



OREGON

"Delivering Excellence Everyday"

MARION COUNTY BOARD OF COMMISSIONERS

Wednesday, December 17, 2025
Board Session 9:00 a.m.

Senator Hearing Room
555 Court Street NE, Salem

PUBLIC COMMENT

CONSENT

BOARD OF COMMISSIONERS

1. Approve an order ratifying the delegation of authority to the Marion County Chief Administrative Officer to issue Emerging Economic Opportunities Grant funds in the amount of \$100,000 to the Marion Polk Food Share for residents impacted by the temporary suspension of federal Supplemental Nutrition Assistance Program (SNAP) benefits.

2. Approve an order ratifying the delegation of authority to the Marion County Chief Administrative Officer to issue additional Emerging Economic Opportunities Grant funds in the amount of \$100,000 for a new total of \$200,000 to the Marion Polk Food Share for residents impacted by the temporary suspension of federal Supplemental Nutrition Assistance Program (SNAP) benefits.

BUSINESS SERVICES

3. Approve Amendment #5 to the Standard Professional Services Contract with Mackenzie Engineering, Inc., to add \$76,000 for a new not-to-exceed contract total of \$732,417.75 for updates to the rate schedule to support the construction of the Marion County Evidence Building located on Aumsville Highway in Salem, Oregon through June 28, 2026.

4. Approve the Public Improvement Agreement with Garland DBS, Inc. in the amount of \$104,902 to provide pressure washing, regrouting, and sealing services for the Marion County Juvenile Detention Center exterior through July 31, 2026.

DISTRICT ATTORNEY'S OFFICE

5. Approve the incoming funds 2025-2026 Victim Of Crime Act (VOCA) and Criminal Fines Account (CFA) Non-Competitive Intergovernmental Grant Agreement with the Oregon Department of Justice, Crime Victim and Survivor Services Division, in the amount of \$631,809.61 to support the provision of direct victim services for victims of crime retroactive to October 1, 2025, through September 30, 2026.

FINANCE

6. Approve Amendment #3 to the Contract for Services with Can/Am Technologies, Inc., to add \$24,808 for a new contract total of \$120,808, and extend the term date to October 31, 2026, for maintenance and support of the Teller Point-of-Sale System.

HEALTH AND HUMAN SERVICES

7. Approve Amendment #1 to the Contract for Services with Matthew Piehler to add \$540,000 for a new not-to-exceed contract total of \$1,115,000 to continue to work as the assertive community treatment prescriber providing skilled medical assessments and supervision for Marion County Health and Human Services clients through February 28, 2028.

8. Approve the Contract for Services with A WorkSAFE Service, Inc., in the not-to-exceed amount of \$132,000 to provide urinalysis collection services for the Marion County Adult Drug Court effective January 1, 2026, through August 31, 2027.

PUBLIC WORKS

9. Approve a quitclaim deed to convey a tract of land as described in Reel 401, Page 319 of the Marion County Deed Records, from Marion County to grantees Aleksandr Voronko and Victoria Voronko.

10. Approve an order delegating authority to any Marion County Commissioner or the Marion County Chief Administrative Officer if a commissioner is not available, to execute documents associated with the acquisition of a real property lease for 44505 West McCully Mountain Drive in Linn County, Oregon.

11. Approve of Amendment #2 to the Purchase Order with Carson Oil Company, Inc. to add \$1,500,000 for a new contract total of \$6,500,000 and extend the term date to December 31, 2026, for the purchase of fuel for Marion County's light duty vehicle fleet and heavy equipment fleet.

SHERIFF’S OFFICE

12. Approve Amendment #1 to the Contract for Services with The Pathfinder Network to add funding in the amount of \$374,065.48 for staff to support Justice Reinvestment Initiative (JRI) Services, for a new not-to-exceed contract total of \$1,578,199.48 through June 30, 2027.

ACTION

BOARD OF COMMISSIONERS

13. Consider approval of an order delegating authority to any Marion County Commissioner or the Marion County Chief Administrative Officer if a commissioner is not available, to execute the 2025-2027 Oregon Behavioral Health Deflection Program contract. –Chris Eppley and Gary White

PUBLIC WORKS

14. Consider the adoption of an administrative ordinance for Zone Change (ZC) Case #25-002/Creative Electric, LLC. –John Speckman

(Revised 12/17/2025: Motion made and approved to remove this item from the agenda.)

15. Consider the adoption of an administrative ordinance for Conditional Use/Comprehensive Plan Change (CU/CP) Case #24-038/TLM Holdings, LLC. –John Speckman

16. Consider an appeal of the Planning Commission’s decision approving Subdivision/ Variance Case #25-001/ Olander. –John Speckman

LEGAL COUNSEL

17. Consider the second title reading and the adoption of an ordinance to amend and update Marion County Code Chapter 1.25.220. –Steve Elzinga

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

None.

Members of the public may submit written testimony by email to PublicHearings@co.marion.or.us For agenda items where in-person testimony is allowed, the public may sign up to provide testimony by telephone by emailing PublicHearings@co.marion.or.us 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



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 17, 2025

Department: Board of Commissioners

Title: Marion/Polk Food Share Grant Request - Board Action Ratification

Management Update/Work Session Date: Audio/Visual aids

Time Required: 5 min. Contact: Gary White Phone: 5123

Requested Action: Ratify board direction authorizing the expenditure of \$100,000 through the Emerging Economic Opportinutues Grant. Funds were provided to the Marion/Polk Food share in support of Marion County SNAP recipients during the shut down of the federal government.

Issue, Description & Background: SNAP benefits were suspended as a result of the Federal Government being shutdown. As a result, food shares across Marion County saw an increase in utilization. The board authorized use of \$100,000 through the Emerging Economic Opportunities Grant to assist Marion/Polk food share in providing food to Marion County residents that had SNAP benefits.

Financial Impacts: \$100,000

Impacts to Department & External Agencies: None

List of attachments: None

Presenter: Gary White

Department Head Signature: [Handwritten Signature]

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of ratifying the delegation of)
authority to the Chief Administrative Officer)
Jan Fritz to issue funds to Marion Polk Food)
Share through the Emerging Economic)
Opportunities Grant)

ORDER No. _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting December 17, 2025, to ratify the delegation of certain authority to the Chief Administrative Officer in relation to funding for the Marion Polk Food Share.

WHEREAS Marion County residents were adversely impacted by the suspension of SNAP benefits due to the shutdown of the federal government; and

WHEREAS The Board of Commissioners determined that providing aid and funding to the Marion/Polk Foodshare was necessary to provide needed food to Marion County SNAP beneficiaries; and

WHEREAS, Time was of the essence and the Board delegated authority to the Chief Administrative Officer to issue funds in the amount of \$100,000 from the Emerging Economic Opportunity Grant, therefore

IT IS HEREBY ORDERED that the Marion County Chief Administrative Officer is delegated the authority and responsibility for executing the afore-mentioned action.

DATED at Salem, Oregon, this 17th day of December, 2025.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 17, 2025

Department: Board of Commissioners

Title: Marion/Polk Food Share Grant Request - Board Action Ratification

Management Update/Work Session Date: Audio/Visual aids

Time Required: 5 min. Contact: Gary White Phone: 5123

Requested Action: Ratify board direction authorizing the expenditure of an additional \$100,000 through the Emerging Economic Opportunities Grant for a total of \$200,000. Funds were provided to the Marion/Polk Food share in support of Marion County SNAP recipients during the shut down of the federal government.

Issue, Description & Background: SNAP benefits were suspended as a result of the Federal Government being shutdown. As a result, food shares across Marion County saw an increase in utilization. The board authorized use of an additional \$100,000 through the Emerging Economic Opportunities Grant to assist Marion/Polk food share in providing food to Marion County residents that had SNAP benefits.

Financial Impacts: \$200,000

Impacts to Department & External Agencies: None

List of attachments: None

Presenter: Gary White

Department Head Signature: [Handwritten Signature]

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of ratifying the expenditure of)
an additional \$100,000 to support the)
Marion/Polk Food Share through the)
Emerging Economic Opportunities Grant)

ORDER No. _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting December 17, 2025, to ratify the expenditure of an additional \$100,000 to support the Marion/Polk Food Share.

WHEREAS Marion County residents were adversely impacted by the suspension of SNAP benefits due to the shutdown of the federal government; and

WHEREAS The Board of Commissioners determined that providing additional aid and funding to the Marion/Polk Foodshare was necessary to provide needed food to Marion County SNAP beneficiaries; and

WHEREAS, Time was of the essence and the Board awarded an additional \$100,000 from the Emerging Economic Opportunity Grant for a total of \$200,000, therefore

IT IS HEREBY ORDERED that the Marion County Chief Administrative Officer is delegated the authority and responsibility for executing the afore-mentioned action.

DATED at Salem, Oregon, this 17th day of December, 2025.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 12/17/25

Department: Business Services

Title: Amendment 5 to Evidence Building A&E Contract with Mackenzie Engineering

Management Update/Work Session Date: 12/2/25 Audio/Visual aids

Time Required: 10 min Contact: Tamra Goettsch Phone: x3200

Requested Action: Consider approval of Amendment 5 to add \$76,000.00 to the A&E Professional Services Agreement with Mackenzie Engineering, Inc.

Issue, Description & Background: A&E Design services to support the construction of the Marion County Evidence Building located at 4040 Aumsville Hwy SE, Salem, OR 97317. The building will support the future needs and storage of the Marion County Sheriff Department's evidence.

Financial Impacts: Total cost \$732,417.75 CIP #22-014

Impacts to Department & External Agencies: No impacts to other departments outside of Sheriff's Office, Project coordination to be managed by Business Services

List of attachments: Amendments 5, Exhibit F-Rate Schedule, Previous documents

Presenter: Tamra Goettsch

Department Head Signature: Signed by: *Tamra Goettsch*
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Contract Review Sheet

A&E Standard Prof Svcs Agmnt

BS-4834-22 - Am5

Title: MC Evidence Building A&E Services

Contractor's Name: Mackenzie Engineering, Inc.

Department: Business Services Department

Contact: Vanessa Keck

Analyst: Chalyce MacDonald

Phone #: (503) 566-3910

Term - Date From: July 22, 2022

Expires: June 28, 2026

Original Contract Amount: \$ 80,500.00

Previous Amendments Amount: \$ 575,917.75

Current Amendment: \$ 76,000.00

New Contract Total: \$ 732,417.75 Amd% 810%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

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

Description of Services or Grant Award

Architectural & engineering services for the design of a new evidence building, to be located at the Marion County Jail Campus.

Amendment 1 adds \$525,955 and Phases 2 thru 7 for schematic and design development services.

Amendment 2 adds \$7,125 for freezer and cooler design services.

Amendment 3 adds \$1550 for plan modifications requested by County.

Amendment 4 adds \$41,287.75 in consideration of a rate increase due to the significant delay in the project while conducting the Archaeological survey.

Amendment 5 adds \$76,000.00 to the contract value and updates hourly rate schedule.

Desired BOC Session Date: 12/17/2025

Contract should be in DocuSign by: 11/26/2025

Agenda Planning Date: 12/4/2025

Printed packets due in Finance: 12/2/2025

Management Update: 12/2/2025

BOC upload / Board Session email: 12/3/2025

BOC Session Presenter(s) Tamra Goettsch

Code: Y

REQUIRED APPROVALS

DocuSigned by:
Chalyce MacDonald
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11/24/2025

Finance - Contracts

Date

Contract Specialist

Date

Signed by:
Scott Norris
60C98A6F708240B...

12/1/2025

Legal Counsel

Date

DocuSigned by:
Jan Fritz
DC16351248DE4EC...

12/3/2025

Chief Administrative Officer

Date

MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT
 (Architectural, Engineering, Land Surveying and Related Services)

Amendment #5

This Amendment No. 5 to the Professional Services Contract (as amended from time to time, the “Contract”), dated July 22, 2022, between Marion County, a political subdivision of the State of Oregon, hereafter called County, and Mackenzie Engineering, Inc., hereafter called Consultant.

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

The not to exceed limit for the completion of this Contract is \$732,417.75 ~~\$656,417.75~~.

The Services are more specifically described in the **EXHIBIT A, Statement of Work**. Owner agrees to pay Consultant a sum not to exceed \$732,417.75 ~~\$656,417.75~~ for performance of the Services, which shall include all allowable expenses. Progress payments shall be made in accordance with **EXHIBIT B, Consultant Compensation**.

Exhibit B - CONSULTANT COMPENSATION

B.1 BASIS OF COMPENSATION

B.1.01 Owner shall compensate Consultant for the performance of Services set forth in Exhibit A, as follows:

Consultant shall perform the Basic & Supplemental Services for: a maximum, not-to-exceed price of \$732,417.75 ~~\$656,417.75~~.

B.1.03

Phase	Percentage	\$ Amount
Programming/Conceptual Design Services - Completed	<u>6.3%</u> 7.0%	\$45,483.00
Schematic Design and Design Development Services – Lump Sum	<u>14.1%</u> 15.7%	\$101,761.00
Energy Trust of Oregon EcoCharette – T&M not to exceed	<u>0.4%</u> 0.4%	\$2,600.00
Construction Documents/Permitting Services – Lump Sum	<u>33.0%</u> 37.0%	\$239,063.00
Class 3 Site Plan Review – T&M not to exceed	<u>3.4%</u> 3.7%	\$24,250.00
Bidding Services, Construction Administration, Record Drawings – T&M not to exceed	<u>40.1%</u> 33.1%	<u>\$290,444.00</u> \$214,444.00
Warranty Period Services	<u>0.7%</u> 0.8%	\$5,000.00
Reimbursable Expenses – T&M not to exceed	<u>2.1%</u> 2.3%	\$15,141.75
Total	100.0%	<u>\$723,742.75</u> \$647,742.75

EXHIBIT F: RATE SCHEDULE

EXHIBIT F: RATE SCHEDULE is updated and replaced in its entirety with the current Rate Schedule attached to this Amendment as Exhibit F.

Except as expressly amended above, all other terms and conditions of the original contract 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.

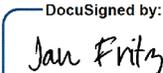
MARION COUNTY SIGNATURES BOARD OF COMMISSIONERS:

Chair _____ Date _____

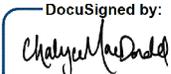
Commissioner _____ Date _____

Commissioner _____ Date _____

Authorized Signature:  Signed by: Tamra Goettsch
E4D545951879444... _____ Date 11/24/2025
Department Director or designee _____ Date _____

Authorized Signature:  DocuSigned by: Jan Fritz
DC16351248DE4EC... _____ Date 12/3/2025
Chief Administrative Officer _____ Date _____

Reviewed by Signature:  Signed by: Scott Norris
60C98A6F708240B... _____ Date 12/1/2025
Marion County Legal Counsel _____ Date _____

Reviewed by Signature:  DocuSigned by: Chalyn McDonald
2A951B5756514CF... _____ Date 11/24/2025
Marion County Contracts & Procurement _____ Date _____

MACKENZIE ENGINEERING, INC. SIGNATURE

Authorized Signature: _____ Date _____

Title: _____

MACKENZIE.

Portland, OR ■ Vancouver, WA ■ Seattle, WA ■ Sacramento, CA

W MACKENZIE.INC

EXHIBIT F: RATE SCHEDULE STANDARD HOURLY BILLING RATE SCHEDULE*

PRINCIPALS	\$ 200 – \$ 290
ARCHITECTURE/LANDSCAPE	
Design Director	\$ 200 – \$ 260
Senior Project Architect	\$ 205 – \$ 230
Project Architect I – III	\$ 125 – \$ 205
Senior Architectural Designer	\$ 140 – \$ 190
Architectural Designer II-III	\$ 90 – \$ 150
Architectural Designer I	\$ 75 – \$ 95
Designer/Drafter	\$ 70 – \$ 95
Intern	\$ 70 – \$ 80
ENGINEERING	
Senior Project Engineer	\$ 200 – \$ 250
Project Engineer I – III	\$ 125 – \$ 225
Designer I – II	\$ 90 – \$ 170
Transportation Analyst I – II	\$ 75 – \$ 125
Designer/Drafter	\$ 90 – \$ 150
Intern	\$ 70 – \$ 80
PLANNING	
Senior Project Planner	\$ 200 – \$ 235
Project Planner I – IV	\$ 95 – \$ 200
Permit Coordinator	\$ 60 – \$ 100
Assistant Planner	\$ 85 – \$ 125
Intern	\$ 70 – \$ 80
INTERIOR DESIGN	
Senior Project Interior Designer	\$ 190 – \$ 230
Interior Designer III – V	\$ 110 – \$ 180
Interior Designer I – II	\$ 75 – \$ 125
Intern	\$ 70 – \$ 80
ADMINISTRATION	
Administrator	\$ 75 – \$ 195
Word Processor	\$ 85 – \$ 100
Graphic Artist	\$ 90 – \$ 135

*Subject to change April 2026



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 17, 2025

Department: Business Services

Title: Juvenile Detention Center Exterior Clean & Seal

Management Update/Work Session Date: December 2, 2025 Audio/Visual aids []

Time Required: 10 min Contact: Tamra Goettsch Phone: x3200

Requested Action: Consider approval of the Public Improvement Agreement with Garland/DBS, Inc. for the exterior clean and seal of the Juvenile Detention Center building located at 2970 Center St NE, Salem, OR 97301.

Issue, Description & Background: The Juvenile Detention Center is in high need of pressure washing, regrouting, and sealing of the building's exterior. The grout is cracking and breaking out, allowing water to infiltrate the blocks. If not corrected, structural damage to the building will occur leading to higher cost for repairs.

Financial Impacts: Total cost \$104,902.00, funding through CIP 24-002.

Impacts to Department & External Agencies: No other impacts to other departments outside of Juvenile with project coordination to be managed by Business Services.

List of attachments: Public Improvement Agreement, Exhibit A Proposal

Presenter: Tamra Goettsch

Department Head Signature: [Signature: Tamra Goettsch]

Contract Review Sheet

Public Improvement Agreements

BS-6887-25

Title: Juvenile Detention Center Exterior Clean & Seal

Contractor's Name: Garland DBS Inc

Department: Business Services Department

Contact: Vanessa Keck

Analyst: Chalyce MacDonald

Phone #: (503) 566-3910

Term - Date From: Execution

Expires: July 31, 2026

Original Contract Amount: \$ 104,902.00

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ 104,902.00 Amd% 0%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 10-0400 Cooperative

Cooperative# PW1925

Description of Services or Grant Award

Pressure wash, re-grout, and seal the exterior of the Juvenile Detention Center building located at 2970 Center St NE, Salem, OR 97301.

Desired BOC Session Date: 12/17/2025

Contract should be in DocuSign by: 11/26/2025

Agenda Planning Date: 12/4/2025

Printed packets due in Finance: 12/2/2025

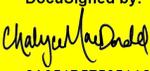
Management Update: 12/2/2025

BOC upload / Board Session email: 12/3/2025

BOC Session Presenter(s) Tamra Goettsch

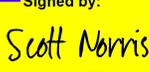
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REQUIRED APPROVALS

DocuSigned by:

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 11/13/2025
 Finance - Contracts Date

DocuSigned by:

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 11/13/2025
 Contract Specialist Date

Signed by:

 60C98A6F708240B
 11/13/2025
 Legal Counsel Date

DocuSigned by:

 DC16351248DE4EC
 11/13/2025
 Chief Administrative Officer Date

MARION COUNTY PUBLIC IMPROVEMENT AGREEMENT
for
Juvenile Detention Center Exterior Clean & Seal

This Agreement for the Juvenile Detention Center Exterior Clean & Seal (the "Agreement"), made by and between Marion County, a political subdivision of the state of Oregon, on behalf of Business Services Department, hereinafter called OWNER, and Garland/DBS, Inc., hereinafter called the CONTRACTOR (collectively the "Parties"), is effective on the date this Agreement has been signed by all the Parties and all required Marion County governmental approvals have been obtained. Unless otherwise defined in the Invitation to Bid or in this Agreement, the capitalized terms used herein are defined in Section A.1 of the Marion County General Conditions for Public Improvement Contracts.

WITNESSETH:

1. Contract Price, Contract Documents and Work.

The CONTRACTOR, in consideration of the sum of \$104,902.00 (the "Contract Price"), to be paid to the CONTRACTOR by OWNER in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Invitation to Bid, this Public Improvement Agreement and other Contract Documents, all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents.

The Contract Price includes the following items outlined in Proposal #25-OR-250146 attached as Exhibit A.

2. Representatives.

Unless otherwise specified in the Contract Documents, the OWNER designates Tamra Goettsch as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to performance, payment, authorization, and to carry out the responsibilities of the OWNER. CONTRACTOR has named Jarod Miller its Authorized Representative to act on its behalf.

County delegates to the individual listed below the authority and responsibility for issuing approvals, providing notices, receiving notices, issuing directives, authorizing change orders, and avoiding and resolving disputes: Wes Miller

3. Contract Dates.

PROJECT START DATE: December 24, 2025
SUBSTANTIAL COMPLETION: June 30, 2026
FINAL COMPLETION: July 31, 2026

4. Liquidated Damages. RESERVED

5. Integration

The contract documents constitute the entire agreement between the parties. no waiver, consent, modification or change of terms of this contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no other understandings, agreements, or

representations, oral or written, not specified herein regarding this contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this contract, understands it, and agrees to be bound by its terms and conditions.

6. Authority to Execute

Contractor covenants, represents, and warrants to Owner that the person(s) executing this Contract on behalf of the Contractor have the actual authority to bind the Contractor to the terms of the Agreement.

In witness whereof, Marion County, a political subdivision of the state of Oregon, on behalf of Board of Commissioners, executes this Agreement and the CONTRACTOR does execute the same as of the day and year of this Agreement first above written.

In witness whereof, Marion County, a political subdivision of the state of Oregon, on behalf of Business Services Department, executes this Agreement and the CONTRACTOR does execute the same as of the day and year of this Agreement first above written.

7. CONTRACTOR DATA:

CONTRACTOR NAME: Garland/DBS, Inc.
CONTRACTOR ADDRESS: 3800 East 91st St
CONTRACTOR ADDRESS: Cleveland, OH 11405
CONTRACTOR'S CCB # & Expiration Date: 192939, Expires 3/14/2027

CONTRACTOR'S SIGNATURE: _____
Date

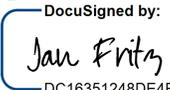
**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair Date

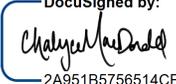
Commissioner Date

Commissioner Date

Authorized Signature:  Signed by: *Tamra Goettlich*
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Department Director or designee Date

Authorized Signature:  DocuSigned by: *Jan Fritz*
DC16351248DE4EC... 11/13/2025
Chief Administrative Officer Date

Reviewed by Signature:  Signed by: 11/13/2025
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Marion County Legal Counsel Date

Reviewed by Signature:  DocuSigned by: 11/13/2025
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Marion County Contracts & Procurement Date

**MARION COUNTY
GENERAL CONDITIONS FOR
PUBLIC IMPROVEMENT CONTRACTS**

September 1, 2014 Edition, Revised February 14, 2022

Changes to the General Conditions (including any additions, deletions, or substitutions) should only be made by Supplemental General Conditions, unless the General Conditions are specifically modified in the Public Improvement Agreement (which has a higher order of precedence under Section A.3 of the General Conditions). The text of these General Conditions should not otherwise be altered.

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**MARION COUNTY
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS
("General Conditions")**

SECTION A GENERAL PROVISIONS

A.1 DEFINITION OF TERMS

In the Contract Documents the following terms shall be as defined below:

ARCHITECT/ENGINEER means the Person appointed by the Owner to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities of the Owner's Authorized Representative to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

CHANGE ORDER means a written order issued by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 including Owner's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

CLAIM means a demand by Contractor pursuant to Section D.3 for review of the denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

CONTRACT means the written agreement between the Owner and the Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

CONTRACT DOCUMENTS means the Solicitation Document and addenda thereto, the Marion County Public Improvement Agreement Form, General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments, and Change Orders.

CONTRACT PERIOD as set forth in the Contract Documents, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

CONTRACT PRICE means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders.

CONTRACT TIME means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

CONTRACTOR means the Person awarded the Contract for the Work contemplated.

DAYS are calendar days, including weekdays, weekends, and holidays, unless otherwise specified.

DIRECT COSTS means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance (including, without limitation, Builder's Risk Insurance and Builder's Risk Installation Floater); bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

FINAL COMPLETION means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any, released.

FORCE MAJEURE means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

NOTICE TO PROCEED means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

OFFER means a bid in connection with an invitation to bid and a proposal in connection with a request for proposals.

OFFEROR means a bidder in connection with an invitation to bid and a proposer in connection with a request for proposals.

OVERHEAD means those items which may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office, and Commercial General Liability Insurance and Automobile Liability Insurance.

OWNER means Marion County acting by and through the governmental entity identified in the Solicitation Document.

OWNER'S AUTHORIZED REPRESENTATIVE means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

PERSON means an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

PLANS means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

PUNCHLIST means the list of Work yet to be completed or deficiencies which need to be corrected to achieve Final Completion of the Contract.

RECORD DOCUMENT means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer, and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

SOLICITATION DOCUMENT means an invitation to bid or request for proposal or request for quotes.

SPECIFICATION means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service, or construction item. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

SUBCONTRACTOR means a Person having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.

SUBSTANTIAL COMPLETION means the date when the Owner accepts in writing the construction, alteration, or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2.

SUBSTITUTIONS means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

SUPPLEMENTAL GENERAL CONDITIONS means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be included in the Solicitation Document or may be a separate attachment to the Contract.

WORK means the furnishing of all materials, equipment, labor, transportation, services, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

A.2 SCOPE OF WORK

The Work contemplated under this Contract includes all labor, materials, transportation, equipment, and services for, and incidental to, the completion of all construction work in connection with the project

described in the Contract Documents. The Contractor shall perform all Work necessary so that the project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

A.3 INTERPRETATION OF CONTRACT DOCUMENTS

- A.3.1 Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:
- A.3.1.1 Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
 - A.3.1.2 The Supplemental General Conditions;
 - A.3.1.3 The Marion County Public Improvement Agreement Form;
 - A.3.1.4 The General Conditions
 - A.3.1.5 The Plans and Specifications
 - A.3.1.6 The Solicitation Document and any addenda thereto;
 - A.3.1.7 The accepted Offer.
- A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.
- A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).
- A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

- A.4.1 It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor resulting from the Contractor's failure to acquire full information in advance regarding all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

- A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.

- A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules, and regulations.

- A.4.4 If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner's Authorized Representative denies Contractor's request for additional compensation, additional Contract Time, or other relief that Contractor believes results from the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

A.5 INDEPENDENT CONTRACTOR STATUS

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee, or agent of the Owner.

A.6 RETIREMENT SYSTEM STATUS AND TAXES

Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under this Contract. Contractor will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation, or the Public Employees' Retirement System, except as a self-employed individual. Unless the Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

A.7 GOVERNMENT EMPLOYMENT STATUS

- A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.
- A.7.2 Contractor represents and warrants that Contractor is not an employee of the Marion County for purposes of performing Work under this Contract.

SECTION B ADMINISTRATION OF THE CONTRACT

B.1 OWNER'S ADMINISTRATION OF THE CONTRACT

- B.1.1 The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- B.1.2 The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the Work.
- B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.
- B.1.4 Based upon the Architect/Engineer's evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

B.2 CONTRACTOR'S MEANS AND METHODS; MITIGATION OF IMPACTS

- B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the

Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures.

- B.2.2 The Contractor is responsible to protect and maintain the Work during construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.
- B.2.4 Contractor agrees that it will commence performance of the Work in a timely manner and will achieve the Contract Times in the Contract Documents.

B.3 MATERIALS AND WORKMANSHIP

- B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.
- B.3.2 The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.
- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.
- B.3.4 Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The Contractor shall furnish Samples of materials for testing by the Owner's Authorized Representative and include the cost of the Samples in the Contract Price.

B.4 PERMITS

Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Supplemental General Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The

Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, Marion County, and its departments, divisions, members, and employees.

B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

- B.5.1 Contractor shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.
- B.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations; and
 - B.5.2.1 Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts.
 - B.5.2.2 Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- B.5.3 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.
- B.5.4 Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

B.6 SUPERINTENDENCE

Contractor shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the site. Directions given to the superintendent by the Owner's Authorized Representative shall be confirmed in writing to the Contractor.

B.7 INSPECTION

- B.7.1 Owner's Authorized Representative shall have access to the Work at all times.
- B.7.2 Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.
- B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor, and promptly delivered to the Owner's Authorized Representative.
- B.7.4 As required by the Contract Documents, Work done, or material used without inspection or testing by the Owner's Authorized Representative may be ordered removed at the Contractor's expense.
- B.7.5 If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.
- B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.
- B.7.7 When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or near third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a

party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

B.8 SEVERABILITY

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

B.9 ACCESS TO RECORDS

B.9.1 Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner's Authorized Representative access thereto.

B.9.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than ten (10) years, all Record Documents, financial and accounting records, and other books, documents, papers, and records of Contractor which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all such records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

B.10 WAIVER

Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

B.11 SUBCONTRACTS AND ASSIGNMENT

B.11.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written

approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

B.12 SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

B.13 OWNER'S RIGHT TO DO WORK

Owner reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor. If such work takes place within or next to the project site, Contractor will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The Owner's Authorized Representative will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

B.14 OTHER CONTRACTS

In all cases and at any time, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract will fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in section B.13.

B.15 GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

B.16 LITIGATION

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 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 section be construed as a waiver by the Marion County on 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. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

B.17 ALLOWANCES

B.17.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

B.17.2 Unless otherwise provided in the Contract Documents:

- B.17.2.1 when finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- B.17.2.2 Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
- B.17.2.3 whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect
 - (a) the difference between actual costs and the allowances under Section B.17.2.1 and
 - (b) changes in Contractor's costs under Section B.17.2.2.
- B.17.2.4 Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

B.18 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- B.18.1 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:
 - B.18.1.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier, or distributor to illustrate some portion of the Work.
 - B.18.1.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
 - B.18.1.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- B.18.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which

the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

- B.18.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.
- B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- B.18.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.
- B.18.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar by the Architect/Engineer's review or approval thereof.
- B.18.7 In the event that Owner elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

B.19 SUBSTITUTIONS

The Contractor may make Substitutions only with the consent of the Owner, after evaluation by the Owner's Authorized Representative and only if price or time change must be made through a Change Order, all other substitutions may be communicated through email. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the Contractor represents that the Contractor has personally investigated the proposed substitute product; represents that the Contractor will provide the same warranty for the Substitution that the Contractor would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

B.20 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications, and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

B.21 FUNDS AVAILABLE AND AUTHORIZED

Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owner's appropriation or limitation. Contractor understands and agrees that, to the extent that in the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies the funding the cost of this contract, the CONTRACTOR agrees to abide by any such decision, including termination of this agreement.

B.22 NO THIRD-PARTY BENEFICIARIES

Owner and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

SECTION C WAGES AND LABOR

C.1 MINIMUM WAGE RATES ON PUBLIC WORKS

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents. Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS

- C.2.1 In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement and that to the Contractor's or Subcontractor's best knowledge and belief the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a

worker on the project shall be submitted once a month, by the fifth business day of the following month.

The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

- C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by section C.2.1. The Owner shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.
- C.2.3 Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.
- C.2.4 In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS

- C.3.1 Pursuant to ORS 279C.505 and as a condition to Owner’s performance hereunder, the Contractor shall:
 - C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.
 - C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
 - C.3.1.3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Owner.
 - C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - C.3.1.5 Demonstrate that an employee drug testing program is in place as follows:
 - (a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:
 - (1) A written employee drug testing policy,

- (2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a “Qualifying Employee Drug Testing Program.” For the purposes of this section, an employee is a “Subject Employee” only if that employee will be working on the project job site.

- (b) Contractor shall require each Subcontractor providing labor for the project to:
 - (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor’s Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
 - (2) Require that the Subcontractor’s Subject Employees participate in the Contractor’s Qualifying Employee Drug Testing Program for the duration of the subcontract.

C.3.2 Pursuant to ORS 279C.515, and as a condition to Owner's performance hereunder, Contractor agrees:

C.3.2.1 If Contractor fails, neglects or refuses to pay promptly a person’s claim for labor or services that the person provides to the Contractor or a Subcontractor in connection with the project as such claim becomes due, the proper officer that represents the Owner may pay the amount of the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Paying a claim in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.

C.3.2.2 If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receiving payment from Owner or a contractor, the contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-Day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

C.3.2.3 If the Contractor or a Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract must contain a similar clause.

C.3.3 Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services the Contractor enters into with a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

- C.3.3.1 A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within ten (10) Days out of amounts the Owner pays to the Contractor under the Contract;
- C.3.3.2 A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor;
- C.3.3.3 A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:
 - (a) Notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and
 - (b) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
- C.3.3.4 An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within thirty (30) Days after receiving payment from Owner, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under Section C.3.3.1 of this subsection. Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and is computed at the rate specified in ORS 279C.515(2).
- C.3.3.5 A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of paragraphs C.3.3.1 through C.3.3.4 above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.
- C.3.4 All employers, including Contractor, that employ subject workers who work under this contract in the Marion County shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

C.4 PAYMENT FOR MEDICAL CARE

Pursuant to ORS 279C.530, and as a condition to Owner's performance hereunder, Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

C.5 HOURS OF LABOR

As a condition to Owner's performance hereunder, Contractor shall comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference:

Pursuant to ORS 279C.520 and as a condition to Owner's performance hereunder, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

- C.5.1 For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- C.5.2 For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- C.5.3 For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

This section C.5 will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

This Section C.5 shall not excuse Contractor from completion of the Work within the time required under this Contract.

SECTION D CHANGES IN THE WORK

D.1 CHANGES IN WORK

- D.1.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.
- D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:
 - D.1.2.1 Modification of specifications and design.
 - D.1.2.2 Increases or decreases in quantities.
 - D.1.2.3 Increases or decreases to the amount of Work.
 - D.1.2.4 Addition or elimination of any Work item.

- D.1.2.5 Change in the duration of the project.
- D.1.2.6 Acceleration or delay in performance of Work.
- D.1.2.7 Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible, as determined by Owner. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (Owner’s Right to Do Work) shall then apply.

Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

- D.1.3 The Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:
 - D.1.3.1 Unit pricing may be utilized at the Owner’s option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.
 - D.1.3.2 If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, fixed pricing may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3.3 shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Owner without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.
 - D.1.3.3 In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor’s or Subcontractor’s own forces:

- On Labor..... 15%
- On Equipment..... 10%
- On Materials..... 10%

When Change Order Work under D.1.3.3 is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor or Contractor will be allowed a 5% supplemental mark-up on each piece of subcontract Work covered by such Change Order.

Payments made to the Contractor shall be complete compensation for Overhead, profit, and all costs that were incurred by the Contractor or by other forces furnished by the Contractor,

including Subcontractors, for Change Order Work. Owner may establish a maximum cost for Change Order Work under this Section D.1.3.3, which shall not be exceeded for reimbursement without additional written authorization from Owner. Contractor shall not be required to complete such Change Order Work without additional authorization.

- D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.
- D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor.

The thirty (30) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the Marion County, whether in this claims process, in litigation, or in any dispute resolution process.

If the Owner's Authorized Representative denies the Contractor's request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.6 No request or Claim by the Contractor for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Contractor agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written extension is granted by Owner. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within ninety (90) days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Contractor is notified that numerous changes may be required and that there will be no compensation made to the Contractor directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

D.2 DELAYS

D.2.1 Delays in construction include "Avoidable Delays", which are defined in Section D.2.1.1, and "Unavoidable Delays", which are defined in Section D.2.1.2. The effect of Avoidable Delays is described in Section D.2.2 and the effect of Unavoidable Delays is described in Section D.2.3.

D.2.1.1 Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time.
- (c) Do not impact activities on the accepted critical path schedule.
- (d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

D.2.1.2 Unavoidable Delays include delays other than Avoidable Delays that are:

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be

inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed, but not more than fourteen (14) days after the condition has been encountered. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:
 - (1) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
 - (2) daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

D.2.2 Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, Contractor may be entitled to the following:

D.2.3.1 Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b).

D.2.3.2 Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2 (c) and (d).

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay.

If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

If Contractor does not timely submit the notices required under this Section D.2., then unless otherwise prohibited by law, Contractor's Claim shall be barred.

D.3 CLAIMS REVIEW PROCESS

- D.3.1 All Contractor Claims shall be referred to the Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Owner's Authorized Representative within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.
- D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.
- D.3.3 The Owner's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part

and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

- D.3.4 The Owner's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner, through its Chief Administrative Officer (CAO), shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.
- D.3.5 The decision of the Owner shall be final and binding unless the Contractor delivers to the Owner its requests for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision.
- D.3.6 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- D.3.7 The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

- D.3.8 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to maintain the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality to the extent allowed by law. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

- D.3.9 Owner may at any time and at its discretion issue a construction change directive adding to, modifying or reducing the scope of Work. Contractor and Owner shall negotiate the need for any additional compensation or additional Contract Time related to the change, subject to the procedures for submitting requests or Claims for additional compensation or additional Contract Time established in this Section D. Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the Work while any request or Claim is pending, including but not limited to, a request or Claim for additional compensation or additional Contract Time resulting from Work under a Change Order or construction change directive. Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

SECTION E PAYMENTS

E.1 SCHEDULE OF VALUES

The Contractor shall submit, at least ten (10) Days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner's Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Owner's Authorized Representative.

E.2 APPLICATIONS FOR PAYMENT

- E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) Days after the receipt of invoice ("application for payment") from the Contractor or fifteen (15) Days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date. The rate of interest shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) Days after receipt of the application for payment from the Contract or fifteen (15) Days after the payment is approved by the Owner, whichever is the earlier date, but the rate of interest shall not exceed thirty (30) percent. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) Days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for payment that is correct and proper. Owner makes this election; the Contractor will be required to arrange to receive EFT/ACH payments.

E.2.2 Contractor shall submit to the Owner's Authorized Representative, an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors. Contractor shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received.

Signed: _____”

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

- E.2.3.1 The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- E.2.3.2 The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- E.2.3.3 The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- E.2.3.4 The Contractor shall name the Owner as co- insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
- E.2.3.5 Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.
- E.2.3.6 Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.
- E.2.3.7 Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.
- E.2.3.8 All required documentation must be submitted with the respective application for payment.

- E.2.4 The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:
 - E.2.4.1 Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,
 - E.2.4.2 third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
 - E.2.4.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Owner and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);
 - E.2.4.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
 - E.2.4.5 damage to the Owner or another contractor;
 - E.2.4.6 reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - E.2.4.7 failure to carry out the Work in accordance with the Contract Documents; or
 - E.2.4.8 assessment of liquidated damages when withholding is made for offset purposes.
- E.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - E.2.5.1 Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in application for payment until the Contract Price has been adjusted by Change Order;
 - E.2.5.2 Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
 - E.2.5.3 Subtract the aggregate of previous payments made by the Owner; and
 - E.2.5.4 Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

- E.2.6 Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.
- E.2.7 The Contractor warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- E.2.8 If Contractor disputes any determination by Owner's Authorized Representative regarding any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

E.3 PAYROLL CERTIFICATION REQUIREMENT

Payroll certification is required before payments are made on the Contract. Refer to Section C.2 for this information.

E.4 DUAL PAYMENT SOURCES

Contractor shall not be compensated for Work performed under this Contract from any state agency other than the agency that is a party to this Contract.

E.5 RETAINAGE

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

- E.5.1.1 Owner reserves the right in its sole discretion to not withhold retainage from progress payments or to begin withholding retainage at any time. If Owner withholds retainage from progress payments the amount to be retained will not exceed five percent of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.
- E.5.1.2 If retainage is withheld, unless the Contractor requests and the Owner accepts a form of retainage described in options (a) or (b) below, the Owner will deposit that retainage in an interest-bearing account, established through the Owner, in a bank, savings bank, trust company or savings association for the benefit of Owner, with interest from such account accruing to the Contractor as required by ORS 279C.560. In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, unless the Owner finds in writing that accepting bonds, securities or other instruments described in option (a) below or a security bond described in option (b)

below poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor's written request:

- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. To be permissible the bonds, securities and other instruments must be of a character approved by the Chief Administrative Officer, including but not limited to:
 - (1) Bills, certificates, notes or bonds of the United States.
 - (2) Other obligations of the United States or agencies of the United States.
 - (3) Obligations of a corporation wholly owned by the federal government.
 - (4) Indebtedness of the Federal National Mortgage Association.
 - (5) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
 - (6) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008; or
- (b) that the Contractor be allowed, with the approval of the Owner, to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to 279C.570 and 279C.600 to ORS 279C.625.

Where the Owner has accepted the Contractor's election of option (a) or (b) above, Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request to deposit a surety bond under option (b), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

- (c) For a contract over \$500,000, if the Contractor requests that the Owner deposit the retainage in an interest-bearing escrow account under ORS 279C.570(2), the Contractor shall execute such documentation and instructions respecting the interest-bearing escrow account as the Owner may require to protect its interests, including but not limited to a provision that no funds may be paid from the account to anyone without the Owner's advance written authorization.

- (d) For a contract of \$500,000 or less, the Owner shall deposit the retainage in an interest-bearing account under ORS 279C.560(5). The Owner will use an interest-bearing account in a bank, savings bank, trust company or savings association as provided under ORS 279C.560(5).

E.5.1.3 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Days after the end of the 15-Day period.

E.5.1.4 In accordance with the provisions of ORS 279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in paragraph (a) of subsection E.5.1.2, the Owner shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570.

E.5.1.5 Contractor agrees that if Contractor elects to reserve retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and the Contractor shall comply with all applicable legal requirements.

E.5.1.6 The Contractor shall comply with all applicable legal requirements for withholding and releasing retainage and for prompt payments, including but not limited to those in ORS Chapters 279C and 701, and 49 CFR 26.29.

E.5.2 As provided in subsections C.2.2 and C.2.3, additional withholding in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by section C.2.1.

E.6 FINAL PAYMENT

E.6.1 Upon completion of all the Work under this Contract, the Contractor shall notify the Owner's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.

E.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other

indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- E.6.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

SECTION F JOB SITE CONDITIONS

F.1 USE OF PREMISES

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC

- F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative, workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

- F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall immediately and in writing, report to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- F.2.4 Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section D.

F.3 CUTTING AND PATCHING

- F.3.1 Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.
- F.3.2 Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

F.4 CLEANING UP

From time to time as may be ordered by the Owner the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four hours after notification by the Owner the work may be done by others and the cost charged to the Contractor and deducted from payment due the Contractor.

F.5 ENVIRONMENTAL CONTAMINATION

- F.5.1 Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit Contractor's responsibility for obtaining insurance coverages

required under Section G.3 of these General Conditions, and Contractor shall take no action that would void or impair such coverages

- F.5.1.1 Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.
- F.5.1.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:
 - (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
 - (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and
 - (c) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.
- F.5.2 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:
 - F.5.2.1 Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
 - F.5.2.2 Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
 - F.5.2.3 Exact time and location of release, including a description of the area involved.
 - F.5.2.4 Containment procedures initiated.
 - F.5.2.5 Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.
 - F.5.2.6 Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
 - F.5.2.7 Personnel injuries, if any, resulting from, or aggravated by, the release.

F.6 ENVIRONMENTAL CLEAN-UP

- F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or wellbeing of Contractor's or any Subcontractor's work force.
- F.6.2 Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s).

F.7 FORCE MAJEURE

A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. The Owner may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

SECTION G INDEMNITY, BONDING, AND INSURANCE**G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY**

- G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.
- G.1.2 Contractor agrees to indemnify, defend (with counsel approved by Owners), reimburse and hold harmless Owners, their partners, owners, board members, officers, employees, agents and volunteers (the "Indemnified Parties") for, from and against any and all threatened, alleged or actual all claims, suits, allegations, damages, liabilities, costs, expenses, losses and judgments, including, but not limited to, those which relate to personal or real property damage (including to the Project itself or otherwise), personal injury or death, attorney and expert/consultant fees and costs, and both economic and non-economic losses, to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other act or omission of Contractor, its employees, Agents and Subcontractors, or anyone for whose acts Contractor is responsible (the Indemnitor). If claims are asserted against any of the Indemnified Parties by an employee of the Indemnitor, the Contractor's indemnification obligation and other obligations under this section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to the employee by or for the Indemnitor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND

- G.2.1 When the Contract Price is \$100,000 or more (or \$50,000 or more in the case of Contracts for highways, bridges and other transportation projects) the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds, if required by the Contract Documents.
- G.2.2 Bond forms furnished by the Owner and notarized by awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.
- G.2.3 Before execution of the Contract Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

G.3 INSURANCE

- G.3.1 Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory with any other insurance and self- insurance, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.
- G.3.2 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.
- G.3.3 Builder's Risk Insurance:
 - G.3.3.1 Builder's Risk: During the term of this Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.
 - G.3.3.2 Builder's Risk Installation Floater: For other than new construction the Contractor shall obtain and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the

Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.3 Such insurance shall be maintained until Owner has occupied the facility.

G.3.3.4 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

G.3.4 Liability Insurance:

G.3.4.1 Commercial General Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace) and shall be issued on an occurrence basis. Contractor shall provide proof of insurance of not less than combined single limit, or the equivalent, of not less than: \$200,000; \$500,000; \$1,000,000; \$2,000,000 each occurrence for Bodily Injury and Property Damage. The policy, or an endorsement or amendment to the policy, must provide that the County and its agents, board members, officers, employees, and volunteers are "additional insureds", but only with respect to the Contractor's Services to be provided under this Contract.

G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than the amounts Minimum amounts required by the Oregon Financial Responsibility Law (ORS 806.060 and 806.070); \$200,000; \$500,000; or \$1,000,000 per occurrence, for Bodily Injury and Property Damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. The policy, or an endorsement or amendment to the policy, must provide that the County and its board members, officers, agents, employees, and volunteers are "additional insureds", but only with respect to the Consultant's Services to be provided under this Contract.

G.3.4.3 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Contract. This will be a condition of the final acceptance of Work or services and related warranty (if any).

G.3.5 Excess/Umbrella Insurance: A combination of primary and excess/umbrella insurance is acceptable to meet the minimum coverage requirements for Commercial General Liability and Automobile Liability Insurance. In such case, the insurance certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is “The Excess/Umbrella policy is excess over primary Commercial General Liability and primary Automobile Liability Insurance.”

G.3.6 Additional Insured: The liability insurance coverage, except Professional Liability if included, required for performance of this Contract shall include the Marion County, its departments, divisions, officers, and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

If Contractor cannot obtain an insurer to name the Marion County, its departments, divisions, officers and employees as Additional Insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the Marion County, its departments, divisions, officers and employees as Named Insureds with not less than a \$1,500,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to execution of the Contract.

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Contract. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self- insurance included hereunder. Any deductible, self- insured retention and/or self-insurance in excess of \$50,000 shall be approved by the Owner in writing prior execution of the Contract and is subject to Owner's approval. The Contractor shall immediately notify the Owner’s Authorized Representative in writing of any change in insurance coverage.

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD

H.1.1 Time is of the essence on this Contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.

H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2.6 and shall be subject to the Change Order process of Section D.1.

H.1.3 The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete in whole or in part the Work after the date described in Section H.1.2 above.

H.2 SCHEDULE

Contractor shall provide, by or before the pre- construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or allocated Contract Time. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a request for additional compensation for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

H.3 PARTIAL OCCUPANCY OR USE

The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

SECTION I CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, Owner

shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) days after demand without affecting Contractor's obligations.

I.2 WARRANTY WORK

- I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent.
- I.2.2 The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Contractor's obligations.
- I.2.3 This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.
- I.2.4 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.
- I.2.5 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- I.2.6 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- I.2.7 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

SECTION J SUSPENSION AND/OR TERMINATION OF THE WORK

J.1 OWNER'S RIGHT TO SUSPEND THE WORK

- J.1.1 The Owner and/or the Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:
 - J.1.1.1 Failure of the Contractor to correct unsafe conditions;
 - J.1.1.2 Failure of the Contractor to carry out any provision of the Contract;
 - J.1.1.3 Failure of the Contractor to carry out orders;
 - J.1.1.4 Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
 - J.1.1.5 Time required to investigate differing site conditions;
 - J.1.1.6 Any reason considered to be in the public interest.
- J.1.2 The Owner shall notify Contractor and the Contractor's Surety in writing of the effective date and time of the suspension and Owner shall notify Contractor and Contractor's surety in writing to resume Work.

J.2 CONTRACTOR'S RESPONSIBILITIES

- J.2.1 During the period of the suspension, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.
- J.2.2 When the Work is recommenced after the suspension, the Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

J.3 COMPENSATION FOR SUSPENSION

Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Contractor shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

J.4 OWNER'S RIGHT TO TERMINATE CONTRACT

- J.4.1 The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) Days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:

- J.4.1.1 If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in- possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
- J.4.1.2 If Contractor should make a general assignment for the benefit of Contractor's creditors;
- J.4.1.3 If a receiver should be appointed on account of Contractor's insolvency;
- J.4.1.4 If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
- J.4.1.5 If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or
- J.4.1.6 If Contractor is otherwise in material breach of any part of the Contract.

J.4.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

J.5 TERMINATION FOR CONVENIENCE

- J.5.1 Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the public.
- J.5.2 The Owner will provide the Contractor with seven (7) Days' prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section E. Compensation for Work terminated by the Owner under this provision will be according to Section E. In no circumstance shall Contractor be entitled to lost profits for Work not performed due to termination.

J.6 ACTION UPON TERMINATION

- J.6.1 Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.
- J.6.2 As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

SECTION K CONTRACT CLOSE OUT

K.1 RECORD DOCUMENTS

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative, one hard copy set and one electronic set of Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

K.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") and one (1) digital copy for review by the Owner's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the Owner until the O & M Manuals have been received. The O & M Manuals shall contain training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver three (3) complete and approved sets and one (1) digital copy of O & M Manuals to the Owner's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the Contractor shall submit to the Owner's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to Owner, which states that all Subcontractors and suppliers have been paid in full, all disputes with property owners have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the Contractor's knowledge, there are no claims of any kind outstanding against the project. The Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner from all claims for labor and materials finished under this Contract. The Contractor shall furnish complete and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

K.4 COMPLETION NOTICES

- K.4.1 Contractor shall provide Owner's Authorized Representative notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.
- K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The

Contractor may request that a punch list be prepared by the Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

K.5 TRAINING

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. Contractor shall schedule training sessions at least four weeks in advance of the date of training to allow Owner personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

K.6 EXTRA MATERIALS

As part of the Work, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by the Owner's Authorized Representative.

K.7 ENVIRONMENTAL CLEAN-UP

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner that all environmental pollution clean-up performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

K.8 CERTIFICATE OF OCCUPANCY

The Contractor shall not be granted Final Completion or receive final payment if the Owner has not received an unconditioned certificate of occupancy from the appropriate state and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of Owner.

K.9 OTHER CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for returning to the Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion if the Owner does not take beneficial use of the facility and the Contractor's forces continue with the Work.

K.10 SURVIVAL

All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract

SECTION L LEGAL RELATIONS & RESPONSIBILITIES

L.1 LAWS TO BE OBSERVED

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state, and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to

environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

L.2 FEDERAL AGENCIES

Agriculture, Department of
Forest Service
Soil Conservation Service
Coast Guard
Defense, Department of
Army Corps of Engineers
Energy, Department of
Federal Energy Regulatory Commission
Environmental Protection Agency
Health and Human Services
Department of Housing and Urban Development
Department of Solar Energy and Energy Conservation Bank
Interior, Department of
Bureau of Land Management
Bureau of Indian Affairs
Bureau of Mines
Bureau of Reclamation
Geological Survey
Minerals Management Service
U.S. Fish and Wildlife Service
Labor, Department of
Mine Safety and Health Administration
Occupation Safety and Health Administration
Transportation, Department of
Federal Highway Administration
Water Resources Council

L.3 STATE AGENCIES

Administrative Services, Department of
Agriculture, Department of
Soil and Water Conservation Commission
Columbia River Gorge Commission
Energy, Department of
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of
Human Resources, Department of
Consumer and Business Services, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of
State Lands, Division of
Water Resources Department of

L.4 LOCAL AGENCIES

City Councils

County Courts

County Commissioner, Board of

Design Commissions

Historical Preservation Commission

Planning Commissions

EXHIBIT A



Garland/DBS, Inc.
3800 East 91st Street
Cleveland, OH 44105
Phone: (800) 762-8225
Fax: (216) 883-2055



ROOFING MATERIAL AND SERVICES PROPOSAL

Marion County
Juvenile Detention Center
2970 Center St NE
Salem, Oregon 97301

Date Submitted: 10/17/2025
Proposal #: 25-OR-250146
MICPA # PW1925

OREGON General Contractor License #: 192939

Purchase orders to be made out to: Garland/DBS, Inc.

Please Note: The following budget/estimate is being provided according to the pricing established under the Master Intergovernmental Cooperative Purchasing Agreement (MICPA) with Racine County, WI and OMNIA Partners, Public Sector (U.S. Communities). Garland/DBS, Inc. administered an informal competitive process for obtaining quotes for the project with the hopes of providing a lower market-adjusted price whenever possible.

Scope of Work:

1. Access work area from scissor lifts, boom lifts, or scaffolding as needed.
2. Pressure wash the exterior using recommended settings, pressure, and cleaner to remove all stains, debris, and organic materials from the walls.
3. Place ground protection around perimeter to reduce debris, spillage, or overspray.
4. Removing dis-bonded paint and loose mortar and masonry.
5. Damaged mortar joints and split block will be ground out with diamond blade saws with dust collection system. Then repointed back with type-s mortar mix.
6. Patch CMU block back with large voids.
7. Apply thick coat of block filler on exposed CMU block.
8. Base bid to include up to 300 LF of expansion joint replacement. All Outdoor sections on the west side are to have full expansion joint, exclusive from the 300 LF, cut out and replaced. All metal coping joints that are in line with joints are to have new caulking applied to the metal caps.
9. Apply two coats of Garland Tuff-Coat on all existing painted surfaces. On unpainted surfaces, the newer section, apply two coats of Garland Seal-A-Pore sealant.
10. Clean area of all debris, job complete.

Proposal Price Based Upon Market Experience: \$ 104,902

Garland/DBS Price Based Upon Local Market Competition:

1 Pioneer Waterproofing	\$	104,902
2 D&R Masonry	\$	183,651
Technical Waterproofing	\$	303,566

Potential issues that could arise during the construction phase of the project will be addressed via unit pricing for additional work beyond the scope of the specifications. This could range anywhere from wet insulation, to the replacement of deteriorated wood nailers.

Please Note – The construction industry is experiencing unprecedented global pricing and availability pressures for many key building components. Specifically, the roofing industry is currently experiencing long lead times and significant price increases with roofing insulation and roofing fasteners. Therefore, this proposal can only be held for 30 days. DBS greatly values your business, and we are working diligently with our long-term suppliers to minimize price increases and project delays which could effect your project. Thank you for your understanding and cooperation.

Clarifications/Exclusions:

1. Permits are excluded. If permits are required this will be addressed via change order.
2. Plumbing, Mechanical, Electrical work is excluded.
3. Masonry work is included to which it obtains to the scope of work.
4. Interior Temporary protection is excluded.
5. Any work not exclusively described in the above proposal scope of work is excluded.

If you have any questions regarding this proposal, please do not hesitate to call me at my number listed below.

Respectfully Submitted,

Jarod Miller

Jarod Miller
Garland/DBS, Inc.
(216) 430-3606



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 12/17/2025

Department: District Attorney

Title: 2025-2026 VOCA and CFA Non-Competitive Grant

Management Update/Work Session Date: 12/09/2025 Audio/Visual aids

Time Required: 5 minutes Contact: Zughey Luna Phone: 503-588-7983

Requested Action: Approve

Issue, Description & Background: One year joint grant includes federal Victim of Crime Act funding and State Criminal Fines Account funding. Both grants support the provision of direct victim services for victims of crime.

Financial Impacts: \$631,809.61

Impacts to Department & External Agencies: Grant requirements

List of attachments: 2025-2026 VOCA and CFA Non-Competitive Grant

Presenter: Pami Guerra and Brendan Murphy

Department Head Signature:

Contract Review Sheet

Grant Agreement

DA-6902-25

Title: **2025-2026 VOCA and CFA Non-Competitive Grant**

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

Department: **District Attorney's Office**

Contact: **Zugey Luna**

Analyst: **Sandra Fixsen**

Phone #: **(503) 588-7983**

Term - Date From: **October 1, 2025**

Expires: **September 30, 2026**

Original Contract Amount: \$ **631,809.61**

Previous Amendments Amount: \$ **-**

Current Amendment: \$ **-**

New Contract Total: \$ **631,809.61**

Amd% **0%**

Incoming Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: **Not Applicable (Incoming Funds)**

Description of Services or Grant Award

One-year joint grant includes federal Victims of Crime Act funding and state Criminal Fines Account funding. Both grants support the provision of direct victim services for victims of crime.

Desired BOC Session Date: **12/17/2025**

Contract should be in DocuSign by: **11/26/2025**

Agenda Planning Date: **12/4/2025**

Printed packets due in Finance: **12/2/2025**

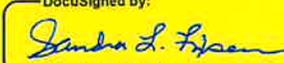
Management Update: **12/9/2025**

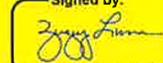
BOC upload / Board Session email: **12/3/2025**

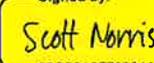
BOC Session Presenter(s) **Pami Guerra**

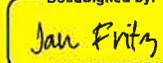
Code: **Y**

REQUIRED APPROVALS

DocuSigned by:

 C5F72231E6E54E3
 Finance - Contracts 11/10/2025
 Date

Signed by:

 5A89C661916741B
 Contract Specialist 11/13/2025
 Date

Signed by:

 8FC98A5E7082409
 Legal Counsel 11/12/2025
 Date

DocuSigned by:

 9C16351249DE4E6
 Chief Administrative Officer 11/12/2025
 Date

REQUEST FOR AUTHORIZATION OF CONTRACT DA-6902-25

Date: October 28, 2025
To: Chief Administrative Officer
Cc: Contract File
From: Zugey Luna

I. Subject: Retroactive

The Marion County District Attorney's Office is requesting approval of a retroactive Grant Agreement as described in Section 10-0580 of the Marion County Public Contracting Rules. The Grant Agreement is with Oregon Department of Justice for 2025-2026 VOCA and CFA Non-Competitive Grant with a value of \$631,809.61 and will be effective retroactive to October 1, 2025 upon approval.

A. BACKGROUND

This is a State of Oregon Grant Agreement for the projected period October 1, 2025 – September 30, 2026.

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:

This is a State of Oregon Grant Agreement that was received by the County on October 27, 2025 due to their Budget/Funding Cycle.

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:

We will continue to communicate with the State of County's request for timely contracts in the future.

Submitted by:

Signed by:

5A63CC51C15741B
Zugey Luna
District Attorney's Office

Reviewed by:

DocuSigned by:

65F72231E8F54E3
Sandra L. Fyfe
Contracts & Procurement

Acknowledged by:

Signed by:

1D15B98FG4E9497
Paige Clarkson
Department Head

Acknowledged by:

DocuSigned by:

DC16351248DE4EC
Jan Fritz
Jan Fritz, CAO

DAN RAYFIELD
Attorney General



BENJAMIN GUTMAN
Interim Deputy Attorney General

DEPARTMENT OF JUSTICE
CRIME VICTIM AND SURVIVOR SERVICES DIVISION

MEMORANDUM

DATE: October 1, 2025
TO: 2025-2026 VOCA and CFA Non-Competitive Grant Recipients
FROM: Marjorie Glick and Ben Bradshaw, Fund Coordinators

Attached is your agency's 2025-2026 VOCA and CFA Non-Competitive Grant Agreement. Please download the entire document and have your authorized official sign the following pages:

- The final page of the Grant Agreement;
- Exhibit A – Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters, and Drug-Free Workplace Requirements;
- Exhibit B – Standard Assurances;
- Exhibit C – Single Audit Certification Letter;
- Exhibit D – Certification of Compliance with Regulations, Office for Civil Rights, Office of Justice Programs for Subgrants issued by the Oregon Department of Justice; and
- Exhibit E – 2024 Victims of Crime Act Special Conditions
- Exhibit F – 2025 Victims of Crime Act Special Conditions

Once the Grant Agreement is signed, please upload a copy of the signed Grant Agreement and Exhibits in the “Grantee Signed Grant Agreement” upload field on the “Grant Agreement Upload” page in your application in E-Grants. Once the documents are uploaded and the form page saved, you will need to **change the application status in CVSSD E-Grants to “Agreement Accepted.”**

Once the signed Grant Agreement has been uploaded in E-Grants, a copy of the Grant Agreement signed by both your authorized official and CVSSD Director Shannon Sivell will be uploaded into E-Grants and the status of your application will be changed to “Grant Awarded.” You will find the uploaded copy of your grant agreement under the “Agreement Upload” form on the Forms Menu of your application.

If you have any questions regarding this Agreement, please contact your Fund Coordinator.

DAN RAYFIELD
Attorney General



BENJAMIN GUTMAN
Interim Deputy Attorney General

DEPARTMENT OF JUSTICE
Crime Victim and Survivor Services Division

**2025-2026 VOCA AND CFA NON-COMPETITIVE
GRANT AWARD COVER SHEET**

<p>1. Applicant Agency's Name and Address:</p> <p>Marion County, acting by and through its District Attorney's Office PO Box 14500 Salem, OR 97309-5036</p> <p>Contact Name: Pami Guerra Telephone: 503-588-5604 E-mail: pjguerra@co.marion.or.us</p>	<p>2. Special Conditions: This grant project is approved subject to such conditions or limitations as set forth the attached Grant Agreement.</p> <p>3. Statutory Authority for Grant: VOCA: Federal Victims of Crime Act of 1984, as amended, 42 U.S.C. 1061 ET SEQ and ORS 147.231 (1) CFA: ORS 147.227 and OAR 137-078-0000</p>
<p>4. Award Number: VOCA/CFA-2025-MarionCo.DAVAP-00014</p>	<p>5. Award Date: October 1, 2025</p>
<p>6. Subrecipient Tax Identification Number: 93-6002307</p>	<p>7. UEI Number: H5PMLAVKG4H1</p>
<p>8. Type of Party Receiving Funds: <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor</p>	<p>9. Project Period: October 1, 2025 – September 30, 2026</p>
<p>10. VOCA Category: General Victim Services</p>	<p>11. Total VOCA Grant Award Amount / Match Amount Required: \$432,691.99/ \$0.00 CFDA 16-575 Match Waiver Approved For: \$108,173.00</p>
<p>12. Federal VOCA Award #s 15POVC-23-GG-00410-ASSI 15POVC-24-GG-00716-ASSI 15POVC-25-GG-00353-ASSI</p>	
<p>13. Indirect Cost Rate: 12.81%</p>	<p>14. Total CFA Grant Award Amount: CFA Allocation: \$199,117.62 Carry Over: \$ 5,168.88 Total CFA Award: \$204,286.50</p>
<p>15. VOCA Annual Narrative Report Due Dates: October 31, 2026</p>	<p>16. Total Federal Award Amount: \$432,691.99</p>
<p>17. VOCA Semi-Annual Narrative Report Due Dates: April 30, 2026 October 31, 2026</p>	<p>18. VOCA and CFA Financial Reports, Common Outcome Measures Report, VOCA PMT Report, and CFA Statistical Report Due Dates: January 31, 2026 April 30, 2026 July 20, 2026 October 31, 2026</p>
<p>This award is contingent upon the Subrecipient agreeing to the terms of award for the grant entitled "2025-2026 VOCA/CFA Non-Competitive Grant Request for Applications for Awards". The grant agreement document must be signed by an authorized official in order to validate the acceptance of this award.</p>	

**OREGON DEPARTMENT OF JUSTICE
2025-2026 VOCA AND CFA GRANT AWARD
INTERGOVERNMENTAL GRANT AGREEMENT
VOCA/CFA-2025-MarionCo.DAVAP-00014**

BETWEEN: State of Oregon, acting by and through (DOJ CVSSD)
its Department of Justice,
1162 Court St. NE
Salem, Oregon 97301-4096

AND: Marion County, acting by and through its District Attorney's Office (Subrecipient)
PO Box 14500
Salem, OR 97309-5036

PROJECT START DATE: October 1, 2025

GRANT AWARD PROVISIONS

**SECTION 1
LEGAL BASIS OF AWARD**

Section 1.01. Legal Basis of Award.

- (a) Pursuant to the federal Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601 *et seq.* (“VOCA”) and ORS 147.231(1), DOJ CVSSD is authorized to enter into a grant agreement and to make an award from funds received under VOCA to Subrecipient for the purposes set forth herein.
- (b) Pursuant to ORS 147.227 (1), DOJ CVSSD is authorized to enter into a Grant Agreement and to make an award, from funds in the Criminal Injuries Compensation Account that are received from the Criminal Fine Account (CFA), to Subrecipient for the purposes set forth herein.

Section 1.02. Agreement Parties. This Intergovernmental Grant Award Agreement, hereafter referred to as “Agreement”, is between DOJ CVSSD and the forenamed Subrecipient.

Section 1.03. Effective Date. When all parties have duly executed this Agreement, and all necessary approvals have been obtained, this Agreement shall be effective, and have a Project start date of as of October 1, 2025.

Section 1.04. Agreement Documents. This Agreement includes the following documents listed in descending order of precedence and incorporated into this Agreement. 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.

- (a) This Agreement without any exhibits.
- (b) Exhibits A through F as described in Section 2.04(c).
- (c) The most current version of the CFA Grant Management Handbook available at <https://www.doj.state.or.us/crime-victims/grant-funds-programs/criminal-fine-account-cfa-funding/>, (“CFA Grant Management Handbook) and the VOCA Handbook available at the Grantor’s web page under **VOCA Federal Rules and State Guidelines** <https://www.doj.state.or.us/crime-victims/grant-funds-programs/victims-of-crime-act-voca-assistance-fund/#vocafederalrules> (“VOCA Handbook”).
- (d) 2025-2026 VOCA and CFA Grant Funds Request for Applications for Awards (“VOCA and CFA RFA”).
- (e) Subrecipient’s CFA Application from the VOCA and CFA Non-Competitive Application to include the general information for all Subrecipients, (Form A, Cover Page; Form B, Staff, Volunteers and Training Requirements; Form C, Meaningful Access to Effective Services; Form D, Project Collaborations; Form F, Administrative Self-Assessment; Form G, Financial Management Self-Assessment; Form H, Other Attachments; and the Subrecipient’s

CFA Application as defined in Section 1.04 (e) herein and the Subrecipient’s VOCA Application as defined in Section 1.04 (f) herein, are collectively referred to as the “Subrecipient’s VOCA CFA Application.”

- (f) Subrecipient’s CFA Application from the VOCA CFA RFA to include the following and collectively referred to as “Subrecipient’s CFA Application.”
 - (i) Forms J- N, the budget forms (CFA Budget).
- (g) Subrecipient’s VOCA Application from the VOCA CFA RFA to include the following and collectively referred to as “Subrecipient’s VOCA Application.”
 - (i) Form E, VOCA Services.
 - (ii) Form I, VOCA Program Income Narrative (if applicable).
 - (iii) Forms J-N, the budget forms (“VOCA Budget”).

Section 1.05. Requirements for Pass-through Entities. Information required by 2 CFA 200.332 for pass-through entities to include on all subawards is contained herein or available for VOCA at https://justice.oregon.gov/crime-victims/pdf/2025_voca_pass_through_documentation.pdf.

SECTION 2 GRANT AWARD

Section 2.01. Grant. In accordance with the terms and conditions of this Agreement, DOJ CVSSD shall provide Subrecipient with the maximum not-to-exceed amount of **\$631,809.61** (the “Grant”) from CFA to financially support and assist Subrecipient’s implementation of the Subrecipient’s CFA Application (as described in Section 1.04), and all supplemental documents submitted by Subrecipient to DOJ CVSSD, all of which are incorporated herein by this reference and collectively referred to as the “Project”.

Fund	Total Allocation	Carryover	Total Maximum Funds
VOCA	\$432,691.99		\$432,691.99
CFA	\$199,117.62	\$ 5,168.88	\$199,117.62

Section 2.02. Grant Award. In accordance with the terms and conditions of this Agreement, Subrecipient shall implement the VOCA and CFA activities as described in the Project.

Section 2.03. Disbursement of Grant Funds.

- (a) CFA Funds: Subject to Sections 2.04, 2.05, and 2.06, DOJ CVSSD shall periodically disburse the CFA Grant funds to Subrecipient. The first installment shall be disbursed as soon as practicable after this Agreement is fully executed by all parties and all required approvals, if any, obtained. Thereafter, the CFA Grant shall be disbursed in amounts to be determined by DOJ CVSSD on or about each following January 31, April 30, July 31, October 31 until the earlier of (i) the entire CFA Grant amount has been disbursed, (ii) the Availability Termination Date as defined in Section 2.06 or, (iii) this Agreement terminates as provided herein.
- (b) VOCA Funds: Subject to Sections 2.04, 2.05, and 2.06, DOJ CVSSD shall disburse the VOCA Grant funds to Subrecipient on a quarterly eligible expense reimbursement basis after this Agreement is fully executed by all parties and all required approvals, if any, obtained and when DOJ CVSSD has received from Subrecipient a quarterly financial report (as described in Section 5.07) appropriately describing the expenses for which the reimbursement is claimed until the earlier of (i) the entire Grant amount has been disbursed, (ii) the Availability Termination Date as defined in Section 2.06 or (ii) this Agreement terminates as provided herein.

Section 2.04. Conditions Precedent to Each Disbursement. Prior to each disbursement, all of the following conditions must be satisfied:

- (a) DOJ CVSSD has received sufficient federal and state funds under VOCA, CFA and the Criminal Injuries Compensation Account to allow DOJ CVSSD, in the reasonable exercise of its administrative discretion, to make the disbursement;
- (b) DOJ CVSSD has received sufficient funding appropriations, limitations, allotments, or other expenditure authorizations to allow DOJ CVSSD, in the reasonable exercise of its administrative discretion, to make the disbursement;
- (c) DOJ CVSSD has received a copy of **Exhibit A**, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, **Exhibit B**, Standard Assurances, **Exhibit C**, Single Audit Certification Letter, **Exhibit D**, Certification of Compliance with Regulations, Office for Civil Rights, Office of Justice Programs for Subgrants Issued by the Oregon Department of Justice, **Exhibit E**, 2024 Victims of Crime Act Special Conditions, **Exhibit F**, 2025 Victims of Crime Act Special Conditions and all in the form attached hereto and incorporated herein by this reference, duly executed and delivered on behalf of Subrecipient by an authorized official of Subrecipient.
- (d) Subrecipient certifies it has obtained the required insurance coverage for the duration of this Agreement and acknowledges Subcontractor Insurance Requirements contained in Section 7.07 of this agreement;
- (e) If Subrecipient expends \$1,000,000 or more in federal funds from all sources Grantee has submitted the most recent single organization-wide audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F.
- (f) If Subrecipient agency does not claim an exemption from the Equal Employment Opportunity Plan (“EEO”) requirement (Subrecipient is an educational, medical or non-profit institution or an Indian Tribe; or Subrecipient has less than 50 employees; or Subrecipient was awarded less than \$25,000 in federal U.S. Department of Justice funds), Subrecipient has prepared, maintained on file, submitted to the Office for Civil Rights or DOJ CVSSD for review (if receiving a single award of \$25,000 or more) an EEO Utilization Report, and implemented an EEO;
- (g) Subrecipient is current in all reporting requirements of all active or prior grants administered by DOJ CVSSD;
- (h) No default as described in Section 6.04 has occurred; and
- (i) Subrecipient’s representations and warranties set forth in Section 4 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

Section 2.05. Supplemental Grant Disbursement Conditions. If Subrecipient fails to satisfy any of the following conditions, DOJ CVSSD may withhold disbursement:

Reserved

Section 2.06. Grant Availability Termination. The availability of Grant funds under this Agreement and DOJ CVSSD’s obligation to disburse Grant funds pursuant to Section 2.03 shall end on **September 30, 2026** (the “Availability Termination Date”). DOJ CVSSD will not disburse any Grant funds after the September 30, 2026, Availability Termination Date. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate when DOJ CVSSD accepts Subrecipient’s completed reports, as described in Section 5.07, or on **September 30, 2026**, whichever date occurs first, exclusive of financial and narrative reports which are due no later than 30 days after the Availability Termination Date. Agreement termination shall not extinguish or prejudice DOJ CVSSD’s right to enforce this Agreement with respect to any default by Subrecipient that has not been cured.

SECTION 3 USES OF GRANT

Section 3.01. Eligible Uses of Grant. Subrecipient’s use of the Grant funds is limited to those expenditures necessary to implement the Project. All Grant funds must be for expenses that are eligible under applicable federal and State of Oregon

law, and as described in the most recent versions of the VOCA Handbook and the CFA Handbook. Furthermore, Subrecipient's expenditure of Grant funds must be in accordance with the Project VOCA and CFA Budget set forth in the Subrecipient's VOCA CFA Application.

Section 3.02. Ineligible Uses of Grant Funds. Notwithstanding Section 3.01, Subrecipient shall not use the Grant funds for (i) indirect costs defined in 2 CFR 200.1 in excess of a federally-approved Negotiated Indirect Cost Rate, or in excess of fifteen percent (15%) if Subrecipient does not have a federally approved Negotiated Indirect Cost Rate, (ii) unallowable costs as listed in 2 CFR Part 200 and OAR 137-078-0041 (2)(a), (iii) to provide services to persons other than those described in Section 5.18(a), (iv) for any purpose prohibited by any provision of this Agreement, or (v) to retire any debt or to reimburse any person or entity for expenditures made or expenses incurred prior to the date of this Agreement. A detailed list of unallowable costs can be found in the most recent version of the VOCA and CFA Grant Management Handbook.

Section 3.03. Misexpended and Unexpended Grant Funds. If any state Grant funds disbursed to Subrecipient, or any interest earned by Subrecipient on State Grant funds, that is not expended by Subrecipient (i) in accordance with this Agreement ("Misexpended Funds") or (ii) by the earlier of the appropriate Availability Termination Date or the date this Agreement is terminated ("Unexpended Funds") shall be returned to DOJ CVSSD. Notwithstanding the preceding sentence to the contrary, at DOJ CVSSD's discretion and with DOJ CVSSD's prior approval, Subrecipient may request an Amendment to this Agreement to extend the Availability Termination Date.

Subrecipient may, at its option, satisfy its obligation to return Misexpended and Unexpended Funds under this Section 3.03 by paying to DOJ CVSSD the amount of Misexpended and Unexpended Funds or permitting DOJ CVSSD to recover the amount of the Misexpended and Unexpended Funds from future payments to Subrecipient from DOJ CVSSD. If Subrecipient fails to return the amount of the Misexpended and Unexpended Funds within fifteen (15) days after the earlier of written demand from DOJ CVSSD, the appropriate Availability Termination Date or the date this Agreement is terminated, Subrecipient shall be deemed to have elected the deduction option and DOJ CVSSD may deduct the amount demanded from any future payment or payments from DOJ CVSSD to Subrecipient, including but not limited to: (i) any payment to Subrecipient from DOJ CVSSD under this Agreement, (ii) any payment to Subrecipient from DOJ CVSSD under any other contract or agreement, present or future, between DOJ CVSSD and Subrecipient, and (iii) any payment to Subrecipient from the State of Oregon under any other contract, present or future, unless prohibited by state or federal law. DOJ CVSSD shall notify Subrecipient in writing of its intent to recover Misexpended and Unexpended Funds and identify the program or programs from which the deduction or deductions will be made. Subrecipient shall have the right to, not later than fourteen (14) calendar days from the date of DOJ CVSSD's notice, request the deduction be made from a future payment(s) identified by Subrecipient. To the extent that DOJ CVSSD's recovery of Misexpended and Unexpended Funds from the future payment(s) suggested by Subrecipient is feasible, DOJ CVSSD shall comply with Subrecipient's request. In no case without the prior consent of Subrecipient, shall the amount of recovery deducted from any one obligation owing to Subrecipient exceed twenty-five percent (25%) of the amount from which the deduction was taken. DOJ CVSSD may seek recovery from as many future payments as necessary to fully recover the amount of Misexpended and Unexpended Funds. DOJ CVSSD's right to recover Misexpended and Unexpended Funds from Subrecipient under this subsection is not subject to or conditioned on Subrecipient's recovery of money from any subcontractor or subrecipient.

SECTION 4 SUBRECIPIENT'S REPRESENTATIONS AND WARRANTIES

Subrecipient represents and warrants to DOJ CVSSD that:

Section 4.01. Existence and Power. Subrecipient is a political subdivision of the State of Oregon. Subrecipient has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.

Section 4.02. Authority, No Contravention. The making and performance by Subrecipient of this Agreement (a) has been duly authorized by all necessary action of Subrecipient, (b) does not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency, any provision of Subrecipient's articles of incorporation or bylaws, or any provision of Subrecipient's charter or other organizational document and (c) does 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 Subrecipient is a party or by which Subrecipient or any of its properties are bound or affected.

Section 4.03. Binding Obligation. This Agreement has been duly executed by Subrecipient and when executed by DOJ CVSSD, constitutes a legal, valid, and binding obligation of Subrecipient enforceable in accordance with its terms.

Section 4.04. Approvals. If applicable and necessary, the execution and delivery of this Agreement by Subrecipient has been authorized by an ordinance, order or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and

Section 4.05. There is no proceeding pending or threatened against Subrecipient before any court or governmental authority that if adversely determined would materially adversely affect the Project or the ability of Subrecipient to carry out the Project.

SECTION 5 SUBRECIPIENT'S AGREEMENTS

Section 5.01. Project Commencement. Subrecipient shall cause the Project to be operational no later than 60 days from the date of this Agreement. If the Project is not operational by that date, Subrecipient must submit a letter to DOJ CVSSD describing steps taken to initiate the Project, reasons for delay, and the expected Project starting date. If the Project is not operational within 90 days of the date of this Agreement, the Subrecipient must submit a second letter explaining the additional delay in implementation. DOJ CVSSD may, after reviewing the circumstances, consider the Subrecipient in default in accordance with Section 6.04 and may terminate the Agreement in accordance with Section 6.02.

Section 5.02. Project Completion. Subrecipient shall complete the Project no later than **September 30, 2026**; however, if the full amount of the Grant is not available because one or both of the conditions set forth in Sections 2.04(a) and (b) are not satisfied, Subrecipient shall not be required to complete the Project.

Section 5.03. Federal Assurances and Certifications. Subrecipient will comply with all of federal requirements, including, but not limited to, those set forth in Exhibits A – F (Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements; Standard Assurances; Single Audit Certification Letter; Certification of Compliance with Regulations, Office for Civil Rights, Office of Justice Programs for Subgrants Issued by the Oregon Department of Justice; 2024 Victims of Crime Act Special Conditions; and 2025 Victims of Crime Act Special Conditions) attached hereto.

Section 5.04. Civil Rights and Victim Services.

- (a) Subrecipient shall collect and maintain statutorily required civil rights statistics on victim services as indicated in the CVSSD Quarterly Statistical Report.
- (b) Subrecipient shall comply with the following Oregon Department of Justice, Crime Victim and Survivor Services Division ("CVSSD") policies for addressing discrimination complaints,
 - (i) *Procedures for Responding to Discrimination Complaints from Employees of the Oregon Department of Justice, Crime Victim and Survivor Services Division's Subrecipients under U.S. Department of Justice Grant Programs*, available under Policies on DOJ CVSSD's Civil Rights Requirements web page at <https://www.doj.state.or.us/crime-victims/for-grantees/civil-rights-requirements/>; and
 - (ii) *Procedures for Responding to Discrimination Complaints from Clients, Customers, Program Participants, or Consumers of the Oregon Department of Justice, Crime Victim and Survivor Services Division and the Oregon Department of Justice, Crime Victim and Survivor Services Division Subrecipients* available under Policies on DOJ CVSSD's Civil Rights Requirements web page at <https://www.doj.state.or.us/crime-victims/for-grantees/civil-rights-requirements/>.
- (c) Subrecipient shall complete and certify completion of civil rights training as described under Training on DOJ CVSSD's Civil Rights Requirements web page available at

<https://www.doj.state.or.us/crime-victims/for-grantees/civil-rights-requirements/>. Subrecipient shall conduct periodic training for Subrecipient employees on the procedures set forth in the policies referenced in subsection (b) of this Section.

- (d) Subrecipient shall prominently display at locations open to the public and shall include on publications, websites, posters and informational materials a notification that Subrecipient is prohibited from discriminating on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, age or disability and the procedures for filing a complaint of discrimination as described in the "Civil Rights Fact Sheet" developed by DOJ CVSSD and available under Notification Regarding Program Availability on DOJ CVSSD's Civil Rights Requirements web page at <https://www.doj.state.or.us/crime-victims/for-grantees/civil-rights-requirements/>.

Section 5.05. Volunteers. Subrecipient organization will use volunteers unless a waiver has been obtained from DOJ CVSSD.

Section 5.06. Training Requirements.

- (a) Subrecipient shall ensure that all grant-funded staff and volunteers/interns successfully complete the training outlined in the *Grantee Training Requirements* document on CVSSD's [Grant Guidance Documents webpage](#).
- (b) All grant-funded staff providing direct services are required to attend the CVSSD-sponsored Crime Victims Compensation Training at least once every four years and ensure all direct service staff are appropriately trained.
- (c) Subrecipient shall notify DOJ CVSSD when any staff training is completed by updating the Staff Roster in the CVSSD web-based grant application and reporting system ("CVSSD E-Grants"). Subrecipient shall document training completed by volunteers, interns and members of the board of directors, governing body or designated leaders.
- (d) Subrecipient shall attend all appropriate DOJ CVSSD-sponsored training and fund-specific meetings unless specific written permission excusing attendance has been obtained from DOJ CVSSD.

Section 5.07. Reporting Requirements. Subrecipients have established quarterly reporting requirements that entail the submission of both quarterly, semi-annual, and annual reports. The semi-annual reports alternate throughout the reporting period. These reporting requirements are reflected in the [Grant Reporting Date Requirements Across Funds](#) document on the DOJ CVSSD website and are described below.

- (a) Quarterly Client Feedback Form and Outcome Measures Report. Subrecipient agrees to distribute a client feedback form to all victims served by the Project. The client feedback form must include the three CVSSD Common Outcome Measures as designated by DOJ CVSSD in the most recent version of the Grant Management Handbooks as well as collect other data as requested by DOJ CVSSD. Subrecipient shall encourage return of the client feedback form with a survey completion and return rate goal of at least 10%. Subrecipient must report on the responses quarterly no later than 30 days after the end of the calendar quarters ending September 30, December 31, and March 31, and no later than July 20 for the calendar quarter ending June 30. Subrecipient shall use forms satisfactory to DOJ CVSSD.
- (b) Quarterly Financial Reports. Subrecipient shall provide DOJ CVSSD with quarterly financial reports no later than 30 days after the end of the calendar quarters ending September 30, December 31, and March 31, and no later than July 20 for the calendar quarter ending June 30.
- (c) Subrecipient shall submit the following reports as described in the VOCA CFA RFA and in the most recent version of the VOCA Handbook:
- (i) Quarterly Performance Measurement Tool Reports. Subrecipient shall provide Grantor with quarterly performance measurement tool reports no later than 30 days after the end of the calendar quarters ending December 31, March 31, and September 30, and no later than July 20 for the calendar quarter ending June 30.

- (ii) Semi-Annual Progress Reports. Subrecipient shall prepare and submit to DOJ CVSSD semi-annual narrative reports no later than 30 days after the end of the calendar quarters ending March 31 and September 30.
 - (iii) Annual Narrative Reports. No later than 31 days after the end of each calendar quarter ending September 30, Subrecipient shall prepare and submit to Grantor an Annual Narrative Report for the VOCA Non-Competitive Project covering the reporting period just ended from October 1 through September 30.
- (d) Subrecipient shall submit the following reports as described in the VOCA CFA RFA and in the most recent version of the CFA Handbook:
- (i) Quarterly Statistical Reporting. Subrecipient shall prepare and submit to DOJ CVSSD quarterly statistical reports no later than 30 days after the calendar quarters ending December 31, March 31, and September 30, and no later than July 20 for the calendar quarter ending June 30.

Section 5.08. Procurement Standards. Subrecipient shall follow the same policies and procedures it uses for procurement from any other state or federal funds. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement procedures and regulations conform to applicable federal and state law and standards as noted in 2 CFR 200.317 through 2 CFR 200.327.

Section 5.09. VOCA Matching Funds. DOJ CVSSD exercises its authority to waive matching funds for this VOCA award.

Section 5.10. Program Income. Subrecipient (and any subrecipient at any tier) must seek approval from DOJ CVSSD prior to generating any program income. Without prior approval, program income must be deducted from total allowable costs to determine the net allowable costs. Any program income added to an award must be used to support activities that were approved in the budget and follow the conditions of this Agreement. Program income generated by the Subrecipient must be reported on the quarterly Financial Report in accordance with the addition alternative. Failure to comply with these requirements may result in DOJ CVSSD withholding award funds, disallowing costs, or suspending or terminating the award. The Subrecipient must comply with all program income requirements contained in the Program Income Policy available on the DOJ CVSSD's web page under Grant Guidance Documents: <https://www.doj.state.or.us/crime-victims/for-grantees/grant-guidance-documents/>.

Section 5.11. Nondisclosure of Confidential or Private Information. Subrecipient shall protect the confidentiality and privacy of persons receiving services.

- (a) The term “personally identifying information”, “individual information”, or “personal information” means individually identifying information for or about an individual victim of domestic violence, dating violence, sexual assault, or stalking, including (1) a first and last name; (2) a home or other physical address; (3) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number); (4) a social security number; and (5) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information would serve to identify any individual.
- (b) Subrecipient may share (1) non-personally identifying data in the aggregate regarding services to their clients and non-personally identifying information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements; (2) court-generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and (3) law-enforcement and prosecution-generated information necessary for law enforcement and prosecution purposes.
- (c) Subrecipient shall not disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through Subrecipient's programs, regardless of whether the information has been encoded, encrypted, hashed or otherwise protected. This applies to:
 - (i) Information requested for a Federal, State, tribal, or territorial grant program; and
 - (ii) Disclosure from the Subrecipient's organization, agency, or government, including victim and non-victim services divisions or components and leadership of the organization, agency or government; and
 - (iii) Disclosure from victim services divisions or components of an organization, agency, or government to the leadership of the organization, agency, or government (e.g., executive director or chief executive). Such

executive shall have access without releases only in extraordinary and rare circumstances. Such circumstances do not include routine monitoring and supervision.

- (d) Personally identifying information or individual information collected in connection with services requested, utilized, or denied through Subrecipient's programs may be released only if:
- (i) The victim signs a release as provided below;
 - (ii) Release is compelled by statutory mandate, which includes mandatory child abuse reporting laws; or
 - (iii) Release is compelled by court mandate, which includes a legal mandate created by case law, such as a common-law duty to warn.
- (e) Victim releases must meet the following criteria:
- (i) Releases must be informed, written, and limited to a reasonable duration. The reasonableness of duration is dependent on the situation. Subrecipient may not use a blanket release and must specify the scope and limited circumstances of any disclosure. Subrecipient must discuss with the victim, and the written release must explain, why the information might be shared, who would have access to the information, and what information could be shared under the release.
 - (ii) Subrecipient may not require consent to release of information as a condition of service.
 - (iii) Releases must be signed by the victim unless the victim is a minor who lacks the capacity to consent to release or is a legally incapacitated person who has a court-appointed guardian. Except as provided in paragraph (e)(iv) of this section, in the case of an unemancipated minor, the release must be signed by the minor and a parent or guardian. A legally-appointed guardian must sign for an incapacitated person. Consent may not be given by the abuser of the minor or incapacitated person or the abuser of the other parent of the minor. If a minor is incapable of knowingly consenting, the parent or guardian may provide consent. If a parent or guardian consents for a minor, the subrecipient or subgrantee should attempt to notify the minor as appropriate.
 - (iv) If the minor or person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may consent to release information without additional consent.
- (f) If release of information described in the previous paragraph is compelled by statutory or court mandate, Subrecipient shall make reasonable attempts to provide notice to victims affected by the disclosure of information. Subrecipient shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.
- (g) Fatality reviews. Subrecipient may share the personally identifying information or individual information of deceased victims that is requested for a fatality review to the extent permitted by their jurisdiction's law and only if the following conditions are met:
- (i) The underlying objectives of the fatality review are to prevent future deaths, enhance victim safety, and increase offender accountability;
 - (ii) The fatality review includes policies and protocols to protect identifying information, including identifying information about the victim's children, from further release outside the fatality review team;
 - (iii) The Subrecipient makes a reasonable effort to obtain a release from the victim's personal representative (if one has been appointed) and from any surviving minor children or the guardian of such children (but not if the guardian is the abuser of the deceased parent), if the children are not capable of knowingly consenting; and
 - (iv) The information released is limited to that which is necessary for the purposes of the fatality review.
- (h) Breach of Personally Identifying Information. Subrecipient is responsible for taking reasonable efforts to prevent unauthorized releases of personally identifying information or individual information that is collected as described in paragraph (a) of this section. The Subrecipient (and any subgrantee at any tier) must have written procedures in place to respond in the event of an actual or imminent breach (as defined in OMB M-17-12) if it (or a subgrantee), 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of personally identifiable information (PII) (as defined in 2 C.F.R. 200.1) within the scope of a grant-funded program or activity, or 2) uses or operates a Federal information system. The Subrecipient's breach procedures must include a requirement to report

actual or imminent breach of personally identifying information to a CVSSD Fund Coordinator no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

- (i) Subrecipient shall notify DOJ CVSSD promptly after receiving a request from the media for information regarding a recipient of services funded with Grant funds.

Section 5.12. Criminal History Verification. Subrecipient shall obtain a criminal history record check on any employee, potential employee or volunteer working with victims of crime as follows:

- (a) Requiring all applicants for employment or volunteer service to apply for and receive a criminal history check from a local Oregon State Police Office and furnish a copy thereof to Subrecipient; or
- (b) Contacting a local Oregon State Police office for an “Oregon only” criminal history check on the applicant/employee/volunteer; or
- (c) Using another method of criminal history verification that is at least as comprehensive as those described in sections (a) and (b) above.

A criminal record check will indicate convictions of child abuse, offenses against persons, sexual offenses, child neglect, or any other offense bearing a substantial relation to the qualifications, functions or duties of an employee or volunteer scheduled to work with victims of crime.

Subrecipient shall develop a policy or procedures to review criminal arrests or convictions of employees, potential employees, or volunteers. The review will examine: (1) the severity and nature of the crime; (2) the number of criminal offenses; (3) the time elapsed since commission of the crime; (4) the circumstances surrounding the crime; (5) the subject individual’s participation in counseling, therapy, education or employment evidencing rehabilitation or a change in behavior; and (6) the police or arrest report confirming the subject individual’s explanation of the crime.

Subrecipient shall determine after receiving the criminal history check whether the employee, potential employee or volunteer has been convicted of one of the crimes described in this Section, and whether, based upon the conviction, the person poses a risk to working safely with victims of crime. If Subrecipient intends to hire or retain the employee, potential employee, or volunteer, Subrecipient shall confirm in writing the reasons for hiring or retaining the individual. These reasons shall address how the applicant, employee, or volunteer is presently suitable or able to work with victims of crime in a safe and trustworthy manner, based on the policy or procedure described in the preceding paragraph of this Section. Subrecipient will place this explanation, along with the applicant, employee, or volunteer’s criminal history check, in the retained employee or volunteer’s personnel file for permanent retention.

Section 5.13. Determination of Suitability to Interact with Participating Minors. If the purpose of some or all of the activities to be carried out under the VOCA project is to benefit a set of individuals under 18 years of age, Subrecipient must make determinations of suitability, in advance, before individuals may interact with participating minors, regardless of the individual’s employment status. Details of this requirement can be found: (1) on the Office of Justice Programs website at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here. DOJ CVSSD instructions for complying with this requirement can be found on the CVSSD website at: [Grant Guidance Documents - Oregon Department of Justice](#) and are incorporated by reference here.

Section 5.14. Employment Eligibility Verification for Hiring. Subrecipient shall ensure that, as part of the hiring process for any position funded with VOCA funds, they will properly verify the employment eligibility of the individual who is being hired, consistent with provisions of 8 U.S.C. 1324a(a)(1) and (2) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens. Subrecipient must:

- (a) Notify all staff involved in the hiring process of this requirement;
- (b) Maintain records of all employment eligibility verifications pertinent to compliance with this requirement in accordance with Form I-9 record retention requirements.

For purposes of satisfying the requirement to verify employment eligibility, Subrecipient may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the Subrecipient uses E-Verify to confirm employment eligibility for each hiring for a position that is or will be funded with VOCA funds.

Details of this requirement can be found in Exhibits E and F: Victims of Crime Act Special Conditions (2024 and 2025) and are incorporated by reference here.

Section 5.15. Maintenance, Retention and Access to Records; Audits.

- (a) Maintenance and Retention of Records. Subrecipient must maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Subrecipient must maintain any other records, whether in paper, electronic or other form, pertinent to this Grant in such a manner as to clearly document Subrecipient's performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Subrecipient acknowledges and agrees DOJ CVSSD and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Subrecipient must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. It is the responsibility of the Subrecipient to obtain a copy of the DOJ Grants Financial Guide from the OCFO available at <https://ojp.gov/financialguide/DOJ/index.htm> and apprise itself of all rules and regulations set forth.
- (b) Access to Records. DOJ CVSSD, Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Subrecipient and any contractors or subcontractors of Subrecipient, which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period but shall last as long as the records are retained. Subrecipient acknowledges that this Agreement and other information related to the performance of this Agreement is a public record under the Oregon Public Records Law, ORS 192.311 to 192.478 and may be subject to mandatory disclosure upon request unless as exemption from disclosure provided under the law applies.
- (c) Audits. Subrecipient shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law. If Subrecipient expends \$1,000,000 or more in federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Part 200, subpart F. Copies (electronic or URL address) of all audits must be submitted to CVSSD within 30 days of completion. If Subrecipient expends less than \$1,000,000 in its fiscal year, Subrecipient is exempt from federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in subsection 5.15(b) above.
- (d) Audit Costs. Audit costs for audits not required in accordance with 2 CFR Part 200, subpart F are unallowable. If Subrecipient did not expend \$1,000,000 or more in federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to this Grant.

Section 5.16. Compliance with Laws. Subrecipient shall comply with (and when required cause its subgrantees to comply with) all applicable federal, state, and local laws, regulations, executive orders and ordinances related to expenditure of the Grant funds and the activities financed with the Grant funds. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with:

- (a) **Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.** (prohibiting discrimination in programs or activities on the basis of race, color, and national origin) and the **Omnibus Crime Control and Safe Streets Act of 1968, as amended, 34 U.S.C. § 10228(c)(1)** (prohibiting discrimination in employment practices or in programs and activities on the basis of race, color, religion, national origin, age, disability, and sex in the delivery of services).

- (i) These laws prohibit discrimination on the basis of race, color, religion, national origin, age, disability, and sex in the delivery of services.
 - (ii) In the event a federal or state court, or a federal or state administrative agency, makes a finding of discrimination after a due process hearing on the grounds of race, color, national origin, sex, age, or disability against the Subrecipient, the Subrecipient shall forward a copy of the finding to the Oregon Department of Justice, CVSSD, 1162 Court Street N.E., Salem, OR 97301-4096 and the Office for Civil Rights, OJP, U.S.D.O.J. 999 North Capitol Street N.E., Washington D.C. 20531.
- (b) **Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et. Seq.** (prohibiting discrimination in employment practices or in programs and activities on the basis of disability).
- (c) **Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131** and ORS 659.425 (prohibiting discrimination in services, programs, and activities on the basis of disability), the **Age Discrimination Act of 1975, 42 U.S.C. § 6101-07** (prohibiting discrimination in programs and activities on the basis of age); and **Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et. seq.** (prohibiting discrimination in educational programs or activities on the basis of gender); as well as all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws prohibit discrimination on the basis of race, color, religion, national origin and sex in the delivery of services. In the event a federal or state court, or a federal or state administrative agency, makes a finding of discrimination after a due process hearing on the grounds of race, color, national origin, sex, age, or disability, against the Subrecipient, the Subrecipient shall forward a copy of the finding to the Oregon Department of Justice, Crime Victim and Survivor Services Division, 1162 Court Street N.E., Salem, Oregon 97301-4096.
- (d) The **Federal Funding Accountability and Transparency Act (FFATA) of 2006**, which provisions include, but may not be limited to, a requirement for Subrecipient to have a Unique Entity Identifier (UEI) number.
- (e) **Partnerships with Faith-Based and Other Neighborhood Organizations**, codified at 28 C.F.R. Part 38, and Executive Order 13279, regarding Equal Protection of the Laws for Faith-Based and Community Organizations (ensuring equal treatment for faith-based organizations and non-discrimination of beneficiaries on the basis of religious belief) ensures that no organization will be discriminated against in a USDOJ funded program on the basis of religion and that services are available to all regardless of religion. Executive Order 13279 ensures a level playing field for the participation of faith-based organizations as well as other community organizations.
- (f) All regulations and administrative rules established pursuant to the foregoing laws, and other regulations as provided at [Civil Rights Office | Home | Office of Justice Programs \(ojp.gov\)](#).
- (g) The **Uniform Administrative Requirements, Cost Principles, and Audit Requirements** in 2 CFR Part 200, as adopted and supplemented by the United States Department of Justice in 2 CFR Part 2800.
- (h) Further, Subrecipient shall not retaliate against any individual for taking action or participating in action to secure rights protected by these laws and agrees to report any complaints, lawsuits, or findings from a federal or state court or a federal or state administrative agency to the Oregon Department of Justice, CVSSD, 1162 Court Street N.E., Salem, OR 97301-4096 and the Office for Civil Rights, OJP, U.S.D.O.J. 999 North Capitol Street N.E., Washington D.C. 20531. Complaints with the Office for Civil Rights can be filed through their website at [Civil Rights Office | Filing a Civil Rights Complaint | Office of Justice Programs \(ojp.gov\)](#) or by sending the complaint verification form and Identity Release Statement to the address listed in the preceding sentence.

Section 5.17. Grant Eligibility Requirements. Subrecipient will comply with the federal eligibility criteria established by the Victims of Crime Act of 1984, as amended, and the Office of Justice Programs Financial Guide, in order to receive VOCA funds as described in the Subrecipient's VOCA Application.

Section 5.18. Assurances. The Subrecipient assures that it will:

- (a) Utilize Grant funds only to provide authorized services to victims of crime;

- (b) Obtain prior approval from DOJ CVSSD for:
 - 1. Movement of funds
 - i. For grant awards totaling \$500,000 or less: Movement of funds that total more than \$3,000 in the Personnel, Services and Supplies, and/or Other Services categories;
 - ii. For grant awards totaling more than \$500,000: Movement of funds that total more than \$5,000 in the Personnel, Services and Supplies, and/or Other Services categories; OR
 - 2. Adding a budget category or line item that did not exist in the original budget; OR
 - 3. Deleting an existing category.
- (c) Comply with the requirements of the current version of the Office of Justice Programs, Financial Guide available at: <https://ojp.gov/financialguide/DOJ/index.htm> ; and
- (d) Comply with the terms of the most recent version of the CFA and the VOCA Grant Management Handbooks.

SECTION 6 TERMINATION AND DEFAULT

Section 6.01. Mutual Termination. This Agreement may be terminated by mutual consent of both parties.

Section 6.02. Termination by Either Party. Either party may terminate this Agreement, for any reason, upon 30 days advance written notice to the other party. In addition, DOJ CVSSD may terminate this Agreement effective immediately upon written notice to Subrecipient, or effective on such later date as may be established by DOJ CVSSD in such notice, under any of the following circumstances: (a) DOJ CVSSD fails to receive sufficient appropriations or other expenditure authorization to allow DOJ CVSSD, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, (b) DOJ CVSSD fails to receive sufficient federal or state funds to allow DOJ CVSSD, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, (c) there is a change in federal or state laws, rules, regulations or guidelines so that the Project funded by this Agreement is no longer eligible for funding, or (d) Subrecipient is in Default under Section 6.04.

Section 6.03. Effect of Termination. Upon receiving a notice of termination of this Agreement or upon issuing a notice of termination to DOJ CVSSD, Subrecipient shall immediately cease all activities under this Agreement unless, in a notice issued by DOJ CVSSD, DOJ CVSSD expressly directs otherwise.

Section 6.04. Default. Either party (as applicable) shall be in default under this Agreement upon the occurrence of any of the following events:

- (a) Either party fails to perform, observe or discharge any of its covenants, agreements or obligations contained herein or in any Exhibit attached hereto; or
- (b) Any representation, warranty or statement made by Subrecipient herein or in any documents or reports relied upon by DOJ CVSSD to measure progress on the Project, the expenditure of Grant funds or the performance by Subrecipient is untrue in any material respect when made; or
- (c) Subrecipient (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated as bankrupt or insolvent, (v) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing; or

- (d) A proceeding or case is commenced, without the application or consent of Subrecipient, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Subrecipient, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Subrecipient or of all or any substantial part of its assets, or (iii) similar relief in respect to Subrecipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Subrecipient is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect); or

Section 6.05. Remedies.

- (a) DOJ CVSSD Remedies Upon Default. In the event Subrecipient is in default under Section 6.04, and if Subrecipient's default is not cured within fifteen (15) days of written notice thereof to Subrecipient from DOJ CVSSD or such longer period as DOJ CVSSD may authorize in its sole discretion, DOJ CVSSD may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (i) termination of this Agreement under Section 6.02, (ii) reducing or withholding payment for Project activities or materials that are deficient or Subrecipient has failed to complete by any scheduled deadlines, (iii) requiring Subrecipient to complete, at Subrecipient's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Agreement, (iv) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (v) exercise of its right of recovery of overpayments under this section or setoff (under 3.03), or both, or (vi) declaring Subrecipient ineligible for the receipt of future awards from DOJ CVSSD. These remedies are cumulative to the extent the remedies are not inconsistent, and DOJ CVSSD may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. Subrecipient may, at its option, satisfy its obligation to return such costs under this Section by paying to DOJ CVSSD the amount of the costs or permitting DOJ CVSSD to recover the amount of the funds from future payments to Subrecipient from DOJ CVSSD.
- (b) Subrecipient Remedies. In the event DOJ CVSSD is in default under Section 6.04 and whether or not Subrecipient elects to terminate this Agreement, Subrecipient's sole monetary remedy will be, within any limits set forth in this Agreement, reimbursement of authorized expenses incurred for Project activities completed and accepted by DOJ CVSSD, less any claims DOJ CVSSD has against Subrecipient. In no event will DOJ CVSSD be liable to Subrecipient for any expenses related to termination of this Agreement or for anticipated profits.

SECTION 7 MISCELLANEOUS

Section 7.01. No Implied Waiver, Cumulative Remedies. The failure of DOJ CVSSD to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

Section 7.02. Governing Law; Venue; Consent to Jurisdiction. This Agreement is 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 DOJ CVSSD or any other agency or department of the State of Oregon, or both, and Subrecipient that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. SUBRECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT.

In no event may 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, to or from any Claim or from the jurisdiction of any court.

Section 7.03. 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, e-mail (with confirmation of delivery,

either by return email or by demonstrating through other technological means that the email has been delivered to the intended email address), or mailing the same, postage prepaid to Subrecipient or DOJ CVSSD at the address or number set forth in this Agreement. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the postmark date. Any communication or notice delivered by e-mail shall be deemed received and effective on the date sent if sent during normal business hours of the receiving party and on the next business day if sent after normal business hours of the receiving party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee. This Section shall survive expiration or termination of this Agreement.

Section 7.04. Amendments. This Agreement may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties or as described and certified through CVSSD E-Grants. No term of this Agreement may be waived unless the party against whom such waiver is sought to be enforced has given its waiver in writing as specified in Section 7.03 of this Agreement. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given.

Section 7.05. Subcontracts, Subawards, Successors and Assignments.

- (a) Subrecipient shall not enter into any Subawards, as defined in 2 CFR 200.1, for any of the Project activities required by this Agreement without DOJ CVSSD's prior written consent. Subrecipient shall require any Subrecipients, as defined in 2 CFR 200.1, to comply in writing with the terms and conditions of this Agreement and provide the same assurances as the Subrecipient must in its use of federal funds. DOJ CVSSD's consent to any Subaward shall not relieve Subrecipient of any of its duties or obligations under this Agreement.
- (b) Subrecipient shall not enter into any Contracts, as defined in 2 CFR 200.1, for any of the Project activities required by this Agreement without DOJ CVSSD's prior written consent. Subrecipient shall comply with procurement standards as defined in Section 5.08 when selecting any subcontractor. Subrecipient shall require any subcontractor to comply in writing with the terms of an Independent Contractor Agreement as described in the [Minimally Recommended Elements for an Independent Contractor Agreement](#) found at [Grant Guidance Documents - Oregon Department of Justice](#). DOJ CVSSD's consent to any Contract shall not relieve Subrecipient of any of its duties or obligations under this Agreement.
- (c) This Agreement shall be binding upon and inure to the benefit of DOJ CVSSD, Subrecipient, and their respective successors and assigns, except that Subrecipient may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of DOJ CVSSD. Any such assignment or transfer, if approved, is subject to such conditions and provisions required by DOJ CVSSD.

Section 7.06. Entire Agreement. This Agreement and all exhibits and attachments, if any, constitute 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.

Section 7.07. Contribution and Indemnification

- (a) Generally. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("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. Either 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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
- (b) Third Party Claim; DOJ CVSSD's Joint Liability. With respect to a Third Party Claim for which the DOJ CVSSD is jointly liable with the Subrecipient (or would be if joined in the Third Party Claim), the DOJ CVSSD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Subrecipient in such proportion as is appropriate to

reflect the relative fault of the DOJ CVSSD on the one hand and of the Subrecipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the DOJ CVSSD on the one hand and of the Subrecipient 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. The DOJ CVSSD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the DOJ CVSSD had sole liability in the proceeding.

- (c) **Third Party Claim; Subrecipient's Joint Liability.** With respect to a Third Party Claim for which the Subrecipient is jointly liable with the DOJ CVSSD (or would be if joined in the Third Party Claim), the Subrecipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the DOJ CVSSD in such proportion as is appropriate to reflect the relative fault of the Subrecipient on the one hand and of the DOJ CVSSD on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Subrecipient on the one hand and of the DOJ CVSSD 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. The Subrecipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
- (d) **Alternative Dispute Resolution.** Alternative Dispute Resolution. The parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.
- (e) **Indemnification by Subcontractors.** Subrecipient shall take all reasonable steps to cause each of its contractors that are not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subrecipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the gross negligence or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims.
- (f) **Subcontractor Insurance Requirements.** Subrecipient shall require each of its first tier contractors that is not a unit of local government as defined in ORS 190.003, if any, to: i) obtain insurance complying with the requirements set forth in Exhibit G, attached hereto and incorporated by reference herein, before the contractor performs under the contract between Subrecipient and the contractor (the "Subcontract"), and ii) maintain such insurance in full force throughout the duration of the Subcontract. The insurance must be provided by an insurance company or entity that is authorized to transact the business of insurance and issue coverage in the State of Oregon and that is acceptable to DOJ CVSSD. Subrecipient shall not authorize contractor to begin work under the Subcontract until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in each Subcontract permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing a stop work order (or the equivalent) until the insurance is in full force or terminating the Subcontract as permitted by the Subcontract, or pursuing legal action to enforce the insurance requirements. In no event shall Subrecipient permit a contractor to work under a Subcontract when the Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the Subrecipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

Section 7.09. **False Claims Act.** Subrecipient acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) made by (or caused by) Subrecipient that pertains to this Agreement or to the Project. Subrecipient certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Subrecipient further acknowledges in addition to the remedies under Section 6.05, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Subrecipient.

Section 7.10. **Time is of the Essence.** Subrecipient agrees that time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

Section 7.11. **Survival.** The following sections shall survive termination of this Agreement: Section 3.03, Unexpended Grant Funds; Section 5.15, Maintenance, Retention and Access to Records; Audits; and Section 7, Miscellaneous. Otherwise, all rights and obligations shall cease upon termination of this Agreement, except for those rights and obligations that by their nature or express terms survive termination of this Agreement. Termination shall not prejudice any rights or obligations accrued to the Parties prior to termination.

Section 7.12. **Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

Section 7.13. **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.

Section 7.14. **Relationship of Parties.** The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

Section 7.15. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

Section 7.16. **No Third Party Beneficiaries.** DOJ CVSSD and Subrecipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.

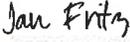


STATE OF OREGON

Acting by and through its Department of Justice

By: _____
Name: Shannon L. Sivell
Title: Director, Crime Victim and Survivor Services Division
Date: _____

AUTHORIZED AGENT FOR SUBRECIPIENT

DocuSigned by:
By: 
DC18361248DE4EC
Name: Jan Fritz
Title: Chief Administrative Officer
Date: 11/12/2025

APPROVED FOR LEGAL SUFFICIENCY

By: Shannon L. Sivell
Title: Director, Crime Victim and Survivor Services Division
Date: Approved via email on 10/27/2025



U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations or other cited requirements before completing this form. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the U.S. Department of Justice ("Department") determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by 31 U.S.C. § 1352, as implemented by 28 C.F.R. Part 69, the Applicant certifies and assures (to the extent applicable) the following:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If the Applicant's request for Federal funds is in excess of \$100,000, and any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal grant or cooperative agreement, the Applicant shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities" in accordance with its (and any DOJ awarding agency's) instructions; and

(c) The Applicant shall require that the language of this certification be included in the award documents for all subgrants and procurement contracts (and their subcontracts) funded with Federal award funds and shall ensure that any certifications or lobbying disclosures required of recipients of such subgrants and procurement contracts (or their subcontractors) are made and filed in accordance with 31 U.S.C. § 1352.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

A. Pursuant to Department regulations on nonprocurement debarment and suspension implemented at 2 C.F.R. Part 2867, and to other related requirements, the Applicant certifies, with respect to prospective participants in a primary tier "covered transaction," as defined at 2 C.F.R. § 2867.20(a), that neither it nor any of its principals:

a) is presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) has within a three-year period preceding this application been convicted of a felony criminal violation under any Federal law, or been convicted or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, tribal, or local) transaction or private agreement or transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property, making false claims, or obstruction of justice, or commission of any offense indicating a lack of business integrity or business honesty that seriously and directly affects its (or its principals') present responsibility;

(c) is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, tribal, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and/or

(d) has within a three-year period preceding this application had one or more public transactions (Federal, State, tribal, or local) terminated for cause or default.

B. Where the Applicant is unable to certify to any of the statements in this certification, it shall attach an explanation to this application. Where the Applicant or any of its principals was convicted, within a three-year period preceding this application, of a felony criminal violation under any Federal law, the Applicant also must disclose such felony criminal conviction in writing to the Department (for OJP Applicants, to OJP at Ojpcompliancereporting@usdoj.gov; for OVW Applicants, to OVW at OVW.GFMD@usdoj.gov; or for COPS Applicants, to COPS at AskCOPSRC@usdoj.gov), unless such disclosure has already been made.

3. FEDERAL TAXES

A. If the Applicant is a corporation, it certifies either that (1) the corporation has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, or (2) the corporation has provided written notice of such an unpaid tax liability (or liabilities) to the Department (for OJP Applicants, to OJP at Ojpcompliancereporting@usdoj.gov; for OVW Applicants, to OVW at OVW.GFMD@usdoj.gov; or for COPS Applicants, to COPS at AskCOPSRC@usdoj.gov).

B. Where the Applicant is unable to certify to any of the statements in this certification, it shall attach an explanation to this application.

4. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 83, Subpart F, for grantees, as defined at 28 CFR Sections 83.620 and 83.650:

A. The Applicant certifies and assures that it will, or will continue to, provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the award be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the award, the employee will

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of the employee's conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title of any such convicted employee, to: U.S. Department of Justice, Office of Justice Programs, ATTN: Control Desk, 810 7th Street, N.W., Washington, D.C. 20531.

Notice shall include the identification number(s) of each affected award;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271- 10273), and also may subject me and the Applicant to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and 3801-3812). I also acknowledge that the Department's awards, including certifications provided in connection with such awards, are subject to review by the Department, including by its Office of the Inspector General.

Marion County, PO Box 14500, Salem OR 97309

1. Grantee Name and Address

VOCA/CFA-2025-MarionCo.DAVAP-00014

93-6002307

2. Application Number and/or Project Name

3. Grantee IRS/Vendor Number

Jan Fritz, Chief Administrative Officer

4. Typed Name and Title of Authorized Representative

DocuSigned by:

Jan Fritz

11/12/2025

DC16351248DE4EC

5. Signature

6. Date



EXHIBIT B

OMB APPROVAL NO. 1121-140

STANDARD ASSURANCES

On behalf of the Applicant, and in support of this application for a grant or cooperative agreement, I certify under penalty of perjury to the U.S. Department of Justice ("Department"), that all of the following are true and correct:

(1) I have the authority to make the following representations on behalf of myself and the Applicant. I understand that these representations will be relied upon as material in any Department decision to make an award to the Applicant based on its application.

(2) I certify that the Applicant has the legal authority to apply for the federal assistance sought by the application, and that it has the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project costs) to plan, manage, and complete the project described in the application properly.

(3) I assure that, throughout the period of performance for the award (if any) made by the Department based on the application--

- a. the Applicant will comply with all award requirements and all federal statutes and regulations applicable to the award;
- b. the Applicant will require all subrecipients to comply with all applicable award requirements and all applicable federal statutes and regulations; and
- c. the Applicant will maintain safeguards to address and prevent any organizational conflict of interest, and also to prohibit employees from using their positions in any manner that poses, or appears to pose, a personal or financial conflict of interest.

(4) The Applicant understands that the federal statutes and regulations applicable to the award (if any) made by the Department based on the application specifically include statutes and regulations pertaining to civil rights and nondiscrimination, and, in addition--

- a. the Applicant understands that the applicable statutes pertaining to civil rights will include section 601 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); section 901 of the Education Amendments of 1972 (20 U.S.C. § 1681); and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. § 6102);
- b. the Applicant understands that the applicable statutes pertaining to nondiscrimination may include section 809(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. § 10228(c)); section 1407(e) of the Victims of Crime Act of 1984 (34 U.S.C. § 20110(e)); section 299A(b) of the Juvenile Justice and Delinquency Prevention Act of 2002 (34 U.S.C. § 11182(b)); and that the grant condition set out at section 40002(b)(13) of the Violence Against Women Act (34 U.S.C. § 12291(b)(13)), which will apply to all awards made by the Office on Violence Against Women, also may apply to an award made otherwise;
- c. the Applicant understands that it must require any subrecipient to comply with all such applicable statutes (and associated regulations); and
- d. on behalf of the Applicant, I make the specific assurances set out in 28 C.F.R. §§ 42.105 and 42.204.

(5) The Applicant also understands that (in addition to any applicable program-specific regulations and to applicable federal regulations that pertain to civil rights and nondiscrimination) the federal regulations applicable to the award (if any) made by the Department based on the application may include, but are not limited to, 2 C.F.R. Part 2800 (the DOJ "Part 200 Uniform Requirements") and 28 C.F.R. Parts 22 (confidentiality - research and statistical information), 23 (criminal intelligence systems), 38 (regarding faith-based or religious organizations participating in federal financial assistance programs), and 46 (human subjects protection).

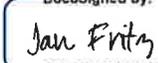
(6) I assure that the Applicant will assist the Department as necessary (and will require subrecipients and contractors to assist as necessary) with the Department's compliance with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. § 306108), the Archeological and Historical Preservation Act of 1974 (54 U.S.C. §§ 312501-312508), and the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4335), and 28 C.F.R. Parts 61 (NEPA) and 63 (floodplains and wetlands).

(7) I assure that the Applicant will give the Department and the Government Accountability Office, through any authorized representative, access to, and opportunity to examine, all paper or electronic records related to the award (if any) made by the Department based on the application.

(8) I assure that, if the Applicant is a governmental entity, with respect to the award (if any) made by the Department based on the application—

- a. it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and
- b. it will comply with requirements of 5 U.S.C. §§ 1501-1508 and 7324-7328, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the Applicant to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and 3801-3812). I also acknowledge that the Department's awards, including certifications provided in connection with such awards, are subject to review by the Department, including by its Office of the Inspector General.

Jan Fritz	Chief Administrative Officer
Print Name of Authorized Official	Title
	11/12/2025
Signature of Authorized Official	Date

SINGLE AUDIT CERTIFICATION LETTER

October 1, 2025

Pami Guerra
Marion County, acting by and through its District Attorney's Office
PO Box 14500
Salem, OR 97309-5036

RE: Subrecipient Audit Requirements of 2 CFR Part 200, Subpart F for audits of Grant Agreement between the Oregon Department of Justice and **Marion County, acting by and through its District Attorney's Office** for the period of October 1, 2025 – September 30, 2026 under the VOCA Grant Award/CFDA#16-575 /\$432,691.99.

Dear Pami Guerra,

The Oregon Department of Justice is subject to the requirements of Office of Management and Budget (OMB) 2 CFR Part 200, subpart F. As such, the Oregon Department of Justice is required to monitor our subrecipients of federal awards and determine whether they have met the audit requirements and whether they are in compliance with federal laws and regulations. A copy of 2 CFR Part 200, Subpart F can be found at the following web address: [eCFR :: 2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#).

Accordingly, we are requesting that you check one of the following, upload all appropriate documentation regarding your organization's compliance with the audit requirements to the Federal Audit Clearinghouse, sign and date the letter and return this letter along with your Grant Agreement and Exhibits A, B, D, E, and F.

1. _____ We have completed our single audit for our most recent fiscal year, ending _____ and have uploaded the audit and accompanying documentation to the Federal Audit Clearinghouse at [The Federal Audit Clearinghouse \(fac.gov\)](#). (If material exceptions were noted, the responses and corrective actions taken have also been provided.)
2. We expect our single audit for our most recent fiscal year, ending 2025, to be completed by 3/31/2026. The URL address or an electronic copy of our audit report and a schedule of federal programs by major program will be uploaded to the Federal Audit Clearinghouse at [The Federal Audit Clearinghouse \(fac.gov\)](#) within 30 days of receipt of the report. (If material exceptions are noted, a copy of the responses and corrective actions taken will be included.)
3. _____ We are not subject to the single audit requirement because:
 - _____ We are a for-profit organization.
 - _____ We expend less than \$1,000,000 in federal funds annually.
 - _____ Other (please explain) _____

Zuguey Luna	Budget Analyst
Print Name of Fiscal Officer	Title
	11/13/2025
5A698E51C15741B... Signature of Fiscal Officer	Date

EXHIBIT D

**Oregon Department of Justice – Crime Victim and Survivor Services Division
 CERTIFICATION OF COMPLIANCE WITH REGULATIONS
 OFFICE FOR CIVIL RIGHTS, OFFICE OF JUSTICE PROGRAMS
 FOR SUBAWARDS ISSUED BY THE OREGON DEPARTMENT OF JUSTICE**

INSTRUCTIONS: Complete the identifying information, which is found on the Grant Award face sheet, in the table below. Read the form completely, identifying, under "I," the person responsible for reporting civil rights findings; and checking only the one certification under "II" that applies to your agency. Have your Authorized Official sign as appropriate on page 2, forward a copy to the person you identified under "I", keep a copy for your records, and return the original to the Oregon Department of Justice, Crime Victim and Survivor Services Division, 1162 Court Street NE, Salem, OR 97301-4096 along with your Grant Agreement and Exhibits A, B, C, E, and F.

Grant Award: VOCA/CFA-2025-MarionCo.DAVAP-00014	Grant Title: 2025-2026 VOCA and CFA Non-Competitive Grant
Subrecipient Name (Funded Entity): Marion County, acting by and through its District Attorney's Office	
Address: PO Box 14500, Salem, OR 97309-5036	
Project Period: Start Date: July 1, 2025 End Date: September 30, 2026	Award Amount: \$631,809.61
Contact Name, Phone # & E-mail address: Pami Guerra, 503-588-5604, pjguerra@co.marion.or.us	

AUTHORIZED OFFICIAL'S CERTIFICATION: As the Authorized Official for the above Subrecipient, I certify, by my signature below, that I have read and am fully cognizant of our duties and responsibilities under this Certification.

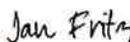
I. REQUIREMENTS OF SUBAWARD RECIPIENTS: All subaward recipients (regardless of the type of entity or the amount awarded) are subject to prohibitions against discrimination in any program or activity, and must take reasonable steps to provide meaningful access for persons with limited English proficiency.

- ◆ I certify that this agency will maintain data (and submit when required) to ensure that: our services are delivered in an equitable manner to all segments of the service population; our employment practices comply with Equal Opportunity Requirements, 28 CFR 42.207 and 42.301 *et seq.*; our projects and activities provide meaningful access for people with limited English proficiency as required by Title VI of the Civil Rights Act, (*See also*, 2000 Executive Order #13166).
- ◆ I also certify that the person in this agency or unit of government who is responsible for reporting civil rights findings of discrimination will submit these findings, if any, to the Oregon Department of Justice within 45 days of the finding, and/or if the finding occurred prior to the grant award beginning date, within 45 days of receipt of this form. A copy of this Certification will be provided to this person, as identified here:

Person responsible for reporting civil rights findings of discrimination:
 William White, Risk Manager
 PO Box 14500, Salem OR 97309
 503-373-4423

I certify that Marion County District Attorney, Victim Assistance [Subrecipient] will comply with applicable federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Jan Fritz, Chief Administrative Officer

DocuSigned by:

 DC16351248DE4EC...

11/12/2025

Print or Type Name and Title

Signature

Date

CERTIFICATION C: Declaration Stating that an EEOP Certification Form and Utilization Report Has Been Submitted to OR DOJ CVSSD for Review

If a subrecipient agency has fifty or more employees and is receiving a single award of \$25,000 or more as a subrecipient, then the subrecipient agency must submit an EEOP certification form and an EEOP Utilization Report to OR DOJ CVSSD for review. The subrecipient may use the EEOP Report Builder tool for DOJ Subrecipients found at [OCR - EEOP \(ojp.gov\)](http://OCR-EEOP.ojp.gov) to create their EEOP Utilization Report. The utilization report should be submitted electronically to OR DOJ CVSSD through the Egrants system.

I, _____ [authorized official],
certify that _____ [Subrecipient],
which has fifty or more employees and is receiving a single award of \$25,000 or more, has formulated an
EEOP in accordance with 28 CFR pt. 42, subpt. E, and sent an EEOP Utilization Report for review on
_____ [date] to the Oregon Department of Justice, Crime Victim and Survivor Services Division.

Print or Type Name and Title *Signature* *Date*

CERTIFICATION C(1): Declaration Stating Certification C applies and that an EEOP Certification Form and Utilization Report Will Be Submitted to OR DOJ CVSSD for Review

I, _____ [authorized official],
certify that _____ [Subrecipient],
which has fifty or more employees and is receiving a single award of \$25,000 or more, will formulate an
EEOP in accordance with 28 CFR pt. 42, subpt. E, and send an EEOP Utilization Report for review on to the Oregon
Department of Justice, Crime Victim and Survivor Services Division once the OCR website is operational and the
EEOP Report Builder tool is available.

Print or Type Name and Title *Signature* *Date*

* * * * *

This original signed form must be returned to the Oregon Department of Justice, Crime Victim and Survivor Services Division, 1162 Court Street NE, Salem, OR 97301-4096, along with your Grant Agreement and Exhibits A, B, C, E, and F. You must also forward a signed copy to the person you identified under "I" on page 1. Please retain a copy for your records.

For more information regarding EEOP requirements, please access the Office for Justice Programs, Office for Civil Rights web page at: <https://ojp.gov/about/ocr/eeop.htm>.

EXHIBIT E

2024 VICTIMS OF CRIME ACT SPECIAL CONDITIONS

1. Requirement of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any certifications or assurances submitted by or on behalf of the Subrecipient that relates to conduct during the period of performance also is a material requirement of this award.

By signing and accepting this award on behalf of the Subrecipient, the authorized official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized official for the Subrecipient, all assurances or certifications by or on behalf of the Subrecipient that relate to conduct during the period of performance.

Failure to comply with any one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, an assurance or certification related to conduct during the award period -- may result in the Oregon Department of Justice, Crime Victim and Survivor Services Division ("CVSSD") taking appropriate action with respect to the Subrecipient and the award. Among other things, the CVSSD may withhold award funds, disallow costs, or suspend or terminate the award. The Department of Justice ("DOJ"), including the Office of Justice Programs ("OJP"), also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or unenforceable, such provision shall be deemed severable from this award.

2. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this award.

For more information and resources on the Part 200 Uniform Requirements as they relate to CVSSD awards and subawards ("subgrants"), see the Office of Justice Programs (OJP) website at <http://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the Subrecipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report, unless a different retention period applies -- and to which the Subrecipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the Subrecipient is to contact CVSSD promptly for clarification.

3. Compliance with DOJ Grants Financial Guide

The Subrecipient agrees to comply with the Department of Justice Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance.

4. Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

5. Requirements related to "de minimis" indirect cost rate

A Subrecipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise CVSSD of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

6. Requirement to report potentially duplicative funding

If the Subrecipient currently has other active awards of federal funds, or if the Subrecipient receives any other award of federal funds during the period of performance for this award, the Subrecipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the Subrecipient must promptly notify the awarding agency (CVSSD and OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the awarding agency, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) or grant amendment to eliminate any inappropriate duplication of funding.

7. Requirements related to System for Award Management and Unique Entity Identifiers

The Subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <http://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The Subrecipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the Subrecipient) the unique entity identifier required for SAM registration.

The details of the Subrecipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <http://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

8. Requirement to report actual or imminent breach of personally identifiable information (PII)

The Subrecipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient)-- 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.1) within the scope of a CVSSD grant-funded program or activity, or 2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to a CVSSD Fund Coordinator no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

9. Employment eligibility verification for hiring under the award

1. The Subrecipient (and any subrecipient at any tier) must:

- A. Ensure that, as part of the hiring process for any position in the United States that is or will be funded (in whole or in part) with VOCA funds, the Subrecipient (or any subrecipient at any tier) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).
- B. Notify all persons associated with the Subrecipient (or any subrecipient) who are or will be involved in activities under this VOCA award of both –
 - 1) This award requirement for verification of employment eligibility, and
 - 2) The associated provisions of 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful to hire (or recruit for employment) certain aliens.
- C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and the associated provisions of 8 U.S.C. 1324a(a)(1).
- D. As part of the recordkeeping for this award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The Subrecipient must monitor subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all Subrecipient officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the Subrecipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the Subrecipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

- D. Nothing in this condition shall be understood to authorize or require any Subrecipient, any subrecipient at any tier, or any person or other entity, to violate federal law, including any applicable civil rights or nondiscrimination law.
- E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any Subrecipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to CVSSD before award acceptance.

10. All subawards ("subgrants") must have specific federal authorization

The Subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <http://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award Condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

11. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000

The Subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site <http://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm>. Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.

12. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and CVSSD authority to terminate award)

The Subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Subrecipient, subrecipients at any tier ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the Subrecipient or of any subrecipient ("subgrantees").

The details of the Subrecipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <http://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

13. Determination of suitability to interact with participating minors

SCOPE: This condition applies to this award if it is indicated – in the application for the award (or in the application for any subaward, at any tier), or the CVSSD solicitation -- that the purpose of some or all of the activities to be carried out under this VOCA award (whether by Subrecipient or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age:

The Subrecipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

14. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The Subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

15. Requirement for data on performance and effectiveness under the award

The Subrecipient must collect and maintain data that measure the performance and effectiveness of activities under this award. The data must be provided to CVSSD in the manner (including within the timeframes) specified by CVSSD in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act, and other applicable laws.

16. OJP Training Guiding Principles

Any training or training materials that the Subrecipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with CVSSD award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees>.

17. Effect of failure to address audit issues

The Subrecipient understands and agrees that the awarding agency may withhold award funds, or may impose other related requirements, if (as determined by the awarding agency) the Subrecipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of CVSSD awards.

18. Potential imposition of additional requirements

The Subrecipient agrees to comply with any additional requirements that may be imposed by CVSSD during the period of performance for this award, if the Subrecipient is designated as "high risk" for purposes of the DOJ high-risk grantee list.

19. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The Subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

20. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The Subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

21. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The Subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to Subrecipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to Subrecipients and subgrantees that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

22. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a Subrecipient (or subrecipient at any tier) would or might fall within the scope of this prohibition, the Subrecipient is to contact CVSSD for guidance, and may not proceed without the express prior written approval of CVSSD.

23. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2022)

The Subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2022, are set out at <https://ojp.gov/funding/Explore/FY22AppropriationsRestrictions.htm> , and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a Subrecipient (or a subrecipient at any tier) would or might fall within the scope of an appropriations-law restriction, the Subrecipient is to contact CVSSD for guidance, and may not proceed without the express prior written approval of CVSSD.

24. Reporting Potential Fraud, Waste, and Abuse, and Similar Misconduct

The Subrecipient and any subrecipients at any tier ("subgrantees") must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by-- (1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave, NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881(fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

25. Restrictions and certifications regarding non-disclosure agreements and related matters

No Subrecipient or subrecipient at any tier ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the Subrecipient --

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the Subrecipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the Subrecipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements

- from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
- (2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and
- b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

26. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The Subrecipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The Subrecipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the Subrecipient is to contact CVSSD for guidance.

27. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages Subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

28. Requirement to disclose whether Subrecipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the Subrecipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to CVSSD by email to shannon.l.sivell@doj.oregon.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the Subrecipient's past performance, or other programmatic or financial concerns with the Subrecipient. The Subrecipient's disclosure must include the following: 1. The federal awarding agency that currently designates the Subrecipient high risk, 2. The date the Subrecipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

29. Discrimination Findings

The Subrecipient assures that in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the ground of race, religion, national origin,

sex, or disability against a recipient of victim assistance formula funds under this award, the Subrecipient will forward a copy of the findings to CVSSD.

30. Subrecipient integrity and performance matters: Requirement to report information on certain civil, criminal, and administrative proceedings to SAM and FAPIIS

Subrecipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, Subrecipients of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIIS").

The details of Subrecipient obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIIS") within SAM are posted on the OJP web site at <http://ojp.gov/funding/FAPIIS.htm> (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.

31. Meaningful Access for Limited English Proficiency Persons

Subrecipients must ensure that Limited English Proficiency persons have meaningful access to the services under this program. National origin discrimination includes discrimination on the basis of limited English Proficiency (LEP). To ensure compliance with Title VI of the Safe Streets Act, Subrecipients are required to take reasonable steps to ensure that LEP persons have meaning full access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice had issued guidance for Subrecipients to help them comply with Title VI requirements, with he guidance document able to be accessed on the internet at www.lep.gov. The USDOJ has temporarily suspended the operations of lep.gov, pending an internal review. Those materials will be replaced when new guidance is issued.

32. VOCA Requirements

The Subrecipient, and any subrecipient at any tier ("subgrantee"), must comply with the conditions of the Victims of Crime Act (VOCA) of 1984, sections 1404(a)(2), and 1404(b)(1) and (2), 34 U.S.C. 20103(a)(2) and (b)(1) and (2) (and the applicable program guidelines and regulations), as required. Specifically, the Subrecipient certifies that funds under this award will:

- a) be subawarded only to eligible victim assistance organizations, 34 U.S.C. 20103(a)(2);
- b) not be used to supplant State and local public funds that would otherwise be available for crime victim assistance, 34 U.S.C. 20103(a)(2), if a government-based organization; and
- c) be allocated in accordance with program guidelines or regulations implementing 34 U.S.C. 20103(a)(2)(A) and 34 U.S.C. 20103(a)(2)(B) to, at a minimum, assist victims in one or more of the following categories: sexual assault, child abuse, domestic violence, and underserved victims of violent crimes as identified by CVSSD.

33. The Subrecipient agrees to submit (and, as necessary, require subgrantees to submit) quarterly financial reports and semi-annual performance reports on the performance metrics identified by CVSSD, and in the manner required by CVSSD. This information on the activities supported by the award funding will assist in assessing the effects that VOCA Victim Assistance funds have had on services to crime victims within the jurisdiction.

34. The Subrecipient understands and agrees that it has a responsibility to monitor its subrecipients' ("subgrantees") compliance with applicable federal civil rights laws.

CERTIFICATION: I certify that I have read and reviewed the above assurances and links to referenced Award Conditions and certify that the Subrecipient will comply with all provisions of the Victims of Crime Act of 1984 (VOCA), as amended, and all other applicable Federal laws.

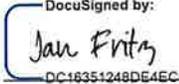
Jan Fritz	Chief Administrative Officer
Print Name of Authorized Official	Title
	11/12/2025
Signature of Authorized Official	Date
Zugey Luna	Budget Analyst
Print Name of Fiscal Officer	Title
	11/13/2025
Signature of Fiscal Officer	Date

EXHIBIT F

2025 VICTIMS OF CRIME ACT SPECIAL CONDITIONS

1. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2025)

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions that may be set out in applicable appropriations acts are indicated at <https://ojp.gov/funding/Explore/FY25AppropriationsRestrictions.htm> and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of DOJ CVSSD.

2. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the subrecipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)) and are incorporated by reference here.

3. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38.

Among other things, 28 C.F.R. Part 38 states that recipients may not use direct Federal financial assistance from the Department of Justice to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment to the U.S. Constitution and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by the Department of Justice or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38 also sets out rules and requirements that pertain to subrecipient organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to subrecipients that are faith-based or religious organizations. In addition, Part 38 states that a faith-based organization that participates in a Department of Justice funded program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

Subrecipients that provide social services under this award must give written notice to beneficiaries and prospective beneficiaries prior to the provision of services (if practicable) which shall include language substantially similar to the language in 28 CFR Part 38, Appendix C, sections (1) through (4). A sample written notice may be found at <https://www.ojp.gov/program/civil-rights-office/partnerships-faith-based-and-other-neighborhood-organizations>.

In certain instances, a faith-based or religious organization may be able to take religion into account when making hiring decisions, provided it satisfies certain requirements. For more information, see "Nondiscrimination

provisions and the Religious Freedom Restoration Act," accessible at <https://www.ojp.gov/funding/explore/legaloverview2025/civilrightsrequirements>.

4. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that a legal notice regarding award requirements is necessary or that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such notice or exception regarding enforcement, including any such notice or exception made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqts.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the subrecipient, the authorized subrecipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized subrecipient official, all assurances or certifications submitted by or on behalf of the subrecipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in DOJ CVSSD taking appropriate action with respect to the subrecipient and the award. Among other things, DOJ CVSSD may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

5. Effect of failure to address audit issues

The subrecipient understands and agrees that DOJ CVSSD may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the subrecipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

6. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") including, without limitation, the provisions regarding termination of 2 C.F.R. 200.340, apply to this award from OJP.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the subrecipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the subrecipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the subrecipient is to contact OJP promptly for clarification.

7. Reporting potential fraud, waste, and abuse, and similar misconduct

The subrecipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Fraud Detection Office, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

8. Requirements related to "de minimis" indirect cost rate

A subrecipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

9. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

10. Requirement for data on performance and effectiveness under the award

The subrecipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to DOJ and DOJ CVSSD in the manner (including within the timeframes) specified in the program solicitation or other applicable written guidance. Data collection supports compliance with

the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

11. Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The subrecipient agrees to comply with the DOJ Grants Financial Guide.

12. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including 28 C.F.R. § 42.106(d), 28 C.F.R. § 42.405(c), and 28 C.F.R. § 42.505(f) which contain certain notice requirements that covered subrecipient must follow regarding the dissemination of information regarding federal nondiscrimination requirements.

13. Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ CVSSD)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the subrecipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The subrecipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

14. Requirement to disclose whether subrecipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the subrecipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the subrecipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the subrecipient's past performance, or other programmatic or financial concerns with the subrecipient. The subrecipient's disclosure must include the following: 1. The federal awarding agency that currently designates the subrecipient high risk, 2. The date the subrecipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

15. Employment eligibility verification for hiring under the award

1. The subrecipient (and any subrecipient at any tier) must--

- A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the subrecipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

- B. Notify all persons associated with the subrecipient (or any subrecipient) who are or will be involved in activities under this award of both--
- (1) this award requirement for verification of employment eligibility, and
 - (2) the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.
- C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).
- D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The subrecipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all subrecipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the subrecipient (or any subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any subrecipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any subrecipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email

E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

16. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

17. Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

18. Restrictions and certifications regarding non-disclosure agreements and related matters

No subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the subrecipient --

- a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
- b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the subrecipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

- a. it represents that--

- (1) it has determined that no other entity that the subrecipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
 - (2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and
- b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

19. OJP Training Guiding Principles

Any training or training materials that any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees>.

20. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.

21. Requirement to report potentially duplicative funding

If the subrecipient currently has other active awards of federal funds, or if the subrecipient receives any other award of federal funds during the period of performance for this award, the subrecipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the subrecipient must promptly notify DOJ CVSSD in writing of the potential duplication, and, if so requested by DOJ CVSSD, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) to eliminate any inappropriate duplication of funding.

22. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The subrecipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and

specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The subrecipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the subrecipient is to contact DOJ CVSSD for guidance.

23. Potential imposition of additional requirements

The subrecipient agrees to comply with any additional requirements that may be imposed by DOJ CVSSD during the period of performance for this award, if the subrecipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

24. Requirement to report actual or imminent breach of personally identifiable information (PII)

The subrecipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "Personally Identifiable Information (PII)" (2 CFR 200.1) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The subrecipient's breach procedures must include a requirement to report actual or imminent breach of PII to DOJ CVSSD no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

25. Requirements related to System for Award Management and Universal Identifier Requirements

The 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 the currency of information in SAM.

The subrecipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the subrecipient) the unique entity identifier required for SAM registration.

The details of the subrecipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

26. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the subrecipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the subrecipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an

exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a or subrecipient would or might fall within the scope of these prohibitions, the subrecipient is to contact DOJ CVSSD for guidance, and may not proceed without the express prior written approval of DOJ CVSSD.

27. All subawards ("subgrants") must have specific federal authorization

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

28. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination – 28 C.F.R. Part 54

The subrecipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

Among other items, 28 C.F.R. § 54.140 contains notice requirements that covered subrecipient must follow regarding the dissemination of information regarding federal nondiscrimination requirements.

29. Discrimination Findings

The subrecipient assures that in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the ground of race, religion, national origin, sex, or disability against a subrecipient of victim assistance formula funds under this award, the subrecipient will forward a copy of the findings to DOJ CVSSD and the Office for Civil Rights of OJP.

30. The subrecipient agrees that it will submit (and as necessary, require subgrantees to submit) quarterly financial reports and quarterly performance reports on the performance metrics identified by CVSSD, and in the manner required by CVSSD. This information on the activities supported by the award funding will assist in assessing the effects that VOCA Victim Assistance funds have had on services to crime victims within the jurisdiction

31. Subrecipient integrity and performance matters: Requirement to report information on certain civil, criminal, and administrative proceedings to SAM and FAPIIS

The subrecipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, subrecipient of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIIS").

The details of subrecipient obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIIS") within SAM are posted on the OJP web site at <https://ojp.gov/funding/FAPIIS.htm> (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.

32. The Subrecipient understands and agrees that it has a responsibility to monitor its subrecipients' ("subgrantees") compliance with applicable federal civil rights laws.

CERTIFICATION: I certify that I have read and reviewed the above assurances and links to referenced Award Conditions and certify that the subrecipient will comply with all provisions of the Victims of Crime Act of 1984 (VOCA), as amended, and all other applicable Federal laws.

Jan Fritz	Chief Administrative Officer
Print Name of Authorized Official	Title
<small>DocuSigned by:</small> 	11/12/2025
<small>DC16351246DE4EC...</small>	
Signature of Authorized Official	Date

Zugey Luna	Budget Analyst
Print Name of Fiscal Officer	Title
<small>Signed by:</small> 	11/13/2025
<small>5A63CC51C15741B</small>	
Signature of Fiscal Officer	Date

SUBCONTRACTOR INSURANCE REQUIREMENTS

Subcontractor shall obtain at Subcontractor's expense the insurance specified in this section prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement. Subcontractor shall obtain the following insurance from 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 DOJ CVSSD.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

Subcontractor shall provide workers' compensation insurance coverage for subject workers as required by federal, state, or Tribal law, as applicable. Subcontractor must require and ensure that each of its subcontractors that employ subject workers as defined in ORS 656.027, shall comply with ORS 656.017, and provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Subcontractor shall require and ensure that each of its subcontractors complies with these requirements. If Subrecipient is a subject employer, as defined in ORS 656.023, Subrecipient shall also obtain Employers' Liability insurance coverage with limits not less than \$500,000 each accident.

If Subcontractor is an employer subject to any other state's workers' compensation law, Contactor shall provide Workers' Compensation Insurance coverage for its employees as required by applicable workers' compensation laws including Employers' Liability Insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

As applicable, Subcontractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen's and Harbor Workers' Compensation Act.

COMMERCIAL GENERAL LIABILITY

Subcontractor shall provide Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State of Oregon. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Grant Agreement, and have no limitation of coverage to designated premises, project, or operation. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence and not less than \$1,000,000 annual aggregate limit.

AUTOMOBILE LIABILITY INSURANCE

Subcontractor shall provide Automobile Liability Insurance covering Subcontractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal Automobile Liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY

Subcontractor shall provide Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Grant Agreement by the Subcontractor and Subcontractor's subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per claim and not less than \$1,000,000 annual aggregate limit.

If coverage is provided on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Subcontractor shall provide Continuous Claims Made coverage as stated below.

EXCESS/UMBRELLA INSURANCE

A combination of primary and Excess/Umbrella Insurance may be used to meet the required limits of insurance. When used, all of the primary and Excess or Umbrella policies must provide all of the insurance coverages required herein, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess or Umbrella or policies must be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, must be called upon to contribute to a loss until the Subrecipient's primary and excess liability policies are exhausted.

If Excess/Umbrella Insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the Excess/Umbrella insurance.

ADDITIONAL INSURED

All liability insurance, except for Workers' Compensation, Professional Liability, Pollution Liability and Network Security and Privacy Liability (if applicable), required under this Grant Agreement must include an Additional Insured endorsement specifying the State of Oregon, its officers, employees, and agents as Additional Insureds, but only with respect to Subcontractor's activities to be performed under this Grant Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Regarding Additional Insured status under the General Liability policy, DOJ CVSSD requires Additional Insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Subcontractor's activities to be performed under this Grant Agreement. The Additional Insured endorsement with respect to liability arising out of Subcontractor's ongoing operations must be on, or at least as broad as, ISO Form CG 20 10 and the Additional Insured endorsement with respect to completed operations must be on, or at least as broad as, ISO form CG 20 37.

WAIVER OF SUBROGATION

Subcontractor shall waive rights of subrogation which Subcontractor or any insurer of Subcontractor may acquire against the DOJ CVSSD or State of Oregon by virtue of the payment of any loss. Subcontractor shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not DOJ CVSSD has received a Waiver of Subrogation endorsement from the Subcontractor or the Subcontractor's insurer(s).

CONTINUOUS CLAIMS MADE COVERAGE

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Subcontractor shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Grant Agreement, for a minimum of 24 months following the later of:

- (i) Subcontractor's completion and DOJ CVSSD's acceptance of all Services required under the Grant Agreement, or
- (ii) DOJ CVSSD or Subrecipient termination of this Grant Agreement, or
- (iii) The expiration of all warranty periods provided under this Grant Agreement.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Subcontractor shall provide to Subrecipient Certificate(s) of Insurance for all required insurance before delivering any goods and performing any Services required under this Grant Agreement. The Certificate(s) of Insurance must list the State of Oregon, its officers, employees, and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) of insurance must also include all required endorsements or copies of the applicable policy language effecting coverage required by this Grant Agreement. If Excess/Umbrella Insurance is used to meet the minimum insurance requirement, the Certificate(s) of Insurance must include a list of all policies that fall under the Excess/Umbrella Insurance. As proof of insurance, DOJ CVSSD has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this section.

NOTICE OF CHANGE OR CANCELLATION

Subcontractor or its insurer must provide at least 30 calendar days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW

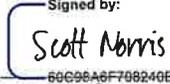
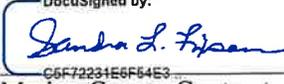
Subcontractor agrees to periodic review of insurance requirements by Subrecipient under this Grant Agreement and to provide updated requirements as mutually agreed upon by Subrecipient and DOJ CVSSD.

STATE ACCEPTANCE

All insurance providers are subject to DOJ CVSSD acceptance. If requested by Subrecipient, Subcontractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to DOJ CVSSD's representatives responsible for verification of the insurance coverages required under this Section.

**SIGNATURE PAGE FOR
2025-2026 VOCA AND CFA NON-COMPETITIVE GRANT - DA-6902-25
between
MARION COUNTY and OREGON DEPARTMENT OF JUSTICE**

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair		Date
Commissioner		Date
Commissioner		Date
Authorized Signature:	<small>Signed by:</small>  <small>1D15B38FC4C9497</small>	11/10/2025
	Department Director or designee	Date
Authorized Signature:	<small>DocuSigned by:</small>  <small>DC1E351248DE4EC</small>	11/12/2025
	Chief Administrative Officer	Date
Reviewed by Signature:	<small>Signed by:</small>  <small>59C96A8F709240B</small>	11/12/2025
	Marion County Legal Counsel	Date
Reviewed by Signature:	<small>DocuSigned by:</small>  <small>C5F72231E6F64E3</small>	11/10/2025
	Marion County Contracts & Procurement	Date

Contract Review Sheet

Information Technology Agreement

IT-4342-21 - Am3

Title: Support of Teller Point of Sale System

Contractor's Name: Can-Am Technologies, Inc.

Department: Finance Department

Contact: Chalyce MacDonald

Analyst: Chalyce MacDonald

Phone #: (503) 584-4764

Term - Date From: September 27, 2021

Expires: October 31, 2026

Original Contract Amount: \$ 90,000.00

Previous Amendments Amount: \$ 6,000.00

Current Amendment: \$ 24,808.00

New Contract Total: \$ 120,808.00

Amd% 34%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 20-0285 Special

CMS# FI1736-25

Description of Services or Grant Award

Software Agreement for cashiering software.

Amendment 1 added 5 user licenses and increased NTE by \$6,000.

Amendment 2 extended term through 12/31/25 [9/26/25].

Amendment 3 adds \$24,808 and extends agreement through 10/31/26 [12/31/25] or until new contract is executed (whichever is first).

Desired BOC Session Date: 12/17/2025

Contract should be in DocuSign by: 11/26/2025

Agenda Planning Date: 12/11/2025

Printed packets due in Finance: 12/2/2025

Management Update: 12/9/2025

BOC upload / Board Session email: 12/3/2025

BOC Session Presenter(s) Jeff White

Code: Y

REQUIRED APPROVALS

Finance - Contracts _____ Date _____

Contract Specialist _____ Date _____

Legal Counsel _____ Date _____

Chief Administrative Officer _____ Date _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 12/17/2025

Department: Health & Human Services

Title: Amendment 1 to Contract for Skilled Medical Assessments and Supervision

Management Update/Work Session Date: 12/2/2025 Audio/Visual aids

Time Required: 10 mins Contact: Lyndsie Schwarz Phone: 503-584-4898

Requested Action: Approval of Amendment 1 to Health Contract with Matthew Piehler.

Issue, Description & Background: Provider will work as the Assertive Community Treatment Prescriber and will provide skilled medical assessments & supervision as part of an Individual Service and Support Plan to HHS clients. Amendment 1 - Extends the term to February 28, 2028, increases hourly rate to \$165/hr effective March 1, 2026, and adds funds of \$540,000.00 for a new NTE of \$1,115,000.00.

Financial Impacts: Increases outgoing funds by \$540,000.00 for a new NTE of \$1,115,000.00 through February 28, 2028.

Impacts to Department & External Agencies: N/A

List of attachments: Amendment 1, Original

Presenter: Carol Heard

Department Head Signature: Ryan Matthews

Contract Review Sheet

Contract for Services

HE-5873-24 - Am1

Title: Skilled Medical Assessments and Supervision - Matthew Piehler

Contractor's Name: Matthew Piehler

Department: Health and Human Services

Contact: Lyndsie Schwarz

Analyst: Chalyce MacDonald

Phone #: (503) 584-4898

Term - Date From: March 4, 2024

Expires: February 28, 2028

Original Contract Amount: \$ 575,000.00

Previous Amendments Amount: _____

Current Amendment: \$ 540,000.00

New Contract Total: \$ 1,115,000.00

Amd% 94%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 50-0160 Health Provider Contracts

Description of Services or Grant Award

Provider will work as the Assertive Community Treatment Prescriber and will provide skilled medical assessments & supervision as part of an Individual Service and Support Plan to Health and Human Services clients.

Amendment 1 - Extends the term to February 28, 2028 [2026], increases hourly rate to \$165/hr effective March 1, 2026, and adds funds of \$540,000.00 for a new NTE of \$1,115,000.00.

Desired BOC Session Date: 12/17/2025

Contract should be in DocuSign by: 11/26/2025

Agenda Planning Date: 12/4/2025

Printed packets due in Finance: 12/2/2025

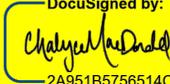
Management Update: 12/2/2025

BOC upload / Board Session email: 12/3/2025

BOC Session Presenter(s) Carol Heard

Code: Y

REQUIRED APPROVALS

DocuSigned by:

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 11/12/2025
 Finance - Contracts Date

DocuSigned by:

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 11/13/2025
 Contract Specialist Date

Signed by:

 60C98A6E708240B...
 11/12/2025
 Legal Counsel Date

DocuSigned by:

 DC16351248DF4EC...
 11/12/2025
 Chief Administrative Officer Date



**AMENDMENT 1 to HE-5873-24
the CONTRACT FOR SERVICES
between
MARION COUNTY and MATTHEW PIEHLER**

This is Amendment 1 to the Contract for Services (as amended from time to time, the “Contract”), dated March 4, 2024 between Marion County, a political subdivision of the State of Oregon, hereinafter called County, and Matthew Piehler, hereafter called Contractor.

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

1. TERM

This Contract expires on February 28, 2028 ~~February 28, 2026~~, or the date Contractor has completed all Services in accordance with the requirements of this Contract, as determined by County.

2. CONSIDERATION

A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$1,115,000.00 ~~\$575,000.00~~.

**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 \$1,115,000.00 ~~\$575,000.00~~.

A. METHOD OF PAYMENT FOR SERVICES: County shall pay Contractor \$145.00 per hour ~~through February 28, 2026~~, for completing ~~all~~ Services and delivering ~~all~~ Goods required under this Contract. Effective March 1, 2026 County shall pay Contractor \$165.00 per hour for completing Services and delivering 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.

Signatures on following page

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

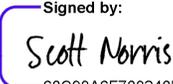
Chair _____ Date _____

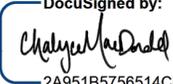
Commissioner _____ Date _____

Commissioner _____ Date _____

Authorized Signature:  DocuSigned by:
7D28A787656F458... 11/12/2025
Department Director or designee _____ Date _____

Authorized Signature:  DocuSigned by:
DC18351248DE4EC... 11/12/2025
Chief Administrative Officer _____ Date _____

Reviewed by Signature:  Signed by:
60C98A6F708240B... 11/12/2025
Marion County Legal Counsel _____ Date _____

Reviewed by Signature:  DocuSigned by:
2A951B5756514CF... 11/12/2025
Marion County Contracts & Procurement _____ Date _____

MATTHEW PIEHLER SIGNATURE

Authorized Signature: _____ Date _____

Title: _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 12/17/2025

Department: Health & Human Services

Title: Urinalysis Collection Services for Adult Drug Court - A WorkSAFE Service, Inc.

Management Update/Work Session Date: 12/2/2025 Audio/Visual aids

Time Required: 10 mins Contact: Lyndsie Schwarz Phone: 503-584-4898

Requested Action: Seeking approval of the contract for services with A WorkSAFE, Inc. to provide urinalysis collection services to Adult Drug Court for the Criminal Justice Commission 25-27 Grant Agreement.

Issue, Description & Background: A WorkSAFE Service, Inc. shall provide urinalysis collection services to Adult Drug Court (ADC); one of the five Treatment Courts for the Criminal Justice Commission (CJC) 25-27 Grant Agreement.

Marion County serves as the fiscal intermediary for the Criminal Justice Commission Grant Award #TCP-27-36 of \$409,325.00 for the Marion County Adult Drug Court (ADC). Of this amount, \$132,000.00 is designated for A WorkSAFE, Inc. to provide urinalysis collection services for Marion County ADC.

Financial Impacts: Marion County serves as the fiscal intermediary for the Criminal Justice Commission Grant Award #TCP-27-36 of \$409,325.00 for the Marion County Adult Drug Court (ADC). Of this amount, \$132,000.00 is designated for A WorkSAFE, Inc. to provide urinalysis collection services for Marion County ADC.

Impacts to Department & External Agencies: N/A

List of attachments: Original contract HE-6788-25

Presenter: Rhett Martin

Department Head Signature: Ryan Matthews Digitally signed by Ryan Matthews Date: 2025.11.24 17:18:38 -08'00'

Contract Review Sheet

Contract for Services

HE-6788-25

Title: Urinalysis Collection Service for Treatment Court: Adult Drug Court (ADC)

Contractor's Name: A WorkSAFE Service Inc

Department: Health and Human Services

Contact: Lyndsie Schwarz

Analyst: Chalyce MacDonald

Phone #: (503) 584-4898

Term - Date From: January 1, 2026

Expires: August 31, 2027

Original Contract Amount: \$ 132,000.00

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ 132,000.00

Amd% 0%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 20-0260 Request for Proposal

RFP# HE1702-25

Description of Services or Grant Award

A WorkSAFE Service, Inc. shall provide urinalysis collection services to Adult Drug Court (ADC); one of the five Treatment Courts for the Criminal Justice Commission (CJC) 25-27 Grant Agreement.

Marion County serves as the fiscal intermediary for the Criminal Justice Commission Grant Award #TCP-27-36 of \$409,325.00 for the Marion County Adult Drug Court (ADC). Of this amount, \$132,000.00 is designated for A WorkSAFE, Inc. to provide urinalysis collection services for Marion County ADC.

Desired BOC Session Date: 12/17/2025

Contract should be in DocuSign by: 11/26/2025

Agenda Planning Date: 12/4/2025

Printed packets due in Finance: 12/2/2025

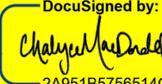
Management Update: 12/2/2025

BOC upload / Board Session email: 12/3/2025

BOC Session Presenter(s) Rhett Martin

Code: Y

REQUIRED APPROVALS

DocuSigned by:

 2A951B5758514CF
 11/21/2025
 Finance - Contracts Date

DocuSigned by:

 B84A939E0D02459
 11/26/2025
 Contract Specialist Date

Signed by:

 80C98A6F708240B
 11/24/2025
 Legal Counsel Date

DocuSigned by:

 DC18351248DE4EC
 11/24/2025
 Chief Administrative Officer Date

**MARION COUNTY
CONTRACT FOR SERVICES
HE-6788-25**

This Contract is between Marion County (a political subdivision of the State of Oregon) hereinafter called County, and A WorkSAFE Service, Inc., hereinafter called Contractor.

RECITALS

WHEREAS, this Contract is established pursuant to ORS 279B.060 and MCPCR 20-0260 is a formal procurement award.

WHEREAS, County issued Request for Proposal HE1702-25 for Urinalysis Collection Services for Treatment Courts on June 18, 2025.

WHEREAS, A WorkSAFE Services, Inc. submitted a proposal in response to HE1702-25 on July 2, 2025, which was determined to be responsive.

WHEREAS, County evaluated and scored all proposals received and issued a Notice of Intent of Award to A WorkSAFE Services, Inc. on July 21, 2025.

WHEREAS, County wishes to engage Contractor to provide the services set forth in Exhibit A.

Contractor agrees to perform, and County agrees to pay for, the services and deliverables described in Exhibit A (the "Work").

1. TERM

This Contract is effective on January 1, 2026 after signed by all parties and all required County approvals have been obtained. This Contract expires on **August 31, 2027**. The parties may extend the term of this Contract provided that the total Contract term does not extend beyond December 31, 2027.

2. DOCUMENTS / ORDER OF PRECEDENCE

This Contract consists of the following documents, each of which is attached and incorporated herein by reference:

- A. This Contract less exhibits
- B. Exhibit A – Statement of Work
- C. Addendum 1 – HIPAA Business Associate Contract Provisions

3. CONSIDERATION

- A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$132,000.00**. County will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

- B. Interim payments to Contractor shall be made in accordance with the payment schedule and requirements in Exhibit A.
- C. If specified below, county's payments to Contractor under this Contract will be paid in whole or in part with federal funds. If so specified, by signing this agreement, Contractor certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government. If applicable, Contractor shall comply with [Appendix II to Title 2, Part 200](#) of the Code of Federal Regulations.

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

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

4. COMPLIANCE WITH STATUTES AND RULES

- A. County and Contractor agree to comply with the provisions of this Contract, its exhibits and attachments and all applicable federal, state, and local statutes and rules. Unless otherwise specified, responsibility for all taxes, assessment, and any other charges imposed by law upon employers shall be the sole responsibility of Contractor. Failure of Contractor or County to comply with the provisions of this Contract and all applicable federal, state, and local statutes and rules shall be cause for termination of this Contract as specified in sections concerning recovery of funds and termination.

County's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230, 279B.235 (if applicable to this Contract) and ORS 652, which are incorporated by reference herein.

- B. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes all the provisions described in subsection 29. C. (i) through (iv) of this Contract.

Any violation of subsection B of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty, in subsection 29.C of this Contract, that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- i. Termination of this Contract, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and
- iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of

Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services.

- C. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

5. CIVIL RIGHTS, REHABILITATION ACT, AMERICANS WITH DISABILITIES ACT AND TITLE VI OF THE CIVIL RIGHTS ACT

Contractor agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

6. TIME IS OF THE ESSENCE

Contractor agrees that time is of the essence in the performance of this Contract.

7. FORCE MAJEURE

Neither County nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. County may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

8. FUNDING MODIFICATION

- A. County may reduce or terminate this Contract when state or federal funds are reduced or eliminated by providing written notice to the respective parties.
- B. In the event the Board of Commissioners of County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, Contractor agrees to abide by any such decision including termination of service.

9. RECOVERY OF FUNDS

Expenditures of Contractor may be charged to this Contract only if they (1) are in payment of services performed under this Contract, (2) conform to applicable state and federal regulations and statutes, and (3) are in payment of an obligation incurred during the Contract period.

Any County funds spent for purposes not authorized by this Contract and payments by County in excess of authorized expenditures shall be deducted from future payments or refunded to County no later than thirty (30) days after notice of unauthorized expenditure or notice of excess payment.

Contractor shall be responsible to repay for prior contract period excess payments and un-recovered advanced payments provided by County. Repayment of prior period obligations shall be made to County in a manner agreed on.

10. ACCESS TO RECORDS

- A. Contractor shall permit authorized representatives of County, State of Oregon, or the applicable audit agencies of the U.S. Government to review the records of Contractor as they relate to the Contract services in order to satisfy audit or program evaluation purposes deemed necessary by County and permitted by law.
- B. Contractor agrees to establish and maintain financial records, which indicate the number of hours of work provided, and other appropriate records pertinent to this Contract shall be retained for a minimum of three (3) years after the end of the Contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved.

11. REPORTING REQUIREMENTS

Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such assurances provided by Contractor shall be supported by documentation in Contractor’s possession from third parties.

12. CONFIDENTIALITY OF RECORDS

- A. Contractor shall not use, release, or disclose any information concerning any employee, client, applicant or person doing business with County for any purpose not directly connected with the administration of County’s or Contractor’s responsibilities under this Contract except upon written consent of County, and if applicable, the employee, client, applicant or person.
- B. Contractor shall ensure that its agents, employees, officers, and subcontractors with access to County and Contractor records understand and comply with this confidential provision.
- C. If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which shall become part of this Contract, if attached hereto.
- D. Client records shall be kept confidential in accordance with ORS 179.505, OAR 309-014-0036(3), 45 CFR 205.50 and 42 CFR Part 2 as applicable.

13. INDEMNIFICATION AND INSURANCE

- A. Contractor shall defend, save, indemnify, and hold harmless County, its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Contractor shall have control of the defense and settlement of any claim that is subject to this section. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of either County or any department of County, nor purport to act as legal representative of either County or any of its departments, without first receiving from County Legal Counsel authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of County Legal Counsel. County may, at its election and expense, assume its own defense and settlement.

- B. Contractor shall obtain the insurance required under section 24 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.
- C. County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program that provides property damage and personal injury coverage.

14. EARLY TERMINATION

This Contract may be terminated as follows:

- A. County and Contractor, by mutual written agreement, may terminate this Contract at any time.
- B. County in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.
- C. Either County or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
- D. Notwithstanding section 14C, County may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.

15. PAYMENT ON EARLY TERMINATION

Upon termination pursuant to section 14, payment shall be made as follows:

- A. If terminated under 14A or 14B for the convenience of County, County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract. County shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim County may have against Contractor.
- B. If terminated under 14C by Contractor due to a breach by County, then County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.
- C. If terminated under 14C or 14D by County due to a breach by Contractor, then County shall pay Contractor for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which County is entitled.

16. INDEPENDENT CONTRACTOR

- A. Contractor is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out Contractor's activities and responsibilities for the purpose of implementing the provisions of this Contract, and maintains the appropriate license/certifications, if required under Oregon Law. This Contract shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other

than that of independent parties. The Contractor is acting as an “independent contractor” and is not an employee of County and accepts full responsibility for taxes or other obligations associated with payment for services under this Contract. As an “independent contractor”, Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties for the duration of the Contract.

- B. SUBCONTRACTING/NONASSIGNMENT. No portion of the Contract may be contracted or assigned to any other individual, firm or entity without the express and prior approval of County.

17. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of County according to law.

18. OWNERSHIP AND USE OF DOCUMENTS

All documents, or other material submitted to County by Contractor shall become the sole and exclusive property of County. All material prepared by Contractor under this Contract may be subject to Oregon’s Public Records Laws.

19. NO THIRD-PARTY BENEFICIARIES

- A. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.
- B. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

20. SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns.

21. MERGER CLAUSE

This Contract and the attached exhibits constitute the entire agreement between the parties.

- A. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.
- B. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.
- C. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

22. WAIVER

The failure of any Party to enforce any provision of this Contract shall not constitute a waiver by that Party or any other provision. Waiver of any default under this Contract by any Party shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

23. REMEDIES

In the event of breach of this Contract, the Parties shall have the following remedies:

- A. If terminated under 14C by County due to a breach by Contractor, County may complete the Work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to County the amount of the reasonable excess.
- B. In addition to the remedies in sections 14 and 15 for a breach by Contractor, County also shall be entitled to any other equitable and legal remedies that are available.
- C. If County breaches this Contract, Contractor’s remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

24. INSURANCE

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 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 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 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 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.

25. NOTICE

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or email set forth below or to such other addresses or emails as either party may hereafter indicate in writing. Delivery may be by personal delivery, or mailing the same, postage prepaid.

- A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- B. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage delivered to:

To Contractor:
A WorkSAFE Service Inc
steve@energetixholdings.com
1696 CAPITOL ST NE same
Salem, OR 97301

To County
Contracts and Procurement Manager
PO_Contracts@co.marion.or.us
555 Court Street NE, Suite 4247
P.O. Box 14500
Salem, Oregon 97309

26. SURVIVAL

All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in sections 3, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 and 27.

27. SEVERABILITY

If any term or provision of this Contract is declared illegal or in conflict with any law by a court of competent jurisdiction, the validity of the remaining terms and provisions that 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.

28. AMENDMENTS

This Contract may be amended if mutually agreed to by both parties.

- A. **Anticipated Amendments**
This Contract is anticipated to be amended for the following reasons:
 - i. To extend the Contract term and increase the maximum not-to-exceed amount to cover those extension term.
 - ii. To adjust the unit pricing or other rate(s) of compensation, set forth in Exhibit A.
- B. **Unanticipated Amendments**

All other amendments for purposes not listed as Anticipated Amendments will be deemed Unanticipated Amendments.

29. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants to County that:

- A. Contractor has the power and authority to enter into and perform this Contract.
- B. This Contract, when executed and delivered, is a valid and binding obligation of Contractor, enforceable in accordance with its terms.
- C. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this Contract, faithfully has complied with:
 - i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
 - ii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
 - iii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
 - iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- D. Any Goods delivered to the County under this Contract, and Contractor's Services rendered in the performance of Contractor's obligations under this Contract, shall be provided to County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

30. CERTIFICATIONS AND SIGNATURE. THIS CONTRACT MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor.

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: DocuSigned by:
Ryan Matthews
7D28A787656F458... 11/21/2025

Department Director or designee Date

Authorized Signature: DocuSigned by:
Jan Fritz
DC16351248DE4EC... 11/24/2025

Chief Administrative Officer Date

Reviewed by Signature: Signed by:
Scott Norris
60C98A6F708240B... 11/24/2025

Marion County Legal Counsel Date

Reviewed by Signature: DocuSigned by:
Chalynne MacDadd
2A951B5756514CF... 11/21/2025

Marion County Contracts & Procurement Date

A WORKSAFE SERVICE, INC. SIGNATURE

Authorized Signature: Signed by:
Steve Lobsinger
76854A03E257452... 12/2/2025

Date

Title: VP / CTO

**EXHIBIT A
STATEMENT OF WORK**

1. STATEMENT OF SERVICES

Contractor shall perform Services as described below.

- A. **GENERAL INFORMATION.** Marion County Health & Human Services is acting as a fiscal intermediary for Marion County Circuit Court Treatment Programs for the 2025-2027 Criminal Justice Commission (CJC) grants to subcontract with A WorkSAFE Service, Inc. to provide Urinalysis Collection Services for Marion County Adult Drug Court.
- B. **REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.**
- i. Contractor shall provide program management for Marion County Adult Drug Court as follows:
- a. Provide urinalysis collection and testing services for up to 50 participants. Each participant may complete up to five urinalysis collects per month. Additional urinalysis collections may be scheduled at the discretion of the Treatment Court Coordinator.
 - b. Conduct computerized monthly random urinalysis selections in accordance with court participant's level of treatment and assigned color.
 - c. Provide a dedicated call-in telephone line. The call-in line shall be updated by 6:00am each day for participants to access.
 - d. Conduct observed urine drug screen collections Monday – Friday 8:00am – 5:00pm with no closure from 12pm – 1pm. Urinalysis services will not be provided for nine observed holidays. These are: New Year's Day, Memorial Day, Juneteenth (June 19), July 4th, Labor Day, Thanksgiving, the Friday after Thanksgiving, Christmas Eve (December 24), and Christmas Day.
 - e. Administer oral fluid testing only when same-gender observer is not available for direct observe collections.
 - f. Update the participant's applicable treatment court program database and provide to the database a daily "no show list".
 - g. Make one representative available to answer questions and assist with unusual circumstances.
 - h. All collections must be sent to Abbott Toxicology, 3650 Westwind Blvd., Santa Rosa, CA 95403 or other contracted Laboratories within 48 hours of collection.
 - i. All the urinalyses shall be observed using the requirements described below. Any alterations to these procedures shall be coordinated between the Treatment Court Coordinators and Contractor.
 - (A) Department of Transportation (DOT) Direct Observation Mandated Requirements for participants in Veterans Treatment Court, Adult Drug Treatment Court, Mental Health Treatment Court and Fostering Attachment Treatment Court (FATC). Federal

regulations stipulate the process of observed collection is an observer of the same gender in which the donor identifies will require the donor to raise their shirt, skirt or dress to their waist, drop pants and underwear to the knee, and turn full circle in front of the observer. The observer is looking to see if there is a prosthetic or any other device that was brought in that may be used to tamper with or adulterate the urine specimen. If no device is found, the donor may reposition clothing to a position that still allows the observer to see the urine stream from the donor's body to the collection cup. If a device is found, the collection stops, and this becomes a "refusal to test". No minors are permitted to conduct these collections.

C. SPECIAL REQUIREMENTS.

Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences, and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors, and agents.

Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional, and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession.

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 **\$132,000.00**.

- A. METHOD OF PAYMENT FOR SERVICES: County shall pay Contractor \$27.50 per collection through December 31, 2026. If the percentage change in the CPI-W for the U.S. City Average, as published by the Bureau of Labor Statistics, exceeds 3% after December 31, 2026 of this Agreement, for the previous twelve-month period, Contractor may request renegotiation of the per collection rate to reflect the actual increase in the cost of goods and services. The total contract value is up to but not in excess of \$132,000.00 for completing Services and delivering Goods required under this Contract.
- B. BASIS OF PAYMENT FOR SERVICES. Monthly progress payments for completed Services. County shall pay Contractor monthly progress payments upon County's approval of Contractor's invoice submitted to County for completed Services and delivered Goods, but only after County has determined that Contractor has completed, and County has accepted the completed Services and County has accepted the delivered goods.
- C. EXPENSE REIMBURSEMENT. County will not reimburse Contractor for any expenses under this Contract.
- D. GENERAL PAYMENT PROVISIONS. Notwithstanding any other payment provision of this Contract, failure of Contractor to submit required reports when due, or failure to perform or document the performance of contracted services, may result in withholding of payments under this Contract. Such withholding of payment for cause shall begin thirty (30) days after written notice is given by County to Contractor, and shall continue until Contractor submits required reports, performs required

services or establishes, to County's satisfaction, that such failure arose out of causes beyond the control, and without the fault or negligence of Contractor.

- E. INVOICES. Contractor shall send all invoices to County's Contract Administrator at the address specified below or to any other address as County may indicate in writing to Contractor.

Marion County
Attn: Health and Human Services, Accounts Payable
HealthAP@co.marion.or.us
3160 Center St NE
Salem, OR 97301

ADDENDUM #1
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT BUSINESS
ASSOCIATE CONTRACT PROVISIONS

INTRODUCTION

This Addendum to the contract between MARION COUNTY, a political subdivision of the State of Oregon, hereinafter called the COUNTY, and **A WorkSAFE Service Inc**, hereinafter called CONTRACTOR is required by the Health Insurance Portability and Accountability Act of 1996, (HIPAA), as amended.

WHEREAS, COUNTY will make available or transfer to CONTRACTOR certain information in conjunction with goods or services that are being provided by CONTRACTOR to COUNTY, that is confidential and must be afforded special treatment and protection.

WHEREAS, CONTRACTOR will have access to or receive from COUNTY certain information that can be received, maintained, used or disclosed only in accordance with this Contract and the Department of Health and Human Services Security Rule and Privacy Rule, 45 Code of Federal Regulations (CFR) Parts 160, 162, and 164.

NOW THEREFORE, the parties agree as follows:

1. Definitions.

- a. BUSINESS ASSOCIATE shall mean **A WorkSAFE Service Inc**.
- b. BREACH means the acquisition, access, use or disclosure of protected health information (PHI) in a manner not permitted under subpart E of the HIPAA Privacy Regulations; I found at 45 CFR 164.402 (as amended by the Final HIPAA/HITECH Act Privacy, Security, Breach Notification, and Enforcement Rule, 78 Federal Register 5565), which compromises the security or privacy of the protected health information. In the event of any inconsistency between the definition of "Breach" in this Agreement and the definition in the Privacy Regulations, the definition in the Privacy Regulations will control.
- c. COVERED ENTITY shall mean MARION COUNTY.
- d. HITECH Act shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act Public. Law No. 111-5.
- e. INDIVIDUAL shall mean the person who is the subject of the information and has the same meaning as the term "individual" defined in 45 CFR 164.501 and includes a person who qualifies as a personal representative pursuant to 45 CFR 164.502 (g).
- f. PRIVACY RULE shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, Subparts A and E.
- g. PROTECTED HEALTH INFORMATION shall have-the same meaning- as the term in 45 CFR 164.501 (as amended by the Final HIPAA/HITECH Act Privacy, Security, Breach Notification,

and Enforcement Rule, 78 Federal Register 5565), limited to information created or received by BUSINESS ASSOCIATE from or on behalf of Covered Entity.

- h. REQUIRED BY LAW shall have the same meaning as the term in 45 CFR 164.103.
- i. SECRETARY shall mean the Secretary of the federal Department of Health and Human Services (HHS) and any other HHS officer or employee with delegated authority.
- j. SECURITY RULE shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160, and 164, Subparts A and C.
- k. UNSECURED PROTECTED HEALTH INFORMATION shall mean Protected Health Information in any form, including electronic, paper or verbal, that is not rendered usable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary pursuant to the HITECH Act, as such guidance may be updated by the Secretary from time to time.

Terms used, but not otherwise defined, in this Agreement shall have the meaning given the terms in the Health Insurance Portability and Accountability Act (HIPAA) Regulations at 45 CFR 160-164.

2. Term.

The term of the HIPAA obligations under this addendum shall commence as of the effective date of this contract and shall expire when all of the information provided by COVERED ENTITY to BUSINESS ASSOCIATE, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY, is destroyed or returned to COVERED ENTITY, or if it is infeasible to return or destroy protected health information, protections are extended to the information in accordance with the termination provisions in this contract.

3. Limits on Use and Disclosure.

BUSINESS ASSOCIATE shall not use or disclose protected health information provided or made available by COVERED ENTITY for any purpose other than as expressly permitted or required by this contract or as Required by Law.

4. Permitted Uses and Disclosures by BUSINESS ASSOCIATE.

- a. Statutory Duties.
 - (1) BUSINESS ASSOCIATE acknowledges that it has a statutory duty under the HITECH Act to, among other duties:
 - (A) effective February 17, 2010, use and disclose Protected Health Information only in compliance with 45 C.F.R. § 164.504(e) (the provisions of which have been incorporated into this Agreement); and
 - (B) effective February 17, 2010, comply with 45 C.F.R. §§ 164.308 ("Security Standards: General Rules"), 164.310 ("Administrative Safeguards"), 164.312 ("Technical Safeguards"), and 164.316 ("Policies and Procedures and Documentation

Requirements"). In complying with 45 C.F.R. § 164.312 ("Technical Safeguards"), BUSINESS ASSOCIATE shall consider guidance issued by the Secretary pursuant to Section 13401 (c) of the HITECH Act and, if a decision is made to not follow such guidance, document the rationale for that decision.

- (2) BUSINESS ASSOCIATE acknowledges that its failure to comply with these or any other statutory duties could result in civil and/or criminal penalties under 42 U.S.C. §§1320d-5 and 1320d-6.
- (3) As of the effective date of Section 13405(d) of the HITECH Act, BUSINESS ASSOCIATE may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

b. General Use and Disclosure Provision.

Except as otherwise limited in this contract, BUSINESS ASSOCIATE may use or disclose protected health information to perform the functions, activities or services for, or on behalf of, COVERED ENTITY as specified in the contract between the parties, provided that such use or disclosure would not violate the Security and Privacy Rules if done by the COVERED ENTITY, or the minimum necessary policies of COVERED ENTITY.

c. Permissible Requests by Covered Entity.

COVERED ENTITY shall not request BUSINESS ASSOCIATE to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

5. Additional Purposes for Uses and Disclosures by BUSINESS ASSOCIATE.

- a. Except as otherwise limited in this Contract, BUSINESS ASSOCIATE may use protected health information for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE.
- b. Except as otherwise limited in this Contract, BUSINESS ASSOCIATE may disclose protected health information for the proper management and administration of the BUSINESS ASSOCIATE, provided that:
 - (1) The disclosure is Required by Law;
 - (2) Reasonable assurances are obtained from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, that the person will use appropriate safeguards to prevent use or disclosure of the information, and that the person immediately notifies BUSINESS ASSOCIATE of any instances of which the confidentiality of the information has been breached per section 6.d of this Contract;

- (3) Except as otherwise limited in this Contract, BUSINESS ASSOCIATE may use protected health information to provide data aggregation services to COVERED ENTITY as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (4) BUSINESS ASSOCIATE may use protected health information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).
- (5) As of the effective date of Section 13405(d) of the HITECH Act, BUSINESS ASSOCIATE may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

6. BUSINESS ASSOCIATE Obligations:

- a. Limits on Use and Further Disclosure Established by Contract and Law. BUSINESS ASSOCIATE agrees that information provided or made available by COVERED ENTITY shall not be further used or disclosed other than as permitted or required by the Contract or as Required by Law.
- b. Appropriate Safeguards. BUSINESS ASSOCIATE agrees to use appropriate safeguards to prevent use or disclosure of the protected health information other than as provided for by this Contract.
- c. Mitigation of Harmful Effects. BUSINESS ASSOCIATE agrees to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of the use or disclosure of protected health information by BUSINESS ASSOCIATE in violation of the requirements of this Contract.
- d. Reports of Breach. Per the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) Public. Law 111-5, BUSINESS ASSOCIATE agrees to report to COVERED ENTITY as soon as possible any use or disclosure of the protected health information not provided for by this Contract of which it becomes aware. If a breach of unsecured protected health information occurs at or by a BUSINESS ASSOCIATE, the BUSINESS ASSOCIATE must notify the COVERED ENTITY no later than 60 days from the discovery of the breach. To the extent possible, the BUSINESS ASSOCIATE should provide the COVERED ENTITY with the identification of each individual affected by the breach as well as any information required to be provided by the COVERED ENTITY in its notification to affected individuals.
- e. Subcontractors and Agents. BUSINESS ASSOCIATE agrees to ensure that any agent, including any subcontractor, to whom it provides protected health information received from, or created by BUSINESS ASSOCIATE on behalf of COVERED ENTITY agrees in writing to the same terms, conditions and restrictions on the use and disclosure of protected health information as contained in this Contract. BUSINESS ASSOCIATE is required to have Business Associate Agreements with its subcontractors that use protected health information on their behalf. BUSINESS ASSOCIATE is required to obtain satisfactory assurances from its subcontractors that the subcontractor will safeguard protected health information.

- f. Right of Access to Information. BUSINESS ASSOCIATE agrees to provide access, at the request of COVERED ENTITY, to protected health information in a Designated Record Set, either to the COVERED ENTITY, or as directed by COVERED ENTITY to an Individual. This right of access shall conform with and meet the requirements of 45 CFR 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATES where appropriate.
- g. Amendment and Incorporation of Amendments. BUSINESS ASSOCIATE agrees to make and incorporate any amendments to protected health information in a Designated Record Set that the COVERED ENTITY directs or agrees to pursuant to 45 CFR 164.526.
- h. Provide Accounting. BUSINESS ASSOCIATE agrees to make internal practices, books, and records, including policies and procedures and protected health information relating to the use and disclosure of protected health information received from, or created or received by BUSINESS ASSOCIATE on behalf of, COVERED ENTITY available to COVERED ENTITY, the Secretary, or the Secretary's designee for the purposes of determining compliance with the Security and Privacy Rules.
- i. Documentation of Disclosures. BUSINESS ASSOCIATE agrees to document disclosures of protected health information and information related to these disclosures as would be required for COVERED ENTITY to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528.
- j. Access to Documentation of Disclosures. BUSINESS ASSOCIATE agrees to provide COVERED ENTITY information collected in accordance with Section 6(i) of this Contract, to permit COVERED ENTITY to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528.
- k. False Claims, Fraud, Waste and Abuse. BUSINESS ASSOCIATE shall cooperate with and participate in activities to implement and enforce the COVERED ENTITY'S policies and procedures to prevent, detect and investigate false claims, fraud, waste and abuse relating to Oregon Health Plan, Medicare or Medicaid funds. BUSINESS ASSOCIATE shall cooperate with authorized State of Oregon entities and Centers for Medicare and Medicaid (CMS) in activities for the prevention, detection and investigation of false claims, fraud, waste and abuse. BUSINESS ASSOCIATE shall allow the inspection, evaluation or audit of books, records, documents, files, accounts, and facilities as required to investigate the incident of false claims, fraud, waste or abuse. BUSINESS ASSOCIATE is required to verify that their staff and contractors are not excluded from providing services under this contract funded by Medicare and Medicaid before services are provided. BUSINESS ASSOCIATE is required to check the following databases for excluded individuals and entities:
 - (1) Office of Inspector General (OIG) <https://oig.hhsc.state.tx.us/Exclusions/Search.aspx>
 - (2) Excluded Parties List System (EPLS) www.sam.gov

7. Obligations of COVERED ENTITY.

- a. Limitations in Notice of Privacy Practices. COVERED ENTITY shall notify BUSINESS ASSOCIATE of any limitations in its notice of privacy practices of COVERED ENTITY, in accordance with 45 CFR 164.520, to the extent that the limitation may affect BUSINESS ASSOCIATE'S use or disclosure of protected health information.
- b. Changes in Use or Disclosure of Protected Health Information. COVERED ENTITY shall notify BUSINESS ASSOCIATE of any changes in, or revocation of, permission by Individual to use or disclose protected health information, to the extent that the changes may affect BUSINESS ASSOCIATE'S use or disclosure of protected health information.
- c. Restrictions on Use or Disclosure of Protected Health Information. COVERED ENTITY shall notify BUSINESS ASSOCIATE of any restriction to the use or disclosure of protected health information, that COVERED ENTITY has agreed to in accordance with 45 CFR 164.522, to the extent that the restriction may affect BUSINESS ASSOCIATE'S use or disclosure of protected health information.

8. Permissible Requests by COVERED ENTITY.

COVERED ENTITY shall not request BUSINESS ASSOCIATE to use or disclose protected health information in any manner that would not be permissible under the Security and Privacy Rules if done by COVERED ENTITY, except if the BUSINESS ASSOCIATE will use or disclose protected health information for, and the Contract includes provisions for, data aggregation or management and administrative activities of BUSINESS ASSOCIATE.

9. Security Assurances, the BUSINESS ASSOCIATE will.

- a. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the County as required by the Health Insurance Portability and Accountability Act of 1996 and the requirements of Health Insurance Reform, the Security Standards (45CFR Parts 160, 162 & 164); and, effective February 17, 2010, to comply with the provisions of the Security Rule identified in this Agreement.
- b. Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;
- c. Report to the County any material attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, interference with system operations in an information system, or any security incident of which it becomes aware;
- d. Authorize termination of the contract by the County, if the County determines that the BUSINESS ASSOCIATE has violated a material term of the contract.

10. Termination of Contract.

- a. Termination for Cause. Upon COVERED ENTITY'S knowledge of a material breach by BUSINESS ASSOCIATE, COVERED ENTITY shall either:
 - (1) Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation and terminate this Contract, if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by COVERED ENTITY;
 - (2) Immediately terminate this Contract, if BUSINESS ASSOCIATE has breached a material term of this Contract and cure is not possible; or
 - (3) If neither termination nor cure is feasible, COVERED ENTITY shall report the violation to the Secretary.

- b. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Contract, for any reason, BUSINESS ASSOCIATE shall return or destroy all protected health information received from COVERED ENTITY, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY. This provision shall apply to protected health information that is in the possession of subcontractors or agents of BUSINESS ASSOCIATE. BUSINESS ASSOCIATE, its subcontractors or agents, shall retain no copies of the protected health information.
 - (2) In the event that BUSINESS ASSOCIATE determines that returning or destroying protected health information is infeasible, BUSINESS ASSOCIATE shall provide to COVERED ENTITY notification of the conditions that make return or destruction infeasible. Upon written notice to COVERED ENTITY that return or destruction of protected health information is infeasible, BUSINESS ASSOCIATE shall extend the protections of this Contract to the protected health information and limit further uses and disclosures of protected health information to those purpose that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE, its subcontractors or agents maintains protected health information.

11. Miscellaneous Provisions.

- a. Regulatory References. A reference in this Contract to a section in the Security and Privacy Rules means the section as in effect or as amended.

- b. Amendment. The Parties agree to take any action as is necessary to amend this Contract from time to time needed for COVERED ENTITY to comply with the requirements of the Security and Privacy Rules and the Health Insurance Portability and Accountability Act of 1996.

- c. Survival. The respective rights and obligations of BUSINESS ASSOCIATE under Section 10 (b) of this Contract, Effect of Termination, shall survive the termination of this Contract.

- d. Interpretation. Any ambiguity in this Contract shall be resolved to permit COVERED ENTITY to comply with the Security and Privacy Rules.
- e. Entire Agreement. This Contract consists of this Addendum and the Contract, together which constitutes the entire agreement between the Parties. Any alterations, variations, modifications or waivers of any provisions shall be valid only when they have been submitted in writing and approved by the Parties.

12. Qualified Service Organization Contract Provisions.

- a. CONTRACTOR is required to follow the Federal Drug and Alcohol law 42 C.F.R. Part 2, Subchapter A, as amended.
- b. COUNTY will make available or transfer to CONTRACTOR certain information in conjunction with goods or services that are being provided by CONTRACTOR to COUNTY, that is confidential and must be afforded special treatment and protection.
- c. CONTRACTOR will have access to or receive from COUNTY certain information that can be received, maintained, used or disclosed only in accordance with this Contract and the Federal Drug and Alcohol law 42 C.F.R. Part 2, Subchapter A.
- d. CONTRACTOR Shall:
 - (1) Acknowledge that in receiving, storing, processing, or otherwise dealing with any information from the Program about the patients in the Program, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; and
 - (2) Undertake to resist in judicial proceedings any effort to obtain access to information pertaining to patients otherwise than as expressly provided for in the federal confidentiality regulations, 42 C.F.R. Part 2.



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 12/17/2025

Department: Public Works

Title: Quitclaim Deed of Vacated Property

Management Update/Work Session Date: 12/2/2025 Audio/Visual aids []

Time Required: 3 minutes Contact: Kent Inman Phone: 4316

Requested Action: Approve and sign a Quitclaim Deed returning a strip of land recently vacated.

Issue, Description & Background: Marion County acquired right-of-way for a segment of Darling Street from the south side of the property currently owned by Aleksandr and Victoria Voronko by a deed recorded in Reel 401, Page 319 of the Marion County Deed Records. The above mentioned strip of land was vacated in Board Order Number 25-148 and recorded in the Marion County Deed Records as Instrument Number 2025-034387. Upon vacation, title to the strip of land vested in Marion County. Through the quitclaim deed, the strip of land will be returned to the property from which it came.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Quitclaim Deed

Presenter: N/A, approved as consent item on 12/2/25

Department Head Signature: Brian Nicholas Digitally signed by Brian Nicholas Date: 2025.12.03 10:48:21 -08'00'

Grantor's Name:

Marion County

After recording to:

Kent Inman

County Surveyor

Marion County Public Works

5155 Silverton Rd., NE

Salem, Oregon 97305

Grantee:

Aleksandr and Victoria Voronko

QUITCLAIM DEED

KNOW ALL PERSONS BY THESE PRESENTS, that **MARION COUNTY, a Political Subdivision of the State of Oregon**, hereinafter called grantor, for the consideration hereinafter stated, does hereby remise, release and quitclaim unto, **Aleksandr Voronko and Victoria Voronko**, hereinafter called grantee and unto grantee's heirs, successors and assigns all of the grantor's right, title, and interest in that certain real property with the tenements, hereditaments and appurtenances there unto belonging or in any way appertaining, situated in the **County of Marion**, State of Oregon, as described:

That tract of land described in Reel 401, Page 319 of the Marion County Deed Records, Marion County, Oregon, vacated by Board Order Number 25-148, recorded in Instrument No. 2025-034387.

To Have and to Hold the same unto the grantee and grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is **\$ 0**. However, the actual consideration consists of other property or other value given or promised, which comprises the whole consideration. In construing this deed, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this deed shall apply equally to corporations and to individuals.

In Witness Whereof, the grantor has executed this instrument on this 17th day of December 2025.

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

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY CONTAIN ENVIRONMENTAL HAZARDS, CONTAMINATION, AND/OR WETLANDS. SELLER ASSUMES NO RESPONSIBILITY AND IS IN NO WAY LIABLE FOR ANY CLEANUP, ABATEMENT, MITIGATION, REMEDIATION OR OTHER ACTIONS IN CONNECTION WITH THESE POSSIBLE CONDITIONS.

MARION COUNTY BOARD OF COMMISSIONERS

COMMISSIONER

COMMISSIONER

COMMISSIONER

STATE OF OREGON)

) ss

County of Marion)

This instrument was acknowledged before me on December 17, 2025.

By _____

as Marion County Commissioners.

Notary Public for Oregon



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 17, 2025

Department: Public Works

Title: McCulley Mountain Radio Site Lease Agreement and Board Order

Management Update/Work Session Date: 10/21/2025 Audio/Visual aids

Time Required: 5 minutes Contact: Brian Nicholas Phone: x7943

Requested Action:
Approve the enclosed Board Order authorizing any member of the Board or the Marion County Chief Administrative Officer to execute the enclosed lease agreement between Marion County and Freres Timber, Inc. for the McCulley Mountain Radio Site.

Issue, Description & Background:
Marion County is in the process of constructing the Marion County Radio Project, a new P25-compliant public safety radio communications system for use by first responder agencies and other public service agencies within Marion County. As a part of this project, Marion County will construct a new radio broadcast site on McCulley Mountain near Lyons, Oregon, one of thirteen radio broadcast sites to be utilized by the radio project. The enclosed lease agreement must be executed before construction activities can begin.

Financial Impacts:
Marion County will pay an annual lease rate of \$15,000.00 for the first year with an annual CPI increase.

Impacts to Department & External Agencies:
The Marion County Sheriff's Office and first responder agencies throughout Marion County will benefit from a stable, unified radio system meeting current public safety radio standards.

List of attachments:
Board Order and Site Lease for the McCulley Mountain radio site

Presenter:
Brian Nicholas

Department Head Signature:
Brian Nicholas Digitally signed by Brian Nicholas
Date: 2025.11.29 09:36:16 -08'00'

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of delegating authority to sign)
documents associated with the acquisition of)
a real property lease located in Linn County,)
Oregon.)

ORDER No. _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on Wednesday, December 17, 2025.

WHEREAS, the Board is interested in leasing a portion of real property located at 44505 West McCully Mountain Drive in Linn County, Oregon, for development as a Marion County Radio Project broadcast site; and

WHEREAS, in order to facilitate the timely execution of documents needed to pursue the lease of 44505 West McCully Mountain Drive, the Board desires to delegate authority to execute documents associated with the lease to any one of the members of the Board; and if any one of the members of the Board is not available, then to the Chief Administrative Officer; now, therefore,

IT IS HEREBY ORDERED that any one of the members of the Marion County Board of Commissioners is authorized to execute documents associated with the lease of 44505 West McCully Mountain Drive in Linn County;

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and if any one of the members of the Board is not available, then the Chief Administrative Officer is authorized to execute any such documents.

DATED at Salem, Oregon, this 17th day of December, 2025.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

Contract Review Sheet

Lease Agreement

PW-6844-25

Title: McCully Mountain Radio Site Lease

Contractor's Name: Freres Timber Inc.

Department: Public Works Department

Contact: Alicia Jones

Analyst: Sabrina Hay

Phone #: 503-566-3974

Term - Date From: Execution

Expires: Five years from execution

Original Contract Amount: \$ 80,000.00

Previous Amendments Amount: _____

Current Amendment: \$ -

New Contract Total: \$ 80,000.00

Amd% 0%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 50-0600 Leasing Real Property

Department

Description of Services or Grant Award

Site lease agreement for the McCully Mountain radio site. Annual rental fee of Fifteen Thousand Dollars (\$15,000.00) during the initial term. Year 2 - 5 increase by CPI Inflation Calculator (minimum \$15,000.00).

Option to extend agreement for up to 5 additional 5-year terms.

Desired BOC Session Date: _____

Contract should be in DocuSign by: _____

Agenda Planning Date: _____

Printed packets due in Finance: _____

Management Update: _____

BOC upload / Board Session email: _____

BOC Session Presenter(s): _____

Code: G

REQUIRED APPROVALS

DocuSigned by:
Sabrina Hay
E21BD5B5934B405...
10/7/2025

Finance - Contracts

Date

Signed by:
Alicia Jones
DA7EBDCC1E7B47D...
10/8/2025

Contract Specialist

Date

Signed by:
Scott Norris
80C98A6F708240B...
10/7/2025

Legal Counsel

Date

DocuSigned by:
Jan Fritz
DC16351248DE4EC...
10/7/2025

Chief Administrative Officer

Date

Site Name: McCully
Site Coordinates: 44.7634N, 122.6318W

SITE LEASE AGREEMENT
between
MARION COUNTY and FRERES TIMBER, INC.
PW-6844-24

1. PARTIES TO AGREEMENT

This real property site lease agreement (“Agreement”) between Marion County, a political subdivision of the state of Oregon, acting by and through its Public Works Department (“County”) and Freres Timber, Inc. (“Lessor”) is entered into upon the date all required County and Lessor signatures have been obtained (the “Effective Date”). Herein, County and Lessor are jointly referred to as “Parties” and individually as “Party”.

2. THE PROPERTY

Lessor is the record owner of a certain parcel of real property located in Linn County, Oregon, commonly referred to as 44505 West McCully Mountain Drive, Lyons, Oregon 97358 and assigned Tax Lot Number 09S01E25-00-00202 by the Linn County Assessor (the “Subject Real Property”). Lessor grants to County a lease upon a portion of the Subject Real Property (the “Lease Area”, further defined in Section 3) for the purposes of constructing, operating and maintaining a radio communication facility by County.

3. LEASE AREA

The Lease Area is generally described as follows: approximately 3,600 square feet of ground space located on the Subject Real Property, more particularly described in Exhibit A and depicted in Exhibit C, upon which County has or will construct certain radio communication facilities consisting of a communications tower with antennas mounted thereon, one or more equipment shelters, one or more emergency electrical power generators, fuel storage tanks, all necessary cabling and above and below ground utility services, and such other structures, equipment and installations as may be needed for the satisfactory operation of County’s radio communication facility, all to be enclosed in a perimeter security fence.

4. EXCLUSIVE USE

The Lease Area may be used by County for any activity in connection with the construction, operation and maintenance of County’s radio communication facility. Lessor agrees to cooperate with County, at County’s expense, in making application for and obtaining all licenses, permits and all other approvals that may be required for County’s intended use of the Lease Area. Lessor grants to County sole right of use to the Lease Area and shall not grant to any other entity a right to use the Lease Area or any portion thereof.

5. TERM

- a. **Initial Term.** The Initial Term of this Agreement is five (5) years commencing on the Effective Date unless earlier terminated as provided in Section 13.

Site Name: McCullySite Coordinates: 44.7634N, 122.6318W

- b. **Renewal Terms.** County has the right to extend the Term of this Agreement for up to five (5) additional five-year (5-year) terms (“Renewal Terms”) with the same terms and conditions as set forth herein. This Agreement shall automatically renew at the end of the Initial Term and each Renewal Term unless County notifies Lessor of its intention to not renew prior to commencement of the succeeding Renewal Term.
- c. Nothing in this Agreement shall be construed as prohibiting County and Lessor from entering into a new site lease agreement at the end of the final Renewal Term.

6. CONSIDERATION

- a. **Initial Rental Rate.** County shall pay to Lessor a rental fee of **Fifteen Thousand Dollars (\$15,000.00)** for the first full year of this Agreement. County shall deliver the first rental payment within thirty (30) days of the execution of this Agreement and shall, thereafter, deliver each rental payment within thirty (30) days of the anniversary of the Effective Date.
- b. **Rental Rate Adjustments.** The rental rate shall be subject to adjustment annually upon the anniversary of the Effective Date. The adjusted rental rate shall be calculated using the US Bureau of Labor Statistics CPI Inflation Calculator found at https://www.bls.gov/data/inflation_calculator.htm, the basis for which is the Bureau’s *Consumer Price Index, All Urban Consumers (CPI-U), U.S. city average for all items, not seasonally adjusted*. In the event the referenced CPI Inflation Calculator becomes unavailable or the Bureau stops maintaining the calculator, an equivalent CPI calculation methodology based on the referenced Consumer Price Index shall be used as mutually agreed by County and Lessor.

7. ACCESS TO LEASE AREA

County shall access the Lease Area using the Access Areas depicted in Exhibit B and shall have no right to access any portion of the Subject Real Property other than the Lease Area and Access Areas without the prior written authorization of Lessor. Lessor grants unlimited right to County to travel upon the surface of the Access Areas at any time of day or night and on any day of the year for the purpose of accessing the Lease Area, which may include without limitation the deployment of County personnel, contractors and other County service providers; the operation of vehicles, construction equipment and nighttime lighting equipment; delivery of construction materials and fuel; construction of access improvements; installation and maintenance of utility infrastructure serving the Lease Area; emergency response activities and any other action associated with County’s construction and operation of the radio communication facility.

Lessor agrees that the Lease Area and Access Areas may be surveyed by a licensed land surveyor at the sole cost of County for the purposes of recovering land survey data, preparing land survey documents, and staking the Lease Area and Access Areas, and such survey shall then supplement Exhibits A and B and become a part hereof and shall control to describe the Lease Area and Access Areas in the event of any discrepancy between such survey and the description of the Lease Area and Access Areas boundaries contained herein.

Site Name: McCullySite Coordinates: 44.7634N, 122.6318W

8. COUNTY RIGHTS AND OBLIGATION

- a. County has the right to erect, maintain and operate on the Lease Area radio communication facilities, including without limitation an antenna tower or pole and foundation, utility lines, transmission lines, air-conditioned equipment shelter(s), electronic equipment, radio transmitting and receiving antennas, security fencing, security surveillance systems, and all supporting equipment and structures thereto (“County Facilities”). In connection therewith, County has the right to perform all work necessary to prepare, alter and maintain the Lease Area for County’s intended use as a radio communication facility. All of County’s construction, installation, operation and maintenance work shall be performed at County’s sole cost and expense and in a good and workmanlike manner. Title to County Facilities shall be retained by County as County’s personal property and shall not be considered tenant improvements nor fixtures on the land. County has the right to remove all County Facilities at its sole expense on or before the expiration or earlier termination of the Agreement, provided County repairs any damage to the Lease Area and Access Areas caused by such removal. Upon expiration or earlier termination of this Agreement, County shall not be required to remove any foundation more than one (1) foot below grade level.
- b. County shall, at County’s sole cost and expense, construct access improvements within the Access Areas that County deems necessary for construction and maintenance of the radio communication facility to include the construction of new access roads or improvement of existing access roads. Within one hundred twenty (120) days of the start of each Renewal Term and at County’s sole cost and expense, County shall place, spread and grade up to 45 tons of ¾” minus crushed aggregate on the access road located within the Access Areas that are used to access the Lease Area, from the point of the nearest public right-of-way to the Lease Area, unless the Parties agree that such maintenance is not required to maintain reliable access to the Lease Area.
- c. County shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company and, if necessary, for the installation of a new electrical service. County shall have the right to draw electricity and other utilities from the existing utilities on the land or obtain separate utility service from any utility company that will provide service to the land, including a standby power generator for County’s exclusive use. Lessor agrees to allow the servicing utility company to install such service in, over, across or through the land at a location acceptable to Lessor and the servicing utility company. County shall cause the utility service to be removed at County’s sole expense upon expiration or termination of this agreement, except as otherwise approved by Lessor.
- d. County and its employees, agents, contractors, lenders, guests and invitees shall have access to the Lease Area without notice to Lessor twenty-four (24) hours a day, seven (7) days a week, at no charge. Lessor grants to County and its employees, agents, contractors, lenders, guests and invitees, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across that portion of the land identified as Access Areas in Exhibit B. County shall ensure during construction and the Term of this Agreement and any extensions thereof that any Lessor-owned gates or other Lessor-owned security measures restricting access to

Site Name: McCullySite Coordinates: 44.7634N, 122.6318W

the Subject Real Property are secured immediately after entering and exiting the Subject Real Property by County.

9. LESSOR REPRESENTATIONS AND WARRANTIES

Lessor represents and warrants that Lessor has good and marketable title to the Subject Real Property free and clear of all competing liens and encumbrances, that Lessor has the authority to enter into and be bound by the terms of this Agreement, that there are no pending or threatened legal or administrative actions related to the Subject Real Property, and that no easements or leases exist that conflict with County's rights under this Agreement. In the event that any representations or warranties described herein are found to be incorrect, County may terminate this Agreement according to Section 13.

10. INTERFERENCE

- a. County shall operate the County Facilities in a manner that will not cause interference to Lessor and Lessor's use of the Subject Real Property, provided Lessor does not, after the Effective Date, change its use of the Subject Real Property in such a way as to create conflict with County's established use of the Lease Area. County shall maintain compliance with all Federal Communications Commission ("FCC") requirements in County's construction, maintenance and operation of the radio communication facility.
- b. Lessor shall not hinder County's immediate access to the Lease Area and County Facilities. Lessor shall provide to County a key or passcode to all lockable doors and gates, electronic security systems, or other temporary or permanent barriers or systems installed by Lessor that limit access to the Lease Area. County shall secure and store such keys or passcodes in accordance with County's established site security protocols. County shall not share or provide copies of such keys or passcodes to any entity or individual that is not a party to this Agreement, except for the local Fire Marshal if so demanded by the local fire district.
- c. Subsequent to the Effective Date, Lessor shall not permit itself or any other current or future lessees or licensees Lessor has authorized or may authorize to operate upon, construct upon or otherwise occupy in any way the Subject Real Property and other properties under Lessor's control near or contiguous thereto to install new structures or equipment on the land if such structures or equipment are likely to cause interference with County's established radio communication facility operations. Such interference shall be deemed a material breach by Lessor. In the event such interference occurs, Lessor agrees to take all reasonable actions necessary to eliminate such interference in a reasonable time period.

11. TAXES

Lessee shall reimburse Lessor for any increase in property taxes resulting directly from Lessee's construction of site improvements on the Subject Real Property. Lessor shall pay all other taxes and assessments associated with the Subject Real Property.

Site Name: McCully
Site Coordinates: 44.7634N, 122.6318W

12. WAIVER OF LESSOR'S LIEN

- a. Lessor waives any lien rights it may have concerning the County Facilities defined herein as County's personal property and not tenant improvements or fixtures. County has the right to remove the same at any time without Lessor's consent.
- b. Lessor acknowledges that County may enter into financing arrangements that may include loans, promissory notes and financial and security agreements for the financing of the County Facilities with a third-party financing entity, in which case the County Facilities may be deemed Collateral to those financing arrangements. In connection therewith, Lessor (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as tenant improvements, fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed by County at any time without recourse to legal proceedings.

13. TERMINATION

This Agreement may be terminated without further liability upon thirty (30) days prior written notice as follows: (i) by either Party upon a default of any covenant or term hereof by the other Party, which default is not cured within sixty (60) days of receipt of written notice of default from the other Party, provided that the grace period for any monetary default is thirty (30) days from receipt of notice; or (ii) by County at the end of the Initial Term or any Renewal Term, provided County delivers written notice of termination to Lessor no later than thirty (30) days prior to the end of the Initial Term or any Renewal Term; or (iii) by County if it fails to obtain or maintain any license, permit or other approval necessary for the construction and operation of the County Facilities; or (iv) by County if County is unable to occupy and utilize the Lease Area due to an action of the FCC, including without limitation, a take back or change of radio frequencies; or (v) by County if County determines that the Lease Area is not suitable for its operations for economic or technological reasons, including, without limitation, signal interference.

14. DESTRUCTION OR CONDEMNATION

If the Lease Area or County Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, County may elect to terminate this Agreement as of the date of the damage, destruction, condemnation, or transfer in lieu of condemnation by giving notice to Lessor no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation.

15. INSURANCE

Lessor acknowledges that County is a self-insured governmental entity and is not required to purchase and maintain site-specific insurance coverage from a third-party insurance provider against bodily injury or property damage. County shall include the County Facilities in County's self-insurance and loss prevention program. County may, at County's sole discretion, purchase and maintain supplemental insurance on the County Facilities against bodily injury and property damage. Such insurance shall insure, on an occurrence basis, against all liability of County, its

Site Name: McCullySite Coordinates: 44.7634N, 122.6318W

employees and agents arising out of or in connection with County's use of the Lease Area and Lessor shall be named as an additional insured party.

16. ASSIGNMENT AND SUBLETTING

County may not assign or otherwise transfer all or any part of its interest in this Agreement or in the Lease Area without the prior written consent of Lessor; provided, however, that County may rent space on and within the County Facilities to other governmental radio communication operators whose use of the County Facilities is compatible with County's radio communication facility operations. County may collect rental fees from such third-party radio communication operators and wholly retain such rental fees to offset County's operating costs and shall relinquish to Lessor rental fees received in excess of County's operating costs. County shall not rent space on or within the County Facilities to any cell phone carrier or commercial radio station.

17. WARRANTY OF TITLE AND QUIET ENJOYMENT

Lessor warrants that: (i) Lessor owns the land in fee simple and has rights of access thereto and the land is free and clear of all liens, encumbrances and restrictions; (ii) Lessor has full right to enter into and perform this Agreement; and (iii) Lessor covenants and agrees with County that upon County paying the annual rental fee and observing and performing all the terms, covenants and conditions on County's part to be observed and performed, County may peacefully and quietly enjoy the Lease Area. Lessor agrees to indemnify and hold harmless County from any and all claims on County's leasehold interest.

18. SITE REPAIRS AND RESTORATION

County shall not be required to make any repairs to the County Facilities or the lands within the Lease Area and Access Areas unless such repairs shall be necessitated by reason of default or neglect by County. Unless County and Lessor enter into a new site lease agreement for the Lease Area upon expiration of the final Renewal Term, County shall complete one of the following actions within one hundred eighty (180) days following the expiration or earlier termination of this Agreement:

- a. Restore the Lease Area to the condition in which it existed upon execution of this Agreement, excepting reasonable wear and tear and loss by casualty or other causes beyond County's control and as otherwise stated in Section 8.
- b. Leave in place those County Facilities that County and Lessor may agree upon in a then As-Is condition and for a mutually agreed upon price to be paid by Lessor to County, after which the County Facilities allowed to remain shall become the property of Lessor.

19. HAZARDOUS SUBSTANCES

County agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Subject Real Property in violation of any law or regulation. Lessor represents, warrants and agrees that (1) neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (defined below) on, under, about or within the Lease Area in violation of any

Site Name: McCullySite Coordinates: 44.7634N, 122.6318W

law or regulation, and (2) Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Lease Area in violation of any law or regulation. Lessor and County each agree to defend, indemnify and hold harmless the other Party and the other Party's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorney's fees and costs) arising from any breach of any representation, warranty or agreement contained in this section. As used in this section, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the land is located, to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This section shall survive the expiration or termination of this Agreement.

20. MISCELLANEOUS

- a. This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.
- b. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the extent permitted by law.
- c. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties. Lessor shall cause this Agreement or a summary memorandum of this Agreement to be recorded in the record documents of Linn County such that it is readily discoverable through a title search pertaining to the Subject Real Property and County shall pay all recording fees. Lessor shall notify County upon the sale of the Subject Real Property or any portion thereof to another party, any division or subdivision of the Subject Real Property or any change whatsoever in the ownership interest of the Subject Real Property. Within thirty (30) days of receiving notice from County, Lessor shall reimburse in full all annual rental fee payments or other payments issued to Lessor by County that rightfully belong to another party under this Agreement due to any sale or change in the ownership interest of the Subject Real Property.
- d. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective Parties set forth below:

Lessor

Robert Freres
 PO Box 276
 Lyons, OR 97358
 503-859-2121
rob@frereswood.com

County

Marion County Public Works Department
 Attn: Public Works Director
 5155 Silverton Road NE
 Salem, OR 97305
 503-588-5036
PWDirector@co.marion.or.us

Site Name: McCully

Site Coordinates: 44.7634N, 122.6318W

- e. The Parties agree that both shall comply with all federal, state, and local laws and ordinances applicable to this Agreement, and that this Agreement shall be administered and construed under the laws of the State of Oregon.

The remainder of this page left intentionally blank.

EXHIBIT A

LEGAL DESCRIPTION OF LEASE AREA

EXHIBIT 'A'
MCCULLY MOUNTAIN LEASE DESCRIPTION

A TRACT OF LAND LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 25, TOWNSHIP 9 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON. SAID TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 3-1/2" U.S.C. & G. ALUMINIUM DISK STAMPED 'LYONS RM#3 1972' FROM WHICH A 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED 'LINN COUNTY SURVEYOR' REFERENCED AS POINT 301B ON COUNTY SURVEY OF RECORD 23588 BEARS SOUTH 00°17'30" WEST, 3230.43 FEET;

THENCE NORTH 10°28'59" WEST, 946.75 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 00°00'00" EAST, 60.00 FEET;

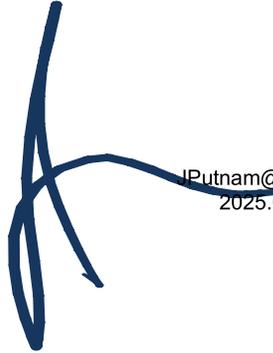
THENCE SOUTH 90°00'00" WEST, 60.00 FEET;

THENCE NORTH 00°00'00" EAST, 60.00 FEET;

THENCE NORTH 90°00'00" EAST, 60.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 3,600 SQUARE FEET, MORE OR LESS.

BEARINGS AND DISTANCES ARE BASED ON NAD 1983(2011)[EPOCH 2010] OREGON COORDINATE REFERENCE SYSTEM, SALEM ZONE.



John D Putnam
JPutnam@Oriongeomatics.com
2025.08.19 07:47:38-07'00'

EXHIBIT B

LEGAL DESCRIPTION OF ACCESS AREA

EXHIBIT 'B'

MCCULLY MOUNTAIN ACCESS / UTILITY EASEMENT DESCRIPTION

A 15.00 FOOT WIDE STRIP OF LAND LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 25, TOWNSHIP 9 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN IN LINN COUNTY, OREGON. THE SIDE LINES OF SAID STRIP ARE CENTERED 7.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

COMMENCING AT A 3-1/2" U.S.C. & G. ALUMINIUM DISK STAMPED 'LYONS RM#3 1972' FROM WHICH A 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED 'LINN COUNTY SURVEYOR' REFERENCED AS POINT 301B ON COUNTY SURVEY OF RECORD 23588 BEARS SOUTH 00°17'30" WEST, 3230.43 FEET;

THENCE NORTH 10°28'59" WEST, 946.75 FEET;

THENCE SOUTH 00°00'00" EAST, 41.50 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 90°00'00" EAST, 131.50 FEET;

THENCE SOUTH 62°31'35" EAST, 18.55 FEET TO THE EAST LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 25, TOWNSHIP 9 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN BEING THE POINT OF TERMINATION.

THE SIDE LINES OF SAID STRIP ARE TO BE EXTENDED AND/OR SHORTENED TO MEET AT ANGLE POINTS AND TERMINATE AT THE EAST LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 25, TOWNSHIP 9 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN.

BEARINGS AND DISTANCES ARE BASED ON NAD 1983(2011)[EPOCH 2010] OREGON COORDINATE REFERENCE SYSTEM, SALEM ZONE.



John D Putnam
jputnam@oriongeomatics.com
2025.09.07 14:33:50-07'00'

EXHIBIT C

SITE PLAN

NOTE:
THIS IS NOT A SURVEY; ALL EXISTING
INFORMATION IS PROVIDED BY LINN
COUNTY GIS.

TAXLOT #: 09S01E24-00-00200
ZONING: FCM

TAXLOT #: 09S01E24-00-00400
ZONING: F/F

TAXLOT #:
09S01E25-00-00101
ZONING: F/F

(EX) 30' EASEMENT BY OTHERS

(EX) EDGE OF DRIVEWAY BY OTHERS

PROPOSED PROJECT AREA
SEE SHEET C-2 FOR DETAILS

TAXLOT #:
09S01E25-00-00103
ZONING: F/F

TAXLOT #: 09S01E26-00-00101
ZONING: F/F

TAXLOT #: 09S01E25-00-00200
ZONING: F/F

TAXLOT #: 09S01E25-00-00202
ZONING: F/F (FARM/FOREST)

(EX) ROW ROAD;
N MCCULLY MOUNTAIN RD

TAXLOT #: 09S01E25-00-00100
ZONING: F/F

TAXLOT #: 09S01E25-00-00201
ZONING: F/F

TAXLOT #: 09S01E25-00-00104
ZONING: F/F

TAXLOT #: 09S01E25-00-00400
ZONING: F/F

TAXLOT #: 09S01E25-00-00351
ZONING: F/F

TAXLOT #: 09S01E25-00-00501
ZONING: F/F

0 75 150 300
SCALE: 1" = 150'



OREGON

PROJECT INFORMATION:

**MARION COUNTY
MCCULLY MOUNTAIN**

40505 N MCCULLY MOUNTAIN ROAD
LYONS, OR 97358

DATE	RELEASE
06-18-25	SITE SKETCH
07-14-25	PRELIMINARY ZONING DRAWINGS
08-07-25	PRELIMINARY CONSTRUCTION DRAWINGS

DRAWING INFORMATION:
THIS DRAWING IS COPYRIGHTED AND IS THE SOLE
PROPERTY OF THE OWNER. IT IS PRODUCED SOLELY
FOR USE BY THE OWNER AND ITS AFFILIATES.
REPRODUCTION OR USE OF THIS DRAWING AND/OR
THE INFORMATION CONTAINED IN IT IS FORBIDDEN
WITHOUT THE WRITTEN PERMISSION OF THE OWNER.

PLANS PREPARED BY:



**Cushing
Civil Engineers**

12725 SW MILLIKAN WAY
SUITE 300
BEAVERTON, OR 97005
(503) 387-5331
www.cushingcivilengineers.com

LICENSURE:

NOT FOR
CONSTRUCTION

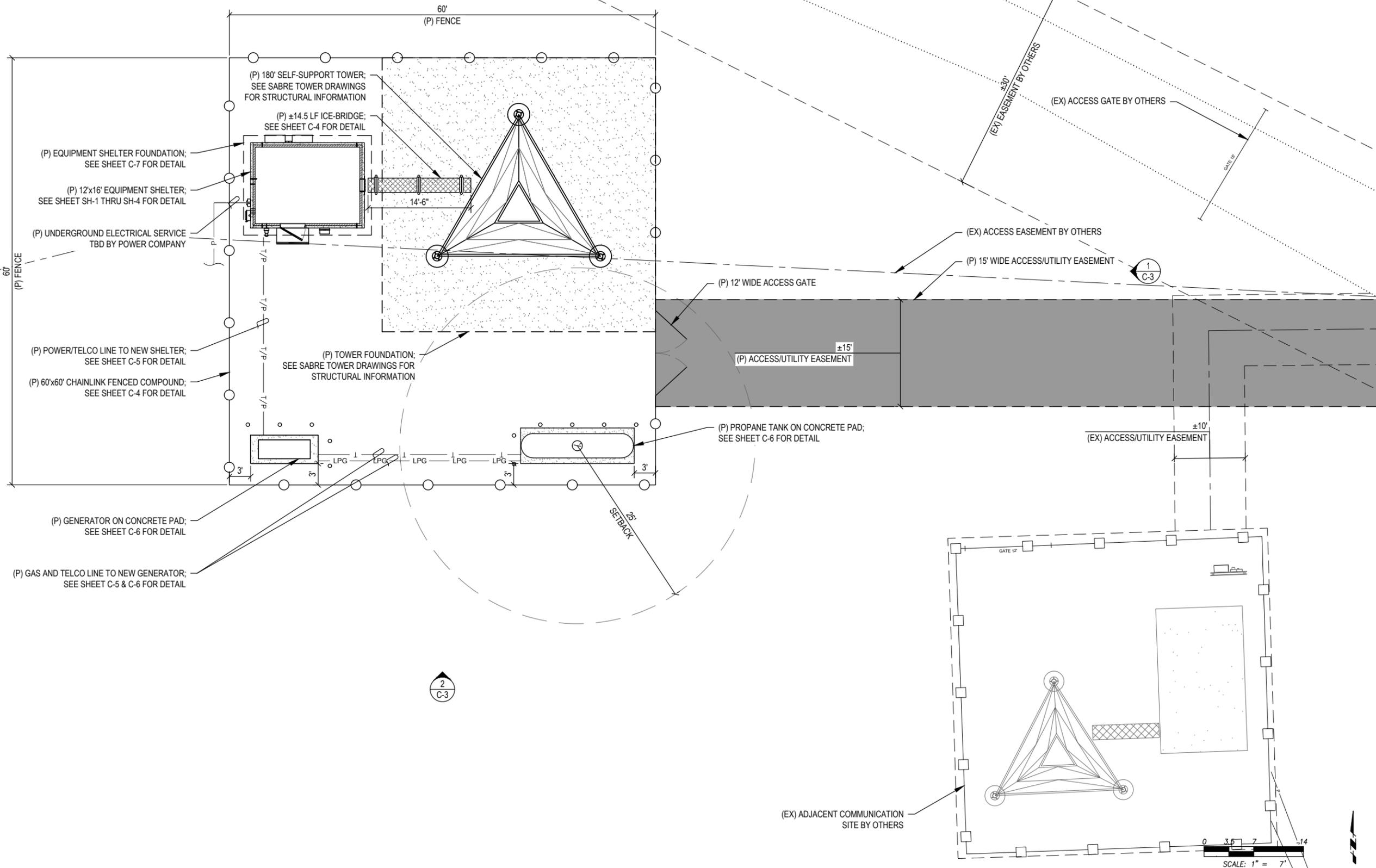
SHEET TITLE:

**OVERALL
SITE PLAN**

SHEET NUMBER:

C-1

- NOTES:
1. TOWER INFO SHOWN FOR CONCEPTUAL USE ONLY. SEE SABRE TOWER STRUCTURAL DESIGN FOR DETAIL.
 2. THIS IS NOT A SURVEY ALL EXISTING INFORMATION IS PROVIDED BY GIS & SITE WALK NOTES.
 3. PROPOSED AND EXISTING ANTENNAS NOT SHOWN FOR CLARITY.



OREGON

PROJECT INFORMATION:

MARION COUNTY MCCULLY MOUNTAIN

40505 N MCCULLY MOUNTAIN ROAD
LYONS, OR 97358

DATE	RELEASE
06-18-25	SITE SKETCH
07-14-25	PRELIMINARY ZONING DRAWINGS
08-07-25	PRELIMINARY CONSTRUCTION DRAWINGS

DRAWING INFORMATION:
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PLANS PREPARED BY:
cushing
Civil Engineers

Cushing
Civil Engineers
12725 SW MILLIKAN WAY
SUITE 300
BEAVERTON, OR 97005
(503) 387-5331
www.cushingcivilengineers.com

LICENSURE:

NOT FOR
CONSTRUCTION

SHEET TITLE:
**ENLARGED
SITE PLAN**

SHEET NUMBER:
C-2

EXHIBIT D

RECORDING INSTRUMENT

FORM MEMORANDUM OF LEASE

After recording return document to:

Freres Timber, Inc.
PO Box 276
Lyons, OR 97358

Document Title: Memorandum of Communication Site Lease

Reference No. of Related Documents:

Lessor: Freres Timber, Inc.

Lessee: Marion County

Legal Description: S25-T9S-R1E WM: NW¼

Tax Parcel Number: 09S01E25-00-00202 (Linn County)

MEMORANDUM OF COMMUNICATION SITE LEASE

MCCULLY MOUNTAIN

This Memorandum of Communication Site Lease (“Memorandum”) refers to that certain Communication Site Lease dated the ____ day of _____, 2025, between Freres Timber, Inc., (hereinafter called “Lessor”) and Marion County, Oregon (hereinafter called “Lessee”).

1. **Premises.** Lessor has granted a lease to Lessee upon the terms and conditions of the Communication Site Lease to use the property situated in Linn County, Oregon, being more particularly described as the NW¼ of Section 25, Township 9 South, Range 1 East, Linn County, Oregon.
2. **Term.** The term of the Communication Site Lease commenced on _____, 2025, with an Initial Term of five (5) years and up to five (5) additional five-year (5-year) terms.
3. **Purpose.** This Memorandum is prepared and recorded for the sole purpose of imparting constructive notice of said Communication Site Lease during the term of the Communication Site Lease and in no way modifies the terms of the Communication Site Lease.
4. **Termination.** Upon the Expiration Date, or sooner by written agreement of the parties, this Memorandum as recorded against title shall automatically extinguish and be of no further force and effect.
5. **Questions.** Questions regarding this Memorandum shall be addressed to Freres Timber, Inc., PO Box 276, Lyons, Oregon 97358.



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 12/17/2025

Department: Public Works

Title: Amendment #2 to PO #882888 for the Purchase of Bulk Fuel

Management Update/Work Session Date: 12/09/2025 Audio/Visual aids

Time Required: 5 min Contact: Michael Pierce Phone: x3196

Requested Action:
Approve Amendment #2 to Purchase Order (PO) #882888 with Carson Oil Company for the purchase of bulk fuel, increasing the PO amount by \$1,500,000.00, from \$5,000,000.00 to \$6,500,000.00, for anticipated bulk fuel purchases through 12/31/26.

Issue, Description & Background:
Marion County Public Works manages fuel procurement for county-owned fueling stations, which serve the County's light-duty vehicle and heavy equipment fleets. This fuel supports operations across multiple departments, including the Sheriff's Office, Health, Juvenile, and Environmental Services, and others, ensuring county-wide service delivery.

Financial Impacts:
Marion County typically spends about \$1,000,000 each year on bulk fuel purchases. In alignment with this average annual usage, this amendment would accommodate the next 1.5 years of bulk fuel purchases.

Impacts to Department & External Agencies:
Reliable fuel supply ensures uninterrupted road maintenance, snow removal, and fleet operations. Sheriff Department patrol vehicles, emergency response units, and specialized equipment depend on consistent fuel availability. Fuel reserves are critical during disaster response, evacuations, and wildfire suppression.

List of attachments: Amendment #2 to Purchase Order #882888

Presenter: Michael Pierce

Department Head Signature: Brian Nicholas Digitally signed by Brian Nicholas Date: 2025.11.25 12:18:26 -08'00'

Contract Review Sheet

Contract Purchase Order
882888

PW-2981-20 Am 2

Title: Bulk fuel purchases from State Price Agreement 0498

Contractor's Name: Carson Oil Company Inc.

Department: Public Works Department

Contact: Jeniffer Scales

Analyst: Kathleen George

Phone #: (503) 588-5036

Term - Date From: July 1, 2020

Expires: December 31, 2026

Original Contract Amount: \$ 1,350,000.00

Previous Amendments Amount:

\$ 3,650,000.00

Current Amendment: \$ 1,500,000.00

New Contract Total: \$ 6,500,000.00

Amd% 381%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: Cooperative Agreement

SPA 0498

Description of Services or Grant Award

Public Works purchases gasoline and diesel fuel for Marion County light duty vehicles and heavy equipment usage. Currently fuel products are purchased from the State of Oregon Price Agreement (SPA) #0498.

Amendment 2 to CPO 882888 adds \$1,500,000 based on average annual usage and extends for an additional year to December 31, 2026.

FY25/26 \$450,000+
FY24/25 \$916,825
FY23/24 \$989,158
FY22/23 \$976,639
FY21/22 \$1,020,121

Desired BOC Session Date: 12/17/2025

Contract should be in DocuSign by: _____

Agenda Planning Date: _____

Printed packets due in Finance: _____

Management Update: 12/9/2025

BOC upload / Board Session email: _____

BOC Session Presenter(s) Dennis Mansfield/Michael Pierce

Code: Y

REQUIRED APPROVALS

Finance - Contracts _____ Date _____

Contract Specialist _____ Date _____

Legal Counsel _____ Date _____

Chief Administrative Officer _____ Date _____



**MARION COUNTY
FINANCE DEPARTMENT**

PO Box 14500
555 Court St NE #4247
Salem, OR 97309-5036

CARSON OIL COMPANY
PO BOX 6030
PORTLAND OR 97228

Purchase Order		
PO#882888	Revision	Page
		1
Ship To: MARION COUNTY PUBLIC WORKS 5155 SILVERTON RD NE SALEM OR 97305		
Bill To: MARION COUNTY PUBLIC WORKS 5155 SILVERTON RD NE SALEM OR 97305		

Customer Acct No 1877926	Supplier No 559954	Order Date / Buyer SCALES, JENIFFER	Revised Date / Buyer
Payment Terms		Ship Via	F.O.B
Freight Terms		Request Or Deliver To STEWART, ERIC	Confirm To / Telephone ()

Line #	Description	Delivery Date	Quantity	Unit	Unit Price	Total
1	6/1/20 - BULK FUEL PURCHASE AND DELIVERY FOR LIGHT DUTY VEHICLES AND HEAVY EQUIPMENT.		1			\$1,350,000
	7/1/22 - AMENDMENT #1 TO ADD ADDITIONAL FUNDS THROUGH 12/31/25.		1			\$3,650,000
	12/7/25 - AMENDMENT #2 TO ADD ADDITIONAL FUNDS THROUGH 12/31/26.		1			\$1,500,000
Total						\$6,500,000

INSTRUCTIONS TO VENDOR

1. Please direct any questions concerning this purchase order to invoiced department.
2. Purchase Order Number must appear on all invoices, packages and shipping documents relating to this order.
3. Separate invoices must be submitted for each Purchase Order.
4. Do not overship or substitute.
5. If you cannot supply the items requested, please notify issuing authority at once.

Note : Please notify department contact (above) for all inquiries regarding this Purchase Order

Authorized By: _____
MARION COUNTY PURCHASING
NOT VALID Unless Signed By Purchasing

MARION COUNTY TERMS AND CONDITIONS

1. INSPECTIONS: County may inspect and test the Goods and related Services (collectively, Goods). County may reject non-conforming Goods and require Contractor to correct them without charge or deliver them at a reduced price, as negotiated. If Contractor does not cure any defects within a reasonable time, County may reject the Goods and cancel the PO in whole or in part. This paragraph does not affect or limit County's rights, including its rights under the Uniform Commercial Code, ORS chapter 72 (UCC).

2. DELIVERY: Deliveries will be F.O.B destination. Contractor shall pay all transportation and handling charges. Contractor is responsible and liable for loss or damage until final inspection and acceptance of the Goods. Contractor remains liable for latent defects, fraud, and warranties.

3. PAYMENT: County shall pay Contractor within 30 days from (i) the date the Goods are delivered and accepted or (ii) the date the invoice is received, whichever is later

4. COUNTY PAYMENT OF CONTRACTOR CLAIMS: If Contractor does not pay promptly any claim that is due for Goods or Services furnished to the Contractor by any subcontractor in connection with this PO, the County may pay such claim and charge that payment against any payment due to the Contractor under this PO. The County's payment of a claim does not relieve the Contractor or its surety, if any, from their obligations for any unpaid claims.

5. WARRANTIES: Contractor agrees to perform its services with that highest standard of care, skill and diligence normally provided by a professional individual in the performance of similar services. Contractor represents and warrants that the Goods are new, current, and fully warranted by the manufacturer. Delivered Goods will comply with specifications and be free from defects in labor, material and manufacture. All UCC implied and expressed warranties are incorporated in this PO. Contractor shall transfer all warranties to the County.

6. TERMINATION OF PO: The PO may be terminated under the following conditions: a. By written mutual agreement of both parties. Termination under this provision may be immediate. b. Upon fifteen (15) calendar days written notice by either Party to the other of intent to terminate. c. The County may terminate all or part of this PO for the following reasons: (1) If the consultant fails to provide services, or fails to meet the performance standards as specified in this PO (or subsequent modifications of this PO), within the time specified herein or any extension thereof. Termination under this provision may be immediate; (2) If the consultant fails to start services on the date specified by Marion County in this PO or subsequent modifications to this contract. Termination under this provision may be immediate. (3) Failure of the consultant or Marion County to comply with the provisions of this PO and all applicable federal, state, and local laws and rules may be cause for termination of this contract. Such termination shall be without prejudice to any obligations or liabilities of either party accrued prior to such termination. If this PO is terminated by either party, for reasons other than breach of contract, the County agrees to pay to the consultant all costs and expenses associated with services satisfactorily provided to the effective date of termination.

7. INDEMNIFICATION. The Contractor shall save harmless, indemnify, and defend the County for any and all claims, damages, losses and expenses including but not limited to reasonable attorney's fees arising out of or resulting from Contractor's performance of or failure to perform the obligations of this PO to the extent same are caused by the negligence or misconduct of Contractor or its employees or agents.

8. GOVERNING LAW, VENUE: This PO shall be governed by the laws of the State of Oregon. Any action commenced in connection with this PO shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing

is without limitation to or waiver of any other rights or remedies of the County according to law.

9. FORCE MAJEURE: Neither party is responsible for delay or default caused by an event beyond its reasonable control. County may terminate this PO without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this PO.

10. SUBCONTRACTING/NONASSIGNMENT. No portion of the PO may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the County.

11. MAINTENANCE, RETENTION, AND CONFIDENTIALITY OF RECORD. The Contractor agrees to establish and maintain records and statistics as follows: Financial records, which indicate the number of hours of service provided under this contract and other appropriate records pertinent to this contract shall be retained for a minimum of three (3) years after the end of the contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved. To the extent applicable, client records shall be kept confidential in accordance with ORS 179.505, OAR 309-11-020, 45 CFR 205.50 and 42 CFR Part 2.

12. COMPLIANCE WITH APPLICABLE LAWS: The Contractor shall comply with all applicable Federal, State and local laws, rules and regulations. All provisions of ORS 279B (Public Contracts and Purchasing) are incorporated herein to the extent applicable to POs.

13. WORKERS' COMPENSATION: Contractor shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless exempt under ORS 656.126(2). Contractor shall ensure that its Subcontractors, if any, comply with these requirements.

14. SAFETY AND HEALTH REQUIREMENTS: Contractor represents and warrants that the Goods comply with all federal and Oregon safety and health requirements.

15. MATERIAL SAFETY DATA SHEET: Contractor shall provide County with a Material Safety Data Sheet for any Goods which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437- 002-0360 and 29 CFR 1910.1020). Contractor shall label, tag or mark such Goods.

16. AMENDMENTS: All amendments to this PO must be in writing, signed by County.

17. SEVERABILITY: If a court of competent jurisdiction declares any provision of this PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.

18. WAIVER: Failure of either party to enforce any provision of this PO is not a waiver or relinquishment of that party's rights to such performance in the future or to enforce any other provisions.

19. TAX CERTIFICATION: Contractor hereby certifies under penalty of perjury: (a) the number shown on this form is the correct Federal Employer Identification Number; (b) it is not subject to backup withholding because (i) it is exempt from backup withholding, (ii) it has not been notified by the IRS that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that it is no longer subject to backup withholding; and (c) it is not in violation of any Oregon tax laws.

**SIGNATURE PAGE FOR
CPO 882888, PW-2981-17
between
MARION COUNTY and CARSON OIL CO., INC.**

**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: December 17, 2025

Department: Sheriff's Office

Title: Amendment #1 with Pathfinder Network

Management Update/Work Session Date: Tuesday, December 2, 2025 Audio/Visual aids []

Time Required: 10 minutes Contact: Kristy Witherell Phone: x4402

Requested Action: Staff is requesting approval of Amendment #1 with Pathfinder Network for Justice Reinvestment Initiative (JRI) Services in the amount of \$374,065.48, for a new contract total of \$1,578,199.48 to provide treatment and peer mentoring services to community corrections clients who possess medium to high criminogenic risk factors through June 30, 2027.

Issue, Description & Background: Previously this contract combined two Pathfinder Network contracts into one, the Transition from Jail to Community Program and the Peer Support and Mentoring Services. This amendment is combining the third contract with Pathfinder Network, Justice Reinvestment Initiative Services: Stabilization Mentor Program (SO-6478-25) which is set to expire on 12/31/25. The amendment will be adding the 2.35 FTE, (two Peer Support Mentors and .35 FTE Program Operations Support) and adding \$374,065.48 in funding.

Financial Impacts: The amended amount of this contract is \$374,065.48 for a contract total of \$1,578,199.48 through June 30, 2027.

Impacts to Department & External Agencies: The Justice Reinvestment Program helps by reducing recidivism through evidence-based practices and data-driven research; increasing public safety through collaboration; and increasing offender accountability.

List of attachments: Agenda Review Form, CRS, Amendment #1, Original Contract

Presenter: Commander Hartford

Department Head Signature: Jay Bergman

Contract Review Sheet

Contract for Services

SO-6651-25 - Am1

Title: Justice Reinvestment Initiative Services - Resource Center

Contractor's Name: The Pathfinder Network

Department: Sheriff's Office

Contact: Kristy Witherell

Analyst: Sandra Fixsen

Phone #: (503) 373-4402

Term - Date From: July 1, 2025

Expires: June 30, 2027

Original Contract Amount: \$ 1,204,134.00

Previous Amendments Amount: \$ 374,065.48

Current Amendment: \$ -

New Contract Total: \$ 1,578,199.48

Amd% 31%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 20-0260 Request for Proposal

RFP# SO1304-23

Description of Services or Grant Award

Amendment #1 is combining SO-6478-25 with Pathfinder Network to this contract. SO-6478-25 expires on 12/31/25 and the majority of the services have been built in the SOW. Adding the 2.35 FTE, which is two Peer Support Mentors and .35 FTE Program Operations Support. Adding \$374,065.48 in funding through 6/30/2027.

Original Contract: The Pathfinder Network will provide 6.61 FTE staff members, one full-time bilingual Peer Mentor, one full-time Peer Mentor, two full-time Cognitive Behavioral Facilitator, one full-time bilingual Cognitive Behavioral Facilitator, and 1.61 FTE Program Operations Support.

Services target Adults in Custody (AIC), Transition Center Residents, and Adults on Supervision (AOS) with the Marion County Sheriff's Office who present medium to high criminogenic risk factors. Using evidence-based models, the program delivers cognitive programming in individual and group settings to reduce criminal behavior, build pro-social skills and motivation, and support a crime-free lifestyle. Mentoring services complement treatment by assisting with transportation, housing, job search, group facilitation, and treatment engagement.

Desired BOC Session Date: 12/17/2025

Contract should be in DocuSign by: 11/26/2025

Agenda Planning Date: 12/4/2025

Printed packets due in Finance: 12/2/2025

Management Update: 12/2/2025

BOC upload / Board Session email: 12/3/2025

BOC Session Presenter(s) Commander Mike Hartford

Code: Y

REQUIRED APPROVALS

Finance - Contracts _____ Date

Contract Specialist _____ Date

Legal Counsel _____ Date

Chief Administrative Officer _____ Date



**AMENDMENT #1 to SO-6651-25
the CONTRACT FOR SERVICES
between**

MARION COUNTY and THE PATHFINDER NETWORK

This is Amendment #1 to the Contract for Services (as amended from time to time, the “Contract”), dated July 01, 2025, between Marion County, a political subdivision of the State of Oregon, hereinafter called County, and The Pathfinder Network, hereafter called Contractor.

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

RECITALS

WHEREAS, County issued Request for Proposals SO1304-23 for Justice Reinvestment Initiative Services.

WHEREAS, Contractor submitted proposals in response to the solicitation, which was determined to be responsive and responsible.

WHEREAS, County established two separate contracts with Contractor for JRI services, SO-5448-23 – Justice Reinvestment Services – Peer Support and Mentoring Services and SO-5449-23 – Justice Reinvestment Services – TJC Program.

WHEREAS, County issued a Request for Proposals SO1637-24 for Justice Reinvestment Initiative Services: Stabilization Mentor Services.

WHEREAS, Contractor submitted proposals in response to the solicitation, and was the sole offeror, which was determined to be responsive and responsible.

WHEREAS, County established a contract with Contractor for JRI Services: Stabilization Mentor Program, SO-6478-25.

WHEREAS, pursuant to MCPCR 10-0560 (1) and (2), the services the contractor is providing under SO-6478-25 is reasonably related to the scope of the original procurement and there is an agreement between County and Contractor to add contract #SO-6478-25 via an amendment to SO-6651-25.

WHEREAS, Pursuant to MCPCR 20-0800 (1)(a), the County may amend a contract without additional competition to add additional goods or services within the scope of the solicitation document, the sole-source notice or the contract, or the approval of special procurement in that order.

WHEREAS, County wishes to engage Contractor to provide the services set forth in Exhibit A.

2. CONSIDERATION.

A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$1,578,199.48 ~~\$1,204,134.00~~. County will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this

Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

**EXHIBIT A
STATEMENT OF WORK**

1. STATEMENT OF SERVICES

Contractor shall perform Services as described below.

B. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

i. Program Participants Served:

Services target Adults in Custody (AIC), Transition Center Residents, and Adults on Supervision (AOS) with the Marion County Sheriff's Office who present medium to high criminogenic risk factors. Using evidence-based models, the program delivers cognitive programming in individual and group settings to reduce criminal behavior, build pro-social skills and motivation, and support a crime-free lifestyle. Mentoring services complement treatment by assisting with transportation, housing, job search, group facilitation, and treatment engagement.

ii. Staffing:

a. Contractor shall provide two (2.0 FTE) full-time Cognitive Behavioral Facilitators.

b. One (1.0 FTE) full-time bilingual Cognitive Behavioral Facilitator.

c. Equivalent to (1.96 FTE) ~~One (1.61 FTE)~~ Program Operations Support.

d. ~~Four Two~~ (4.0 2.0 FTE) Peer Mentors:

(1) Two ~~One~~ full-time bilingual Peer Mentors who are either:

(A) a Certified Recovery Mentor by the Mental Health & Addiction Certification Board of Oregon (MHACBO); or

(B) a Peer Support Specialist by the Oregon Health Authority (OHA); or

(C) a Certified Alcohol and Drug Counselor by MHACBO.

, and

(2) Two ~~One~~ full-time Peer Mentors who are is either:

(A) a Certified Recovery Mentor by the Mental Health & Addiction Certification Board of Oregon (MHACBO); or

(B) a Peer Support Specialist by the Oregon Health Authority (OHA); or

(C) a Certified Alcohol and Drug Counselor by MHACBO.

- (3) Peer Mentors of each gender are preferred. Peer Mentors shall be required to complete all continuing education required to maintain their certification. The Peer Mentors may have former involvement in the criminal justice system.
- (4) Mentors shall provide holistic and responsive wrap around services through referrals for ongoing services. Mentoring services shall be provided in an assertive engagement and service navigation format which shall consist of four ~~two~~ full-time peer mentors who shall each carry a caseload of 15 to 18 individuals.

iii. Services Provided:

- a. Contractor shall coordinate with County and mutually agree upon curriculum and timeline implementation. Provide staff who can meet certification standards for specific positions. Some positions must meet minimum clearance standards to enter secured facilities.
- b. Provide services at the Sheriff's Office Jail, Transition Center or other locations operated by the County.
- c. Provide services that are trauma responsive.
- d. Individual sessions with AICs, Residents, and AOSs as needed and utilize Creating Regulation and Resilience communication model within individual 1-on-1 interventions.
- e. Address criminogenic needs including responsivity factors through all phases of treatment.
- f. Utilize evidence-based practices as outlined by the Correctional Program Checklist (CPC) and/or Risk-Need-Responsivity (RNR) program tool.
- g. Provide evidence-based programming targeted at reducing the likelihood of program participants to recidivate.
 - (1) The program shall prioritize serving individuals who are medium or high risk as determined by the LS/CMI assessment and WRNA who are in need of recovery support services.
 - (2) Additionally, the program shall make efforts to ensure services are accessible and responsive to all eligible clients, including those who may face barriers to engagement due to socioeconomic, cultural, or systemic factors.
- h. Address risk factors most likely to lead to future antisocial behavior including substance use, a trauma-informed and cognitive behavioral-approach aimed at addressing barriers to success and mitigating risk.
- i. Contractor shall provide cognitive programming to each identified client in both individual and group format.
- j. Contractor shall provide both Cognitive Behavioral Facilitators and Peer Mentors to deliver group programming using evidence-based and evidence-informed curricula in both open and closed formats. Group interventions shall include, but are not limited to, the following:
 - (1) Healing Trauma (including Healing Trauma for Women)

- (2) Building Resilience (including Building Resilience for Men)
- (3) Helping Women Recover: A Program for Treating Addiction
- (4) Helping Men Recover: A Program for Treating Addiction
- (5) Free Your Mind (in Segregation and in Transition)
- (6) Peer Support Groups
- (7) Special Topic Workshops (e.g., job applications, interview skills)

k. Provide extensive initial employee training, feedback, coaching, ongoing training, and fidelity monitoring.

l. Training shall include but is not limited to the following trainings:

- (1) Pre-and post-assessment delivery of the Level of Service Case Management Inventory (LS/CMI) and Women's Risk Needs Assessment (WRNA), and how to share the assessment results with participant.
- (2) Correctional Practices (CCP).
- (3) Creating Regulation and Resilience (CR/2) by CORE Associates and Orbis Partners, which is an evidence-based trauma informed communication model that was designed to improve outcomes with clients.
- (4) Motivational Interviewing (MI).
- (5) Client centered engagement.
- (6) Assessment and Case Management.
- (7) Trauma-Responsive Practices and Healing-Centered Engagement.
- (8) Training on curriculum they shall facilitate.
- (9) Monthly individual and group supervision and growth opportunities.
- (10) Training in recovery programs and resources within Marion County.

m. Provide peer mentors who shall share their experience of recovery and engage participants in a collaborative and caring relationship to provide personalized peer support that shall include but not limited to the following:

- (1) Informational and orientation sessions.
- (2) Recovery planning and coaching.
- (3) Links and referrals to resources, services, and support.
- (4) Assertive outreach.

- (5) Help to manage crises.
- (6) Individual and group intervention.
- (7) Skill building.
- (8) Emotional support and support self-care.
- (9) Home visits.
- (10) Peer support groups.
- (11) Connection to recovery activities and communities of recovery.
- (12) Attending events and meetings with peers.
- (13) Modeling of recovery lifestyle.
- (14) Transportation.
- (15) Client assistance, incentives, and events.

n. Demonstrate an understanding of the characteristics of the population being served, including any structural, cultural, and/or linguistic barriers faced by the population. Work with MCSO to respond to those barriers and provide services that are responsive to individual backgrounds, communication needs, and lived experiences.

o. Motivational enhancement techniques to effectively engage clients based on generally accepted practices.

p. Maintain a programming file containing documentation of all services provided.

q. Collaborate, assess, provide options, facilitate, evaluate, and follow-up with participants to build individual, social, and community resources that promote long-term recovery, successful completion of community supervision and successful integration into the community.

C. REPORTING REQUIREMENTS.

i. Reports are due on a quarterly basis and shall include:

a. Name and SID of AICs, Residents, and AOSs who receive services during reporting period

b. Attendance records

c. The service(s) provided to each AIC, Resident, and AOS during the reporting period (individual sessions, group treatment, mentoring services/activities, assessments, etc.) and who provided the services

d. Any additional information requested by County to complete requirements of the funding agency, Oregon Criminal Justice Commission (CJC)

ii. In addition, the Contractor shall attend staffing meetings as needed and verbally report on progress of clients.

iii. Additional data tracking may be required if reporting requirements are changed by the funding agency, or if the Sheriff's Office documents a necessary business need. If such a change is necessary, Contractor will receive written or electronic notification from the Division Commander or Lieutenant outlining what additional information is needed and corresponding justification.

iv. Any failure to maintain accurate reporting or submissions of monthly invoices may result in the withholding of payment or termination of contract.

D. SPECIAL REQUIREMENTS:

Evidence Based Practices:

i. All services provided under this contract shall be consistent with the research-based principles for Correctional treatment programs, as recommended by the National Institute of Corrections.

ii. Program interventions shall target dynamic risk factors that can be changed through intervention. At least 80% of the program services and interventions shall target criminal risk factors and more intensive services shall be provided to higher need clients. Examples of targets for change:

- a. Recognizing and changing antisocial behavior
- b. Increasing self-control, self-management, and problem-solving skills
- c. Developing anger management and other emotional regulation skills
- d. Developing social skills such as assertiveness, conflict resolution, and empathy
- e. Encouraging pro-social peer associations, while reducing those that are anti-social.
- f. Providing basic education
- g. Improving employability
- h. Planning for relapse prevention

iii. Program interventions shall focus on changing thinking or teaching new behavioral skills, shall be action oriented, and shall reinforce appropriate client behavior. Techniques shall be based on social learning theory approaches including modeling the new behavior, step by step and directed practice of new skills, positive and negative feedback, and recognition of progress.

iv. Contractor shall work collaboratively with the Community Corrections Division of the Marion County Sheriff's Office to provide transitional services to participants. Marion County has developed a program that identifies and provides a variety of services to promote effective and safe community reentry and prison diversion.

Prison Rape Elimination Act (PREA)

v. The Marion County Sheriff's Office is committed to complying with all the requirements of PREA (Prison Rape Elimination Act). To protect AICs from sexual abuse and to ensure they get the

help they need if they are victimized, PREA requires all contractors and volunteers to receive specialized training on how to recognize the warning signs and how to report a case.

vi. Contractors, employees, and volunteers interact with AIC’s shall:

- a. View the PREA Contractor Training Presentation at the following link https://prezi.com/0ebedyz1xjy_/?token=f3d32de2c5ff329ee9f60b63ab34e41e8ac49b72cffcc282f4c4e1d9ea58c3af&utm_campaign=share&utm_medium=copy
- b. Acknowledge the review and receipt of PREA Volunteer and Contractor Information Acknowledgement Form by signing, dating, and returning the form in Exhibit B. Signed acknowledgement forms shall be returned by email to SO-Contracts@co.marion.or.us.

Health Insurance Portability and Accountability Act (HIPAA)

vii. Comply with the Health Insurance Portability and Accountability Act (HIPAA): The Business Associate Contract Provisions required by the Health Insurance Portability and Accountability Act, Pub. Law No. 104-191 (See Exhibit C).

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 ~~\$1,578,199.48~~ ~~\$1,204,134.00~~.

A. METHOD OF PAYMENT FOR SERVICES: County shall pay Contractor ~~\$50,172.25~~ monthly for completing all Services required under this Contract, on the following payment schedule:

Year - Month	Payment Amount	Year - Month	Payment Amount
2025-Jul	\$50,172.25	2026-Jul	\$70,953.66
2025-Aug	\$50,172.25	2026-Aug	\$70,953.66
2025-Sep	\$50,172.25	2026-Sep	\$70,953.67
2025-Oct	\$50,172.25	2026-Oct	\$70,953.67
2025-Nov	\$50,172.25	2026-Nov	\$70,953.67
2025-Dec	\$50,172.25	2026-Dec	\$70,953.67
2026-Jan	\$70,953.66	2027-Jan	\$70,953.67
2026-Feb	\$70,953.66	2027-Feb	\$70,953.67
2026-Mar	\$70,953.66	2027-Mar	\$70,953.67
2026-Apr	\$70,953.66	2027-Apr	\$70,953.67
2026-May	\$70,953.66	2027-May	\$70,953.67
2026-Jun	\$70,953.66	2027-Jun	\$70,953.67

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.

**AMENDMENT #1 to SO-6651-25
the
CONTRACT FOR SERVICES
between
MARION COUNTY and The Pathfinder Network**

**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

THE PATHFINDER NETWORK SIGNATURE

Authorized Signature: _____
Date

Title: _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 17, 2025

Department: Board of Commissioners

Title: Deflection Grant Funding Agreement

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

Time Required: 5 Mins Contact: Gary White Phone: 5193

Requested Action: Approve acceptance of the 2025-2027 Oregon Behavioral Health Deflection Program Phase 1 Grant Award in the amount of \$678, 344.

Issue, Description & Background: Marion County successfully applied for funding made available by the state through HB 3069 to continue to operate a deferral program that will allow qualifying individuals who are referred to enter into a deferral program in place of facing criminal charges.

Financial Impacts: None

Impacts to Department & External Agencies: The following department will be participating in the deferral program. - The Sheriff's Office - The District Attorneys Office - Health and Human Services

List of attachments: Grant Agreement

Presenter: Gary White/Chris Eppley

Department Head Signature: Chris Eppley Digitally signed by Chris Eppley Date: 2025.12.08 11:14:18 -08'00'

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of delegation of authority to)
the Chief Administrative Office to execute)
the Behavioral Health Deflection Program
contract

ORDER No. _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting December 17, 2025, to delegate authority to the Chief Administrative Officer in relation to the Oregon Behavioral Health Deflection Program.

WHEREAS Marion County has applied for and received funding through the CJC as part of the Oregon Behavioral Health Deflection Fund

WHEREAS, Time is of the essence the board seeks to delegate authority to the Chief Administrative Officer to execute the contract with CJC, now, therefore

IT IS HEREBY ORDERED that the Marion County Chief Administrative Officer is delegated the authority and responsibility for executing the afore-mentioned contract.

DATED at Salem, Oregon, this 17th day of December 4, 2025.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 17, 2025

Department: Public Works

Title: Consider adoption of an administrative ordinance approving Conditional Use/Comprehensive Plan Change 24-038/TLM Holdings LLC

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

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

Requested Action: Staff recommended motion: Approve the administrative ordinance approving Conditional Use/Comprehensive Plan Change CU/CP 24-038/TLM Holdings, LLC. Other motion options for consideration are: 1. Direct staff to make changes and approve a modified ordinance. 2. Not approve the ordinance.

Issue, Description & Background: 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. The Board held a duly noticed public hearing on the application on June 18, 2025, and considered all the evidence in the record and approved the request. The ordinance and findings have been prepared and the notice of adoption was given on December 10, 2025. The administrative ordinance is now set for formal adoption.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Ordinance

Presenter: John Speckman

Department Head Signature: [Handwritten Signature]

SECTION V. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this _____ day of _____, 2025, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

I. Nature of the Application

This matter comes before the Marion County Board of Commissioners on the application of TLM Holdings, LLC for a conditional use permit to allow a facility for fixed wing aircraft and helicopters to include vertical takeoff and landing aircraft and a comprehensive plan amendment to amend the Marion County Comprehensive Plan to adjust the Aurora State Airport land use boundary to include the subject 16.54 acre parcel zoned EFU (Exclusive Farm Use) and 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), MCC 17.136 (EFU Zone), MCC 17.177 (Airport Overlay Zone), the Marion County Comprehensive Plan Goals and Policies, The 1976 Aurora State Airport Master Plan which is a part of the County’s acknowledged comprehensive plan, Statewide Planning Goals, Oregon Revised Statutes Chapters 215 and 836, and Oregon Administrative Rules, including OAR 660-012 (Transportation Planning Rule), and OAR 660-013 (Airport Planning Rule).

III. Public Hearings

The Marion County Hearings Officer conducted a full evidentiary hearing on the application, and recommended approval. The Board of Commissioners also conducted a full evidentiary hearing and, upon its conclusion and their review of the record, the Board agreed with the Hearings Officer’s recommendation and decided to approve the application.

The public hearing before the Marion County Hearings Officer was conducted 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 Hearings Officer proceeding record, recorded 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 farms in the area including a farm along airport property, concerning drone usage and details minimal farm impact from existing airport operations on farm use and expected minimal impact from the proposal on farm use.
- 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 her personal decibel counter.

The applicant's PowerPoint presentation was also entered into the record.

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 applicant requested the open record periods be 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 Hearings Officer issued an order to extend the open record periods 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 HDSE 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 Period:

- May 1, 2025: Applicant's Final Written Argument (without any new evidence).

Thereafter, the Hearings Officer's Decision recommending the proposal be approved, was issued on May 20, 2025.

A public hearing was conducted on the matter before the Marion County Board of Commissioners on August 13, 2025. The Planning Division file and Hearings Officer proceedings record was made part of the record before the Board of Commissioners. Before the

Board of Commissioners, the following persons appeared and provided testimony on the application:

- | | | |
|----|-------------------------|---------------------------------|
| 1. | John Speckman | Marion County Planning Division |
| 2. | Wendie Kellington | Applicant's Attorney |
| 3. | Aron Faegre | Proponent of Application |
| 4. | Tony Helbling | Proponent of Application |
| 5. | Kevin Ferrasci O'Malley | Proponent 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 Board of Commissioners proceeding record, recorded as titled:

- August 12, 2025 "Potable Water Quality" Letter from Aron Faegre
- August 12, 2025 "Statement clarifying that this project is an expansion of a public airport by Aron Faegre
- August 13, 2025 "Aviation-related Issues at Aurora Airport" by Aron Faegre
- August 13, 2025 Letter and exhibit "Response to August 9, 2025 City of Aurora and Joseph Schaefer Submittals" by Kelly Huedepohl, Kellington Law Group
- August 13, 2025 Letter "RE: Support for CU/CPA[sic] 24-038 – North Marion County Vertiport & Heliport at Aurora State Airport" from Wilsonville Area Chamber of Commerce
- Email string between Wendie Kellington, Kellington Law Group and Tony Beach, Oregon Department of Aviation, submitted by applicant
- Applicant's Hearing PowerPoint
- Oregon Department of Transportation, Analysis Procedures Manual Version 2 dated July 2025, submitted by applicant
- "Exhibit 1" a 101 page document including Aurora Planning Commission agenda for July 1, 2025 and City of Aurora, Oregon Economic Opportunities Analysis dated June 2025, submitted by applicant

IV. Executive Summary

Following the instructions of the Oregon Court of Appeals, Applicant TLM Holdings, LLC proposes to expand the airport boundary for the Aurora State Airport to include the subject property to allow airport uses (as identified in ORS 835.616(2) and OAR 660-013-0100) to be established on the subject property, within the expanded airport boundary. The subject property is listed on the acknowledged Aurora Airport Master Plan, which is a part of the Marion County Comprehensive Plan, as an "Area Acceptable for Airport Related Development under Private Ownership." The Oregon Department of Aviation (ODAV) has acknowledged that the current in-process version of the Aurora Airport Master Plan will carry forward and include this language. The ODAV director has written a letter for the record supporting the proposal. ODAV – the Aurora Airport "sponsor" - has confirmed via email in the record that the economic and forecast information required by OAR 660-013-0040(9) provided for the application from the current version of the in-process Aurora Airport Master Plan update is the most up-to-date information.

The proposed site plan illustrates the proposal’s layout of airport related uses, facilities and services that are 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 traditional fixed-wing aircraft. The proposal does not seek or need to change the subject property’s Comprehensive Plan designation or zoning for the property. This is because the consolidated application is allowed under ORS 215.283(3)¹ and OAR 660-012-0065(3)(n)² as a conditional use. Therefore, the proposal includes an application for a conditional use permit for airport use on the property.

The application also seeks a comprehensive plan amendment limited to amending the airport land use boundary map for the Aurora State Airport, and to otherwise comply with the requirements of the Airport Planning Rule to expand the airport’s land use boundary as was outlined as necessary by the Oregon Court of Appeals.

Per OAR 660-012-0065(3)(n), the proposal can be processed as a conditional use permit and airport land use map boundary adjustment without exceptions to Goals 3, 4, 11, or 14. First, the proposal is an “expansion *** of a public use airport.” There can be no reasonable dispute that the Aurora State Airport is a public use airport. In fact, no one claims otherwise. Further, the OAR 738-005-0010(110) definition of “public use airport” is an airport that is open to the flying public. The Aurora Airport is owned and managed by the State of Oregon and is open to the flying public. Moreover, the statutory definition of “airport boundary” refers to “the *combined public and private properties* that are permitted to have direct access to the airport runway by aircraft.” (Emphasis supplied.) ORS 836.640(1). Indeed, the Court of Appeals expressly decided that expanding the Aurora Airport land use boundary to include the subject property is the only way that the through the fence airport uses that the legislature in ORS 836.640-842 expressly contemplated on the subject and other private property adjacent to the Aurora Airport can occur, is through an expansion of the Aurora Airport land use boundary to include such private property, exactly as proposed here. *Schaefer v. Marion County*, 318 Or App 617 (2022). As the Court of Appeals explained, there is already “privately owned land that is part of the ‘ultimate airport boundary’ on the 1976 airport layout plan” that is “zoned P and is developed with airport related uses.” *Id.* That has not changed the fact that the Aurora Airport is a public use airport. As the legislature contemplated, the subject property will be a “through the fence” operation at the Aurora Airport per ORS 836.640-642 that ODAV will control through the referenced “Through the Fence

¹ ORS 215.283(3) authorizes approval of the following in EFU zones:

“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.”

² OAR 660-012-0065(3) states that “the following transportation improvements are consistent with Goals 3, 4, 11, and 14” and do not require goal exceptions. One of the “following transportation facilities and improvements” are at (3)(n) of that rule: “Expansions or alterations of public use airports that do not permit service to a larger class of airplanes.”

Agreement,” a copy of the template for which is in the record. The proposal is an expansion of a public use airport.

Second, the proposal does “not permit service to a larger class of airplane” but rather accommodates airplane classes that already use the airport or that are no larger than airplane classes that now use the airport. A condition of approval is imposed to ensure compliance with that requirement is maintained.

The proposal must demonstrate compliance with the farm impacts test (ORS 215.296). The Hearings Officer and Board found the evidence most credible and persuasive that farm operations and the extensive aviation activities at the Aurora Airport have co-existed for decades without significant increases in costs of accepted farming practices or significant changes to accepted farming practices. Farmer Jason Montecucco of Montecucco Farms testified he has farmed adjacent to and around the airport for years without any problems and also the testimony of Dr Irl Davis that there will be no significant added conflicts under the proposal between farmers using drones near the airport or subject property. The proposal meets the farm impacts test.

Applicant must also demonstrate compliance with the aviation facility planning requirements set forth in OAR 660-013-0040. As explained in greater detail herein, the Board decided that the applicant demonstrated that those requirements are met.

As noted, the proposed aviation facility will operate as a “through-the fence” (“TTF”) operation at the Aurora State Airport which is specifically allowed and is strongly and expressly encouraged by the Oregon legislature in ORS 836.640-642. As contemplated by those statutes, the TTF operation proposed for the subject property would allow aviation uses of the subject property access to the airport’s facilities to include its runway, without being physically located on property owned by ODAV.

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 as acceptable for development with aviation uses. Following closure of the retreat facility that was previously on the subject property for more than 40 years, Applicant sought to put the subject property into productive aeronautical use consistent with the long-since acknowledged Marion County Comprehensive Plan designation for the property that is established in the County’s adoption and incorporation of 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 acknowledged Marion County Comprehensive Plan. That means, by definition, the 1976 Aurora Airport Master Plan complies with the statewide planning goals. That Aurora 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 acceptable for airport related development under private ownership.

The Application, including its 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 boundary and to authorize airport uses within the

expanded airport boundary. As detailed below, the Board of Commissioners finds that Applicant has met the burden of establishing compliance with the applicable standards and criteria for a conditional use permit and comprehensive plan amendment to amend the airport land use map to include the subject property located at 22515 Airport Rd. NE, Aurora.

Therefore, the Marion County Board of Commissioners **GRANTS** the conditional use and comprehensive plan amendment applications, subject to the conditions of approval herein imposed that that the Board herein finds necessary for the public health, safety, and welfare.

V. Applicable Standards

Several Marion County Code (“MCC”) standards apply to this application. As discussed above, the proposed airport uses are an allowed conditional use on EFU land. MCC 17.136.050(J)(4)³ authorizes, as a conditional use on EFU land, other transportation facilities and improvements not otherwise allowed on EFU land under certain circumstances. OAR 660-012-0065(3)(n) allows expansions of airport uses that do not permit a larger class of airplane as is the case with this proposal, to be approved as consistent with Goals 3, 4, 11 and 14 without taking a goal exception. Consequently, Applicant is submitting this Conditional Use Permit application subject to the criteria set forth under MCC 17.136.060 and the procedures set forth under MCC 17.119 to expand the airport boundary and to allow airport uses on the property. Because OAR 660-012-0065(3)(n) applies to expansions of public use airports, Applicant is not requesting an exception to Goals 3, 4, 11 and 14 because the rule states the uses are consistent with those Goals.

Also, the subject property is within the Airport Overlay (AO) zone, the applicable MCC Chapter 17.177 AO standards are addressed as part of the conditional use application.

Finally, OAR Chapter 660, division 13, the Airport Planning Rule, requires that a map showing the airport boundary expansion be adopted and, among other things, incorporated into the comprehensive plan. The Applicant proposed, and this decision approves, a Comprehensive Plan Amendment that will adopt the updated Aurora Airport Boundary into the County’s Comprehensive Plan. Approval requires compliance with applicable Comprehensive Plan Policies, any applicable Statewide Planning Goals and the Airport Planning Rule. The proposal does not seek to change the plan designation or the zoning for the subject property. This is because the proposed use is a conditional use under the subject property’s current EFU zoning.

³ To reiterate, MCC 17.136.050 provides, in relevant part,

“The following uses may be permitted in an EFU zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.136.060(A), and any additional criteria, requirements, and standards specified for the use:

* * * *

“J. The following transportation uses:

* * * *

“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.”

The Board notes that ultimately, implementation of the proposed airport land use boundary expansion and approval of airport related uses on the subject property requires approvals from several different bodies. The focus in this decision is on the required land use approval from the County. The County notes that the applicant will also need to obtain various other approvals from ODAV, the Federal Aviation Administration (“FAA”), and the Oregon Department of Environmental Quality (“DEQ”) prior to any construction or operations. Consequently, the findings demonstrate that the proposal complies with each of the relevant land use standards and demonstrates that it is feasible to obtain all other necessary permits. Furthermore, this decision imposes conditions of approval to ensure the required permits are obtained before the proposed uses are developed and become operational.

VI. Proposed Airport Uses Within the Airport Boundary

Each of the proposed uses and related development fall within the list of airport uses permitted at the Aurora State Airport, considered under the relevant laws to be a “non-towered airport”,⁴ which local governments are required to allow within the airport boundary. ORS 836.616(2); OAR 660-013-0100. *See also*, ORS 836.616(3) and OAR 660-013-0110 (listing other uses within an airport boundary that a local government “may” authorize if consistent with applicable regulations).

ORS 836.616(2) provides:

“Within airport boundaries established pursuant to commission rules, local government land use regulations shall authorize the following uses and activities:

- (a) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tie-downs, construction and maintenance of airport facilities, fixed-base operator facilities and other activities incidental to the normal operation of an airport;
- (b) Emergency medical flight services;
- (c) Law enforcement and firefighting activities;
- (d) Flight instruction;
- (e) Aircraft service, maintenance and training;
- (f) Crop dusting and other agricultural activities;
- (g) Air passenger and air freight services at levels consistent with the classification and needs identified in the State Aviation System Plan;
- (h) Aircraft rental;
- (i) Aircraft sales and sale of aviation equipment and supplies; and
- (j) Aviation recreational and sporting activities.”

⁴ OAR 660-013-0030 provides “(4) ‘Non-Towered Airport’ means an airport without an existing or approved control tower on June 5, 1995.” *See also*, ORS 836.616(4) (provisions of ORS 836.616(1) - (3) do not apply to airports with an existing or approved control tower on June 5, 1995). While the Aurora State Airport currently has an air traffic control tower (“ACTC”), the ACTC was constructed in 2015. Consequently, for statutory and administrative rule purposes, the Aurora State Airport is a non-towered airport. *See also*, *Schaefer*, 318 Or App at 625 n 8 (concluding, “For purposes of the rule, the Aurora State Airport is a non-towered airport.”).

OAR 660-013-0100 reiterates the above list, expanding on what each use means, what types are excluded from the identified uses, and the development that is authorized for the identified uses. *See*, Exhibit 15 (OAR Chapter 660, division 13). The administrative rule also adds an additional permitted use. OAR 660-013-0100(10) authorizes:

“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.”

The proposal is to develop within the expanded airport boundary only airport uses as defined by the above statute and administrative rule. As shown in the site plan (Exhibit 1 submitted at the March 6, 2025 Hearings Officer Hearing), and discussed herein, the proposal is to develop: landing pads for rotorcraft takeoffs and landings, rotorcraft, fixed-wing airplane tiedown areas, electric charging stations,⁵ fueling facilities, hangars for rotorcraft and fixed-wing aircraft, maintenance and repair facilities for those aircraft, operations areas that include sleeping bunks, meal preparation and rest areas for shift-work pilots, and small offices to manage the aeronautical operations on the property. The application also requests approval of accessory support facilities to handle electrical peak-load periods and power supply during natural disasters and other emergency situations as well as accessory facilities such as water, stormwater, and wastewater facilities. Despite demonstrating that the proposal can develop an on-site wastewater system, Applicant is also requesting that the County grant land use approval for connecting to the existing HDSE sewer system or the Columbia Helicopters drain field should either of those systems be approved for such connection through a separate land use approval on those properties.

The types of uses that will take place on the subject property include the movement of people and goods, either directly from the subject property or via taxi lanes to the KUAO runway for such things as firefighting and utility facility repair operations (serving, for example, the needs of Columbia Helicopters), emergency medical evacuation (Medevac) flights (serving, for example, Life Flight Network), medical transport (to include air ambulance and organ transport for transplants), business flights, and itinerant operations. The site will enable the charging and maintenance of eVTOL and electric-powered fixed-wing aircraft, to include itinerant aircraft. Approval of the applications will make Aurora State Airport one of the first (or the first) airports in the state capable of serving this new generation of electric aircraft and will provide transportation facilities for renewable energy-based vehicles.

Each of the above uses, elaborated in more detail below, falls within one or more of the airport uses identified under ORS 836.616(2), which are identified following the description of the use:

- Use of the site for all types of rotorcraft and fixed-wing aircraft to include, but not limited to: emergency medical, firefighting and natural disaster response operations; support to commercial natural resource sector and oil industries, and

⁵ Charging stations are necessary for electric rotorcraft and electric aircraft, and for surface vehicles that provide transportation to the subject property. Under DEQ’s rules – OAR 340-257-0030 - by 2035, all new passenger cars, SUVs, and light-duty pickup trucks must either be battery electric or plug-in hybrid electric vehicles. Therefore, having charging facilities for the steady uptake of electric terrestrial vehicles leading to that transition, is essential.

forest and stream restoration efforts; forestry and agricultural related activities; aerial construction, infrastructure, repair and heavy lift operations; aerial transport of persons, aerial transport of goods to include shipping and receiving of parts and supplies for repair of aircraft and operational needs; electronic news gathering and motion pictures support; engineering and technical support services; rotorcraft and fixed-wing aircraft maintenance, overhaul and repair services; itinerant and facility-based rotorcraft and fixed-wing aircraft use; flight instruction; accessory uses such as fueling of rotorcraft and aircraft, storage of maintenance parts, and uses related to the development proposed below. ORS 836.616(2)(a), (b), (c), (d), (e), (f), (g), (j).

- Landing pads for rotorcraft to use for landing and taking off. While on the landing pad, people and goods are loaded onto or removed from the vehicle. ORS 836.616(2)(a).
- Taxi ways for fixed wing aircraft to move around the site and to access taxi ways to the Aurora State Airport runway. ORS 836.616(2)(a).
- Tiedown areas where rotorcraft and fixed wing aircraft can be temporarily “parked,” ready for next use. ORS 836.616(2)(a).
- Hangar space where rotorcraft and fixed-wing aircraft can be temporarily parked in a covered, protected location, ready for next use. ORS 836.616(2)(a).
- Maintenance and repair facilities for rotorcraft and fixed-wing aircraft. ORS 836.616(2)(a), (e).
- Refueling and energy facilities to provide both aviation fuel for turbine or piston engine rotorcraft and electrical recharging stations for all-electric rotorcraft and fixed wing aircraft. This will include peaking/resilience systems for peak power load draws or disaster response such as private battery storage systems, and an on-site hydrogen storage tank, filled by truck deliveries, and a standby generator that can run on hydrogen fuel. Note, Applicant is not requesting approval for an energy generating facility to produce the hydrogen that will be stored and used on the site; rather hydrogen will be trucked to the site in the same way that petroleum is trucked to sites to provide petroleum-based vehicle fuels. ORS 836.616(2)(a).
- Electric charging stations for electric cars that transport people and goods to the facility. ORS 836.616(2)(a).
- Small offices to manage traffic and operations on the subject property. ORS 836.616(2)(a).
- Operations areas, sleeping bunks and break areas for shift-work rotorcraft pilots and for emergency operations. ORS 836.616(2)(a), (b), (c).

- Rotorcraft and fixed wing flight training. ORS 836.616(2)(d).
- Related accessory structures and incidental uses. ORS 836.616(2)(a).
- Related accessory uses include development of on-site water, wastewater and stormwater facilities, with authorization to connect to the HDSE wastewater system should that operator receive land use approval to serve additional parcels or to utilize the Columbia Helicopter drain field if a similar land use approval is obtained from the operator, as well as the extension to the subject property of existing and available electrical, gas, internet and telecommunications and other existing services necessary for the proposed use. ORS 836.616(2)(a).

The Board expressly finds that the proposal does not seek approval of, and this decision does not approve authorization for, any uses not listed as an airport use or identified under the administrative rule as not constituting an airport use such as commercial, industrial or manufacturing uses not provided by the rule, instruction for flight attendants or ticketing agents, or manufacturing of aircraft for sale to the public. *See, e.g.,* OAR 660-013-0100(1), (4), (5) (identifying such uses as not airport uses under the statute and rule).

This decision contains a condition of approval that limits uses permitted on the subject property within the expanded airport boundary to those airport uses permitted pursuant to ORS 836.616(2) and OAR 660-013-0100.

VII. Findings of Fact and Law

The Board of Commissioners, after careful consideration of the testimony and evidence in the record and recommendation of its Hearings Officer, 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 is zoned Exclusive Farm Use (EFU). The subject 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 and has not been in farm or forest use for at least the past 50 years. In this regard, for more than 50 years the subject property was used as a church camp and has not been farmed for at least that long. There are no rivers, streams, wetlands, floodplains or other natural hazards on the subject property or within its vicinity. The Pudding River is more than 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 any direct link to the Pudding River and is only connected to the river via a stormwater ditch serving the area along Airport Road. There is

a perennial stream that connects to the Pudding River that is mapped as beginning roughly 700-feet east of the southeast corner of the subject parcel.

3. The subject 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.
4. The subject property is roughly level and is largely 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.
5. The subject parcel is bordered to the north, west and south by parcels in the Public (P) zone that are either part of the Aurora Airport or are otherwise in aviation-related use. 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. The Pudding River serves as 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, aviation related 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 Helicopter Transport Services (HTS) headquarters and main campus. HTS is one of the largest heavy-life helicopter companies in the world. HTS charters heavy lift and fire suppression helicopters and has repair and training facilities on-site. Like Columbia Helicopters located to the north of the subject property, HTS is not within the Aurora State Airport boundary and does not have through-the-fence (TTF) access to the Aurora State Airport.

6. 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.⁶ 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 Aurora Airport Master plan that is an acknowledged part of the County's Comprehensive Plan.

⁶ "The subject parcel is benefited by an easement that allows its owners use of a paved taxi lane on adjoining property, which provides access to the airport runway." *Schaefer, supra*, 318 Or App 621.

7. The Aurora Airport is a public use airport. Applicant's proposal is for a conditional use permit to expand the land use boundary of that public use airport to include the subject property, and to approve the airport uses identified in Oregon Revised Statute (ORS) 836.616(2) and Oregon Administrative Rule (OAR) 660-013-0100 on the subject property. The application also includes a proposed comprehensive plan change to amend the Aurora Airport boundary land use map in the Marion County Comprehensive Plan to include the subject property, concurrent with the expansion of the airport boundary.
8. The proposal is an expansion or alteration of the Aurora Airport that does not permit service to a larger class of airplanes than are already served by the Aurora Airport and, as to new types of airplanes, none served by the proposal will be of a larger class than those that are already served by the Aurora Airport. The Board finds that the expert opinion of Mr. Aron Faegre on this topic as explained on Application Exhibit 40 to be credible and persuasive to demonstrate that the proposal does not permit service to a larger class of airplane. This will be ensured through a condition of approval. Therefore, no goal exception is included or required for the proposal per OAR 660-012-0065(3)(n).
9. 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.*"
10. 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.*"
11. Applicant is required to meet the farm impacts test of ORS 215.296, which is implemented in MCC 17.136.060(A)(1), for approval of the proposed alteration or expansion of the Aurora Airport to include and develop airport uses on the subject property. The Board finds more credible and persuasive the written testimony of farmer Jason Montecucco than that of opponents that the proposal will not significantly increase the cost of accepted farming practices or significantly change accepted farming practices on area farms. As Mr. Montecucco testified "No activity at the airport has ever hindered our ability to farm." The Board finds that farming has co-existed without significant added costs to accepted farming practices or significant changes to accepted farming practices on the farmed property around the airport including the farmed property that is directly across from the Aurora Airport and "P" zoned areas occupied by significant heavy lift helicopter uses that are directly across the street from farming operations. The Board also finds most credible and

persuasive the testimony of expert Dr. Irl Davis than that of opponents, that the proposed aviation activities on the subject property are safe and regulated by the Federal Aviation Administration (FAA), and that area farm drone use will not be required to significant change when the proposal is established but rather in fact will co-exist with the proposal in the same manner that it now co-exists with the significant aviation activity at the Aurora Airport. Concerning the latter, there is no dispute that the Aurora Airport is now one of the state’s busiest airports and the Board so finds.

12. 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 those that are expressly listed in ORS 836.616(2) and OAR 660-013-100 as uses that shall be authorized within airport boundaries.
13. Expansions of airport boundaries are guided by OAR 660-013. The application is not subject to demonstrating compliance with the Transportation Planning Rule of 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.*”
14. 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.
15. 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.

All other agencies either had no comment or did not respond.

- 16. In addition to the Application, submissions in support of and in opposition to the Application were received and included in the record.
- 17. Friends of Marion County (FOMC) submitted statements in opposition to the application. Friends of Marion County opposes the application asserting safety and security concerns with respect to the use and development of electric vertical takeoff and landing aircraft or “eVTOLS”. FOMC argues that the application seeks an urban use, is not in harmony with the purpose of the EFU zone, and that there are other sites that can reasonably accommodate the proposed use. FOMC alleges conflict between the proposal and use of agricultural drones in the area. The Board finds that the proposal does not present significant safety or security concerns and finds the testimony of Dr. Irl Davis most persuasive on those issues. As explained in more detail below, the Board finds that the proposal is in harmony with the purpose and intent of the EFU zone and the fact that there may or may not be other locations for the proposal is irrelevant to any approval standard that applies. The Board also finds that the subject property has a dual Comprehensive Plan designation of both Primary Agriculture but also an area that is acceptable for airport related development under private ownership per the express terms of the 1976 Aurora Airport Master Plan that is expressly incorporated as a part of the County’s acknowledged plan and so is itself acknowledged. As such, the Board also finds that the plan has already determined that putting the subject property to airport related uses under private ownership, as is approved here, is already contemplated by the County plan and so is necessarily “harmonious” with the purpose and intent of the EFU zone.
- 18. Joseph Schaefer objects to the application asserting 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) cannot apply, given the Court of Appeals’ determinations in *Schaefer v. Marion County*, 318 Or App 617 (2022). Mr. Schaefer also alleges that the proposal is not authorized by ORS 215.283(3)(b), and requires exceptions to Goals 3, 11, and 14. The Board finds that, as explained in detail in these findings, the proposal is an expansion of a public use airport, meets the requirements of ORS 215.283(3)(b) as well as OAR 660-012-0065(3)(n) and that means that no goal exceptions are required.

19. Similarly, Friends of French Prairie (FOFP) opposes the application asserting 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. FOFP argues that the proposal is for a transportation facility which cannot be approved on rural lands without an exception. The Board finds that whether the proposal involves private development on private land is irrelevant to the applicable standards – the issue is whether the proposal is an expansion of a public use airport and the Board finds that it is for all the reasons discussed in these findings. As is also explained in detail herein, the proposal does not require a goal exception for approval, therefore no goal exception to Goal 12 is required.

20. Opponents (in particular FOFP) relatedly assert that “ODAV is not expanding the Aurora State Airport to include this piece of private property” because “it is private property adjacent to the airport not physically part of the ODAV ownership” and then claim that “ODAV apparently agrees that a private entity lacks the authority to unilaterally expand a public use airport for its private use.” The Board finds that there are two different airport boundaries at work. One is the airport boundary that includes the property owned by the state. That is what FOFP is talking about in their assertions concerning their perception of ODAV’s position. The other is the airport land use boundary that is at issue in this case and that is being expanded here. The Board finds that the credible and persuasive evidence in the record is that ODAV supports the proposed land use boundary expansion sought in this case as is plain from ODAV’s Director’s letter of support in the record. The Board also finds credible and persuasive the evidence in the record from ODAV Airports Manager Tony Beach that the subject property would continue to be designated on the current Aurora Airport Master Plan as suitable for airport development under private (or public) ownership, a designation the Board finds that the subject property now has under the County’s acknowledged comprehensive plan. The Board also finds that the state law definition of the land use “airport boundary” the Court of Appeals was talking about in deciding that the boundary must be adjusted to allow airport related uses of the subject property and that is being adjusted by this decision in ORS 836.640(1), “includes the combined public *and private properties* that are permitted to have direct access to the airport runway by aircraft.” (Emphasis supplied.) The Board expressly decides that nothing requires the land use boundary being expanded here per ORS 836.640-642 and the Court of Appeals’ roadmap for approving airport related uses on the subject property, can only include publicly owned property.

21. FOFP asserts that ORS 215.283(3)(b) and “Section 3 of chapter 529, Oregon Laws 1993” always require goal exceptions for proposed “transportation facilities on rural lands”. The Board disagrees. OAR 660-12-0065(3)(n) expressly states that certain transportation facilities, to include expansions or alterations of public use airports that do not permit service to a larger class of airplane, as is proposed here, are deemed to be consistent with Goals 3, 4, 11 and 14. Therefore, as explained in greater detail below, the proposal is deemed to be consistent with those goals and that means that no exceptions are required for Goals 3, 4, 11 or 14.

22. FOFP claims that the 2024 TIA is inaccurate because it should count trips for 83,916 sq. ft. of office space and does not do so and that only counting 83,916 sq. ft. of offices is a “reasonable worst case scenario.” The Board rejects FOFP’s claim. As explained by Mr. Faegre, the proposal is only for 15,658 sq. ft. of offices in the proposed development. The Board finds that the 2024 TIA is adequate and appropriate, credible and more so than FOFP’s claims otherwise.
23. Jason Montecucco, an owner of Montecucco Farms, LLC, which operates farms in the area including a farm along airport property, testified in writing that the proposal is expected to have minimal impacts to farm uses in the area, that there have been no significant adverse impacts between the significant aviation related activity that now exists at the airport and farming operations in the area, and that the proposal will not interfere with farm drone use – that there is an existing process for gaining permission from air traffic control for using farm drones and that process is unimpeded by the proposal. The Board finds this testimony more credible and persuasive than opposing testimony otherwise.
24. Irl M. Davis, PhD, an expert in uncrewed technology and the use thereof, submitted a response to the objections of Friends of Marion County, Joseph Schaefer, and Friends of French Prairie. Dr. Davis testified in writing that the introduction of new rotorcraft pads and associated uses will have no impact on the use of agricultural drones in the area. Dr. Davis also responded to allegations of safety and security concerns noting that commercial eVTOLs are not ultralights and any use is subject to oversight through FAA regulations. The Board finds this testimony more credible and persuasive than opposing testimony otherwise.
25. 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. The Board finds Mr. Weimer’s testimony to be credible and persuasive.
26. Mr. Schaefer objects to the proposal asserting it violates ORS 660-012-0060(5) which states “the presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional, or industrial development on rural lands.” The Board finds that the proposal does not violate this provision. The proposal neither seeks nor requires a goal exception. Mr. Schaefer also claims that LUBA and the Court of Appeals ruled that TTF aviation activity at the subject property is prohibited. The Board finds rather that both LUBA and the Court of Appeals determined only that in order to establish aviation uses on the property as proposed here, that the processes being followed in this case must be pursued.
27. Mr. Schaefer seems to argue that the proposal is not a “transportation facility.” The proposal clearly seeks approval of a transportation facility, service, or improvement as is evident from the plain language of OAR 660-012-0065(3)(n) that in turn characterizes expansion or alteration of a public use airport that does not permit service to a larger class of airplane as being consistent with Goal 3, 4, 11 and 14 and so no exceptions to those

goals are required. As explained in detail in these findings, the proposal falls squarely within OAR 660-012-0065(3)(n). The Board also notes 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.” The Board finds that the proposal complies with OAR 660-013-000 et seq and so is deemed to satisfy the requirements of OAR 660 Div12..

28. Mr. Schaefer argues that MCC 17.136.0060(I) applies. He speculates that the proposed facility “will have a design capacity of more than 100 people” and asserts that “exceptions must be approved ***”. The Board finds that Mr. Schaefer uses a superseded site plan that no longer applies. The correct site plan that reflects the proposed use with the correct chart of uses and associated square footages, is the one the applicant submitted in the Hearings Officer’s March 6, 2025 hearing. Second, Mr. Schaefer incorrectly assumes that the proposal will have 83,916-squarefeet of offices and from there draws the incorrect conclusion that there will be 277 employees in the offices alone. The evidence submitted in the record does not align with Mr. Schaefer’s argument. The evidence in the record demonstrates that the enclosed structures here are primarily hangars for aircraft, maintenance shops for aircraft and the vertiport headquarters with 15,658-squarefeet of offices and the rest of the building devoted to industrial shops for working on aircraft and storing aircraft parts. Three (3) people for every 1000-squarefeet of offices, out of 15,658 squarefeet of office space, is 47 people – which is less than 100. The spaces here are large because they are designed to accommodate aircraft, not people, and aircraft are large.. The same is true for maintenance areas. There is no reasonable basis to conclude that the design capacity of the structures on the property will have a design capacity of more than 100 people and the Board finds that they will not.

Third, the Board specifically interprets MCC 17.136.0060(I), to either be satisfied or inapplicable here. MCC 17.136.0060(I) states:

“No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved within three miles of an urban growth boundary unless an exception is approved pursuant to OAR Chapter 660, Division 004.”

The Board interprets MCC 17.136.0060(I) to only require exceptions for uses where a statewide planning goal would otherwise prohibit the use, when the capacity limitation applies in code. Otherwise, the exception process is pointless because there is no goal and no goal policy to vary from, which is what a goal exception is – a variance from the requirements of a goal. ORS 197.732(1)(b). The Board finds it persuasive that the referenced OAR 660-040-000(1) states:

“Rules in other divisions of OAR 660 provide substantive standards for some specific types of goal exceptions. Where this is the case, the specific substantive standards in the other divisions control over the more general standards of this division.”

OAR 660-012-0065(3)(n), is an “other division” of “OAR 660” and it provides “substantive standards” for “specific types of goal exceptions” expressly determining that in some circumstances, particular uses such as the proposal here, are deemed to be consistent with Goals 3, 4, 11 and 14 and so in that circumstance no goal exception is required. Thus, the Board interprets its standard to mean that if a facility has a design capacity of 100 people an exception to a goal that the proposal is inconsistent with is required. But the Board also interprets this provision to mean that if another provision of law such as OAR 660-012-0065(3)(n), determines as a matter of law that the particular use is deemed to be consistent with Goals 3, 4, 11 and 14, then no exception is required to those goals. Thus, MCC 17.136.0060(I) does not require exceptions to Goals 3, 4, 11 or 14 with which state law expressly says the proposal is consistent.

The Board further interprets the standard to only require an exception if there is a different goal that the proposal is not consistent with. The Board finds that there is not any such goal with which the proposal here is inconsistent and that the standard does not require a goal exception in this case. The Board finds that, in fact taking an exception to a use that is consistent with the goals, is improper *DLCD v. Yamhill County*, 183 Or App 556, 562 (2002) *rev. dism.* 336 Or 126 (2003). (“It is only when a use is *not* permitted at all under the applicable goal that the exceptions process may come into play.”) (Emphasis in original.); *but see Young v. Jackson County*, 49 Or LUBA 327, 336 (2005). The Board further finds that even if not improper to take an exception to a use that the goals allow, the question still becomes what goal or goal provision would one take an exception to? The state law that MCC 17.136.0060(I) apparently implements provides the most plausible answer to this question. In this regard, OAR 660-033-0130(2) has language that is nearly identical to MCC 17.136.0060(I). OAR 660-033-0130 implements Goal 3. That means that the goal to which an exception is supposed to be taken is Goal 3. But here, state law expressly states the proposal is *consistent with* Goal 3 and so no purpose is served by taking a Goal 3 exception where LCDC has adopted a specific rule that says the proposal is consistent with that goal. The Goal 3 use table - OAR 660-033-0120 table - lists “Transportation improvements on rural lands allowed by OAR 660-012-0065” as a reviewable EFU use; there is no cross-reference to “(2)” – OAR 660-033-0130(2) that appears for that line. Under OAR 660-033-0130’s opening paragraph, the absence of a numeric reference means 0130 does not add any minimum criteria—which includes subsection (2)’s 100-person cap. Put differently, the Board finds that LCDC deliberately did not attach the 100-person/three-mile limit to TPR-authorized transportation improvements in OAR 660-012-0065(3)(n).

Therefore, the Board finds that MCC 17.136.0060(I) either does not apply or it is satisfied because no goal exception is required.

29. Mr. Schaefer and other opponents argue that the proposal requires an alternatives analysis under OAR 660-012-0070(3). The Board finds that OAR 660-012-0070 in its entirety by its terms does not apply. Rather, the proposal can be and is approved under OAR 660-012-0065(3)(n).

30. Opponents assert that the proposal is contrary to OAR 660-004-0022 and other goal exception provisions. The Board finds that they are mistaken. The Board finds that no goal exceptions are required and that the goal exception rules do not apply.
31. The Aurora Airport Improvement Association (AAIA) 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 aviation related companies in particular those 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 and immediately around the Aurora Airport. He stated that the proposal would support the Oregon Business Plan in promoting the concentration of these similar aviation related uses and will bring development and jobs to a “long-time unproductive property.” The Board finds Mr. Helbling’s testimony credible and persuasive.
32. FOMC claims that “there is no Airport Layout Plan for the Aurora State Airport that includes the subject property within the state-owned airport facility.” The Board finds that claim to be irrelevant to this proceeding. The Board finds that there is an Airport Layout Plan in the acknowledged Marion County Comprehensive Plan that designates the subject property as acceptable for airport related development under private ownership. The Board also finds that contrary to FOMC assertions otherwise that the fact that the subject property will be developed as a private through the fence operation does not prevent the Aurora Airport land use boundary from being expanded as proposed to include the subject property as the Court of Appeals said ORS 836.642 contemplates to enable the development of aviation uses on the property.
33. The Board finds that opponents assert incorrectly that the 1976 Aurora Airport Master Plan is not a part of the County’s current comprehensive plan. The Board expressly decides that the 1976 Aurora Airport Master Plan is an acknowledged part of the county’s comprehensive plan, as the Court of Appeals has repeatedly explained.
34. 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 on the duration of the approval established in MCC 17.119.190 in general, asserts that an exception to Goal 12 is required, and asserts that the proposal is not consistent with ORS 215.283(3)(a). As explained in detail in these findings, the Board agrees with the applicant that the requested extended duration for this approval is appropriate and allowed by the County code given the circumstances that the opponents to this application have proven to be litigious when it comes to the subject property and the airport and will likely appeal any approval as they have for the other approvals for this property and the airport itself over the past several years. As is also explained in detail in these findings, no Goal 12 exception is required and the proposal is wholly consistent with ORS 215.283(3)(b), and that ORS 215.283(3)(a) is an alternative to ORS 215.283(3)(b) and ORS 215.283(3)(a) simply does not apply.
35. The City of Wilsonville objects to the application. The City of Wilsonville argued it does not support use of EFU land for non-agricultural uses in the French Prairie area of the Willamette Valley, and objects to intensification of airport uses, asserting environmental

and infrastructure issues that might negatively impact the City of Wilsonville. The City of Wilsonville asserted a concern about downstream impacts of stormwater discharge from the proposed facility. The Board finds that state law and the acknowledged County code allow the proposal on EFU zoned land, ORS 836.640-642 expressly encourage and contemplate intensification of airport uses at the Aurora Airport through increased TTF activity and the stormwater discharge for the proposal will not cause adverse downstream impacts.

36. Wendie Kellington (Kellington Law Group), attorney for Applicant went over the application, and discussed the exhibits presented with the application and for the hearing on behalf of the applicant.
37. Wendie Kellington gave a PowerPoint presentation explaining the application and put a hard copy of that presentation into the record.
38. 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 annual tax revenue. The Board finds Mr. Millar’s testimony to be credible and persuasive.
39. Aron Faegre testified in favor of the application. Mr. Faegre is an architect and civil engineer who specializes in airport planning and development. The Board finds Mr. Faegre to be an expert in aviation planning and airport development. The Board finds the testimony of Mr. Faegre persuasive and credible and more so than that of opponents. Mr. Faegre testified about the noise study and indicated that electric aircraft, including eVTOLs are significantly less noisy than helicopters. Mr. Faegre stated that the noise impacts from the proposed use are fully captured within the existing noise contours for the Aurora Airport and are lesser than existing Aurora Airport noises. Mr. Faegre provided evidence showing the existing noise contours of the airport and the noise contours associated with the proposal which supported his testimony.
40. Tony Helbling, an air ambulance and helicopter pilot, testified in favor of the application. Mr. Helbling testified that the proposal creates additional space for aircraft that use the runway as well as additional needed room for helicopters in medical transportation and construction. Mr. Helbling testified about the “clusters” of similar use companies centered at the Aurora Airport. The “cluster” of companies, including direct competitors, benefit by their proximity to one another to share services and workforce. Mr. Helbling noted that the industry “clusters” also reduce impact to surrounding areas. The Board finds Mr. Helbling’s testimony to be credible and persuasive.
41. 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 positive economic impact on the area in revenue and jobs. The proposal, if approved, will enable the County

to capitalize on emerging technology, and will be a strategic investment in the County's growth. The Board finds Mr. O'Malley's testimony to be credible and persuasive.

42. At the Hearings Officer proceeding, Betsy Johnson testified at the hearing in favor of the application. Ms. Johnson was formerly the Director of the Oregon 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 benefits of the proposal and the benefit of "through the fence" legislation which specifically identifies the Aurora Airport as a "pilot site" for the growth of aviation related industry and directs the state to support proposals like this one at the Aurora Airport. The Board finds Ms. John's testimony credible and persuasive.
43. At the Hearings Officer proceeding, Mercedes Rhoden-Feely testified in opposition to the application in her individual capacity and in her representative capacity as a city councilor with the City of Aurora.
44. At the Hearings Officer proceeding, Nancy Snyder testified in opposition to the application. Ms. Snyder owns a house and farm across the street from the Aurora Airport. Ms. Snyder testified that she objects to the application based upon environmental concerns, noise concerns, and impacts on surrounding farms and community. Ms. Snyder discussed an incident in which fluids were dropped over her field from existing operations at the Aurora Airport. Concerning the latter, the Board finds that while the issue pertaining to alleged conduct by HTS has limited relevance to the proposal here. However, the Board finds the testimony of HTS' chief pilot and director of flight operations is credible and persuasive regarding these allegations.
45. At the Hearings Officer proceeding James Snyder testified in opposition to the application. Mr. Snyder, Nancy Snyder's brother, opposes the application because of the impact of the existing helicopter operations associated with the Aurora Airport, on his residence property that is across Airport Road from the subject property/airport and on which he recently built his home. Mr. Snyder stated concerns about Airport Road maintenance and the noise from increased helicopter presence. Concerning the latter, the Board finds most credible and persuasive the testimony from Mr. Faegre that the noise associated with the proposal will be no greater than noise already experienced at the Snyder property. Concerning road maintenance, a condition is imposed requiring a recorded road maintenance agreement for maintaining Stenbock Lane which accesses Airport Road from the subject property and the Board also notes that Airport Rd upon which the property has frontage is a major collector that the County maintains. The Board further finds that there are no special features about the proposal that warrant imposing any ongoing Airport Rd. maintenance obligations on the proposal. Transportation mitigation conditions are imposed as conditions in this decision that adequately mitigate for surface transportation impacts from the proposal following the transportation analyses by DKS Transportation engineer Lacy Brown, which DKS testimony/analyses the Board finds more credible and persuasive than opposition assertions to the contrary. In summary, the Board finds that the proposal does not add any

road maintenance issues that are not adequately addressed by the proposal as approved and conditioned herein.

45. Attorney Kelly Huedepohl submitted written testimony into the record on behalf of the applicant observing that the City and its planning commission chair Mr. Schaefer “dismiss the airport’s projected economic benefits as inadequate to justify development of the subject property. At the same time, these same decision-makers are advancing a plan to expand the City’s urban growth boundary (UGB) by 354.24 acres —202.11 acres of which is EFU-zoned farmland, including the subject property—based entirely on their own “optimistic” predictions of airport-driven economic growth over the next 20 years. This is selective reasoning at its worst: when the City wants the land for itself, speculatively-optimistic economic growth at the airport is a compelling justification to convert massive areas of farmland to urban uses; when the applicant seeks to develop just one of those parcels for immediate airport related use, however, suddenly the ‘economic advantages of expanding the Aurora State Airport’ do not adequately protect farmland.” The Board agrees that there can be no reasonable dispute that the proposal will provide significant economic benefits to the area and that Aurora Airport has long been credited with doing so.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met.

GENERAL 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 the airport boundary (an airport is a transportation facility) and allowed airport related uses is a transportation facility and improvement that is 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 *Schaefer v. Oregon Aviation Board*, 312 Or App at 345 (discussing what is meant by different class of airplane). All airplanes that would use the proposed facility are airplanes that have permitted service at the airport – the proposed facility does not permit the airport to service to any larger airplanes than are otherwise permitted at the airport. The facility simply serves airplane classes that are already at the airport. Furthermore, as explained by expert Aron Faegre in Application Exhibit 40, which the Board incorporates by this reference into these findings, the taxiway access to the property is limited to 82 feet in width due to existing structures, which precludes larger airplanes than those already permitted service at the airport, to access the subject property – the largest fixed-wing aircraft that could utilize the subject property’s access to the taxiway and runway under the proposal would be those with wingspans no larger than 75 feet which generally describes Class B-II aircraft. The Board finds Mr. Faegre’s testimony to be credible and persuasive. Last, nothing about the proposal requires the airport to implement any design standards to permit a larger class of airplane to use the Airport

The rule also provides that an expansion or alteration of a public use airport is deemed to be consistent with Goals 3, 4, 11 and 14. Consequently, an exception to statewide Goal 3 is not required and, as explained below in the section addressing the Statewide Planning Goals, no exceptions to any other goals are required either.

Furthermore, ORS 836.625(1)⁷ states 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 Oregon Court of Appeals in *Schaefer v. Oregon Aviation Board*, 312 Or App 316, 345, *aff’d on recon*, 313 Or App 725 (2021), interpreted OAR 660-012-0065(3)(n) and held:

“an ‘expansion[] or alteration[] of a public use airport that do[es] not permit service to a larger class of airplane’ is an expansion or alteration that does not authorize the airport, by increasing design standards or otherwise, to serve a group of fixed-wing aircraft with a greater variety of approach speeds, a greater variety of MTOWs, or a greater variety of wingspans or tail heights.”

Under that definition, the proposal – either the airport boundary expansion or the allowed airport related uses - clearly does not permit service to a larger class of airplane. All the fixed-wing airplanes that would use the proposed facility are permitted service at the airport – the proposed facility does nothing and provides nothing that permits the airport to provide service to larger airplanes than are otherwise using the airport. Nothing

⁷ ORS 836.625 provides, in relevant part:

“(1) 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.”

about the proposal allows airplanes that are heavier, have a taller tail height or larger wingspan or greater approach speeds to use the airport. The Aurora Airport design standards do not need to change under the proposal.

The Board further notes that rotorcraft are not “fixed-wing aircraft” and, therefore, rotorcraft are not relevant to this standard. However, regardless, the Board finds that the proposal does not permit service to a larger class of rotorcraft than already use the airport by weight, tail height, wingspan, or approach speed and requires no design changes to the Aurora Airport to permit service to such larger classes of airplanes either. The evidence in the record clearly establishes that the airport already is adjacent to both HTS and Columbia Helicopters which serve rotorcraft that are among the largest and heaviest in the industry. Opponents do not contend otherwise. Instead, opponents contend that the aircraft that will use the proposed use will be *different* than the aircraft that now use the airport. That is true in the sense that the proposal will provide facilities for electric fixed-wing and rotorcraft aircraft to include eVTOLs and that neither electric aircraft nor eVTOLs are now served at the Aurora Airport. But the operative terms under OAR 660-012-0065(3)(n) is “*larger* class of airplane” as the Court of Appeals has defined the term, not *different* airplanes – class or otherwise. The Board finds that the proposal **does not** constitute an expansion or alteration that authorizes the Aurora Airport, by increasing design standards or otherwise, to serve a group of fixed-wing (or other) aircraft with a greater variety of approach speeds, a greater variety of maximum take-off weights, or a greater variety of wingspans or tail heights. Therefore, the proposed alteration or expansion of the airport boundary and allowed airport related uses within the expanded boundary does not provide service to a “larger class of airplane.”

The Board observes that the term “expansions” in the context of OAR 660-012-0065(3)(n) means expanded pursuant to OAR Chapter 660, division 13 by a local government adopting a map showing an airport boundary that includes a larger area than the boundary shown on the previously adopted map of the airport. *See, Schaefer v. Marion County*, 318 Or App 617, 619-20, 509 P3d 718 (2022) (interpreting OAR 660-012-0065(3)(n)). The Board further observes that the term “alterations” as used in the rule means changes or modifications to the development and uses permitted within an airport boundary, whether they are uses and development within an existing airport boundary or those allowed within an expanded airport boundary. Consequently, OAR 660-012-0065(3)(n)’s “consistent with Goals 3, 4, 11, and 14” provision applies both to the expanded airport boundary and to the airport uses and related development permitted within that airport boundary.

Accordingly, the proposed expansion of the Aurora Airport land use boundary and alteration to allow airport related uses within it, is deemed to be consistent with Goals 3, 4, 11 and 14 under OAR 660-012-0065(3)(n) and exceptions to Statewide Goals 3, 11 and 14 are not required.

To round out these findings, the Board further notes that within the expanded airport boundary, the Applicant requests authorization only for “airport uses” as they are expressly defined by statute and administrative rule. *See*, ORS 836.616(2) and OAR 660-013-0100. These proposed airport uses represent “alterations” of the public use Aurora State Airport

and, pursuant to OAR 660-012-0065(3)(n) are considered consistent with Goals 3, 4, 11 and 14. These uses, and their related development, are permitted on EFU zoned land because ORS 826.625(1) provides:

“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.”

ORS 836.616(2) and OAR 660-013-0100 provide a list of airport uses and activities that “shall” be authorized within airport boundaries. Once a property is within an airport boundary, those listed uses must be allowed by the County. As discussed in detail below, each of the proposed airport uses and supporting development fall into one or more of the airport uses identified by the statute and rule. By comparison, ORS 836.616(3) and OAR 660-013-0110 address uses that “may” be allowed by the County within an airport boundary. None of the uses proposed in this application fall into the list of ORS 836.616(3) or OAR 660-013-0110 “may” uses.

Additionally, the Board notes that Mr. Schaefer and FOFP insists that OAR 660-012-0065(3)(n) is beyond LCDC’s authority to promulgate. The Board does not understand why that would be so. As the Court of Appeals explained in commenting on the same objection in one of Mr. Schaefer’s cases against the airport in which he also asserted that the rule is invalid:

“*** nothing in the text of the rule suggests that LCDC intends to allow any transportation improvements on EFU land without applying the farm impacts test; the rule does not purport to supersede the statutory requirement that “[r]oads, highways and other transportation facilities and improvements” not otherwise addressed in ORS 215.213 and 215.283 can be allowed without a goal exception only if they are also “subject to” “ORS 215.296,” the farm impacts test. ORS 215.213(10); ORS 215.283(3). The proposed expansion of the airport boundary and proposed airport uses are permitted conditional uses under MCC 17.136.0050.” *Schaefer v. ODAV*, 312 Or App n 26 (2021).

The Board agrees with the Court of Appeals that the rule – OAR 660-012-0065(3)(n) - is consistent with the authority granted to LCDC to promulgate it in ORS 215.283(3)(b) and that the application here is as required, subjected to the farm impacts test of ORS 215.296, and implemented by the Marion County Code.

Finally, Mr. Schaefer argues that under MCC 17.136.050(J)(4) that because a heliport is specifically allowed as a conditional use in the County’s commercial and industrial zones, that it may not be allowed as an “other transportation facilities and improvements” under MCC 17.136.050(J)(4). The Board finds that Mr. Schaefer misinterprets the County code. The Board finds that there is no basis for Mr. Schaefer’s negative inference - just as no negative inference was appropriate in *Western Land & Cattle, Inc. v. Umatilla County* (Flying J, Inc), 230 Or App 202 (2009) in which the court affirmed LUBA’s determination that no negative inference was warranted where “The

‘express language’ of UCDC 152.262(H) permits ‘truck stops and truck terminals’ as a conditional use in the CRC zoning district; it says nothing about truck stops anywhere else. ***.’ Similarly, here the fact that a heliport is listed as an allowed use in the commercial zone, says nothing about heliports anywhere else – especially where as in this case, heliports are a type of transportation facility or improvement that is expressly allowed in the subject EFU zone. The Board interprets MCC 17.136.050(J)(4) to specifically subsume and allow all other transportation facilities and improvements that are not otherwise expressly allowed by the chapter. Heliports are not otherwise expressly allowed under the chapter. The Board finds that it is unnecessary to specifically list every possible type of transportation facility or improvement that refers to. The Board further finds that the MCC 17.136.050(J)(4) reference and link to OAR 660-012 is a reference designed to clearly establish that the provision allows all of the uses that rule allows because that is what the provision says. The Board reinforces that it is unnecessary for MCC 17.136.050(J)(4) to list the entire universe of “other transportation facilities or improvements”. The Board finds it is acceptable for the provision to say that other transportation facilities and improvements are allowed under that provision and the provision’s citation to OAR 660-012 which includes OAR 660-012-0065(3)(n). Here, the Board finds, OAR 660-012-0065(3)(n) to which MCC 17.136.050(J)(4) expressly points as containing allowed uses, allows expansions or alterations or public use airports in the circumstances here. The proposal includes a request for an alteration of a public use airport to include a heliport as the MCC defines that term in MCC 17.110.262. A heliport is an “area used for the takeoff and landing of helicopters or other VTOL aircraft capable of hovering and may include any or all of the area of buildings which are appropriate to accomplish these functions.” The Board finds that is a customary and usual aviation-related activity that is a permissible conditionally permitted alteration of the public use airport on land zoned EFU under MCC 17.110.262. The Board finds that the legislature, and LCDC both intended that local governments allow the transportation facilities outlined in ORS 215.283(3), OAR 660-012-0065 and ORS 836.640-642, as well as ORS 836.616 on land zoned EFU as is being proposed here. The Board chooses to interpret its code to be consistent with the statutory and administrative rule scheme. The Board also chooses to interpret its code in a manner that is consistent with the Marion County comprehensive Plan designation for the subject property from the 1976 Aurora Airport Master plan that designates the subject property as being acceptable for airport-related development in private ownership. A heliport is airport related development. The Board finds that it is inappropriate to interpret the County code in a manner that forecloses the very airport related uses that the plan states the subject property is acceptable for. For all these reasons, the Board expressly rejects Mr. Schaefer’s claim that the fact that helipads are allowed in commercial or industrial zones means they cannot be allowed as an other transportation use under MCC 17.110.262.

Similarly, Mr. Schaefer argues that the proposal is for a public use airport and a public use airport is not listed as an allowed conditional use in the EFU zone and rather that because an airport is listed as a use that is allowed in the P zone and that must mean that the proposal is not allowed in the EFU zone under MCC 17.136.050(J)(4). For the same reasons listed above, the Board finds this to be a misinterpretation of the County code. The Board expressly interprets its code to allow the proposed expansion or alteration of the Aurora Airport – a public service airport - under the terms of MCC 17.136.050(J)(4)

which points to OAR 660-12-0065(3)(n) which expressly allows certain airport related land use actions. The Board rejects Mr. Schaefer's interpretation of the code that allowing an airport in the P zone forecloses an airport from being an allowed "other transportation facilities and improvements" that is expressly allowed by state law and the County code.

The Board finds that the County has specifically authorized the uses that the legislature allowed under ORS 215.283(3) in the County EFU zones and that includes the uses allowed by ORS 215.283(3)(b) and thereunder per OAR 660-012-0056(3)(n). Therefore, the Board finds that the proposal is an allowed conditional use in the county EFU zone.

3. MCC 17.119.020/025 concerning ownership and signature requirements for the application

MCC 17.119.020 states that an application for a "conditional use or to enlarge, expand or alter a conditional use" is to be filed by "the owner of the property that is the subject of the application" on a county form. Similarly, MCC 17.119.025 requires the signature of "all owners of the subject property." The Board interprets the phrase "the owner of the property that is the subject of the application" and "all owners of the subject property" to refer to the conditional use application for particular uses, not to owners of areas where a possible future septic system connection might occur when and if another property receives appropriate land use approval to make such a connection. The application has been filed by the property owner as required and signed by the owner as required. Opponents assert that the application is not on behalf of and signed by all of the owners of the property because the application seeks approval to connect to an expansion of the HDSE or Columbia Helicopters sewer system to serve the subject property, if HDSE or Columbia is approved to do so in a subsequent land use application. The Board rejects opponents' contention concerning the meaning of MCC 17.119.0020 and 00025. The owner of the property that would connect to the HDSE or Columbia Helicopters sewer system has filed and signed the application. When and if HDSE or Columbia Helicopters seek to expand their sewer systems to serve the subject property, they will file and sign an application to do so.

The proposal here is to manage septic onsite and does not require connecting to HDSE's septic system or Columbia Helicopter's system for sewerage disposal – that is merely an option if HDSE or Columbia someday seeks and receives independent approval to connect to the subject property, that the subject property's land use approval would not need to be modified to do so. But in all cases before the subject property can connect to either the HDSE or Columbia Helicopters sewer systems, the owners of such systems and property will have to file applications and obtain such land use approval to do so – meaning that HDSE or Columbia Helicopters would need to file land use applications that are signed by the appropriate persons with the requisite legal interests.

This conditional use permit was signed by the people who are required to sign it under MCC 17.119.020 and MCC 17.119.025 and the Board finds that both of those standards are satisfied.

Opponents also assert that the County’s zone change procedure in MCC 17.123.020.C “also requires a signature from the owners of all property where the proposed development will occur.” (City of Aurora City Attorney Robinson, August 9, 2025 Letter, p 11, Para 2 and Mr. Schaefer March 2, 2025 Letter, p 5, Para 3). Mr. Robinson and Mr. Schaefer misread the county code. The County code at MCC 17.123.020.C actually states: “A quasi-judicial zone change may be initiated by a property owner(s) consistent with the application requirements of MCC 17.119.020 and 17.119.025.” It says nothing about its scope pertaining to development. Regardless, the Board finds that the zone change provisions of the County code do not apply because the proposal is not for a zone change and the scope of the cited chapter is limited to zone changes. Moreover, the Board also finds that, as explained above, the owner of the subject property has both submitted and signed the application.

Opponents also assert that the application to expand the airport boundary – which requires a comprehensive plan amendment - is inconsistent with Plan Amendments Policy 2 that says “Quasi-judicial amendments may be initiated by the subject property owners with an application form supplied by the Marion County Planning Division.” As explained above, the application is submitted by the owner of the subject property and when and if HDSE or Columbia wish to connect their systems to the subject property then they must obtain appropriate land use approvals, on forms they sign, to do so. The plan amendment application is submitted and signed by the owner of the subject property, as required.

The proposal meets all required ownership and signature requirements, which are established in MCC 17.119.020/025.

5. MCC 17.119.060 governing conditions of approval

Under MCC 17.119.060, the County 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 County imposes 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 to include those recommended by the Hearings Officer. Various conditions of approval are imposed as a part of this approval. The Board finds that all of the imposed conditions of approval are necessary for the public health, safety or general welfare and are within the county’s authority to impose. No one claims otherwise.

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;*

The Board finds that it has the power to grant the requested 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. The planning director approved the conditional use in the sense that he provided findings for and recommending approval of the conditional use as well as the plan amendment with which it is consolidated. The Board finds and interprets its code to mean that when the proposal is a consolidated request for a conditional use permit that also requires 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 Board of Commissions has both the authority and obligation to be the final decisionmaker. Accordingly, the Board finds that the consolidated request is required to be approved by the Board of Commissioners and so the proposal is consistent with MCC 17.119.070(A).

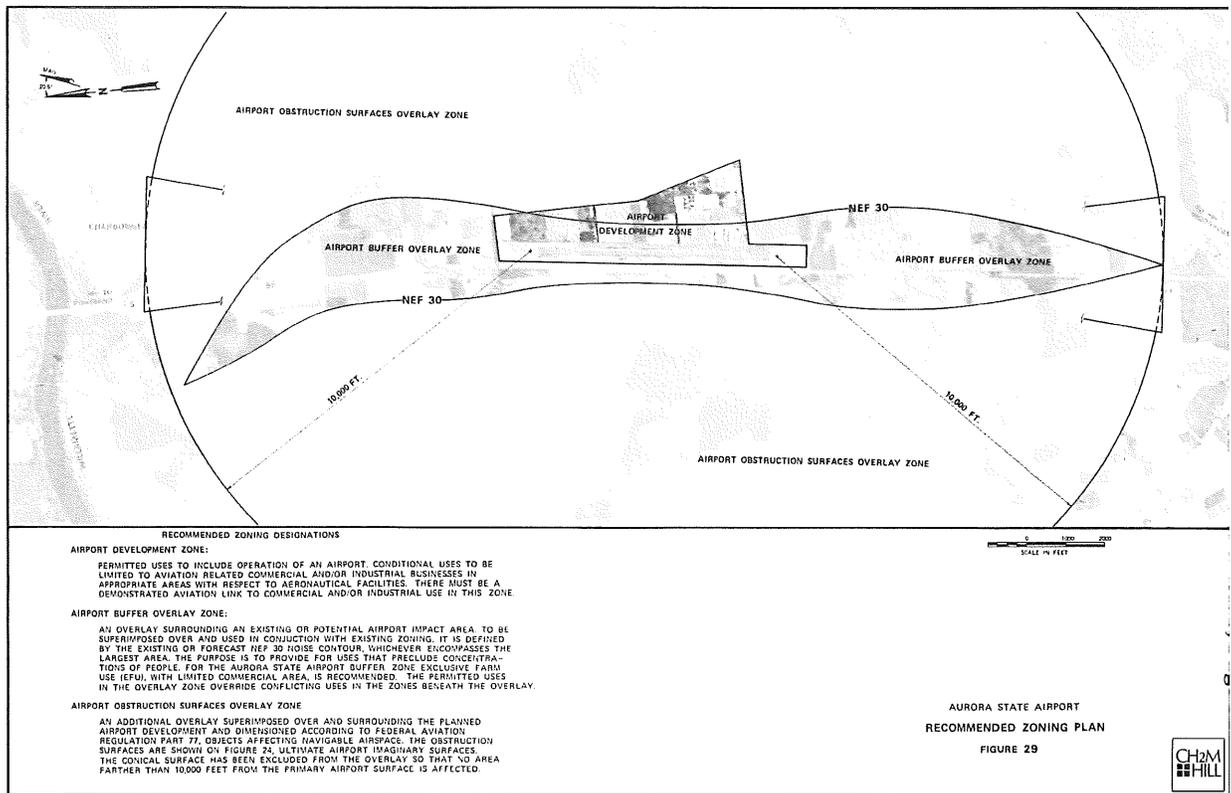
B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;

MCC 17.136.010 states 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 ends with, “The EFU zone is intended to be a farm zone consistent with OAR 660, Division 033 and ORS 215.283.” The Board finds that the above standard is met on evidence that the use allowed in the EFU zone both under state law and under the County’s code. The Board also finds that the proposal does not impose any significant adverse impacts on nearby agricultural operations. Specifically, first the Board interprets this provision to mean that where the proposed expansion of the airport boundary and permitted airport uses is authorized by ORS 215.283(3)(b), which is implemented by MCC 17.136.050(J)(4), that the proposal is consistent with the cited authorities. The Board further finds that MCC 17.136.010 recognizes a broad range of non-agricultural uses 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 Board finds that the proposed use, as authorized by ORS 215.283(3)(b) and OAR 660-12-0065(3)(n), is harmonious with the purpose and intent of the EFU zone.

Second, the Board finds that compliance with this provision is demonstrated by the evidence in the record from Jason Montecucco of Montecucco Farms establishing that the proposal will not have an adverse impact on surrounding agricultural operations, which have operated harmoniously with the adjacent helicopter operations (HTS and Columbia Helicopters) and airplane operations (Aurora State Airport) for decades. Similarly, the Board finds that compliance with this provision is established under the testimony of expert Dr. Irl Davis that the proposal will not interfere with agricultural drone operations. Furthermore, the Board finds that the 2024 TIA prepared by DKS Associates and its supplement, demonstrates that transportation impacts on traveling farm vehicles will be minimal. The 2024 TIA concludes that there will be less than a 5-second increase in the travel time required to go half-way around the combined subject property and airport in either direction during both the AM and PM peak hours. Application Exhibit 39, page 32 (2024 TIA). The Board notes that opponent Schaefer claims that “an urban development that requires a Goal 3 exception is by definition not in harmony with the purpose of the

EFU zone.” The Board finds that this objection is misplaced. The Board finds that the proposal requires no Goal 3 exception.

Last the Board finds that the proposal is necessarily one that is in harmony with the purpose and intent of the EFU zone because the subject property has a plan designation whose zoning allows for the expansion of an airport as a conditional use. The subject property is in an area that the 1976 Aurora Airport Master Plan designates as acceptable for airport related development under private ownership. Application Exhibit 6, p 40, 44, 55. The Board finds that 1976 master plan is a part of the County’s acknowledged comprehensive plan and is itself acknowledged. The 1976 Master Plan’s “Suggested Land Use Designations” for the subject property is “Airport Development”. Application Exhibit 6, p 50. The 1976 KUAO Master Plan’s “Recommended Zoning Plan” for the subject property is “Airport Development zone” as shown on Application Exhibit 6, p 51:



The recommended Airport Development Zone’s “Permitted Uses” “include operation of “airport conditional uses to be limited to aviation related commercial and/or industrial businesses in appropriate areas with respect to aeronautical facilities. There must be a demonstrated aviation link to commercial and/or industrial uses in this zone.” Application Exhibit 6, p 51. The Board finds that the proposal approved herein is for an airport conditional use, consistent with the 1976 master plan. The Board finds the proposed airport conditional use to be limited to aviation related commercial and/or industrial businesses, and finds that the applicant has demonstrated the proposal’s clear link to such aviation related commercial and/or industrial uses. The Board interprets this provision to mean that areas in the recommended zoning plan as “Airport Development Zone” are

“appropriate areas” under that plan for such aviation related uses as are approved here. The Board finds that the proposal is approved in an “appropriate area” under and as contemplated by the 1976 Master Plan. Further the Board finds that the referenced aviation related uses that the acknowledged 1976 Master Plan determines to be appropriate for the subject property includes facilities to be developed under private ownership as here, and do not refer to airport facilities developed by, owned by or on land owned or leased by, the state or federal government. The Board interprets the 1976 Master Plan’s reference to the “Airport” to include all land in public and private ownership that that plan states is to be in “Airport Development” and that the reference to “airport” in the 1976 master plan is a reference that includes the subject property that the 1976 Master Plan designates as acceptable for airport related development in private ownership. Put another way, the Board expressly interprets the 1976 master plan as contemplating that the subject property will be a part of the airport’s land use boundary, developed under private ownership with airport related uses, but not owned by the state or federal government. The Board further finds that it is important to apply the 1976 master plan and other County land use regulations in a manner that is consistent with ORS 836.640-642 which designates the Aurora Airport as a pilot site that the legislature encourages and expects will be developed with significant private through the fence aviation operations exactly as is proposed here. The Board finds that once the subject property is brought into the Aurora Airport’s land use boundary as the Court of Appeals explained was required and in the manner that the court required, which is being done here and with which the proposal is wholly consistent, that both state law and the County Plan allow, expect and encourage the development of the aviation related uses in private ownership that are proposed here.

The Board finds that the EFU zone that is applied to the subject property is necessarily burdened and informed by the above unique airport related land use regulatory program that is established, imposed on the subject property and contemplated by the Marion County Comprehensive Plan’s inclusion of the 1976 Aurora Airport Master Plan as a part of the County’s Comprehensive Plan. Accordingly, the Board finds that in addition to the reasons stated in other findings under this provision, that the proposal is in harmony with the purpose and intent of the EFU zone because the EFU zone applied to this property is applied to the subject property with the understanding that the airport related designations from the 1976 Master Plan establish the ultimate contemplated uses of the subject property.

For the above reasons, the Board finds that the proposed airport expansion and airport uses are in harmony with the purpose and intent of the EFU zone. The Board finds that the proposal is consistent with this 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.

The Board finds that this criterion is met by ensuring that the conditions imposed are 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. The Board finds that the conditions herein imposed meet this standard.

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 alongside the Aurora Airport, which the Board finds is and has been one of the busiest airports in the state. The Board finds that the credible and persuasive evidence in the record demonstrates that the proposal will not cause significant changes in accepted farming practices or significant increases in costs of accepted farming practices. The Board finds that the impacts from the proposed use are substantially similar to impacts already experienced by farm operations in the area from the existing airport and helicopter-based operations immediately adjacent to the airport 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 or located anywhere else around the airport or airport related lands.

The specific assertions in the record alleging farm conflicts came from written testimony from Aurora Farms, objecting that the proposed facility will foreclose or make it more difficult or expensive from them to use drones in farming missions because they will have to start coordinating with air traffic control (ATC) suggesting they do not have to do so now, and arguing that the proposed facility's traffic will make it hard or unsafe for farm equipment to move around. FOFP and Friends of Marion County (FOMC) made similar assertions, as did Nancy Snyder, who additionally claimed that farm workers will stop working and stare at aircraft flying to and from the subject property and that this is a significant farm impact.

However, the Board finds more persuasive and credible the testimony from Montecucco Farms, Dr. Irl Davis, and the traffic analyses provided by Lacy Brown and her firm DKS, that the proposal will not make it significantly harder or less safe to farm and importantly will not cause significant changed to accepted farming practices or significantly increase the cost of accepted farming practices on Aurora Farms or any other area farm operation.

Concerning the claim that farm workers will stop and stare at aircraft operations from the subject property, the Board finds that claim unpersuasive. If farm workers are

inclined to do that, they are inclined to do so now because there are significant large aircraft including rotorcraft operations taking place across from the Snyder farm now including aerial practice exercises on the HTS property across from the Snyder property, as well as large rotorcraft flying to and from that property. The Board is unpersuaded that the aircraft flying to and from the subject property – even if they are electric aircraft to include eVTOLs – will cause farm workers to so stop working as to cause a significant change in accepted farming practices they perform or to add a significant cost to those accepted farming practices. The farming operation must now manage its workers who now work next to one of the state’s busiest airports and the Board finds that it is more likely that that management will remain substantially the same after the proposed operation begins.

Relying on the expert testimony of Dr. Davis, the Board finds that the proposal will not make it less safe to farm and the proposal does not introduce the potential for domestic terrorism as claimed by FOMC and FOFP and the Board also finds that the proposal will be fully regulated by the FAA.

Concerning slow moving farm traffic, the Board finds that at most there will be less than a 5 second delay experienced by farm vehicles moving around area roads per the expert testimony of Lacy Brown of DKS, which testimony the Board finds to be credible and persuasive. The Board finds that a 5-second delay will not and does not cause a significant change in accepted farming practices or cause significant costs to accepted farming practices.

Aurora Farms expressed concern that the proposal may cause conflicts with agricultural drone usage. Concerning drone use, the Board finds that use of drones in farming operations adjacent to the Aurora Airport already requires ATC permission, a process which will not change as a result of the proposed airport uses on the subject parcel. The Board finds persuasive and credible the evidence presented by the applicant’s expert Dr. Irl Davis, that ATC permission is currently required for lawful drone operations to occur as a part of the agricultural enterprise that takes place on Auora Farms due to their proximity to the existing operations at the Aurora Airport. (Applicant’s March 6 Hearings Officer Hearing Exhibit 1, p 6.). As Dr. Davis explained, 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 specifically testified 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.***.”

Further, the Board finds persuasive and credible that area farmer, Jason Montecucco of Montecucco Farms, farms directly across Airport Road from Columbia

Helicopters, as well as on other land around the airport and states that the airport has not presented any problems whatsoever for his farming operations and testified that 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 Board finds credible and persuasive that 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. The Board finds that a 5-second delay does not cause a significant change in accepted farming practices or significantly increase the cost of accepted farming practices. On this point, the Board finds that the 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 and other opponents.

Ms. Snyder testified that her family built a new home on the subject property across from HTS and across from one of Oregon's business airports and is disappointed with noise from HTS' operations on its property and that sometimes fluids have been observed dripping from HTS helicopters and this concerns her. The Board finds credible and persuasive that HTS' operations on its property constitute lawful aviation activity adjacent to the Aurora Airport and is an operation that is authorized not only on HTS' property but also in the national airspace system. The Board finds persuasive and credible HTS' letter in the record stating that HTS has never flown over Ms. Snyder's residences. The Board finds credible and persuasive the written testimony of HTS' chief pilot who explains that "there is ADS-B information (available as public record) showing our flight paths on every flight." The Board finds credible and persuasive that HTS' chief pilot also explained 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 as *** 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 Board finds credible and persuasive HTS' chief pilot's testimony explaining that the water that Ms. Snyder has seen drip from HTS helicopters is river water from practice missions over the Willamette River and that HTS does "endeavor to fly neighborly for all operations[they] conduct". The Board finds that if Willamette River water has been released on property belonging to the Snyder's that (1) there is nothing to suggest that will happen in conjunction with flights to and from the subject property as a part of the proposed operation, and (2) that Snyder does not claim and the Board does not understand how, unintended release of river water on their property from the Willamette River could cause a significant change to Snyder's accepted farming practices on their farm or cause a significant increase in the cost of accepted farming practices on the Snyder farm.

The Board also agrees with the testimony of the HTS chief pilot and others that aircraft operations are typically more frequent at an airport, as to be expected.

The Board further finds that there are other helicopter business and missions that currently operate out of Aurora Airport to include those associated with LifeFlight (whose headquarters are at Aurora Airport) and Columbia Helicopters, the headquarters for which is on private property adjacent to the Aurora Airport.

As noted above, because the proposal seeks to attract and support electric aircraft which are quieter than traditional aircraft, the Board finds that the proposal will involve aircraft operations that will likely be less noisy than those experienced by the Snyder's concerning HTS' operations. The Board finds the evidence persuasive and credible that the proposal will not significantly increase the costs of accepted farming practices or cause significant changes to be made to accepted farming practices on the Snyder farm operations, because all the impacts referenced by the statements in opposition are presently occurring and will not significantly increase with approval of the proposal. Rather, with respect to the possibility of electric aircraft the impacts of the proposal are likely to be less.

While opponents do not tie their noise objections specifically to farming, as a precaution the Board also finds at this juncture that the noise associated with the proposal will operate within the noise parameters of existing airport operations and, to the extent the proposal is able to attract electric aircraft to use the site, the Board finds the evidence credible and persuasive that electric aircraft are less noisy (and have fewer emissions) than traditional aircraft, thus making it likely that the proposal will have fewer impacts than now arise at farm operations from the existing airport. The Board finds that the evidence from Aron Faegre including in the Noise Report to be persuasive and credible that the noise impacts from the proposal are at the very least no different than those that area farms now experience and will not significantly change accepted farming practices or add significant cost to accepted farming practices in the area.

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 FOFP focus on farm operations distant from the proposed facility (on the west side of the Aurora Airport), and on Arndt Rd. The Board finds that 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 being farmed is now encumbered by the County's existing AO Airport Overlay zone, 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 and there are already rotorcraft operations presently occurring at the Columbia Helicopters, LifeFlight and HTS properties, which have co-existed with area farm uses without significantly impacting those 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 existing 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 pads 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 during landing and takeoff. The fixed wing aircraft based at the facility will take off and land from the existing runway at the airport. The Board finds that any noise impacts from the proposed use on farm practices is not significantly increased by the proposal given the similarity in the proposal's rotorcraft uses with historic, existing surrounding uses from Columbia Helicopter, LifeFlight and HTS as demonstrated by the submitted noise impact study and noise contour diagram in the record. The noise contour diagram from Application Exhibit 35 shows the 55 Ldn 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 Board finds that the additional airplane flights generated from airplanes taxiing from the subject property is minor by comparison and the impacts to farm practices or cost of operations from such aircraft taxiing from the subject property is not significant.

Regarding dust, the Board finds that dust impacts will likely be decreased by the establishment of the proposed 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 (Application Exhibits 36 and 37 re: stormwater and wastewater respectively), the Board finds that the proposal's environmental impact will be nominal and will not force a significant change in accepted farming practices or significantly increase the cost of accepted farm practices. The proposed uses can feasibly be served by 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. The Board finds that 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 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. (Application 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) The Board finds that 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. The Board finds that 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 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. The Board finds that such assertions are wildly speculative and without merit.

The Board finds persuasive and credible the testimony of Dr. Davis who 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 Board finds that the testimony of the Airport Director of the Chehalis Centralia Airport in Washington State credible and persuasive, who the Board finds is also an expert in the matter of aviation and in particular eVTOLs, 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 Hearings Officer Hearing Submittal, Exhibit 11) The Association for Uncrewed Vehicle Systems International (AUVSI) also provided testimony, which the Board finds to be credible and persuasive stating essentially the same thing in its expert support letter “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 Hearings Officer 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. The Board finds this testimony persuasive and credible. As Dr. Davis explained, 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 Board finds that per the testimony of Dr. Davis that 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. The Board finds that 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, the Board finds credible and persuasive Dr. Davis’s testimony 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 Board finds that the information provided by the applicant sourced from the Orlando International Airport in Florida to be persuasive and credible and that 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. The Board finds Mr. Helbling’s testimony to be credible and persuasive. 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 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, whom the Board also finds to be credible, persuasive and an expert in the matter, 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, who the Board finds to be credible, persuasive and an expert in the matter, 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 whom the Board finds is credible, persuasive and an expert, 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 incompatible with this airport is inconsistent with both the current reality and the broader public interest.” He closes by stating “[I]miting 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.”

The evidence presented by the opponents does not undermine the evidence in the record presented by the Applicant that establishes that the proposed use would not cause any of the surrounding farm operations to significantly change their farm practices in any

way and nothing that would require farmers to incur significant additional costs as a result of the proposal. 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 Board finds that the proposal is consistent with this standard and that this criterion is met.

2. *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The Board finds that the subject parcel is served by the Aurora Fire Department and Marion County Sheriff's Department. Both already serve the Aurora Airport and adjacent properties within the Aurora Airport's land use boundary, as well as the P zoned areas outside of that land use boundary and currently serve the subject property. Accordingly, the Board finds that like the existing adjacent uses which have been established outside the City of Aurora's UGB, the proposal will only rely on the County's transportation facilities, the Aurora Rural Fire Protection District and the Marion County Sheriff for fire protection and rural services. Given the proposal's location adjacent to existing users of these services, the Applicant will be able to receive the benefit of these same services as it can now and as do all the other properties within the KUAO airport boundary. Those services are already available and can be made available when the proposed uses are established. For example, the Airport formed a Water Control District for fire protection for properties at the airport, which the subject property will become a part of. Furthermore, as discussed elsewhere in this application, 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 Board finds that this 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 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 Board disagrees with opponents in this regard and finds more credible and persuasive the Applicant's evidence that the proposal will not have a significant adverse impact on the Pudding River.

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 that runs along Airport Road for over 6,400 feet. 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 the proposed waste and 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 is the only agency that 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. Aircraft that the FAA certifies as acceptable for use must meet the FAA's relevant standards. The proposal will be required to comply with those FAA standards by virtue of the FAA's certification authority. 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 Board finds that this criterion is met.

4. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

The Board notes that this standard refers to "nearby" land uses, which includes the airport related uses and other uses on EFU land in the area. The Board interprets the standard to apply only to land zoned EFU because it is a conditional use standard that applies only to the EFU zone.

The applicant submitted a "Noise Compatibility Study" (Noise Study), which is Application Exhibit 35, into the record. The Board finds that Noise Study is credible and persuasive and incorporates it herein by this reference. The Noise Study explains that noise levels from aviation activity below 65 Ldn. are considered to be compatible with residential use, citing federal FAA regulations and a federal HUD study. The Noise Study also cites DEQ's noise boundary for an airport noise analysis beginning at 55 Ldn.⁸ The Board interprets its own standard quoted above to mean that a "significant adverse impact" from

⁸ As explained below, the Applicant must demonstrate to the DEQ that the proposal will comply with OAR 340-035-0045. The 55 Ldn is a boundary to start at for analysis purposes, but the 65 Ldn remains the strict criteria for significant adverse impact. As explained below, the Board finds such compliance to be feasible.

noise, refers to aviation related noise at a residence that is at or in excess of 65 Ldn. 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. The Board finds credible and persuasive that the evidence in the record demonstrates that flights associated with the airport will be less than 65 Ldn and actually will be less than 55 Ldn at those and all other nearby residential land uses on EFU zoned land (and anywhere else for that matter), as demonstrated by the Noise Study.

Further, the surrounding P-zoned properties to the north, west and south are in either airport or airport related uses, which the Board finds are not noise sensitive and, in fact, are themselves noise intensive uses. *See* Exhibit 25 (Aurora State Airport Noise Contours Map); Exhibit 35 (Noise Impact Study and Noise Contour Diagrams). The Board finds that there is and can be no significant adverse noise impact on those uses from noise from the proposed use.

The Board finds that fixed-wing aircraft located and operating on the subject property will not be taking off from the subject property and will taxi to the runway located at the Aurora Airport on the ODAV-owned property. The Board finds that there is already significant rotorcraft noise on nearby EFU zoned land on which residences are located. The Board finds that the Snyders' testified that they are impacted by existing rotorcraft operations from HTS' flights. The Board finds that this testimony demonstrates that there are currently significant noise impacts on nearby residential uses to include the Snyders, making it difficult to see how noise from the proposal that will be less than 55 Ldn at the subject property, can be considered a significant adverse noise impact. The Board finds that noise from the proposal is not a significant adverse noise impact on nearby residential uses to include the Snyders' home.

Regarding the nearby farm uses to the east of the subject property, as discussed above and elsewhere in the application, normal farming activities are not considered noise-sensitive uses, which is why farms are commonly found around airports and other air-oriented transportation facilities. As can be seen in the Noise Study, farm uses of the types that exist in the nearby area here do not have aviation related noise limits.

For noise impacts, the Board further finds that distance is the great mitigator. To help mitigate noise and operational aspects of rotorcraft activity on the subject property, the Board notes that the Applicant's updated site plan (Exhibit 1 submitted at the Hearings Officer Hearing) locates hangars, structures, and parking (automobile and rotorcraft) between the landing pads where rotorcraft will be taking off and landing and Airport Road – on the other side of which to the south are residential uses. The take-off and landing area on the property is located on the central western portion of the site. This adds distance and noise barriers between the rotorcraft noise generating take-off and landing activities on the subject property and the residences (and farmlands) to the east. The Board finds that this minimizes noise impacts and further demonstrates that the proposal will not cause any significant noise impacts at nearby residential uses (whether they are on land zoned EFU or not). In particular, there is no serious dispute that noise from the proposal will be less than 55 Ldn at the closest residence to the subject property. Furthermore, the three

proposed flight paths are oriented to correspond to the established rotorcraft flight paths from Columbia Helicopters and HTS and to avoid the surrounding residential uses, which is expected to make the noise impacts to residential uses from the proposed use well within the federal compatibility standard and well below the level that could reasonably be considered to be a significant adverse noise impact. *See* Exhibit 2, (LO.1 showing flight paths). Additionally, each of the flight paths remain over the subject property for approximately 600 linear feet as the rotorcraft rises or lands, thereby adding vertical distance and reducing potential noise impacts even before the rotorcraft leaves the site.

Ultimately, aviation operations on the subject property will also be required to demonstrate compliance with DEQ's noise control regulations for airports⁹ set forth under OAR 340-035-0045. This will require an application to and approval from DEQ. If DEQ determines that the Noise Impact Boundary for the rotorcraft operations from the subject property includes or may include noise sensitive property, the agency can request the Applicant to prepare a Noise Abatement Program. In such instances, DEQ approval will require implementation of the Airport Noise Abatement Program.

Therefore, in addition to the federal noise standard, the County finds that compliance with the DEQ OAR 340-035-0045 requirements also satisfy the County "significant adverse impact" from noise, standard and will further ensure that the proposed use will not have a significant adverse impact on nearby lands.

Furthermore, the County finds that given the existing surrounding uses (especially the various airport-related uses) and the background noise generated by those uses, the fact that there is no serious dispute that the proposal will generate noise at the nearest residence that is less than 65 Ldn – and less than 55 Ldn - the design of the proposed development which helps to minimize noise impacts, and the range of mitigation measures identified by OAR 340-035-0045(4)(b)(B)(i) through (xvi)¹⁰ by which it is possible to further mitigate noise impacts, it is feasible for the Applicant to obtain the requisite approval from the DEQ. This decision imposes a condition of approval that requires the Applicant to submit, consistent with the requirements set forth under OAR 340-035-0045, an application for DEQ approval of the projected Noise Impact Boundary and, if necessary, a noise abatement program, that receives DEQ approval prior to receiving a building permit for construction of the proposed airport uses and that those DEQ-approved materials be provided to the County.

⁹ OAR 340-035-0045(2) Airport Noise Criterion provides:

"The criterion for airport noise is an Annual Average Day-Night Airport Noise Level of 55 dBA." The Board finds that as explained in the Noise Report that the reference to Annual Average Day Night Noise Level refers to the Ldn, which DEQ expresses as above. That criterion is measured at the noise-sensitive property. The referenced 55 dBA is slightly louder than a normal conversation or background music and slightly quieter than office noise or the inside of a car going 60 miles per hour. *See*, "What Is 55 Decibels of Sound" at <https://decibelpro.app/blog/what-is-55-decibels/>

¹⁰ Such measures include, but are not limited to, evaluating the appropriateness and effectiveness of: takeoff and landing noise abatement procedures; modification in the approach and departure flight tracks; higher slope angles; limitations in the times and locations certain types operations can be conducted; and the acquisition and use of noise suppression equipment or barriers. OAR 340-035-0045(4)(b)(B)(i)-(xvi).

The Board reinforces that the submitted noise contour diagram in the Noise Study shows two important things. First, is that each of the residences closest to the airport, directly across Airport Road from the subject property, lies outside the Annual Average Day-Night (Ldn) 55 dBA noise contour from rotorcraft operations from the proposed airport development. Second, that contour diagram also shows the Aurora State Airport contour diagram, which indicates those residences are also within the Ldn 55 dBA noise contour for the existing airport, from which fixed-wing aircraft that use the subject property will take off. That means the noise impacts from the proposed rotorcraft and fixed wing aircraft operations will be less than those from the existing airport operations.

Accordingly, the Board finds that based on the noise contours submitted by Applicant, the Noise Study, design of the proposal, the fact that the proposal seeks to attract electric aircraft including rotorcraft, 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 significant adverse impacts resulting from noise. The Board finds that this criterion is met.

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 Board finds that this 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.

Based on the history of opponent appeals involving land use decisions related to the subject property and the Aurora State Airport and the need for several approvals from other agencies, the applicant reasonably requested that discretion be exercised under the above bold language of 17.119.190, to specify a longer period for the conditional use approval to enable the proposal to obtain final approval and to be able to actually begin construction. Accordingly, the applicant requested 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. In short, commencement of activities to implement this approval cannot begin until both the County conditional use and airport land use boundary adjustment decision and any necessary ODAV and DEQ decisions are final, and any appeals are resolved. Applicant anticipates that opponents to development at the Airport and subject property will file appeals during some or all of the above approval processes. The Board expressly interprets the above emphasized language to authorize this Board to approve the applicant's requested longer approval period.

The Board notes that Marion County Planning Staff and the Hearings Officer both agreed 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 been completed and appeals if any are resolved. Applicant specifically requested 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. The Board grants that request and includes in this decision 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. And the Board finds that based upon the well-documented history, the applicant's request is reasonable. The Board agrees that the appeal process could likely result in the lapse of the conditional use permit before the applicant was ever able to use it. The Board finds that 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.

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 airport 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.

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. The Board finds 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 after approval and development of the proposal. (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.

The Board finds that there are no conflicts between the proposal and the AO zone, and the proposal minimizes potential dangers from or conflicts with existing airport and airport related uses. Therefore, the Board finds that the proposal is consistent with the purpose of the AO zone.

10. Marion County Code 17.177.030 – Airport Districts.

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. A condition of approval is imposed to ensure that compliance. The proposal satisfies this standard.

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 Board finds that this standard does not apply and that the applicant can and will comply with its terms when it seeks a building permit.

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 Hearings Officer 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.

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 Board finds that proposed use has been reviewed as required by this provision and that 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 Board finds that the proposal satisfies the requirements of the AO zone.

Statewide Planning Goals

12. The proposal involves a comprehensive plan amendment to adjust the boundary of the Aurora Airport in the County's Transportation System Plan (TSP) to include the subject property. The MCCP does not contain specific review criteria for plan amendments, however, amendments to a comprehensive plan, to include modifying a map for an expanded airport land use boundary, 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. Goal compliance is demonstrated 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 made her recommendation to the Marion County Board of Commissioners and the Board is making the decision for the County. Area local governments and ODAV were notified of the proposal and provided the opportunity to submit comments. Their comments were received and were considered in

this proceeding and in this decision and their concerns were accommodated as much as the Board finds reasonably possible. 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 above, the Board finds that the proposed airport boundary expansion will not permit service to a larger class of airplane. As the Board explained above, its conclusion in this regard is supported by Application Exhibit 40 and other evidence in the record. The Court of Appeals has explained what this standard means and requires to include within the Aurora State Airport boundary, the private through the fence operations such as is proposed here 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. The Board finds the proposal is wholly consistent with the instructions of the Court of Appeals.

The proposal does not increase or require changes to 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.

Further, the Board finds that 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” standard. The demonstration of compliance with that standard in the findings demonstrating compliance with the County’s conditional use standards 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 and authorizes the proposal, ORS 215.283(3)(b).

Likewise, the Board finds that 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 the conditions under which such is allowed, 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).

The Board finds that the proposed airport uses are specifically allowed uses within airport boundaries under state law and are therefore allowed uses on EFU land – which is what Goal 3 regulates. Because the proposed uses also comply with the ORS 215.296 as implemented by the Marion County Code which expresses the farm impacts test, they are consistent with Goal 3.

The Board finds that 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. The Board finds, however, that as a result of the proposed development, firefighting capabilities to respond to wildfires on forestlands may be expanded which would contribute to conservation of forest lands. The Board finds that this goal does not apply, but that regardless the Board finds that the proposal carries the potential to contribute to the conservation of forestlands, and so to the extent Goal 4 can be said to apply, the proposal is consistent with it.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources

The Board finds that the MCCP does not identify any Goal 5 protected resources on the subject property or immediately adjacent to the subject property. This includes wetlands, sensitive waterways, riparian ways, big game habitat, cultural or historic sites, or aggregate resource sites. Accordingly, the Board finds that this goal does not apply.

Goal 6: Air, Water and Land Resources Quality

LUBA has explained that compliance with Goal 6 involves whether there are findings supported by evidence in the record explaining why it is reasonable to expect that a proposal will be able to comply with applicable state and federal environmental quality standards. *See, e.g., Nicita v. City of Oregon City*, ___ Or LUBA ___ (LUBA Nos. 2020-037/039, September 21, 2021) (Slip op at 13-14); *Friends of the Applegate v. Josephine County*, 44 Or LUBA 786, 802 (2003); *Salem Golf Club v. City of Salem*, 28 Or LUBA 561, 583 (1995).

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 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. *See* Exhibit 41 (40 CFR Part 1031 Control of Air Pollution from Aircraft Engines). Aircraft operating on the subject property under the proposal 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 as proposed within the expanded airport boundary. Application Exhibit 37 (EMS Wastewater Analysis). The EMS materials establish that each approach could comply with State and County regulations governing septic disposal and can be approved by DEQ. The Board finds that each of these potential solutions are both feasible and comply with DEQ standards. The Board also finds that the applicant's evidence adequately demonstrates that either proposal will not cause adverse cumulative effects under the identified systems. The Board finds that compliance with these environmental quality regulations will be administered through the County and will ensure consistency with this goal. Contrary to opposition testimony, 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.

The Board finds that the evidence submitted by applicant's engineer and consultants is credible and persuasive and 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 Hearings Officer Hearing Exhibit 2 and August 12, Board of Commissioners Hearings Exhibit, there is arsenic in both City water and groundwater in the area and it is feasible and normative to filter it out as is proposed here. The Board finds Mr. Faegre's testimony to be both credible and persuasive and rejects evidence to the contrary as less so.

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, that the Board finds to be credible and persuasive. Comments from the project manager notes, and applicant accepts, the need for stormwater drainage and detention improvements and DEQ NPDES permitting. Application Exhibit 36 (Mackenzie Stormwater Analysis). The Board finds that 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 36, p 2. The Board finds that analysis to be credible and persuasive and finds that stormwater run-off from the proposed facility will not harm salmonids in the Pudding River more than a mile away from the subject property. The Board finds that the assertions otherwise by opponents are not credible or persuasive and rejects them.

The Board finds that the applicant's 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 have 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 and significant TTF areas or from the TTF areas to the runway. Further, as demonstrated in the letters in the record from the various aviation experts (whom the Board finds to be credible and persuasive), the proposal's focus on providing infrastructure for electric aircraft means that there will be next to no emissions from electric motors because electric motors create virtually no emissions.

The Board finds that the credible and persuasive 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.

The Board finds that the applicant provided adequate credible evidence that both well and septic are feasible on the property. DEQ approval of the septic system will ensure compliance with state standards.

Further, the Board finds that stormwater drainage, detention improvements and a DEQ National Pollutant Discharge Elimination System (NPDES) permit will be required to mitigate and manage stormwater runoff. As explained above, the Board finds that the applicant provided a credible and persuasive stormwater analysis demonstrating a feasible solution for managing stormwater that will comply with state and federal standards.

The Board finds that the cumulative effects of both stormwater and septic drainage were taken into account by the applicant's respective consultants. The applicant provided credible and persuasive expert evidence that the stormwater runoff from the proposal alone or cumulatively with other runoff in the area, will not exceed the capacity of the existing drainage system. The Board additionally finds that the applicant presented credible and persuasive adequate evidence that septic can be provided to the subject property to serve the proposed uses without discharge contributing to a cumulative negative impact on the soil or groundwater. The Board finds that the credible and persuasive evidence in the record demonstrates that septic can be provided for the property without the subject property having to connect to the HDSE or Columbia Helicopter septic systems. This decision authorizes land use approval for connection should HDSE or Columbia Helicopters seek and gain approval to do so if the owner of the subject property wishes to establish such connection. In that circumstance, this approval says that it need not be modified to allow such a connection. The Board here pauses to respond to Mr. Schaefer's objection that the Columbia Helicopter drainfield/system cannot be expended to serve the proposal asserting it is subject to a goal exception that allowed it to be approved and OAR 660-004-0018(2)(a) limits the exception to the intensity of uses that drove the exception in the first place. Nothing suggests that the Columbia Helicopter septic system was approved under a goal exception. The Board finds that it almost certainly is a septic system that predates the requirement that an exception be required to install it. The Board also finds that regardless, the objections about the limits on the existing approvals for HDSE and Columbia do not matter because in order for Columbia or HDSE to expand their septic systems to serve the subject property they would have to get whatever land use and DEQ approval is required to do so. This decision merely decides that if such occurs, that this decision need not be modified for the subject property to connect.

The Board further finds that the applicant addressed several different potential solutions for the septic system on the subject property. Applicant's consultant addressed the two options for septic disposal 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.

The Board finds that the applicant provided credible and persuasive 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. The Board finds that Goal 6 is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards

The subject property is not within an MCCP identified floodplain or geologic hazard area. 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 (Application 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. The Board finds the GeoDesign analysis and report to be expert, credible and persuasive.

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. Concerning liquefaction risks, GeoDesign's liquefaction analysis indicates that post-liquefaction settlement will be less than one (1) inch during a design-level earthquake and the differential settlement across the site will be less than approximately one-half an inch. Application Exhibit 44, p. 2. The analysis further concludes that there are no other geotechnical issues present at the site concerning lateral spreading, ground motion amplification, landslides, settlement, subsistence/uplift, lurching or seiche and tsunامي.

Similar to the discussion above concerning firefighting operations and Goal 4, the proposed development of the property to support rotorcraft and fixed-wing aircraft operations will enhance the emergency response resiliency of the Aurora State Airport, and the Willamette Valley in general, when the Cascadia Subduction Zone earthquake hits. Recently, ODAV issued a report to the Oregon Legislature, entitled "The Day After" that discusses Oregon's airports' role following a megathrust earthquake. See Application

Exhibit 45 (ODAV, “The Day After”). That report explains that, in the immediate aftermath of the earthquake, helicopters will play a major role in the initial response, despite only making up 5% of the US aviation fleet. Application Exhibit 45 (p. 9 of 91). The report lists the Aurora State Airport as a Tier 2 airport, which means ODAV predicts that the airport could resume fixed-wing runway operations within one month of major subduction event. Application Exhibit 45 (p. 15 of 91). During that one-month period, the only operations that may be taking place at KUAO would be rotorcraft operations. The proposal enhances KUAO’s ability to respond to that and other emergency response efforts to major natural hazard events.

Finally, the Board finds that the septic system on the subject property will continue to function in the event of a Cascadia Subduction earthquake, while municipal systems are not expected to fare well: “The 2013 Oregon Resilience Plan estimates it will take 6 months - 1 year for wastewater systems to become 80-90% operational in the Willamette Valley (3 years to return to current operational state).” This further establishes that the subject property will be capable of assisting the airport with persistent emergency response when needed whereas other facilities are unlikely to have that luxury.

In summary, the Board finds that the applicant’s geotechnical study is credible and persuasive and demonstrates that there are no geologic hazards that would present problems for development of the subject property in the future. Additionally, approval of the applications will enhance the Airport’s and County’s emergency response capabilities and resiliency in the event of a natural disaster.

The Board finds that the proposal complies with Goal 7

Goal 8: Recreation needs

No recreational space is present on the subject property. The aircraft allowed on the subject property are limited to those that the FAA considers as commercial operations. A condition of approval is imposed to that effect. 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, the Board finds that the proposed development will create jobs and attract early adopters of electric aircraft that will 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 Board finds as persuasive and credible the testimony of Ted Millar who is a principal of the applicant, that the proposal will contribute approximately \$350,000.00 in annual tax revenue. The Board finds that while Goal 9 does not apply, that nonetheless, the proposal is consistent with Goal 9.

Goal 10: Housing

This goal applies to land within urban growth boundaries. Moreover, the Board finds that housing is not encouraged in airport land use boundaries. As noted above, the Noise Study establishes that the FAA expects residential uses to be situated outside of the 65 ldn. This goal does not apply.

Goal 11: Public Facilities and Services

As with Goals 3 and 4, OAR 660-012-0065(3)(n) expressly states that expansions and alterations of a public use airport that do not permit service to a larger class of airplane are deemed to be consistent with Goal 11. The proposed airport boundary expansion and the proposed airport uses, to include authorization for the subject property to connect to an existing sewer system in the airport boundary, are therefore consistent with Goal 11 because the proposal does not permit service to a larger class of airplane.

The Board further finds that the applicant is not proposing any public water or sewage services to be extended to the subject property. The Board finds that the credible and persuasive evidence in the record demonstrates that it is feasible to provide adequate on-site water and stormwater and sewer facilities to serve the proposed airport uses. *See* Application Exhibit 42 (Edge Analytical, Water Analysis); Application Exhibit 37 (EMS Wastewater Analysis); Exhibit 36 (Mackenzie Stormwater Analysis). As discussed above, water will be provided by an on-site well that provides a high-volume rate sufficient for the proposed uses. 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. Establishing connectivity to support charging electric rotorcraft, electric fixed-wing aircraft and electric automobiles as proposed requires improving nearby electrical switches and a battery storage system, on-site hydrogen storage and a hydrogen-powered generator. The Board finds that the credible and persuasive evidence in the record establishes that the provision of such connectivity is feasible. Furthermore, 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. Because the proposal includes onsite facilities, no public facilities or services need be extended to the subject property from urban areas to support it.

The EMS analysis adequately and credibly explains that there are several different feasible approaches to managing the wastewater (sewage) from the proposed use. Application Exhibit 37. These include the use of holding tanks, either for each structure or for the site collectively, the treatment of wastewater and dispersal on site using raised bed treatment or an off-site drain field, the reuse of wastewater for other beneficial uses, subsurface discharge or connection to any of two existing systems. As EMS explains, while the site's soil conditions do not permit a traditional on-site septic tank and drainfield, all of the above alternative approaches are available and feasible to develop and DEQ would

approve appropriately designed systems. Opponents argue that septic and holding tanks are not a “sustainable option.” The fact that some of the identified feasible options are more costly than others does not mean they are not feasible as a means of satisfying the applicable standards. The Board expressly finds the EMS analysis to provide adequate and feasible onsite solution options, and is credible and persuasive and that the opposition testimony to the contrary is not as credible or persuasive and is rejected. To be sure, each feasible solution for wastewater treatment has advantages and disadvantages. However, that a feasible solution is not the approach preferred by opponents is not a basis for denial.

The EMS materials also address the existing HDSE and Columbia Helicopters facilities that have excess capacity and represent potential options for wastewater disposal. The existing HDSE system provides treatment for multiple parcels to the west and southwest of the subject property that are located in the Southend Airpark within the airport boundary and has excess capacity available for expansion. As noted above, the expansion of the airport to allow airport uses and the alteration of the airport to provide sewer services as part of the sewer system that serves part of the airport are deemed consistent with Goal 11 pursuant to OAR 660-012-0065(3)(n). The proposed development should be allowed to connect to that existing system located within the airport boundary if appropriate approvals are obtained to do so. *See Exhibit 48* which is the existing Goal exception for the HDSE system. Because the original proposal for the HDSE system entitled only six specific airport properties to connect to the sewer system, allowing the subject property to connect to the system likely requires new land use approval, which the Board notes would require prior notice and opportunity for public participation.

Similarly, Columbia Helicopters likely has excess capacity with its existing septic drain field system that could accommodate wastewater from the proposed uses. Use of that drainfield by the proposal would follow a proceeding in which Columbia Helicopters obtain required land use approval to do so.

To repeat from above, Applicant requests that this approval, in addition to approving an on-site system that includes any of the systems justified by the EMS evidence as feasible and permissible by DEQ, authorize connection to the HDSE facility or the Columbia Helicopters drain field/system, without the need to amend this land use approval, should the appropriate land use and DEQ permits for such extensions and connections be obtained by those owners. However, to be clear, connection to either the HDSE facility or the Columbia Helicopters drain fields/systems is not necessary to feasibly manage wastewater produced by the proposal, nor is an extension from an urban area required. Further, approval here to use either of those systems does not authorize the use of those systems without further action demonstrating that such use is allowed.

The Board finds that 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. 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.”

Thus, the Board finds that direct compliance with Goal 12 and OAR 660-012 (the Transportation Planning Rule or TPR), is not required because the proposal demonstrates compliance with OAR 660 Division 13, which therefore establishes that the proposal is consistent with Goal 12 and the TPR. In this regard, the findings below 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).

However, as a precaution only and without waiver of Applicant’s position that OAR 660-013-160(3) means what it says that compliance with OAR 660-013 means that the TPR is complied with, provisions in the TPR are addressed below as a precaution only and without abandoning that such is wholly unnecessary.

Precautionary TPR Compliance Findings

OAR 660-012-0060(1) provides that if there is an amendment to an acknowledged comprehensive plan that would significantly affect an existing or planned transportation facility, then measures set forth under subsection (2) must be provided unless the amendment is allowed under section (3), (9) or (10) of the rule.¹¹ If the TPR were to apply,

¹¹ OAR 660-012-0060(1) provides, in relevant part:

then the proposal here would be consistent with the TPR. In this regard, the proposal would fall under subsection (9), and the proposal satisfies all of OAR 660-012-0060(9)'s requirements.

OAR 660-012-0060(9) provides:

(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;

(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.

As noted above, the Board finds that OAR 660-013-160(3) states that compliance with the Airport planning rule is deemed to satisfy the TPR. Accordingly, the Board finds that the findings are unnecessary and are only provided as a precaution and without waiving that the proposal is consistent with the TPR. The Board finds that Lacy Brown, a transportation engineer at DKS Associates, prepared a transportation impact analysis (Application Exhibit 39 (2024 TIA)), that addresses not only traffic impact issues mandated by the MCC and applicable to the conditional use proposal, but also the TPR. The Board further finds that Brown (DKS) provided a supplement to the 2024 TIA in a letter dated March 5, 2025 which examined opponent claims that the 2024 TIA was inadequate. The Board finds that March 5, 2025 supplemental analysis adequately rebuts opponent allegations and demonstrated that opponents' claims concerning transportation and Goal 12 are unmeritorious. The Board finds that the 2024 TIA as well as the March 5, 2025 supplement are credible and persuasive and are more so than opponents' claims about those documents and about transportation. The Board rejects the opponents' claims in this regard as unpersuasive and lacking credibility.

Where it applies the TPR, under OAR 660-012-0060(1), requires a determination by the County of whether the plan or zone amendment will "significantly affect a transportation facility" (generally a road) and provides the criteria used to evaluate whether a transportation facility is significantly affected. OAR 660-012-0060(2) and (3) prescribe

"If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule."

what the County must or can do if it determines that an amendment will significantly affect an existing transportation facility.

The 2024 TIA (Application Exhibit 39) as supplemented in DKS' March 5, 2025 letter, provides the required (precautionary) TPR analyses and determines that the proposal does not further degrade the performance of any transportation facility and does not cause any facility to exceed its performance standard. The TIA concludes the proposal does not have a significant effect on a transportation facility. The Board finds that conclusion to be credible, persuasive and correct and adopts it as its own.

OAR 660-012-0060(1):

If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

*(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection. If a local government is evaluating a performance standard based on projected levels of motor vehicle traffic, then the results must be based on projected conditions measured at the end of the planning period identified in the adopted TSP. ***.*

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

The relevant 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.

The Applicant's transportation consultant, DKS Associates conducted transportation studies and memos concerning transportation related to the subject property and to the Aurora State Airport. The most recent of those studies is Application Exhibit 39, 2024 TIA and its March 5, 2025 supplement.

Based on the analysis contained in the 2024 TIA and its March 5, 2025 supplement, the Board finds that the proposed expanded airport boundary and proposed development does not have a significant effect on any transportation facilities. The 2024 TIA (Application 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. See Application Exhibit 39, p 1, page 6 its diagrams. The 2024 TIA includes an analysis of the existing conditions for each of the relevant intersections, as well as a safety analysis based on appropriate available data.

The evidence in the record supports the conclusion that the proposal will not have a significant effect on a transportation facility and that the proposal complies with the requirements of Goal 12 and the Transportation Planning Rule.

(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the performance standards of the facility measured or projected at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in subsections (a) through (e) below, unless the amendment meets the balancing test in subsection (e) or qualifies for partial mitigation in section (11) of this rule.

* * * * *. (listing mitigation measures (a) through (e)).

Because the proposal does not significantly affect a transportation facility, if the TPR applied, no mitigation measures would be necessary to demonstrate compliance with Goal 12.

Even though Goal 12 compliance is demonstrated through compliance with OAR 660- Division 13, the proposal is consistent with Goal 12.

As explained above, 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.

As is also explained above, 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, these findings must and do 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 EFU 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 relevant 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.

As explained above, the applicant's transportation consultant, DKS Associates, conducted transportation studies related to the subject property and to the Aurora State Airport, in the 2024 TIA (Application Exhibit 39), and its March 5, 2025 supplement.

As we have already explained above but reiterate here, based on the analysis contained in the 2024 TIA and its March 5, 2025 supplement, the Board finds that the proposed development does not have a significant effect on any transportation facilities. The 2024 TIA (Application 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 Board finds that the DKS analyses are credible, persuasive and expert, the Board adopts them as its own, and is the most credible evidence in the record and 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

Goal 13 promotes a variety of land use practices to maximize the conservation of all forms of energy. The proposed airport expansion and airport uses are consistent with three of the Goal 13 planning guidelines. First, the proposal seeks to minimize the depletion of non-renewable sources of energy by including facilities that promote the use of electric rotorcraft and electric fixed-wing aircraft at the proposed facility. That energy is proposed to be provided by renewable hydrogen resources, which the Board finds to be feasible. Second, the proposal promotes the maximum efficiency in energy efficiency by expanding airport uses at an existing public use airport instead of locating them at a different, new

location. Third, the proposal re-uses now-vacant land, putting it into a more productive airport uses in close proximity to other aviation related uses on land that the county's acknowledged plan designates as "acceptable for airport related development under private ownership." Last, the subject property is located close to major transportation routes, thereby reducing potential travel times for persons traveling to and from the expanded airport to near-by urban areas. 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 MCCC does not contain specific review criteria for plan amendments, but plan amendments must be consistent with applicable MCCC goals and policies.

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 Board finds that the proposal is not for a land division and this policy does not apply.

2. *“Strip-type” commercial or residential development along roads in rural areas shall be discouraged.*

The Board finds that the proposal does not propose commercial or residential development, consequently, policy 2 does not apply. 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 Board also finds that the proposed expansion of the airport boundary and proposed airport uses are compatible with the existing airport development to the north, west, and south of the subject parcel. The Board finds that the proposed airport related use is better suited for siting near similar uses, and uses that are not noise sensitive such as the Aurora Airport and crop farming, than near dense urban residential development. The Board finds that the proposed location for the proposal is a well-suited rural location because it is surrounded on three sides by intensive airport related uses. The Board finds that the proposal’s compatibility with agricultural goals is demonstrated by the proposal’s compliance with the farm impacts test administered as part of the Conditional Use criteria (MCC 17.136.060(A)(1)). The Board rejects opponents’ claim that this policy requires an analysis of alternative locations for the proposal like the Salem airport. The Board finds that the proposal is consistent with this policy.

Agricultural Lands Policies

15. The proposal is consistent with the County Plan’s agricultural goals and policies as the Board explains below.

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 Board finds that this provision is inapplicable. The proposal does not involve changing the zoning or designation of the subject property, which is zoned EFU. Rather, the Board finds that the proposal seeks a use that is identified in both state law, the implementing County code provisions, and independent County code provisions as a permitted conditional use in the EFU zone that OAR 660-012-0065(3)(n) as a matter of law deems to be consistent with Goal 3, Agriculture. The proposal is consistent with this policy.

The Board also finds that the Marion County’s acknowledged Comprehensive Plan specifically designates the subject property as appropriate for airport related uses under

private ownership. This is demonstrated because the County's Plan includes the 1976 Aurora Airport Master plan as an element and that 1976 Aurora Airport master plan designates the subject property for airport related development under private ownership and recommends that it be zoned "Airport Development." (See Application Exhibit 6, p 50). Accordingly, the Board finds that the subject property has a dual plan designation that designates the subject property not only as Primary Agriculture, but also as an area suitable for airport-related development under private ownership. Accordingly, the Board finds that this policy does not apply to areas that are designated both "Primary Agriculture" but also as land acceptable for airport related development under private ownership. This is because the airport related uses acceptability plan designation demonstrates that the land at issue here is not solely to be protected as farmland, but rather the land's dual designation supports that the subject land is intended to be and may be ultimately put to airport related uses per that designation in the County's acknowledged plan, once the airport's land use boundary is expanded, as here. The Board finds that this interpretation of the plan policy is not only correct but is also consistent with the legislature's designation of the Aurora Airport and surrounding lands as a "pilot" site for private through the fence airport related use development per ORS 836.640-642.

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. While the subject property is planned and zoned for farm use, the Board finds that historically the property was used as a church camp and retreat since before the 1970s. The Board also notes that the County's acknowledged comprehensive plan – through the included and also acknowledged 1976 Aurora Airport Master Plan – recommends the subject property be zoned for airport development.

The Board finds that the subject property has not been farmed for more than 50 years and possibly longer. The Board finds that the subject property is not conducive to agricultural use given its 16.54-acre size and the poorer soils compared to near-by EFU parcels. The Board finds that this is evident from Application Exhibit 49 and Application Exhibit 50 (Soils Maps and NRCS productivity ratings for soils), and other credible and persuasive evidence in the record. The Board finds the subject property is entirely surrounded on its west, east and southern boundaries by airport related uses and its eastern boundary is Airport Road and it is only across airport road that there are farming operations and that it is infeasible to combine the subject property with farm operations. The Board finds that it is not now, and it is infeasible to make, the subject property a "large tract" for primary agriculture. The Board finds that the property is not in a "largest area" of primary agriculture but in an area of airport related uses. The Board finds as credible and persuasive the testimony of farmer Jason Montecucco that the subject property:

“has very little to nearly zero value as production agriculture land. It is a small parcel, somewhat poorly drained soil, surrounded by airport infrastructure, with **no irrigation**. The parcel is so small the investment to

drill an irrigation well would be too large for very minimal return making it completely uneconomical to pursue farming it. The parcel is also surrounded by an airport, so there is zero opportunity make the field larger by adding it to neighboring land to farm.” (Emphasis in original.)

The Board finds that evidence to the contrary from opponents is less credible and is not persuasive.

The Board interprets this policy to protect “larger areas” of EFU zoned land with a “large tract” or tracts that is designated as primary agriculture and the Board concludes that the subject property is neither within the “largest areas” of primary agricultural land or a “large tract” of primary agricultural land. The Board finds that the proposed use does not affect the maintenance of agricultural uses to the east, nor does it remove agricultural land that could be utilized for large scale commercial agricultural production. The Board finds that the proposal is consistent with this policy.

The Board further finds that the subject property has a Comprehensive Plan designation as primary agricultural land but also is suitable for airport related development under private ownership per the express terms of the 1976 Aurora Airport master plan which airport master plan is a part of the County’s acknowledged comprehensive plan. The Board finds that dual designation means that the subject property is not only designated as primary agricultural lands but also as land acceptable for airport related development under private ownership, once the Aurora Airport’s land use boundary is expanded as is approved here in the manner that the Court of Appeals directed be accomplished as is being accomplished here. Accordingly, the Board finds that the property’s primary agriculture designation is intended to be and must be balanced against the subject property’s other designation as land that is suitable for airport related development when the airport’s boundary is expanded to include it, as here. Therefore, the Board finds that the subject property is not intended to be counted as a parcel of land that “maintains” the agricultural economy” because the subject land is intended by the County comprehensive plan to ultimately be put to airport related uses in private ownership.

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.

The Board interprets this policy to allow non-farm uses on high value farmland so long as they do not cause adverse impacts on farm uses. Concerning the latter, the Board interprets the term “adverse impacts” to not impose an absolute bar on miniscule impacts but rather applies to ensure impacts that are meaningful – in other words that non-farm uses not cause adverse impacts on farm uses that are significant to the farm operation in terms of costs or farm practices. The Board determines that a nominal or minimal adverse impact on farm uses is not prohibited by this policy. Finally, the Board interprets this standard to be satisfied where, as here, the proposal meets the farm impacts test of ORS 215.296 which the Marion County Code implements.

The subject property is mapped as having soils considered to be high value farmland, however for at least the past fifty years the property has been in non-farm use, first as a Methodist church camp and then a theological center/retreat. Furthermore, as demonstrated by Application Exhibit 49 and Application Exhibit 50, the testimony of Jason Montecucco and other information in the record, the Board finds that the proposal is located on soils with the lowest productivity rating for the area, lacks irrigation, is not suited for agricultural use investments, is poorly suited for agriculture and that the proposal will not have an adverse impact on farm uses. The Board herein incorporates by this reference its findings in this document demonstrating that the proposal meets the farm impacts test of ORS 215.296 and implementing MCC standards (i.e. the proposal does not cause a significant increase in the costs of accepted farming practices or a significant change to accepted farming practices). As Mr. Montecucco observes, the Board agrees that the subject property is not directly adjacent to any agricultural uses, being separated from those uses by Airport Road NE. Further and importantly, the County's acknowledged Plan designates the subject property is appropriate for airport related uses under private ownership and allows the expansion of a public airport as a conditional use.. Therefore, while the above policy generally discourages non-farm uses on property like the subject property with high value soils, the acknowledged County Plan designation for the property identifying the property as appropriate for airport related uses provides a competing policy that supports the expansion of the airport land use boundary to include the subject property and the establishment of the proposed aviation related uses on the subject property. That together with the facts that the Board finds that the proposal does not cause a significant increase in the cost of accepted farming practices and does not cause a significant change to accepted farming practices, that the subject property has not contributed to the farm economy of the area for at least 50 years, that the proposal is an expansion of airport uses on property adjacent to the existing airport and the airport and coexisted with farming in the area for decades, and that the County Plan designates the subject property for airport related use, all ensures that the proposal will not cause adverse impacts on farm uses within the meaning of this policy.

Moreover, the Board observes that much of the activity within the expanded airport boundary will occur indoors and have no impact whatsoever on farm uses or practices. As discussed under the farm impacts test findings above, the expansion of the airport boundary and proposed airport related uses on the subject property do not cause significant adverse impacts on the adjacent and surrounding farm uses. Those farm activities will continue as they have over the past decades and farmers will not have to significantly change their established farm practices or incur significant additional costs for those practices as a result of the proposed airport uses on the subject property within the expanded airport boundary. The proposed airport uses involve activities similar to those that the farm uses have long coexisted with in the area. The Board finds that the proposal is consistent with this policy.

Rural Services Policies

16. The proposal is 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 Board finds that the proposal does not impact existing services. All services required to support the proposal are thoroughly evaluated in this decision. The Board finds that expert evidence in the record demonstrates that water and stormwater needs can be met on-site and will not impact any existing services or require public facility extensions to the site. The Board finds that expert testimony in the record further demonstrates that it is feasible to develop and implement a viable, DEQ approved wastewater treatment plan to manage wastewater and that such system will not adversely impact groundwater. The Board finds that the 2024 TIA and its March 5, 2025 supplement, demonstrate that there are no significant impacts on a transportation facility. The recommended mitigation of ½ street frontage improvements on Airport Road and paying a fee in-lieu is imposed as a condition of approval. See Application Exhibit 39, p 39. This policy does not apply but regardless, the Board finds that 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 Board makes the following observations that demonstrates that the proposal is consistent with the above aspiration. 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. That designation and this decision is consistent with the general policy of maintaining the rural character of areas outside of urban growth boundaries. The character of the area is already significantly influenced by the presence of the Aurora Airport, one of the state's busiest airports.

The Board further finds that the proposal is contemplated under ORS 836.640 and 642 which states that "through the fence" areas as proposed here to take place at the Aurora Airport (a "pilot" site under those statutes), are to be encouraged and are to be included in the airport land use boundary to enable aviation related uses to occur. The Board finds that while opponents assert that the Court of Appeals (and LUBA) have determined that the subject property may not be developed with TTF uses and assert that these appellate authorities have declared that ORS 836.640-642 is unavailable to the subject property, the Board finds these assertions are wholly false, and miss the point of the Court of Appeals' instructions. The Board observes that the court outlined the process that must be followed for the subject property to be developed with the airport uses contemplated by ORS 836.640-642 and this proceeding and the Board finds that this decision follows the court's instructions to the letter. The proposal is authorized and contemplated by state law and the Board finds that it does not require the extension of urban services to the site, as opponents wish. The Board finds that all water, storm and sewer services will be provided on site, that sheriff and fire services are already provided to the subject property and will continue to be provided. In this regard, the Board finds that the credible and persuasive evidence in the record demonstrates that the subject property can be served with onsite water, sewer and stormwater facilities. Application Exhibits 42, 43, 36, 37 respectively. And the Board finds

that the subject property can be served with sheriff and fire services. The Board rejects the opponents' claims and evidence to the contrary as less credible and less persuasive than the applicant's evidence.

The Board further notes that 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. While the proposal need not connect to that system, this decision grants land use approval to do so if HDSE (or Columbia Helicopters) receive appropriate land use and DEQ approvals to do so.

While the policy does not apply as a mandatory standard, regardless, the Board finds that 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 Board observes that the subject property is planned in the County's acknowledged Comprehensive Plan as a site appropriate for airport development in private ownership. The proposal requests approval to provide on-site services for water, sewer and stormwater management for that use of the site consistent with that Plan designation of appropriate uses. The proposed facilities and services are oriented to and limited to serving the proposed airport uses on the subject property that will be within the proposed expanded airport boundary only. The Board finds that it is feasible to develop each of these services on-site. Additionally, as noted throughout this approval, the application seeks approval to connect to the existing HDSE wastewater system located entirely within the Aurora State Airport boundary or to the Columbia Helicopters drainfield which is located adjacent to the airport boundary, only if but if other necessary land use and DEQ permits are obtained for those facilities to do so. Doing so will not encourage development inconsistent with the existing airport uses at the airport and adjacent properties in airport-related uses, nor will it encourage any development on surrounding farm uses on other properties, all of which are located on the east side of Airport Road. Consequently, 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. This policy does not apply, but regardless, 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.

The Board finds that the applicant 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 is consistent with the County Plan's Air, Rail, Water, Energy and Pipeline Transportation Policies.

1. Airports and airstrips shall be located in areas that are safe for air operations and should be compatible with surrounding uses.

As explained in these findings, the Board finds that the proposal here meets the safety requirement. 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 hangars 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 and other evidence in the record that the Board has earlier in these findings determined to be the most credible and persuasive evidence, demonstrates 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.

While unnecessary to establish under the second, the Board also finds that for all the reasons explained in these findings, that the range of proposed airport uses is compatible with the surrounding uses – both at the airport and on agricultural land. The Board finds that 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 Board finds that it has reviewed and taken appropriate actions to adopt the 1976 Aurora Airport Master Plan into the County Comprehensive Plan. The Board finds that the proposal is consistent with Aurora Airport Master Plan of 1976 which, as noted, is adopted into the acknowledged County's Comprehensive Plan and is therefore itself acknowledged. The subject property is specifically designated as acceptable for airport related development under private ownership. The Board finds that 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.

This policy does not apply as a mandatory standard for development on individual property but rather is a directive to the County concerning the adoption of rules to protect public use airports. The Board finds that the relevant “appropriate provisions” that the County is required to adopt by this policy have been adopted as required already, and are found within the 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. This provision does not apply to approval of the proposal but regardless, the Board finds that 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 Board interprets this policy as not being an approval standard, but rather a directive for how the County should proceed before approving development. The Applicant has submitted a TIA (Application Exhibit 39), its March 5, 2025 supplement and other supporting evidence and analysis that demonstrates the potential traffic impacts that will flow from the proposal and also proposed appropriate mitigation enabling the County to adequately assess potential negative impacts and mitigate for those impacts. The proposal is consistent with this policy.

Development and Access Policies

19. The proposal is consistent with the County Plan's Development and Access policies

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 and supplement in which the roadway classifications are adequately addressed. That evidence and analysis also considers present and anticipated safety issues to be used in the County's consideration of potential traffic impacts from the proposed airport boundary expansion and airport uses. 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 County has reviewed this land use action for impacts to transportation facilities. The Board finds that the 2024 TIA and its supplement submitted by the applicant demonstrates that the proposal does not have transportation impacts that the County deems to be significant. The 2024 TIA recommended appropriate transportation systems mitigation and those recommendations are adopted herein and required as conditions of approval. The proposal is consistent with this policy.

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 will take access from Airport Road NE and Stenbock Way NE. Airport Road NE is a major collector road. Table 10-3 of the RTSP indicates that Airport Road has the capacity for an additional 3,000 trips per day. The DKS TIA demonstrates that the proposal will generate far less than 3,000 daily trips and that none of the three access points to Airport Road from the subject property trigger turn warrants (Application Exhibit 39). All access points will operate consistently with the functional classification of Airport Road. The Board finds that the credible and persuasive evidence in the record demonstrates that the proposal will not exceed the trip generation level indicated in Table 10-3. 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 County's access management site review process. Applicant's site plan, 2024 TIA and its March 5, 2025 supplement, and related analyses demonstrate 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 prepared by an expert that the Board finds to be credible and persuasive demonstrating the proposal can feasibly establish an adequate and compliance stormwater system that meets the County's engineering standards. Ultimate approval of that system will be given by Marion County Public Works and DEQ (Application Exhibit 36). The proposal is consistent with this policy.

Right-of-Way Policies

20. The proposal is consistent with the County Plan's right-of-way policies.

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 Board finds that the proposed airport land use boundary expansion and accompanying airport related uses is not the type of transportation facility that is proposed to be nor would typically be situated in rights-of-way. The proposal is for an aircraft transportation facility that will only utilize existing rights-of-way for access and egress onto the subject property. The Board finds based upon the credible and persuasive evidence in the record to include the 2024 TIA and its March 5, 2025 supplement, that access to the parcel will not result in significant disruption to existing land use in the area. The Board finds that the proposal is consistent with this policy.

Marion County Economic Development Goals

21. The proposal is 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 concerning Goal 9 above are herein incorporated. The proposed airport expansion and airport uses will provide increased employment opportunities in

several respects. The construction related to building the airport uses will require the employment of skilled workers during the period of development. The services provided at the airport uses will provide a range of employment opportunities for white collar, skilled and unskilled workers. Some opportunities may be transplant positions from services offered elsewhere, but services related to expanded operations and services related to the 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 or LifeFlight that are seeking potential locations for expansion. Also, as the ODAV 2014 economic analysis in the record demonstrates, aviation-based activity creates economic opportunities in the area immediately around the activity as well as the greater region. Application Exhibit 46. ODAV's 2021 economic analysis for the Airport showed similar economic benefits (Application Exhibit 47 page 1 of 19). The Board finds that the proposed airport uses to be developed in the expanded airport property will increase employment opportunities in the County. The proposal is consistent with this policy.

b. Maintenance of a strong agricultural economy;

As noted above, the proposal does not remove any land that is presently in agricultural use. Accordingly, the Board finds that continuing to use the subject property for nonfarm uses has no effect on the maintenance of the agricultural economy. The Board also notes that the subject property has not been in agricultural use for well over 50 years. Furthermore, the subject property is significantly smaller than the state-mandated 80-acre minimum parcel size for farm use, and as explained in the expert credible testimony of Jason Montecucco, the subject property is not suitable for commercial agricultural use that would add much to the agricultural economy. The Board also notes that the proposal has met the conditional use criteria, that includes the farm impacts test, from ORS 215.296 that is implemented by in MCC 17.136.060(A) and will not undermine the maintenance of a strong agricultural economy for that reason as well. 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 Board finds that these facets of the proposal establish that the proposal can contribute to the maintenance of the agricultural economy and will not undermine it. 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 as well as 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 job opportunities provided by the proposal include year-round opportunities for aviation related jobs. 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 County acknowledged plan, per the terms of the 1976 Aurora Airport Master Plan, establishes the need for growth in helicopter operations. The applicant submitted letters from potential users of the proposed facilities for traditional rotorcraft operations for the safe and efficient movement of persons and goods. Application Exhibit 26, and Application Exhibit 27. Further the proposal will support the present need for an eVTOL site which is not currently available in Oregon or at the Aurora Airport.

The Board finds that there is an unmet need for facilities for electric aircraft, in particular eVTOL aircraft, which are expected to in the near future provide for the safe and efficient movement of people and goods. *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;

No public facilities are proposed on the property. However, 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. The record demonstrates 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 of the airport boundary, and establishment of airport uses, would allow the private sector to meet some of the demand for electric aircraft. Through the land use planning process, interested parties at the state and local level can be and have been involved in the planning and development of this property that is designated on the County's acknowledged Comprehensive Plan as an appropriate site for airport related uses in private ownership. The proposal is consistent with this policy.

Energy Policies

22. The proposal is consistent with the county Plan 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. The Board finds that the applicant has demonstrated that the proposal is consistent with all applicable policies of 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 land use 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 Board finds that 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 not only for more traditional rotorcraft facilities but also 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 that the Board finds to be credible and persuasive 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. (Application 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.” The Board finds Mr. O’Malley’s testimony to be credible and persuasive and agrees with it. The Board finds that many jobs are expected to result from the proposed airport expansion and proposed airport uses.

The Board finds that credible and persuasive evidence in the record supports the Board's conclusion that the proposed airport rotorcraft uses can be operated in a safe manner in conjunction with the Aurora State Airport runway through the use of flight paths for rotorcraft taking off and landing from the subject property that do not interfere with airport operations, similar to the existing Columbia Helicopters, HTS and LifeFlight operations. Further, the proposed fixed-wing aircraft access to the airport from the proposed development on the subject property is similar to the other safe TTF operations at the airport. Further, the Board finds that the credible and persuasive 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. Application Exhibit 22 (page 19) (Oregon Aviation Plan v. 6.0 (excerpt - Introduction)). 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. Application Exhibit 22 (page 15) (discussing changes in the aviation industry and introduction of new technologies).

The Board again notes because it is relevant to this policy that 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 expects the when the subject property is developed as proposed, that it will deliver exactly the electrical charging infrastructure and specific facilities for electric aircraft that the County and state aviation interests need – but lack – in necessary airport infrastructure.

The Board finds the evidence persuasive and credible 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 Board finds that 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 (Application Exhibit 22).

The Board finds that 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 subject property. 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) & (Application Exhibit 5, 1976 Airport Layout Plan - insert "Ultimate Airport Property"). 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 demonstrating that the subject property is intended to develop with "Airport Development". The proposal seeks to expand the airport boundary consistently with the 1976 Airport Master Plan, as well as the requirements in ORS 836.640 and 642 to include the subject property in the airport land use 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. As discussed above, all of the proposed uses fall into those described in OAR 660-013-0100 as airport uses. Last, 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 as a part of the County's own comprehensive 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. Per (9) of the above rule, the airport sponsor, ODAV, confirmed that the economic and use forecast information used was the most current economic and use forecast information as required by the rule, which is to be found in the draft 2024-25 Aurora Airport Master Plan, which draft is in the record. *See Applicant's Post Hearing, Hearing Officer 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 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).

The Board finds that the evidence in the record includes 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 Board in this decision herein adopts 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 that are already a part of the County's Comprehensive Plan.

The Board further finds that the record includes the proposal 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 submitted for the March 6, 2025 proceeding.* The Board finds that 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 Board herein adopts and incorporates 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), as explained above, 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 [Aurora Airport] draft master plan is the most up to date." The Board rejects opponent's claim that the necessary information has not been provided by ODAV.

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. 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. (Hearings Officer 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." (Hearings Officer 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 (Application 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 (Application 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 (Application Exhibits 51, 53 and 63). Experts believe that AAM represents the next inflection point in the aerospace industry, potentially bringing air transportation to the individual commuter level (Exhibit 56, Deloitte - Advanced Air Mobility – Can the United States afford to lose the race?).

The Board finds that credible and persuasive 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 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)).

The Board finds that the credible and persuasive evidence establishes that the 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 (Application Exhibits 36, 37, 39, 42, 43) OAR 660-013-0040(5)(c).

The Board finds that the evidence in the record and the analysis and findings provided under the conditional use standards demonstrate 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 Board finds that 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 adequately and thoroughly addressed in these findings.

The proposal can and will operate within the 65 Ldn noise contour under which the Snyders built their home and the Board finds that the Snyder home will be well within appropriate noise levels for the proposal being outside of even the subject property's 55 dBL noise contour. The Board further rejects as lacking credibility the opponents' claim that the proposal will incite terrorists or otherwise be unsafe. The Board finds that the proposal 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 and in ORS 836.640-642 for this very airport. The Board finds that there are no other conditions required than those that are already imposed in this decision that are necessary to minimize or eliminate any incompatibility because the Board finds that there are no impacts or incompatibilities to further minimize and there are none to eliminate.

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.

The Board finds that the record includes a properly prepared 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 Study (Application Exhibit 35). As 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 noted above, consistent with subsection (9), the Board finds that 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 Hearing 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.

The Board finds that 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 areas 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 Board finds that the proposed uses within the proposed expanded airport boundary consist **only** of uses expressly allowed under OAR 660-013-100 as detailed above 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 above fall into one or more of the above categories of permitted airport uses.

The proposal does not seek approval for, and this decision does not approve, 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 Board finds that 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 Board finds the 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).

37. Miscellaneous

Opponents presented a summary sheet with their many objections to the proposal. The Board intended to, and believes it has, addressed each of those various objections in the above findings. As a precaution, the Board makes the abbreviated additional findings in an effort to be as thorough as it can be.

Opponent Objection Categories:

- R1: No Larger Class of Airplane (OAR 660-012-0065(3)(n))
- R2: Expansion/Alteration of a Public Use Airport; TTF operations
- R3: No Goal 3, 11, or 14 exceptions required
- R4: Transportation Planning Rule (TPR)
- R5: Farm Impacts (ORS 215.296)
- R6: Noise
- R7: Water, Wastewater, Stormwater
- R8: Signatures/Scope
- R9: Effective-date/Exercise-period
- R10: Goal 14 Urbanization
- R11: Safety/Regulation
- R12: Traffic
- R13: Use Forecast (OAR 660-013-0040(9))
- R14: Airport Uses
- R15: Airport Overlay/Imaginary Surfaces
- R16: Goal 6
- R17: Miscellaneous assertions

Brief Response To Each Of The Above Categories:

R1 — No Larger Class of Airplane (OAR 660-012-0065(3)(n))

No Larger Class of Airplane (OAR 660-012-0065(3)(n)) — The application does not authorize the Aurora State Airport to serve a larger class of airplane. The Board finds that no airport design standards are increased; the on-site taxi lane is physically constrained to ~82 feet, limiting wingspans to approximately 75 feet (B-II). A condition of approval expressly prohibits service to a larger class. The Court of Appeals' definition confirms the rule looks to approach speeds, MTOW, wingspan, and tail height — none are increased here. See Section VI.2, ¶¶ under OAR 660-012-0065(3)(n).

R2 — Expansion/Alteration of a Public Use Airport; TTF operations

Expansion/Alteration of a Public Use Airport; TTF operations — The Aurora State Airport is a public use airport. The subject parcel will operate as a lawful through-the-fence (TTF) facility under ORS 836.640–.642 and within the expanded airport boundary. In addition to the many reasons articulated above about why the proposal is the expansion of a public use airport, the Board also finds that ownership of the subject parcel does not determine public-use airport status – like the rest of the public and privately owned areas at the existing Aurora Airport, the aviation uses of the subject property will also be open to the flying public and controlled by the airport sponsor, ODAV. ODAV's TTF framework and sponsor control demonstrates this. See Executive Summary (TTF), Findings V.6–7; Additional Findings, OAR 660-013.

R3 — No Goal 3, 11, or 14 exceptions required

No Goal 3, 11, or 14 exceptions are required — OAR 660-012-0065(3)(n) expressly provides that expansions or alterations of public use airports that do not permit service to a larger class of airplane are consistent with Goals 3, 4, 11, and 14. The proposal meets ORS 215.296 (farm-impacts test). See Sections VI.2, 'Accordingly...', Goal 3, Goal 11, and Goal 14.

R4 — Transportation Planning Rule (TPR)

The Transportation Planning Rule (TPR) is not triggered and Goal 12 satisfied. OAR 660-013-0160(3) deems compliance with Division 13 to satisfy Goal 12 and the TPR for airport planning. The Board finds above that the proposal complies with OAR 660 Div 13. The Board also finds as a precaution that the 2024 DKS TIA and its supplement confirm the proposal does not cause a significant effect to facilities. See Goal 12 findings and 2024 TIA citations.

R5 — Farm Impacts (ORS 215.296)

Farm Impacts (ORS 215.296 and implementing County MCC provisions) — The Board finds the farm impacts test is satisfied. The Board finds that the credible record evidence (Montecucco letter; Dr. Davis) demonstrates no significant increase in cost of, or change

to, accepted farm practices. Moreover, the Board finds that aviation uses have coexisting with area farming for decades. Drone operations are already within controlled airspace and require ATC authorization today; the proposal does not change that. Transportation effects to slow-moving equipment are de minimis and do not constitute a change that requires a significant change to accepted farming practices and does not significantly increase the costs of accepted farming practices (≈5-second added time around half the airport). See V.11; Conditional Use Criterion 7 analysis.

R6 — Noise

Noise — DEQ compliance and contours. The project must obtain DEQ approval under OAR 340-035-0045 and operate within approved Noise Impact Boundaries. eVTOL/electric aircraft are substantially quieter than conventional rotorcraft; applicant's contours show the 55 Ldn footprint remains within existing airport contours. See V.20 and Conditional Use ¶ 4 (Noise).

R7 — Water, Wastewater, Stormwater

Water, Wastewater, Stormwater — The Board finds that establishing these systems on the subject property is feasible and regulated. On-site water is adequate with treatment for arsenic; wastewater can be served via WPCF-compliant on-site system or (if separately approved) connection to existing airport systems; stormwater detention is engineered to release at pre-development rates and flow in existing ditches well upstream of the Pudding River. DEQ/NPDES permits are required. The Board finds that compliance with all federal and state standards that apply is feasible. See Goal 6; V.2; Conditions.

R8 — Signatures/Scope

Signatures/Scope — The Board finds that only the subject property owner must sign the application and has done so. MCC 17.119.020 and .025 require signatures from owners of 'the property that is the subject of the application.' They do not require signatures from owners of speculative, future utility segments on other parcels. No zone change is proposed. See VI.3 (signature discussion).

R9 — Effective-date/Exercise-period

Effective-date/Exercise-period authorized in this decision is wholly lawful and reasonable, given the circumstances and history. The Board interprets MCC 17.119.180–.190 to allow specifying a later effective date as is being authorized here. Given parallel ODAV/DEQ processes and likely appeals, setting the exercise period to begin on the last-in-time final order prevents lapse by technicality and preserves meaningful review. See Additional Findings ¶ 8.

R10 — Goal 14 Urbanization

Goal 14 Urbanization — The proposal is deemed to be consistent with Goal 14 under OAR 660-012-0065(3)(n). Thus the proposed airport land use boundary and alterations to allow airport related uses on the subject property are deemed consistent with Goal 14.

The 1976 Aurora Airport Master Plan (acknowledged) has long designated this site for airport development under private ownership. See Goal 14 findings.

R11 — Safety/Regulation of eVTOLs

Safety/Regulation — FAA/ODAV oversight governs these aircraft. eVTOLs/powered-lift aircraft are certificated, not ultralights; operations must comply with FAA rules and ATC coordination within 5 miles/2,700 ft AGL. Existing mixed helicopter/fixed-wing operations at Aurora function safely. Assertions of ‘unregulated’ aircraft or terrorism risk are speculative. See Dr. Davis letter; ODAV/industry letters; Conditional Use ¶ 7.

R12 — Traffic

Traffic — The Board finds that adequate mitigation of traffic impacts from the proposal are provided. The DKS 2004 TIA and its supplement is credible and persuasive evidence that demonstrates this and demonstrates the proposal adds no significant adverse effects to study intersections and the Board finds that the 2004 TIA recommended mitigation is adequate. County Engineering conditions require frontage improvements and a proportional fee toward Ehlen/Airport Rd signal/turn lanes. These are conditions of approval for this decision. See Engineering Conditions A–B; TIA (Ex. 39).

R13 — Use Forecast (OAR 660-013-0040(9))

Use Forecast (OAR 660-013-0040(9)) — The Board finds that the credible and persuasive evidence in the record is that the airport sponsor provided the required materials. ODAV, as airport sponsor, confirmed the current master plan update materials that the applicant utilized contains the most up-to-date economic/forecast information for Division 13 compliance, which the Board adopts. See Executive Summary and OAR 660-013-0040 findings.

R14 — Airport Uses

Airport Uses — Within OAR 660-013-0100, all approved uses are airport uses that ‘shall be authorized’ within the boundary are allowed and the Board expressly finds that no uses are proposed or approved from the discretionary ‘may authorize’ list (OAR 660-013-0110). A condition limits uses accordingly. See VI.2 concluding paragraphs; Conditions (‘Uses limited to OAR 660-013-0100’).

R15 — Airport Overlay/Imaginary Surfaces

Airport Overlay/Imaginary Surfaces — The Board finds that the proposal is compliant with these surfaces. All structures must avoid penetrating Part 77 surfaces; lighting must be shielded to avoid glare; FAA/ODAV Form 7460-1 (Part 77) notice and determinations are required before permits. Rotorcraft surfaces are smaller than airport surfaces and fall within the existing AO zone. See AO Zone findings and ODAV comments.

R16 — Goal 6

Goal 6 —The Board finds that there is the reasonable expectation of compliance and that compliance is feasible. The Board understands that federal law governs aircraft emissions because only the FAA regulates the same and all emissions will be as FAA allows. The Board also finds that electric propulsion vehicles have few if any emissions and the proposal is designed to attract and serve electric aircraft. Feasible engineered stormwater and WPCF-compliant wastewater systems have been provided in the record each of those will avoid significant adverse effects; the Board finds that arsenic treatment is feasible to ensure potable water quality. See Goal 6 findings and Exhibits 36–37, 42–43.

VII. Decision

It is hereby determined that the 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 **GRANTS** the conditional use and comprehensive plan amendment, subject to the conditions set forth below. The Board finds that the conditions are necessary for public health, safety and welfare.

Conditions of Approval

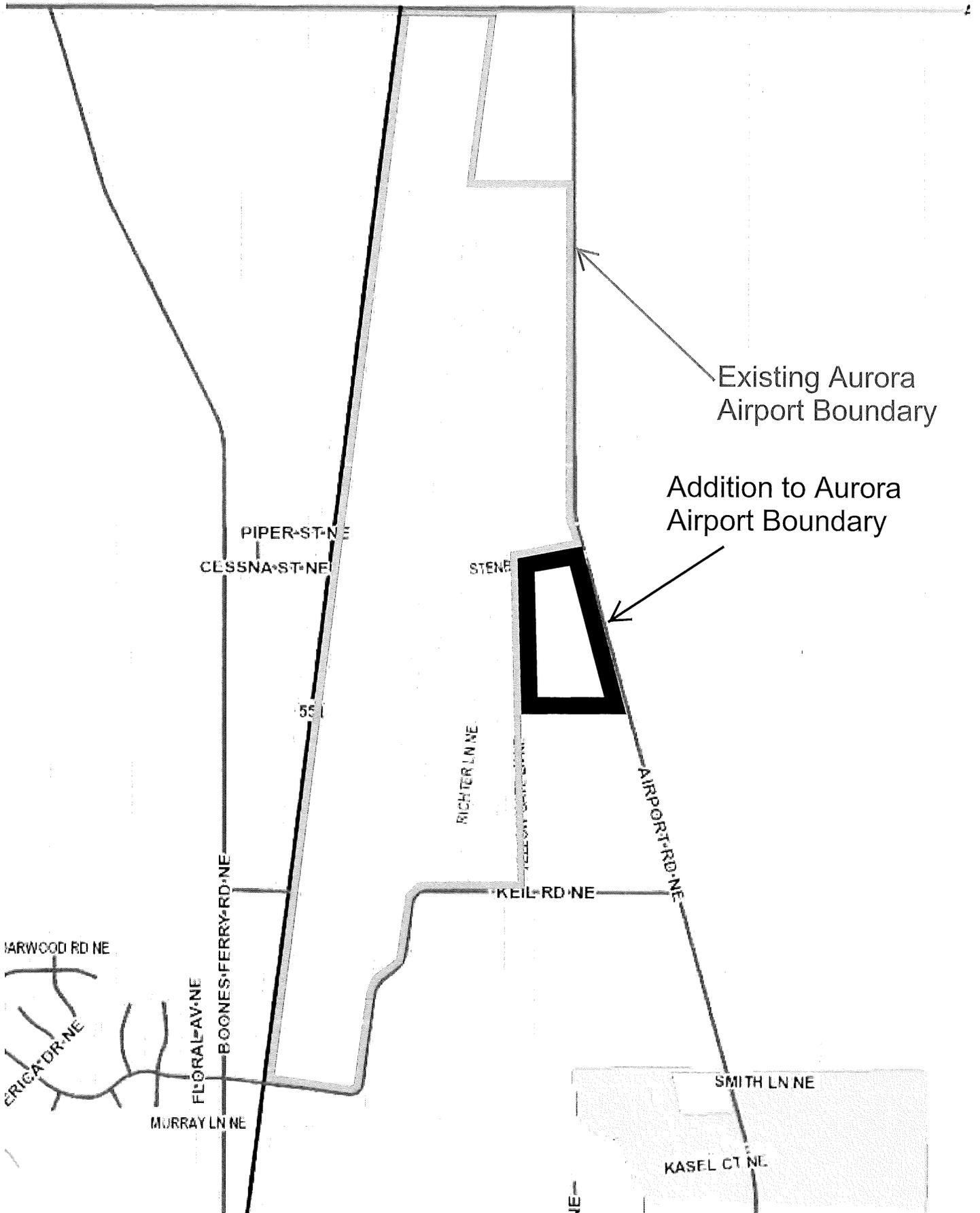
1. Applicant shall obtain all required building and septic permits.
2. Applicant shall submit evidence of compliance with the requirements of all required agencies to planning staff.
3. Prior to building permit issuance, design rural type frontage improvements along the Airport Road subject property 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. Prior to building permit approval, provide a ½ street improvement on the subject property's Airport Rd frontage as recommended by the 2024 TIA.
6. 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 becomes final; (2) the date the ODAV site approval decision becomes 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.
7. 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, as supplemented at the March 6, 2025 Hearings Officer Hearing. 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.

8. 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.
9. Prior to the construction or establishment of the proposed vertical takeoff and landing facility, 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. Prior to the construction or establishment of the proposed vertical takeoff and landing facility, the application fee must be paid to ODAV, as described in ORS 836.085.
15. 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).
16. Prior to the construction or establishment of the proposed vertical takeoff and landing facility, 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.

17. The height of any new structures, trees or 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.
18. The proposed development shall only provide service to classes of airplane classes that are authorized by the FAA and ODAV to have service to the Aurora Airport.
19. All aircraft that use the subject property from the subject property shall be to support commercial operations and recreational ultralight aircraft are prohibited.
20. Applications for building permits shall comply with MCCC 17.170.040(A) and (B).
21. Any proposed external lights shall be designed so as to not interfere with aircraft or airport operations.
22. Any proposed external lights shall be designed so as to not interfere with any adjacent uses.
23. 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.
24. The property shall be limited to providing service to airplanes in the category of BII or less.
25. Prior to obtaining building permits the applicant shall receive all necessary septic approvals from Marion County Septic and/or Oregon DEQ. Any connection to offsite wastewater systems would require land use approval on the other parcels. The subject parcel will not require additional land use approval for such connection once all other required approvals from other departments have been received.



Existing Aurora
Airport Boundary

Addition to Aurora
Airport Boundary

PIPER ST NE

CESSNA ST NE

STENE

551

RICHTER LN NE

AIRPORT RD NE

KEIL RD NE

WARWOOD RD NE

ERICA DR NE

FLORAL AV NE

BOONES FERRY RD NE

MURRAY LN NE

SMITH LN NE

KASEL CT NE

NE



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 17, 2025

Department: Public Works

Title: Consider accepting appeal of the Planning Commission decision approving Subdivision/Variance 25-001/Olander

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 the Planning Commission's decision approving Subdivision/Variance 25-001/Olander. Other motion options for consideration are: 1. Deny the appeal and uphold the Planning Commission's decision. 2. Remand the matter back to the Planning Commission.

Issue, Description & Background: Subdivision/Variance 25-001 is an application for a conceptual and detailed approval to subdivide a 24.60-acre parcel into seven lots and for a variance to allow seven dwellings to be accessed off a private lane in an AR-3 (Acreage Residential - 3 acre minimum) zone located in the 6700 Block of Peter Road SE, Aumsville. On November 4, 2025, the Planning Commission held a public hearing where a motion was passed to approve the proposal. A neighbor appealed the Planning Commission's decision. The appellants provide new arguments related to potential effects on stormwater and traffic as a result of the proposal, and the additional dwellings allowed by the proposed variance. Staff recommends the Board accept the appeal.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Appeal, Planning Commission Decision

Presenter: John Speckman

Department Head Signature: [Handwritten Signature]



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December 3, 2025

VIA HAND DELIVERY AND EMAIL: planning@co.marion.or.us

Marion County Board of Commissioners
c/o Marion County Clerk
555 Court St NE
Salem, OR 97301

Re: **Appeal Of Planning Commission Action
Subdivision/Variance Land Use Applications**
Application No. SUB/VAR 25-001
Public Hearing: November 4, 2025
Decision Date: November 20, 2025
Subject Property: Near the 6700 Block of Peter Road SE, Aumsville, OR
(Marion County Assessor Tax Lot Map No. 081W19C002900)
Applicants: Daniel E. Olander and Darcy K. Olander
My Clients: Ann & Greg Hale (6851 Peter Road)

To The Honorable Members of the Marion County Board of Commissioners:

Executive Summary

There are two land use applications which are the subject of this appeal. First, a subdivision approval to divide the above referenced 24.60-acre parcel into seven lots. Second, a variance application to allow seven dwellings to be accessed off a private road.

The Marion County Planning Commission held a public hearing on the applications on November 4, 2025. The hearing drew significant public interest, with many citizens in attendance expressing concerns. According to the sign-in sheet, more than a dozen families registered to testify in opposition to the applications, while only the Applicants spoke in support.

The primary concerns are whether flood and traffic issues will be sufficiently addressed with the conditions of approval, and whether the Applicants' request for a variance to have seven (7) homesites (instead of four (4) or five (5)) should be allowed. For example, Dan Goffin, Chairman of the Beaver Creek Water Control District, was among those who testified in opposition, because the development of the subdivision under the current¹ proposal would exacerbate flooding and cause financial hardship to those impacted.

¹ At the hearing Mr. Goffin argued the subdivision be limited to only four homesites, with a fifty-year storm system required, to mitigate flooding into Beaver Creek. *See* Video of Planning Commission Hearing, at approximately 22 minutes at 50 seconds. That is a reasonable request.

My clients, Ann & Greg Hale (“Hale Family”), are among those who testified and would be negatively impacted. The Hale Family lives directly south/southwest of the Applicants’ property, at 6851 Peter Road SE. My clients join those who have serious unresolved² concerns with the Applicants’ proposed development.

The Planning Commission approved the applications. This was error. We respectfully request the Marion County Board of Commissioners schedule a public hearing to correct the errors, address the citizen concerns, and/or impose additional or more specific conditions of approval as needed.

To summarize some of the errors:

- The Planning Commission erred by approving the Subdivision application when there was insufficient evidence to establish MCC 17.172.430 (stormwater management) was met, or alternatively, “feasible” to meet with the conditions of approval imposed.
- The Planning Commission erred in approving the Variance application when there was insufficient evidence MCC 17.122.020(1) was met, because there was no evidence of “unnecessary, unreasonable hardships” and variance relief is not applicable.
- The Planning Commission erred in approving the Variance application when the request seeks more than “the minimum necessary to permit the development of the property for the proposed use” and therefore MCC 17.122.020(3) is not met.
- The Planning Commission erred in approving the Variance as proposed with the current information and conditions of approval because the evidence did not establish the development will not “have a significant adverse effect on property or improvements in the neighborhood of the subject property” and MCC 17.122.020(4) is not met.
- The Planning Commission erred in approving the Variance as proposed with the current information and conditions of approval because the evidence did not

² My clients proactively tried to collaborate with the Applicants prior to the submission of applications to avoid objecting to the development during the land use process. Unfortunately, the Applicants have been wary of giving information or assurances sufficient for my clients to avoid asserting their rights in this land use matter. The Applicants remained noncommittal at the Public Hearing. *See* Video of Planning Commission Hearing, at approximately 16 minutes and 55 seconds (statement by Applicants’ representative: “we are happy to meet with Mr. Rhoten and his client at any time, to go over this project. Honestly, we haven’t at this time because we haven’t even started the engineering”). This appeal is necessitated because of that. Even so, my clients remain willing to work with Applicants even during the pendency of this appeal.

establish the development will not have “a significant adverse effect upon the health or safety of persons working or residing in the vicinity” and therefore 17.122.020(5) is not met.

- As a technical and substantive matter, the written decision and its findings in support of the approval decision appear inadequate under Oregon Land Use Board of Appeals (LUBA) case law in light of the above concerns.

These items are more specifically discussed below:

Facts

My clients, the Hale Family, are among those who objected to the applications. The Hale Family Property consists of three tax lots (081W300000301; 081W300000300; 081W300000400) approximately 45.64 acres in total size, directly south and southwest of the Applicants’ property. My clients’ property is Special Agriculture (SA) and currently in farm use.

1. Water Runoff.

Water runoff is the Hale Family’s primary concern. The Applicants’ property slopes on multiple sides. This includes draining from the center of the Applicants’ property into the Hale Family property behind my clients’ barn, and from the Applicants’ property to the southwest corner. There are ditches on the neighboring property and the Hale Family property routing the water runoff to Beaver Creek. Even so, under current conditions water accumulates in the southwestern area of the Applicants’ property and seasonally floods the Hale Family property. The Applicants’ site plans informally show the southwestern corner as having “wetlands” and the neighboring property does in fact have a mapped wetlands area.

The proposed development (seven lot subdivision) would cause a significant increase in impervious surfaces (roofs, driveways, patios, etc.) and therefore increase water runoff volume onto neighboring properties, including my clients’ and into Beaver Creek.

My clients’ concerns are particularly acute because the ditch on the neighboring property is largely unmaintained. This means even a modest increase in water runoff will increase flooding onto the Hale Family property (as well as increase flooding into Beaver Creek and have other related impacts). Consequently, the Hale Family – through no fault of its own – will lose a significant amount of land currently dedicated to farm use if the flooding is not adequately mitigated. Many others at the Planning Commission hearing testified to their own potential hardships as well.

2. Traffic.

The proposed development will significantly increase traffic in this rural area. This was also a major concern. Assuming³ ten (10) trips per day for one dwelling on the proposed seven (7) lots, there could be almost a forty to fifty percent (50%) increase in daily trips roughly estimated.⁴ And the actual number could potentially be higher.

This is a concern because (1) Peter Road is often used for large agricultural equipment and other agricultural-related vehicles, as well as school buses and other oversized vehicles, which already causes issues with existing traffic, and (2) the intersection of Peter Road and Brownell Drive SE will become more hazardous with the increase in traffic given the existing issues with the intersection.

Specifically, Brownell Drive SE is a common route to Silver Falls State Park and has a variety of fast traffic. Further, Brownell Drive SE has “blind corner” to the east when pulling out of Peter Drive and has a “dip” when facing to the west. Multiple individuals testified at the Planning Commission hearing and expressed concerns over historic and increased traffic associated with the proposed development.

Analysis

Errors of the Planning Commission include, but are not necessarily limited to, the following, in light of these facts:

- 1. The Planning Commission erred by approving the Subdivision application when there was insufficient evidence to establish MCC 17.172.430 (stormwater management) was met, or alternatively, “feasible” to meet with the conditions of approval imposed.**

The Marion County Code (“MCC”) has criteria required to gain “conceptual” and⁵ “detailed” subdivision approval. MCC 17.172.430 relates to stormwater management. It says:

³ This figure is based upon sources stating the ITE Trip Generation Manual (“ITE Manual”) estimates a single-family residential property generates 10 trips per day.

⁴ This figure is based upon a review of arial photographs from the Marion County Surveyor’s Office Survey Graphic Index, which, based on my rough approximation, shows 15 distinct properties which appear to have dwellings.

⁵ The Marion County Code draws a distinction between “conceptual” and “detailed” subdivision approval. Detailed approval is required prior to plat recordation and requires more specifics than conceptual approval (including engineering and design information). *See* MCC 17.172.700; MCC 17.172.840. Technically the application was for both conceptual and detailed approval. As such, the Applicants’ failure to provide detailed information is objectionable.

“The impact of proposed subdivisions [] on stormwater runoff shall be evaluated and potential adverse impacts shall be mitigated. Where evidence indicates stormwater runoff will have an adverse impact on a drainage system or natural drainage network, the developer shall demonstrate that proposed stormwater management on the subject property will compensate for the proposed change per county standards. Compliance with this requirement shall be demonstrated by compliance with department of public works engineering standards.” (Emphasis added).

MCC 17.172.430 mandates three things: **(1) an evaluation of the impacts of the subdivision on stormwater, (2) mitigation of those adverse impacts, and (3) compliance with public works engineering standards to compensate for adverse impacts on drainage systems or networks.**

It is the Applicants’ burden of proof to show the criterion is met. *See, e.g., York v. Clackamas County*, LUBA No. 2019-081 at 12 (2020). There needs to be substantial evidence in the record showing compliance with the above standards, or alternatively, compliance is “feasible” if a condition of approval is imposed to ensure compliance. *See generally Meyer v. City of Portland*, 67 Or. App. 274, *rev den*, 297 Or. 82 (1984). If compliance with approval criteria is “uncertain” at the public hearing stage or “subject to future [] determination” then it is not considered “feasible,” however. If so, imposing conditions of approval to ensure compliance is not enough to conclude the criteria is met. *Gould v. Deschutes County*, 216 Or. App. 150, 161 (2007). In other words, conditions cannot substitute for compliance with approval standards or, similarly, unlawfully delegate or defer demonstration of compliance with a review standard to an administrative or ministerial decision-maker.

Accordingly, the case law establishes it is not enough to impose a condition of approval requiring staff review and approval of plans submitted after the public hearing stage, if compliance remains “uncertain” at the public hearing phase. *E.g., Gould v. Deschutes County*, 227 Or. App. 601, 606 (2009) (“the evidentiary record of a land use decision must show that compliance with the approval standards was ‘likely and reasonably certain,’ without regard to any modification as a result of later administrative review”); *Gould v. Deschutes County*, 216 Or. App. 150, 163 (2007) (Court of Appeals found approval not based on substantial evidence when “county’s decision [] allows the mitigation plan justification to be established by future discussions among [the applicant and governmental officials] and not on evidence submitted during the public hearings. That robs interested persons of the participatory rights allowed by the county ordinance”); *Hodge Oregon Properties v. Lincoln County*, 194 Or. App. 50, 53-53 (2004) (cannot defer to later review by county staff and “effectively ignore the possibility that the applicant actually might not be able to comply with” the applicable standards and criteria); *Township 13 Homeowners Association, Inc. v. City of Waldport*, LUBA Nos. 2006-171, 2006-172, 4-8 (2007) (remand of an application that did not provide soil or geotechnical analysis at the preliminary stage, because the use of conditions of approval “impermissibly deferred application of the relevant criteria to a time in the future when there will be no

opportunity for public hearing or comment”); *Western Express v. Umatilla County*, LUBA No. 2007-010, 19-22 (2007) (quoting *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992) for the applicant’s requirement to provide evidence “feasible solutions to identified problems exist”).

Here, the Planning Commission imposed a condition of approval in an attempt to ensure compliance with MCC 17.172.430. Specifically, the Planning Commission decision requires the Applicants submit a “a stormwater attenuation plan for review and approval” prior to recording the final plat. Implicitly⁶ – but not directly stated – this means Marion County staff would apply its baseline engineering standards when reviewing the stormwater plan.

Assuming that is the case, this means, at bottom⁷, the Applicants need to show it is “reasonably certain” that (1) the Marion County stormwater standards can be complied with, and (2) that Marion County stormwater standards go far enough to ensure “potential adverse impacts [are] mitigated” in this circumstance.

The Applicants failed to meet this burden. There is zero evidence in the record pertaining to the evaluation of water runoff impacts, and zero evidence⁸ on how stormwater will be mitigated. While the Applicants expressed an intention to attempt to comply with Marion County standards, they have not shown compliance with baseline standards is possible⁹ or will adequately¹⁰ mitigate the flooding and stormwater concerns. In other words, the methods of solving identified problems (flooding) remain “uncertain.”

⁶ The fact the conditions of approval do not directly specify the standards which Marion County staff will apply in reviewing any future stormwater plan is objectionable in of itself and should be clarified.

⁷ In addition, the Applicants must “evaluate” the adverse impacts to meet the criteria. There is no evidence that occurred here.

⁸ **At the public hearing on November 4 the Applicants’ representative conceded “we haven’t even started the engineering” and therefore didn’t have any specifics to offer on the stormwater mitigation plans.** See Video of Planning Commission Hearing, at approximately 16 minutes and 55 seconds.

⁹ At the Planning Commission hearing the Applicants’ representative referenced MCC 15.15 and MCC 15.20 as some of the relevant standards governing stormwater. To the extent those apply, we note those provisions require stormwater drainage plans to be submitted and approved “prior to the issuance of a Marion County land use [] approval[.]” See MCC 15.20.060; See Video of Planning Commission Hearing, at approximately 13 minutes and 30 seconds.

¹⁰ The Marion County Code itself states stormwater standards in MCC 15.15 are only “minimum standards” and compliance with the standards “does not mean or imply that compliance with this chapter by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into waters of the state by a responsible person.” See MCC 15.15.060.

Indeed, minimum standards often don't go far enough. This situation is similar to *Nicta v. Oregon City*, LUBA No. 2018-102 (2019). There, in a slightly different context LUBA found it was inadequate to merely rely upon City standards for stormwater mitigation, when those standards did not fully address the stormwater issues presented. *See Nicta v. Oregon City*, LUBA No. 2018-102, Slip Opinion at 13-17 (2019) (City's argument stormwater runoff would be sufficiently mitigated by complying with City regulations was inadequate, where impervious surfaces would increase runoff and City regulations only capture and treat 80% of runoff).

It is legally required for the Applicant to provide information and assurances at this stage to ensure the development won't make the flooding worse and that mitigation is feasible. They have not. It was error to find this criterion was met merely by imposing the condition of approval without finding "feasibility" and without further clarification on the required standards.

2. The Planning Commission erred in approving the Variance application when there was insufficient evidence MCC 17.122.020(1) was met, because the Applicants' hardship is self-imposed and there was no evidence of "unnecessary, unreasonable hardships[.]"

The variance is requested because Marion County regulations limit the Applicants to only four or five lots with dwellings in the subdivision unless the Board of Commissioners accepts a dedication of land for a public Marion County owned road. *See* MCC 17.172.160 (requires Marion County Commissioner approval of public road dedication); MCC 17.110.800 (stating private drives may only serve four dwelling units). Thus, the Applicants could conceivably develop the property with four or five lots without the variance. Alternatively, they could have first attempted to obtain a public road dedication, which they did not. In any event, the Applicants are choosing to try and divide the subject property into seven lots, instead of four or five, and choosing to do so without seeking approval for a public road dedication. Under these circumstances we contend the purported hardship is self-imposed and variance relief is not applicable.

Further, the Applicants assert they will incur monetary hardship if the variance is not granted and the additional lots are not allowed. This type of request – to obtain a variance to use land in a more profitable fashion – is often deemed a self-imposed hardship of the type the Oregon Court of Appeals and LUBA regularly reject. *E.g. Reagan v. City of Oregon City*, LUBA No. 2000-125, Slip Opinion at 12-14 (2001) (No variance was allowed to create a second lot out of an existing lot when the applicant's circumstances "merely constitute a monetary hardship or inconvenience."); *see also Lovell v. Planning Com. of Indep.*, 37 Or. App. 3, 7 (1978) ("To obtain a variance, the individual property owner must demonstrate a peculiar hardship or practical difficulty not shared by others . . . Even if [applicant] could use her land more profitably, as suggested by [the findings], that would be insufficient to establish a practical difficulty warranting a variance"); *Roberts v. City of Gearhart*, LUBA No. 99-196, Slip Opinion at 11-12 (2000) (No variance was granted just because the applicant couldn't construct as much storage as applicant wanted to at a preferred location).

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Lastly, the argument is not factually supported. Marion County Tax Assessor records show the Applicants were able to acquire the entire 24.60-acre property for only \$280,000.00. This amount is also shown as the consideration reflected on the face of the deed within the planning department file. Therefore, the only evidence is contrary to the Applicants' contentions, as the Applicants are likely to obtain a significant amount of profit from this development even if only four or five lots are created and served by a private drive. And it is possible larger lots could yield a higher sales price, leading to the same amount of profit. We simply don't know.

In sum, there was zero evidence in the record to support the Applicants' argument – assuming this qualifies for variance relief – and the Planning Commission erred in finding MCC 17.122.020(1) satisfied.

- 3. The Planning Commission erred in approving the Variance application when the request seeks more than “the minimum necessary to permit the development of the property for the proposed use” and therefore MCC 17.122.020(3) is not met.**

The “proposed use” at issue is a housing subdivision. As stated above, the Applicants could develop the property into a housing subdivision and have four or five lots with dwelling units served by a private drive. Thus, the Applicants are seeking more than the “minimum necessary” to allow for the proposed use, and this criterion is not met. The Planning Commission erred by finding otherwise.

- 4. The Planning Commission erred in approving the Variance as proposed with the current information and conditions of approval because the evidence did not establish the development will not “have a significant adverse effect on property or improvements in the neighborhood of the subject property” and MCC 17.122.020(4) is not met.**

Allowing the variance would increase the development to allow for seven lots with dwellings, as opposed to four or five. This would increase the impervious surfaces – and exacerbate water runoff/stormwater.

As stated herein – and shown in the record of the proceedings before the Planning Commission – there is abundant evidence that water runoff and stormwater from the increased impervious surfaces would have a significant adverse impact on my clients' property and on other property in the vicinity, and in Beaver Creek, leading to additional downstream issues. This would be worsened by allowing the variance. Thus, the Planning Commission erred in finding this criterion was met, particularly when there is zero evidence in the record establishing the runoff can be adequately mitigated.

- 5. The Planning Commission erred in approving the Variance as proposed with the current information and conditions of approval because the evidence did not establish the development will not have “a significant adverse effect upon the**

health or safety of persons working or residing in the vicinity” and therefore 17.122.020(5) is not met.

Similarly, many individuals testified at the public hearing on November 4 to existing vehicular and traffic safety issues. The testimony expressed concerns the increase in households exacerbate problems. My clients share these well-founded concerns. The Planning Commission erred in finding the criterion met.

6. As a technical and substantive matter, the written decision and its findings in support of the approval decision appear inadequate under Oregon Land Use Board of Appeals (LUBA) case law in light of the above concerns.

In general, findings must “(1) identify the relevant approval standards, (2) set out the facts which are believed and relied upon, and (3) explain how those facts lead to the decision on compliance with the approval standards.” *Heiller v. Josephine County*, LUBA No. 92-032, Slip Opinion at 7 (1992). Additionally, findings “must address and respond to specific issues relevant to compliance with applicable approval standards that were raised in the proceedings below.” *Id.*; citing *Norvell v. Portland Metropolitan Area Local Government Boundary Com.*, 43 Or App 849, 853, 604 P2d 896 (1979).

We contend the findings of the Planning Commission are inadequate as a technical matter. Amongst other things, the findings do not specifically set forth or tie the relevant facts (or lack thereof) to the approval standards or respond to the issues asserted by the opponents at the November 4 public hearing and in the written materials in advance. This could be cured, however, by holding a public hearing on the matter and issuing new findings.

Conclusion

For the reasons above, and others, we respectfully request the Marion County Board of Commissioners accept the appeal, pursuant to MCC 17.172.820 and/or 17.122.120, and hold a public hearing on the matter. Thank you.

Sincerely,



Nicholas A. Rhoten

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION
SUBDIVISION/VARIANCE CASE 25-001**

APPLICATION: Application of Daniel E. Olander and Darcy K. Olander for conceptual and detailed approval to subdivide a 24.60-acre parcel into seven lots and for a variance to allow seven dwellings to be accessed off a private lane in an AR-3 (Acreage Residential - 3 acre minimum) zone.

DECISION: On November 4th, 2025, the Marion County Planning Commission **GRANTED** conceptual and detailed approval to subdivide the property into seven lots subject to the conditions identified in the following conditions of approval.

EXPIRATION DATE: This decision is valid only when exercised by **December 5th, 2027**, unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drain field replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS

1. Prior to recording the final plat, the applicants shall obtain a septic site evaluation from the Marion County Septic Division on each undeveloped parcel.
2. Subdivision name must be approved per ORS 92.090.
3. Must be surveyed and platted per ORS 92.050.
4. Subdivision plat must be submitted for review. Checking fee and recording fees required.
5. Per ORS 92.065 - Remaining monumentation bond may be required if some of the plat monuments have not been set and/or the installation of street and utility improvements has not been completed, or other conditions or circumstances cause the delay (or resetting) of monumentation.
6. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.
7. Utility easements meeting the approval of the Marion County Department of Public Works shall be provided to all newly created lots.
8. All easements (utility, drainage, septic, etc.) required by reviewing agencies shall be shown on the final plat.
9. In accordance with Marion County Ordinances and OAR 340-21-060, during the land clearing and road construction phase of this development, dust suppression measures such as water trucks shall be employed as necessary to prevent off site deposition of dust generated by the construction activities or related vehicular traffic on adjacent properties.
10. Dust suppression measures shall also be provided during construction of the dwellings on these proposed parcels.

11. All parcels will be required to submit a Sensitive Groundwater Overlay declaratory statement prior to issuance of building permits. MCC 17.181.120 (A).
12. The applicant shall submit a water-level monitoring plan to the county. The plan shall be peer reviewed by the county at the expense of the applicant and is subject to approval by the county. Prior to building permits being issued, the water-level monitoring plan shall be approved and implemented.
13. Static water level measurements shall be taken for any new wells on the parcels prior to issuance of a building permit.
14. ENGINEERING CONDITIONS

Condition A – Prior to Plat approval, provide a notarized Non-Remonstrance Agreement to be recorded concurrently with the subdivision plat documenting agreement for cooperative, collective financial cost sharing by the Developer with the adjacent Apostolic Church organization toward an annual Peter Road lignin dust suppression application, and, for financial participation toward a potential Peter Road future paving project.

Nexus is attributable to the anticipated increase in traffic. The Condition is in keeping with MCC 17.110.780(A), 17.110.800 and 17.172.320. Please note the Apostolic Christian Faith Church of Silverton (TL# 081W19C002501) has recorded a like agreement with Marion County at Reel 4027 / Pg 122.

Condition B – Prior to plat approval provide a notarized Road Maintenance Agreement for the private access easement to be recorded concurrently with the subdivision plat.

Condition C – Prior to subdivision plat approval, design and construct a minimum 20-foot wide private all-weather access road in substantial conformance with approved engineering plans as certified by the Engineer-of-Record.

Condition D – Prior to subdivision plat approval submit a stormwater attenuation plan for review and approval that addresses runoff from the proposed private road as well as parcels. If the system as designed will serve two or more parcels in aggregate, then it shall be constructed prior to plat approval. If detention is addressed as individual parcel exfiltration systems, then a template design shall be provided, and each system shall then be constructed in conjunction with its respective dwelling, with said exfiltration system to be completed prior to issuance of each respective Certificate of Occupancy.

Nexus is due to the creation of 0.5-acre plus of impervious surfaces, the sloping nature of the site, and to satisfy MCC 17.172.430.

Condition E – On the subdivision plat depict a 30-foot R/W half-width dedication for public road purposes along the subject property Peter Road frontage.

Intended to satisfy MCC 17.172.340.

15. The name approved for the private road extending west and south from Peter Rd SE is **Olander Ln SE**, which shall be shown on the final subdivision plat.

APPEAL PROCEDURE: This decision may be appealed to the Marion County Board of Commissioners by submitting a written appeal explaining wherein the Marion County Planning Commission decision is in error, along with a fee of \$500.00. The appeal must be received in the Marion County Clerk's Office, 555 Court St. NE, Salem, by 5:00 p.m. on **December 5th, 2025**. If an appeal is received it will be reviewed by the Board of Commissioners to determine if it merits further hearing and consideration by the Board. Questions regarding this decision or the appeal procedure should be directed to the Marion County Planning Division, 5155 Silverton Road NE, Salem, (503) 588-5038.

FINDINGS AND CONCLUSIONS: The Planning Commission decision is based on the following findings and conclusions.

1. The subject property is designated Rural Residential in the Marion County Comprehensive Plan and correspondingly zoned AR (Acreage Residential). The property is not within any UGB (Urban Growth Boundary). The purpose and intent of the acreage residential zone is to provide appropriate regulations governing the division and development of lands designated rural residential in the Marion County Comprehensive Plan. Acreage residential zones are areas that are suitable for development of acreage homesites. Such areas are necessary to meet the housing needs of a segment of the population desiring the advantages of a rural homesite. It is the intent that residential sites be provided with adequate water supply and wastewater disposal without exceeding the environmental and public service capability of the area or compromising the rural character of the area.
2. The property is on the north side of Highway 22, less than a half mile north of the Aumsville UGB. The property is located approximately a quarter mile south of Brownell Dr SE, and 200-feet west of Peter Rd SE. The only frontage on a public road is via an access point on the northeastern corner of the subject property which meets Peter Rd SE approximately 850-feet south of where Peter Rd SE meets Brownell Dr SE. The property has no mapped geohazard, floodplain, or wetlands. The southwestern corner is adjacent to a pond and mapped wetlands on another property. The entire parcel consists of hydric soils, and slopes generally towards the southwestern corner. The property is located within an SGO (Sensitive Groundwater Overlay) zone. The applicant has an approved and peer-reviewed hydrogeology report for the proposed lots indicating that there is a viable, long-term supply of groundwater available for the new residential wells.
3. Most adjacent properties to the north, east and west are zoned AR and developed with single family homes. The property directly north is developed with a religious organization. Properties to the east of Peter Rd SE are zoned EFU (Exclusive Farm Use) and are in active farm production, producing primarily hay, grass seed or Christmas trees. To the south are properties zoned SA (Special Agriculture) in agricultural use adjacent to Highway 22. South of Highway 22 is the City of Aumsville.
4. The applicant is proposing to subdivide a 24.60-acre parcel into seven lots which would all be served by a single private road. Six of these seven lots would not have frontage on a public road. To exceed the maximum of four lots without frontage on a public road (MCC 17.110.800) the applicant proposes a variance.

AGENCY COMMENTS:

5. Marion County Planning requested comments from various agencies. Those comments provided are included as follows in this section.

Public Works Land Development and Engineering (LDEP) requested that the following be included in the staff report for consideration by the Planning Commission.

ENGINEERING CONDITIONS

Condition A – Prior to Plat approval, provide a notarized Non-Remonstrance Agreement to be recorded concurrently with the subdivision plat documenting agreement for cooperative, collective financial cost sharing by the Developer with the adjacent Apostolic Church organization toward an annual Peter Road lignin dust suppression application, and, for financial participation toward a potential Peter Road future paving project.

Nexus is attributable to the anticipated increase in traffic. The Condition is in keeping with MCC 17.110.780(A), 17.110.800 and 17.172.320. Please note the Apostolic Christian Faith Church of Silverton (TL# 081W19C002501) has recorded a like agreement with Marion County at Reel 4027 / Pg 122.

Condition B – Prior to plat approval provide a notarized Road Maintenance Agreement for the private access easement to be recorded concurrently with the subdivision plat.

Condition C – Prior to subdivision plat approval, design and construct a minimum 20-foot wide private all-weather access road in substantial conformance with approved engineering plans as certified by the Engineer-of-Record.

Condition D – Prior to subdivision plat approval submit a stormwater attenuation plan for review and approval that addresses runoff from the proposed private road as well as parcels. If the system as designed will serve two or more parcels in aggregate, then it shall be constructed prior to plat approval. If detention is addressed as individual parcel exfiltration systems, then a template design shall be provided, and each system shall then be constructed in conjunction with its respective dwelling, with said exfiltration system to be completed prior to issuance of each respective Certificate of Occupancy.

Nexus is due to the creation of 0.5-acre plus of impervious surfaces, the sloping nature of the site, and to satisfy MCC 17.172.430.

Condition E – On the subdivision plat depict a 30-foot R/W half-width dedication for public road purposes along the subject property Peter Road frontage.

Intended to satisfy MCC 17.172.340.

ENGINEERING REQUIREMENTS

- F. Access to all parcels shall be shared from a single connection point to Peter Road.
- G. Any work, including utility work within the public right-of-way such as electrical service interconnection, will require a separate permit from PW Engineering.
- H. Developer(s) may be held responsible for excessive damage to the Peter Road gravel surface attributable to heavy truck traffic in support of onsite construction activities; it is advised to video the Road from Brownell Drive to the access point prior to any heavy hauling.

ENGINEERING ADVISORY

- I. DEQ regulates erosion control for sites of 1.0-acre plus of total disturbance through issuance of the NPDES 1200-C Construction Stormwater Erosion Permit.

Marion County Septic commented: “All 7 lots must have an approved site evaluation. Current site evaluation applications 555-25-005588 through 555-25-005594 to serve all 7 lots are in review.”

Marion County Building commented: “No Building Inspection concerns. Permit(s) are required to be obtained prior to development of structures and/or utilities installation on private property.”

Marion County Survey commented:

1. Subdivision name must be approved per ORS 92.090.
2. Must be surveyed and platted per ORS 92.050.
3. Subdivision plat must be submitted for review.
4. Checking fee and recording fees required.
5. Per ORS 92.065 - Remaining monumentation bond may be required if some of the plat monuments have not been set and/or the installation of street and utility improvements has not been completed, or other conditions or circumstances cause the delay (or resetting) of monumentation.
6. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.

All other commenting agencies either failed to comment or stated no objection.

ANALYSIS AND CONCLUSIONS:

6. The applicant is proposing to subdivide a 24.60-acre parcel into seven lots and proposes a variance to allow seven dwellings to be accessed off a private lane in an AR-3 (Acreage Residential - 3 acre minimum) zone.
7. **Roads, Streets and Easement:** Standards for this section are listed in MCC 17.172.140 through 17.172.340 and include:

17.172.140 ENGINEERING STANDARDS AND REQUIREMENTS Engineering standards and requirements, including but not limited to streets, drainage, access, easements, and thoroughfare improvements, shall be those currently approved by the Marion County Department of Public Works.

Marion County Land Development and Engineering submitted conditions of approval, requirements, and advisories outlined in section 4 of this document.

17.172.160 DEDICATION OR DEEDING OF ROADWAY No person shall dedicate for public use, or deed to Marion County, a parcel of land which is used or proposed to be used as a roadway without first obtaining the approval of the Board and delivering the deed to the Board for its endorsement. No dedication is effective unless the property is accepted by the Board and recorded with the Marion County Clerk's Office.

No public right of way dedication is proposed with this application.

17.172.180 DEAD-END STREETS When it appears necessary to continue streets to an adjacent acreage, the streets shall be platted to the boundary or property line of the proposed subdivision without a turnaround. In all other cases, dead-end streets shall have a turnaround with a configuration approved by the Marion County Department of Public Works.

No dead end streets are proposed with this application. The applicant proposes a cul-de-sac with fire turnarounds, and will need to ensure proper fire turnaround specifications are met.

17.172.200 RADIUS AT STREET INTERSECTIONS The property line radius at street intersections shall be to the Marion County Public Works Department's standards.

The standard does not apply because these are private streets. The applicant has, however, indicated that they plan to build to public street standards.

17.172.220 STREET GRADES No street grade shall be in excess of 12% unless the Commission or Hearings Officer finds that, because of topographic conditions, a steeper grade is necessary. The Commission or Hearings Officer shall require a written statement from the Director of Public Works indicating approval of any street grade that exceeds 12%.

The proposed private street would meet this standard.

17.172.240 DEDICATION OF RIGHT-OF-WAY If land to be subdivided or partitioned will cause the termination of a roadway or borders a roadway right-of-way of less than standard width, the applicant shall dedicate sufficient land to provide for a cul-de-sac or to increase the half (or halves) of right-of-way bordering the subject parcel to one-half of the standard width. Unless otherwise specified for an individual street in the Zoning Ordinance, standard right-of-way widths are subject to the standards of the Marion County Department of Public Works.

The 30-foot right-of-way width along Peter Road required by LDEP shall be a condition of approval.

17.172.260 ADDITIONAL RIGHT-OF-WAY WIDTHS Where topographical requirements necessitate either cuts or fills for the proper grading of the streets, additional right-of-way may be required to be dedicated to allow all cut and fill slopes to be within the right-of-way.

The 30-foot right-of-way width along Peter Road required by LDEP shall be a condition of approval.

17.172.280 PERFORMANCE STANDARDS Whenever adequate assurances of performance are required as a condition of approval of any subdivision under this ordinance, the applicant shall meet the requirements of this section.

Marion County Land Development and Engineering did not request that a Performance & Warranty Construction Bond be submitted.

17.172.300 UTILITY EASEMENTS Utility easements meeting the approval of the Marion County Department of Public Works shall be provided to all newly created lots.

This shall be a condition of approval.

17.172.320 STREET OR ROAD IMPROVEMENTS All street or road improvements including pavement, curbs, sidewalks, signage, and surface drainage shall be in accordance with the specifications and standards prescribed by the Director of Public Works. Subdivision plats shall not have final approval until such time as the Director of Public Works, or his/her designee, is satisfied that the street improvements will be completed in accordance with the specifications and standards set forth by the Marion County Department of Public Works.

The development will be located on a private road, no upgrades are needed.

17.172.340 PRIVATE STREETS In the event the subdivider or developer elects to provide private streets or thoroughfares, they shall be maintained by the Homeowners Association and a maintenance agreement shall be submitted to Marion County for review and approval prior to recording the final plat.

The applicant proposes utilizing a private street, therefore this criterion shall be a condition of approval.

8. **Lots:** Standards for this section are listed in MCC 17.172.360 through 172.380 and include:

17.172.360 LOT SIZE All lots approved under this Chapter shall have sufficient area to be consistent with the intent of the Comprehensive Plan and to provide adequate area for the intended structures and uses, all setbacks, access and spacing required for water supply and waste water disposal. Lots to be served by public or privately owned sewage collection and disposal system must meet the requirements and have approval of the Oregon State Department of Environmental Quality before being recorded or sold. State regulations, soil types, drainage, terrain, and location may be included as part of the criteria used by the State or County in determining appropriate lot sizes for lots using subsurface disposal of sewage. Lot size and dimension shall be as prescribed in the corresponding zone.

The Comprehensive Plan states that all lots must be, as a minimum, two acres in size and the AR-3 (Acreage Residential) zone has a minimum lot size of three acres. The proposed lots range from 3 to 5.99-acres in size. All the lots will conform to the minimum lot size standards and are of sufficient size and shape to accommodate a dwelling.

17.172.380 CURVED FRONT LOT LINES When front lot lines are on a curve or arc, the front line distance shall be indicated on the final plat by bearing and chord distance.

As a condition of approval, all curved front lot lines will be measured and shown on the final plat by bearing and chord distance.

9. **Sewage, water and utilities:** Standards for this section are listed in MCC 17.172.400 through 17.172.440 of and include:

17.172.400 SEWAGE DISPOSAL All new or refigured lots or parcels, 10 acres or smaller in size, shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the Department of Environmental Quality (DEQ) and the Marion County building inspection division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by the Department of Environmental Quality (DEQ) via the Marion County building inspection division. Installation and maintenance shall be in accordance with the Department of Environmental Quality's regulations and requirements. All new or reconfigured lots or parcels with an existing on-site septic system, that were authorized by an approving authority, shall be reviewed to determine that the existing system is either located entirely on the same lot or parcel containing the existing dwelling, or that proper easement is provided to allow the continued use and maintenance of the system. The commission, director, or hearings office may require connection to an existing sewage collection and treatment system regardless of lot suitability for subsurface disposal if the commission, director, or hearings officer deems it necessary and provided the connection is available

A condition of approval shall require the applicant obtain a favorable septic approval for each proposed lot prior to the subdivision plat being recorded. In addition, the County On-site Wastewater Specialist is required to sign the plat.

17.172.420 WATER SUPPLY All lots or parcels shall be served by an authorized public or private water supply system or individual private wells.

(a) **Public or Private Systems:** Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity,

storage, and distribution system requirements of the State Health Division and the Marion County Department of Public Works.

- (b) *Individual Private Wells: Individual private wells must meet the construction requirements of the Oregon State Water Resources Department and be located in accordance with requirements of the State Health Division in relation to public or private sewage disposal systems. The bacteriological quality of this water may be determined through the Marion County Health Department. Upon receiving the recommendations from the State Health Division or Marion County Health Department, the Hearings Officer or Commission may require the use of an engineered public or private water system in any proposed subdivision. Other criteria to be considered in making this determination are the recommendations contained in the Marion County Water Quality Management Plan, Marion County Comprehensive Plan, and Chapter 181 of the Marion County Rural Zoning Ordinance.*

The applicant indicates that water will be provided by individual private wells, not by a private or public water system. Privately owned wells — including their location — are not regulated by Marion County. Wells in the development must meet the requirements of the Oregon Water Resources Department.

17.172.430 STORMWATER MANAGEMENT. The impact of proposed of subdivisions and partitions on stormwater runoff shall be evaluated and potential adverse impacts shall be mitigated. Where evidence indicates stormwater runoff will have an adverse impact on a drainage system or natural drainage network, the developer shall demonstrate that proposed stormwater management on the subject property will compensate for the proposed change per county standards. Compliance with this requirement shall be demonstrated by compliance with department of public works engineering standards.

Marion County Land Development and Engineering as well as Oregon DEQ regulate stormwater detention. LDEP requires a stormwater attenuation plan be submitted for review prior to the subdivision plat being approved. This shall be a condition of approval.

17.172.440 UNDERGROUND UTILITIES EASEMENTS Underground easements for utilities and overhead utility facilities shall be provided by the subdivider and set forth on the final plat. When possible, such easement shall be centered on or bordering a lot line. The subdivider shall provide easements on both sides of all road or street rights-of-way of 60 feet or less.

No street rights-of-way are being proposed. Utility easements meeting this standards shall be a condition of approval.

10. **Access Standards:** *MCC 17. 172.560 requires that all lots must have a minimum of 20 feet of frontage on a public right-of-way, or, when an access easement is proposed to serve one or more lots in any partitioning, the location and improvement of the roadway access shall conform to the following standards which are necessary for adequate access for emergency vehicles. Evidence that the access has been improved to these standards shall be provided prior to the issuance of building permits on the parcels served by the access easement.*

- (a) *Have a minimum easement width of 20 feet;*
- (b) *Have a maximum grade of 12%;*
- (c) *Be improved with an all-weather surface with a minimum width of 12 feet;*
- (d) *Provide adequate sight-distance at intersections with public roadways;*
- (e) *Be provided with a road name sign at the public roadway as an identification for emergency vehicles in accordance with the Marion County Address and Street Name Ordinance.*

The proposed private street shall meet these standards as a condition of approval.

11. **Sensitive Groundwater Overlay (SGO) Zone:** *MCC Chapter 17.181 provides standards for development within an SGO zone, specifically section 17.181.120 (B) provides monitoring requirements for subdivisions in SGO zones:*

- 1. *An approved water-level monitoring plan is required as a condition of approval for subdivisions.*
- 2. *The monitoring plan shall be submitted to the county for peer review and is subject to approval by the county.*
- 3. *The monitoring plan shall be approved and implemented before building permits are issued.*

An approved water-level monitoring plan shall be made a condition of approval, and no building permits will be issued prior to the plan being approved by the County.

5. A minimum of one observation well per 15 lots is required in each subdivision and at least one observation well is required for each phase of a subdivision. Monitoring shall begin at the start of development of Phase 1 of an approved subdivision. A report that includes an analysis of data collected to date shall be submitted to the county for peer review prior to approval of the next phase of development.

This standard is not required as there are only 7 lots being developed.

6. Evidence of water level declines shall require preparation of a hydrogeology study prior to the release of the next phase for development if the county determines that the available data suggests that groundwater supplies may not be sufficient for additional development.

There are no phases for this development and as such this standard does not apply.

7. Access easements that allow county and OWRD personnel to measure water levels shall be recorded with deeds for lots containing an observation well as a condition of approval of the subdivision.

This shall be a condition of approval.

Staff has considered MCC 17.181.140 and does not recommend any conditions from that section of code as the size and nature of this development do not warrant it.

12. **Variance:** Standards for this section are found in MCC 17.122.020 and include:

1. *There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and*

The applicants propose a variance to MCC 17.110.800 (Dwellings and all other buildings to be accessible to public street) which limits the number of dwellings served by a private road to four (without frontage on a public right-of-way) unless they were created prior to May 1st, 1977. The subject property has 60-feet of frontage on a public right-of-way. The configuration of this parcel predates the current owner and constrains the way in which a road may be constructed off Peter Road SE to access the proposed parcels. Adherence to the four dwelling/parcel limitation would decrease the amount of parcels that could be created within this 24.6-acre property that could be fully developed if not for the constrained access. The applicant argues that the value of each of the lots will be approximately \$250,000, that adherence to MCC 17.110.800 would present an opportunity cost of approximately \$750,000, and that this estimated sum constitutes an unreasonable financial hardship. The purpose of the acreage residential zone is to implement the rural residential designation for exception lands which are intended as areas to provide housing for the segment of the population desiring a rural homesite. The subject parcel could not be developed to its full potential within the AR-3 zoning without modification to requirements of MCC 17.110.800. This is a practical difficulty which can be relieved by granting this variance. The criterion is met.

2. *There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and*

The unusual circumstance that applies to the subject property is the way it has been configured. The parcel is a rectangular 24.6-acre parcel, with a small, curved portion extending from the northeast corner which terminates at the right-of-way for Peter Road. The bulk of the property is separated from the right-of-way by other rural residential properties along Peter Road. It is unusual for such a large AR parcel to have such little frontage on the right-of-way. The criterion is met.

3. *The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and*

The property is in the AR-3 zone, where the minimum parcel size is 3-acres. The applicant proposes a subdivision to create 7-parcels. The property could technically be partitioned into 8-parcels, but the southernmost area has particularly wet soils which are being consolidated into a 5.99-acre parcel. The proposed degree of variance to allow for 2 additional parcels and dwellings accessed off the proposed private road (without frontage on a public right-of-way) is the minimum degree of variance required to permit the subdivision. The criterion is met.

4. The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and

The applicant proposes to construct a private street with the same standards as a full public street. The proposed private road will allow for safe and orderly access to the proposed parcels in such a way that does not interfere with adjacent rural residential, religious organization, and agricultural uses. Stormwater attenuation plans will be required prior to plat approval, and if a stormwater system will serve more than two parcels it shall be required to be constructed prior to plat approval. The stormwater requirements and permitting through Marion County Land Development, Engineering, and Permits shall ensure that runoff created by additional impervious surfaces permitted by the proposed variance is adequately contained in such a way that does not interfere with adjacent rural residential, religious organization, and agricultural uses. The criterion is met.

5. The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and

The street will be designed to full public street standards, and accommodate fire apparatus, delivery vehicles, and passenger cars without creating hazards to those using the roadway or adjoining properties. The proposed street design will accommodate the level of traffic produced by this 7-parcel subdivision in such a way that does not produce an adverse effect on the health or safety of persons in the vicinity. The criterion is met.

6. The variance will maintain the intent and purpose of the provision being varied.

The purpose of MCC 17.110.800 is to ensure that access to dwellings is safe and capable of accommodating emergency vehicles. Often private roads are smaller than public roads, and limiting the number of dwellings accessed off them is necessary to maintain safety of the residents. The applicant proposes a private road developed to the full width prescribed by Marion County for a public road. The proposed road will have a turnaround that meets county and fire district standards, ensuring safe and efficient access for emergency vehicles. The proposed variance to allow for 7 dwellings to be accessed off this road is therefore consistent with the intent and purpose of the provision in MCC 17.110.800. The criterion is met.

DELIBERATION:

On November 4th, 2025, the Planning Commission held a public hearing about the proposed 7-lot subdivision of 24.60-acres in the AR- 3 zone, with a Variance to the limitation in MCC 17.110.800 to the number of lots without frontage on a public road that may be served by a private road. The staff summary was heard. The applicant's engineer provided testimony. Testimony in opposition from neighbors and Beaver Creek Water Control District was heard. The applicant provided rebuttal to comments from opposition. The Planning Commission asked questions of the Applicant and Marion County staff. Deliberations were held regarding the proposal, and whether this application met all standards for the proposed Variance. Testimony indicated that the application meets the required criteria.

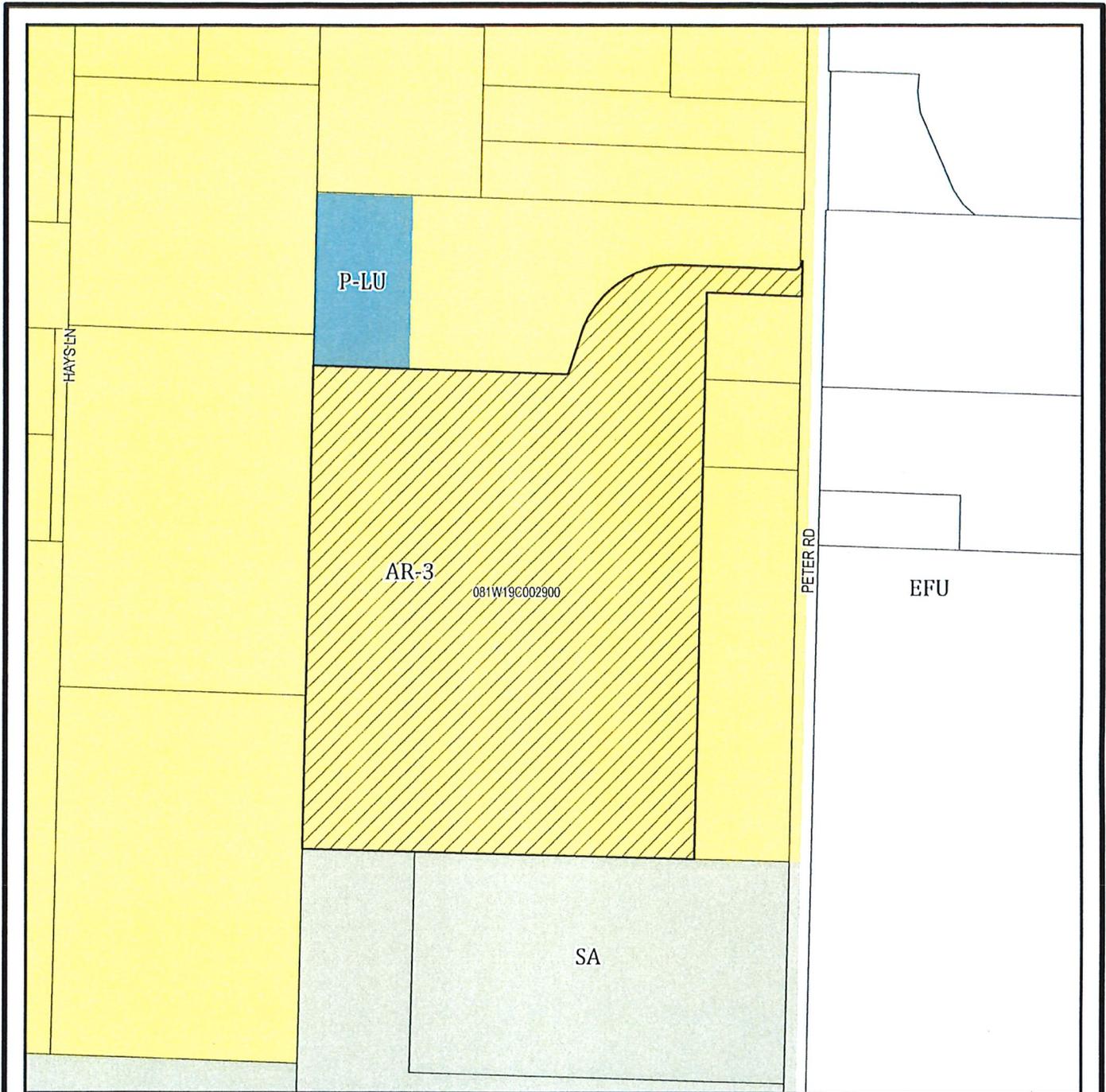
DECISION:

At the November 4th, 2025, meeting, after reviewing testimony in the record and presented at the hearing, a motion was made and seconded to **APPROVE** the proposal, with one additional condition ensuring dust mitigation during construction. The motion passed 5 to 1.

SIGNED AND FINALIZED THIS **20th day of November 2025**

By Brandon Reich
 Planning Commission Secretary

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.



ZONING MAP

Input Taxlot(s): 081W19C002900

Owner Name: OLANDER, DANIEL E OLANDER,
DARCY K

Situs Address: (No Situs Address)

City/State/Zip:

Land Use Zone: AR-3

School District: CASCADE

Fire District: AUMSVILLE

Legend

Input Taxlots

Lakes & Rivers

Highways

Cities



scale: 1 in = 324 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided herein may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 17, 2025

Department: Legal Counsel

Title: Second Reading and Adoption of Marion County Code 1.25.220 Amendment

Management Update/Work Session Date: Audio/Visual aids

Time Required: 5 min. Contact: Steve Elzinga Phone: 503-588-5220

Requested Action: Second Reading and Adoption of ordinance entitled "Marion County Code 1.25.220 Amendment"

Issue, Description & Background: These amendments support reasonable county code enforcement while preventing frivolous cases. Changes are intended to unambiguously confirm the longtime county understanding of the purpose of this county code provision.

Financial Impacts: Minimal

Impacts to Department & External Agencies: Minimal

List of attachments: Ordinance entitled "Marion County Code 1.25.220 Amendment"

Presenter: Steve Elzinga

Department Head Signature: Steve Elzinga Digitally signed by Steve Elzinga Date: 2025.11.13 16:17:52 -08'00'

may have occurred. County counsel shall notify the private citizen of said action within 14 days from the date the violation citation is presented to county counsel.

B. The private citizen, following notice by county counsel of county council's refusal to prosecute, may within 60 days of such notice bring an action pursuant to this article in the citizen's name against the alleged violator in the same manner and form as provided by this article. A private citizen may only file an action under this section if county counsel declines to serve any violation citation or to prosecute and county council also makes a determination that a violation may have occurred. Should the private citizen prevail against the violator, any fine imposed and special costs shall be awarded to the plaintiff private citizen.

C. Any time after a case is filed, including for any case pending as of the effective date of this ordinance, county counsel may take over prosecution of the alleged code violation and substitute Marion County in place of the citizen's name. Should county counsel, after taking over prosecution from a private citizen, prevail against the violator, any fine imposed and special costs shall still be awarded to the plaintiff private citizen who initiated the action.

SECTION 2. SEVERABILITY

Should any section or portion of this ordinance be held unlawful or unenforceable by any court of competent jurisdiction that decision shall apply only to the specific section, or portion thereof, directly specified in the decision. All other sections or portions of this ordinance shall remain in full force and effect.

SECTION 3. EFFECTIVE DATE

This ordinance takes effect on the 90th day after its adoption.

Adopted this 17th day of December, 2025.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

Recording Secretary