COMMISSIONER

Board Sessions can be viewed on-line at

<https://www.youtube.com/playlist?list=PLSUQ1gg6M78UsBE3q6w4rdf59Z5rXkEi5>