



OREGON

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## MARION COUNTY BOARD OF COMMISSIONERS

Wednesday, February 11, 2026  
Board Session 9:00 a.m.

Senator Hearing Room  
555 Court Street NE, Salem

### PUBLIC COMMENT

#### CONSENT

##### BOARD OF COMMISSIONERS

##### Board Committee Appointment – Mental Health Advisory Committee

**1.** Approve an order appointing Kimberly Faber to the Marion County Mental Health Advisory Committee (MHAC) with a term ending December 31, 2029.

##### HEALTH AND HUMAN SERVICES

**2.** Approve the Interdepartmental Agreement between Marion County Health and Human Services (MCHHS) and the Marion County Sheriff's Office (MCSO) that outlines the clinical supervision services that MCHHS will provide to a Qualified Mental Health Professional (QMHP) delivering direct services within Community Corrections, Jail Reentry, and the Transition Center for the MCSO, through June 30, 2029.

##### INFORMATION TECHNOLOGY

**3.** Approve the Contract for Services with Willamette BI in the not-to-exceed amount of \$300,000 to provide on-site project director services to support Marion County's Oracle Fusion implementation retroactive to February 2, 2026, through January 31, 2027.

**4.** Approve the Purchase Order with Dell Marketing, care of Dell USA, L.P., in the amount of \$1,500,000 to provide computer hardware and support for Marion County's Lifecycle Equipment Replacement Program as well as purchases for all county departments.

##### LEGAL COUNSEL

**5.** Approve an order to opt-in to Oregon Revised Statute (ORS) 105.668 limiting certain claims arising from recreational use of public trails, structures in public easements, unimproved rights-of-way, and adjacent property.

PUBLIC WORKS

6. Approve the Contract for Services with Nexterra, Inc. in the not-to-exceed amount of \$350,000 to provide yard debris grinding services at the Brown’s Island Demolition Landfill, Compost Facility through December 31, 2028.

TAX OFFICE

7. Approve orders for a property tax refund for the following tax accounts:
- Greenacres II, LLC, account 526403, in the amount of \$57,554.81;
  - Reese Real Estate and Investment Co., Inc., account 569316, in the amount of \$56,417.62; and
  - Sublimity CIC Partners, LLC, account 529015, in the amount of \$30,224.37.

**ACTION**

BOARD OF COMMISSIONERS

Board Committee Appointments – Fair Board

8. Consider approval of orders appointing Greg Martin and Joseph Billington to the Marion County Fair Board with term dates ending December 31, 2028. –Chip Bury

HEALTH AND HUMAN SERVICES

9. Consider approval of the incoming funds Intergovernmental Agreement (IGA) with the Oregon Health Authority (OHA) in the amount of \$23,827,481.04 for the financing of Community Mental Health Programs (CMHP) retroactive to January 1, 2026, through June 30, 2027. –Ryan Matthews

PUBLIC WORKS

10. Consider an appeal of the hearings officer’s decision denying Administrative Review Case #25-015 / Remington BESS, LLC, on behalf of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust. –John Speckman

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

None.

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

**If you require interpreter assistance, an assistive listening device, large print material or other accommodations, call 503-588-5212 at least 48 hours in advance of the meeting. TTY 503-588-5168 Si necesita servicios de interprete, equipo auditivo, material copiado en letra grande, o 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](http://www.co.marion.or.us)**



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: Wednesday, February 11th, 2026 9:00am

Department: Health & Human Services

Title: Mental Health Advisory Committee (MHAC) Member Appointment

Management Update/Work Session Date: 1/27/2026 Audio/Visual aids [ ]

Time Required: 5 Contact: Samantha Andress Phone: x4903

Requested Action: Appoint Kimberly Faber to the Mental Health Advisory Committee for a 4 year term ending December 31, 2029.

Issue, Description & Background: The MHAC is a group of knowledgeable and unique individuals who provide advocacy and leadership for the county by advising and making recommendations to the HHS Administrator and the Board of Commissioners.

Financial Impacts: N/A

Impacts to Department & External Agencies: N/A

List of attachments: Application, Supplemental, Roster & Board Order

Presenter: Phil Blea

Department Head Signature: Ryan Matthews Digitally signed by Ryan Matthews Date: 2026.01.16 10:58:52 -08'00'



# Advisory Board Application

**Applicant's Name: Kimberly Faber**  
**Adv. Board: Mental Health Advisory Committee**  
**City of Residence: St. Paul**                      **Zip Code: 97137**  
**Occupation: Owner, Attitudes Hair Salon**  
**Application Rcd: January 8, 2026**

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## **The reason I am applying:**

I am applying to serve on the Mental Health Advisory Committee because I have seen firsthand how gaps in Oregon's behavioral health and vulnerable-adult systems impact individuals, families, and communities. My work as a small business owner, community advocate, and parent of an adult with complex needs has given me a deep understanding of where the system succeeds and where it fails. I want to contribute practical, real-world insight to help shape policies that improve access, accountability, and humane, capacity-based care. My goal is to support solutions that strengthen families, reduce preventable crises, and build a mental health system that truly serves the people who rely on it.

## **More about my personal and professional interests:**

My interest in serving on this advisory board comes from my lived experience navigating mental health and vulnerable-adult systems in a rural community. I have seen firsthand how limited resources, long travel distances, and gaps in coordination can leave individuals and families without timely support. These challenges have affected my own family, and it has shown me how urgently rural communities need practical, accessible, and humane solutions.

Because of these experiences, I am committed to bringing a rural, lived-experience perspective to statewide decision-making. I want to help ensure that policies reflect the realities of families who are doing their best with limited options, and to strengthen the partnerships between local agencies, providers, and the people they serve. My goal is to contribute honest insight and help build a mental health system that works for all Oregonians, including those outside urban centers.

## **Tell us more about your community involvement:**

I have been actively involved in community and school activities in the St. Paul and Woodburn areas. I served as the Parent Club Chair for St. Paul Grade School, where I coordinated parent engagement, organized school events, supported fundraising efforts, and worked closely with staff to strengthen school and family partnerships.

In addition, I served as Co-Chair of the annual auction for St. Luke Catholic School in Woodburn and was a member of the school's leadership committee. In these roles, I helped plan and execute major fundraising events, collaborated with school leadership on priorities and community outreach, and supported efforts to enhance resources and opportunities for students.

## **Previous board service at Marion County:**

N/A



# Advisory Board Application

## Qualifications and Skills:

My background includes working with families, schools, law enforcement, hospitals, and service providers as a result of my lived experience navigating complex mental health and vulnerable-adult, and child situations. These experiences have required me to collaborate across agencies during crises and advocate for appropriate, timely care. They have also given me a clear understanding of how communication gaps and system barriers affect real people.

I am skilled in clear, respectful communication, thorough documentation, and building productive partnerships with diverse stakeholders. Through my community involvement and leadership roles, I have gained experience organizing events, coordinating groups, and engaging people with different perspectives to work toward shared goals.

## More about yourself and why you are applying:

I am a small business owner and long-time resident of rural St. Paul, where I am actively involved in community and school leadership. Through my lived experience navigating Oregon's mental health and vulnerable-adult systems, I have gained a clear understanding of the barriers families face, especially in rural areas where resources are limited and coordination is often inconsistent.

These experiences have motivated me to advocate for practical, humane improvements that support individuals, families, and the communities around them. I am applying to this advisory board because I want to bring a rural, lived-experience perspective to statewide decision-making and help ensure that policies reflect the realities of the people who rely on these systems. My goal is to contribute honest insight, collaborative problem-solving, and a commitment to strengthening mental health support across Oregon.

Outside of my advocacy and community work, I'm also involved in raising German Shorthaired Pointers, which keeps me connected to rural life and the values of responsibility, consistency, and community that shape my perspective.

## Personal References:

Aundrea Weise, Educator

Lindsay DeFraes, Office Manager

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## Signature

### Agreement Statement:

I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

I Agree \*

Marion County  
Mental Health Advisory Committee (MHAC)  
Roster 2026

	<b>Member</b>	<b>Occupation</b>	<b>City</b>	<b>Joined</b>	<b>Term Expires</b>
<b>1</b>	<b>Dr. Leon Harrington</b>	Child & Adolescent Psychiatrist	Mill City	2021	12/31/2028
<b>2</b>	<b>Earlene Camarillo</b>	Assistant Professor, Western University	Salem	2021	12/31/2028
<b>3</b>	<b>Michael Mann</b>	Executive Director Salem for All	Aumsville	2021	6/30/2029
<b>4</b>	<b>Jackie Follis</b>	CADC, QMHP-R	Salem	2023	12/31/2027
<b>5</b>	<b>Christina McCollum</b>	Behavioral Health Regional Strategist, PacificSource Community Solutions	Salem	2024	06/30/2028
<b>6</b>	<b>Dean Howes</b>	Beverage Director, Savoury Brands	Aumsville	2025	12/31/2028
<b>7</b>	<b>Teresa Joslin</b>	N/A- Retired	Salem	2025	12/31/2028
<b>8</b>	<b>Karla Hunter</b>	Jackman Wealth Management LLC	Salem	2025	12/31/2028
<b>9</b>	<b>Maria Torres</b>	N/A	Salem	2025	12/31/2028
<b>10</b>	<b>Sharma Owens</b>	Social Worker, Salem Keizer School District	Salem	2025	6/30/2029
<b>11</b>	<b>Kimberly Faber</b>	<i>Attitudes Hair Salon</i>	<b>St. Paul</b>	<b>2026</b>	<b>12/31/2029</b>





MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: February 11, 2026

Department: Health & Human Services

Title: Interdepartmental Agreement for QMHP Clinical Supervision

Management Update/Work Session Date: February 3, 2026 Audio/Visual aids

Time Required: 10 Minutes Contact: Diana Lee Adams Hill Phone: 503-576-4652

Requested Action: Approval of Interdepartmental Agreement HE-6950-26 between Marion County Health & Human Services and Marion County Sheriff's Department for Qualified Mental Health Professional.

Issue, Description & Background: Marion County Health & Human Services (MCHHS) will provide clinical supervision to the Qualified Mental Health Professional (QMHP) delivering direct services within Community Corrections, Jail Reentry, and the Transition Center for the Marion County Sheriff's Office (MCSO).

Financial Impacts: No funds exchanged

Impacts to Department & External Agencies: None

List of attachments: Interdepartmental Agreement

Presenter: Ryan Matthews, Naomi Hudkins

Department Head Signature: DocuSigned by: Ryan Matthews  
7D28A787656F458...

# Contract Review Sheet

InterDepartmental Agreement

**HE-6950-26**

Title: Clinical Supervision for QMHP

Contractor's Name: Sheriff's Office

Department: Health and Human Services

Contact: Diana Lee Adams Hill

Analyst: Chalyce MacDonald

Phone #: (503) 576-4652

Term - Date From: Execution

Expires: June 30, 2029

Original Contract Amount: \$ -

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ -

Amd% 0%

No Funds Exchanged  Federal Funds  Reinstatement  Retroactive  Amendment greater than 25%

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

Description of Services or Grant Award

Marion County Health & Human Services (MCHHS) will provide clinical supervision to the Qualified Mental Health Professional (QMHP) delivering direct services within Community Corrections, Jail Reentry, and the Transition Center for the Marion County Sheriff's Office (MCSO).

Desired BOC Session Date: 2/11/2026

Contract should be in DocuSign by: 1/21/2026

Agenda Planning Date: 1/29/2026

Printed packets due in Finance: 1/27/2026

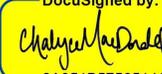
Management Update: 2/3/2026

BOC upload / Board Session email: 2/11/2026

BOC Session Presenter(s) Ryan Matthews/Naomi Hudkins

Code: Y

**REQUIRED APPROVALS**

DocuSigned by:  
  
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 1/23/2026  
 Date

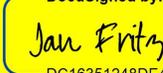
Finance - Contracts

DocuSigned by:  
  
 321AE7275637456  
 2/3/2026  
 Date

Contract Specialist

Signed by:  
  
 1B14E2739EBE4E4  
 2/2/2026  
 Date

Legal Counsel

DocuSigned by:  
  
 DC16351248DE4EC  
 2/3/2026  
 Date

Chief Administrative Officer

**MARION COUNTY  
INTERDEPARTMENTAL AGREEMENT  
Between  
HEALTH AND HUMAN SERVICES AND SHERIFF'S OFFICE  
HE-6950-26**

**1. PARTIES TO AGREEMENT**

This Agreement between Health and Human Services, hereafter referred to as MCHHS and Sheriff's Office, hereafter referred to as MCSO, both Departments of Marion County, a political subdivision of the state of Oregon.

**2. PURPOSE**

The purpose of this Agreement outlines the clinical supervision services that MCHHS will provide to MCSO for a Qualified Mental Health Professional (QMHP) providing direct services within Community Corrections, Jail Reentry, and the Transition Center. Services will comply with Oregon Administrative Rule 309-019-0130(4) governing supervision requirements for behavioral health program staff.

**3. TERM AND TERMINATION**

- 3.1 This Agreement shall become effective upon final signature and shall remain in effect through June 30, 2029, unless sooner terminated or extended as provided herein. The parties may extend this Agreement for one additional term of up to four (4) years, ending no later than June 30, 2033, upon mutual written agreement executed prior to the expiration of the current term.
- 3.2 This Agreement may be terminated by either party, for any reason, upon thirty (30) days' written notice to the other party. This Agreement may also be terminated at any time by mutual written consent of both parties. Termination shall be without prejudice to any obligations or liabilities incurred prior to the effective date of termination.

**4. STATEMENT OF WORK**

- 4.1 UNDER THE TERMS OF THIS AGREEMENT, MCHHS SHALL:
- a. Provide Clinical Supervision in Compliance with OAR 309-019-0130.
  - b. The Supervisor will provide clinical supervision that supports the QMHP's development, implementation, and delivery of mental health services, including assessments, counseling, case consultations, and care coordination for justice-involved individuals. Supervisor will focus on the following:
    - (1) Skills development and service quality consistent with OAR 309-019-130(4), the Supervisor will:
      - (a) Support the QMHP in strengthening clinical skills within their scope of practice.

- (b) Review and guide clinical decision-making, diagnostic formulation, and treatment planning.
  - (c) Provide direction related to program standards, ethical obligations, and county procedures.
  - (d) Ensure the QMHP's services reflect best practices for behavioral health in correctional and community supervision settings.
- c. Required Supervision Frequency and Format:
  - (1) Supervision will adhere to the specific standards outlined below:
    - (a) Standard clinical supervision requirements will be in alignment with OAR 309-019-0130(4)(b):
      - (i) The Supervisor will provide two hours per month of documented clinical supervision.
      - (ii) At least one hour per month will consist of individual, face-to-face supervision, which may occur through real-time two-way audiovisual technology.
- d. Licensed Staff Requirements:
  - (1) If the QMHP holds a health or allied provider license, Supervisor will also comply with OAR 309-019-0130(4)(c):
    - (a) The Supervisor will provide two hours of supervision per quarter, including at least one hour of individual face-to-face supervision (in-person or real-time audio/visual).
- e. Intern Requirements (if applicable):
  - (1) If the position is classified as a mental health intern, the Supervisor will follow OAR 309-019-0130(4)(d):
    - (a) Provide weekly supervision, documented accordingly.
- f. Documentation Responsibilities:
  - (1) The Supervisor will adhere to the following:
    - (a) Maintain supervision logs documenting date, duration, modality, attendees, and topics covered.

(b) Ensure documentation meets OAR 309-019-0130(4) standards for monthly, quarterly, or weekly supervision.

(c) Provide copies of documentation to the Sheriff's Office for personnel files and program records.

g. Supervisory Activities:

(1) Supervision will include:

(a) Case review and clinical consultation.

(b) Guidance on assessment practices (e.g., LS/CMI, WRNA interpretation).

(c) Support for crisis response, suicide risk assessment, and safety planning.

(d) Clinical coaching on short-term counseling interventions used within Community Corrections settings.

(e) Ethical decision-making support consistent with professional licensing standards.

(f) Review of care coordination practices and cross-system communication.

4.2 UNDER THE TERMS OF THIS AGREEMENT, MCSO SHALL:

a. Support Access to Clinical Supervision:

(1) Ensure the QMHP is available for scheduled clinical supervision and provide a private and appropriate setting for supervision sessions that support confidentiality and compliance with OAR 309-019-0130 requirements.

(2) Provide the supervising clinician with performance or conduct information relevant to the QMHP's clinical competence, documentation quality, or ethical practice, allowing supervision to meet the expectations described in OAR 309-019-0130.

4.3 UNDER THE TERMS OF THIS AGREEMENT, BOTH PARTIES SHALL:

a. Agree that the provision of clinical supervision by MCHHS does not transfer employment authority or operational command of the QMHP; MCHHS's responsibility is limited to professional clinical oversight as required by OAR 309-019-0130.

b. Roles and Responsibilities:

(1) Supervisor MCHHS:

- (a) Maintain qualifications as a “qualified clinical supervisor” as defined by OAR.
- (b) Provide supervision as required frequency and in approved formats.
- (c) Document all supervisory activities per OAR 309-019-0130(4).
- (d) Address concerns regarding clinical practice, professional boundaries, or ethical issues.

(2) MCSO:

- (a) Employ the QMHP and ensure attendance at scheduled supervision.
- (b) Provide access to necessary case information, documentation, or program materials.
- (c) Maintain supervision documentation as part of personnel and program records.
- (d) Ensure the QMHP practices within scope and integrates supervisory recommendations into service delivery.

**5. COMPLIANCE WITH APPLICABLE LAWS**

The parties agree that both shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this agreement. The parties agree that this agreement shall be administered and construed under the laws of the state of Oregon.

**6. NONDISCRIMINATION**

The parties agree to comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations in the performance of this agreement.

**7. MERGER CLAUSE**

Parties concur and agree that this agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change to the terms of this agreement shall bind either party unless in writing and signed by both parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Parties, by the signatures below of their authorized representatives, hereby agree to be bound by its term and conditions.

**8. NOTICES**

Any notice required to be given under this Agreement shall be sufficient if given, in writing, as follows:

For MCHHS:  
Naomi Hudkins  
3180 Center Street NE, Salem, OR 97301  
[NHudkins@co.marion.or.us](mailto:NHudkins@co.marion.or.us)

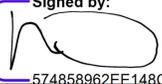
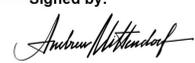
For MCSO:  
Commander Mike Hartford  
3610 Aumsville Hwy SE, Salem, OR 97317  
[MHartford@co.marion.or.us](mailto:MHartford@co.marion.or.us)

**9. SIGNATURES**

This agreement and any changes, alterations, modifications, or amendments will be effective when approved in writing by the authorized representative of the parties hereto as of the effective date set forth herein.

In witness whereof, the parties hereto have caused this agreement to be executed on the date set forth below.

**BOARD OF COMMISSIONERS:**

Chair		Date
Commissioner		Date
Commissioner		Date
Authorized Signature:	<small>DocuSigned by:</small>  <small>7D28A787656F458...</small>	1/23/2026
	Health and Human Services Director	Date
Authorized Signature:	<small>Signed by:</small>  <small>574858962FE148C...</small>	1/24/2026
	Sheriff's Office Director	Date
Authorized Signature:	<small>DocuSigned by:</small>  <small>DC16351248DE4EC...</small>	2/3/2026
	Chief Administrative Officer	Date
Reviewed by Signature:	<small>Signed by:</small>  <small>1B14F2739EBE4E4...</small>	2/2/2026
	Marion County Legal Counsel	Date
Reviewed by Signature:	<small>DocuSigned by:</small>  <small>2A951B5756514CF...</small>	1/23/2026
	Marion County Contracts & Procurement	Date

# Contract Review Sheet

Contract for Services

**IT-7006-26**

Title: Project Director for Oracle Fusion Implementation

Contractor's Name: Willamette BI

Department: Information Technology Department

Contact: Toby Giddings

Analyst: Sandra Fixsen

Phone #: (503) 588-5047

Term - Date From: February 2, 2026

Expires: January 31, 2027

Original Contract Amount: \$ 300,000.00

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ 300,000.00 Amd% 0%

Outgoing Funds  Federal Funds  Reinstatement  Retroactive  Amendment greater than 25%

Source Selection Method: 20-0260 Request for Proposal

RFP# IT1757-25

### Description of Services or Grant Award

The purpose of this Contract is to provide on-site Project Director services to support Marion County's Oracle Fusion implementation. The County requires an experienced leader who can represent the County's interests, guide internal project managers, coordinate with the contracted Oracle Fusion Implementor, and ensure successful delivery of this mission-critical enterprise system.

The Contractor shall report to and be directly accountable to Marion County's Oracle Fusion Project Steering Committee, which is comprised of executive leadership and provides formal governance, decision-making authority, and strategic oversight for the Fusion Project.

The Contractor's role is advisory and managerial in nature and does not include authority to approve expenditures, contractual changes, or final project decisions on behalf of Marion County.

Desired BOC Session Date: 2/11/2026

Contract should be in DocuSign by: 1/21/2026

Agenda Planning Date: 1/29/2026

Printed packets due in Finance: 1/27/2026

Management Update: 2/3/2026

BOC upload / Board Session email: 1/28/2026

BOC Session Presenter(s) Gary Christofferson

Code: Y

### REQUIRED APPROVALS

Signed by:   
C5E72231E6E54E3 1/30/2026

Finance - Contracts Date

Signed by:   
C5E72231E6E54E3 2/3/2026

Contract Specialist Date

Signed by:   
B0C98A6E708240B 2/2/2026

Legal Counsel Date

DocuSigned by:   
DC163512480E4EC 2/3/2026

Chief Administrative Officer Date

# Contract Review Sheet

Purchase Order

**942024**

Title: Dell Marketing Contract Purchase Order FY25/26 and 26/27

Contractor's Name: Dell Marketing, L.P.

Department: Information Technology Department

Contact: Cynthia Klein

Analyst: Sandra Fixsen

Phone #: \_\_\_\_\_

Term - Date From: February 11, 2026

Expires: June 30, 2027

Original Contract Amount: \$ 1,500,000.00

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ 1,500,000.00

Amd% 0%

Outgoing Funds  Federal Funds  Reinstatement  Retroactive  Amendment greater than 25%

Source Selection Method: 10-0400 Cooperative

Cooperative# NCPA-01-1

Description of Services or Grant Award

Contract PO#942024 in the amount of \$1,500,000 to purchase Dell Computer Hardware and support for the Lifecycle Equipment Replacement Program as well as purchases for the enterprise.

The NCPA Cooperative was renewed through 11/30/26 with options to renew for five additional one-year periods. The CPO amount is the total amount of costs through 6/30/27 and will be renewed annually to match the Cooperative.

CMS record IT-7017-26.

Desired BOC Session Date: 2/11/2026

Contract should be in DocuSign by: 1/21/2026

Agenda Planning Date: 1/29/2026

Printed packets due in Finance: 1/27/2026

Management Update: 2/3/2026

BOC upload / Board Session email: 1/28/2026

BOC Session Presenter(s) Gary Christofferson

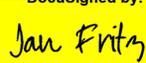
Code: Y

## REQUIRED APPROVALS

Signed by:   
 C5F72231E6F54E3...  
 Finance - Contracts  
 Date: 1/30/2026

Signed by:   
 C5E72231E6E54E3...  
 Contract Specialist  
 Date: 2/3/2026

Signed by:   
 C5FA8DCC00954C9...  
 Legal Counsel  
 Date: 2/2/2026

DocuSigned by:   
 DC16351248DE4EC...  
 Chief Administrative Officer  
 Date: 2/3/2026



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: February 11, 2026

Department: Legal Counsel

Title: ORS 105.668 Opt In

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

Time Required: 1 min Contact: Steve Elzinga Phone: 503-588-5220

Requested Action: Approve Board Order opting in to ORS 105.668 limiting certain claims arising from recreational use of public trails and structures in public easements, unimproved right-of-way, and adjacent property.

Issue, Description & Background: Limits certain liability claims to preserve recreational opportunities for the public.

Financial Impacts: Undertermined

Impacts to Department & External Agencies:

List of attachments: Proposed Board Order

Presenter:

Department Head Signature: Steve Elzinga Digitally signed by Steve Elzinga Date: 2026.02.04 14:15:35 -08'00'

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of limiting certain claims arising )  
from recreational use of public trails and/or )  
structures in public easements, unimproved )  
right-of-way, and adjacent property pursuant to )  
ORS 105.668 )

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

This matter came before the Board of Commissioners at its regularly scheduled public meeting on February 11, 2026, to consider limiting certain claims arising from recreational use of public trails and/or structures in public easements, unimproved right-of-way, and adjacent property pursuant to ORS 105.668.

WHEREAS ORS 105.672 to 105.688 provide certain immunities for owners of publicly and/or privately owned land when landowners allow such land to be used for recreational purposes;

WHEREAS ORS 105.668(2) limits certain lawsuits against a large city, adjacent property owner(s), and certain nonprofit groups and their volunteers that arise from recreational use of trails or structures in public easements or unimproved right of way;

WHEREAS ORS 105.668(3) authorizes other local governments, including counties, to take advantage of the immunities provided in ORS 105.668(2) by adopting an “ordinance, resolution, rule, order or other regulation” to “opt in” to the provisions under ORS 105.668;

WHEREAS the County’s trails and parks are an important public amenity that provide recreational opportunities and support a healthy community;

WHEREAS it is in the best interest of the Marion County to adopt the immunities from liability under ORS 105.668 to further the public interest in protecting and supporting efforts and activities by the County to create and maintain trails and make such trails available for public use; and

WHEREAS it is in the public interest for Marion County to opt in to all immunities from liability to the full extent allowed by ORS 105.668.

IT IS HEREBY ORDERED pursuant to ORS 105.668(3), Marion County, on behalf of its officers, employees and agents, hereby opts to limit its liability with respect to personal injury or property damage resulting from use of a trail that is in a public easement or in an unimproved right of way, or from use of structures in the public easement or unimproved right of way, with respect to claimants who may be a user on foot, on a horse, on a bicycle, or other nonmotorized vehicle or conveyance, in accordance with ORS 105.668(2). For purposes of this Order, “structure” means improvements in a trail, including, without limitation, stairs and bridges, and “unimproved right-of-way” means a platted or dedicated public right-of-way over which a street, road, or highway has not been constructed to the standards and specifications of the County and for which the County has not expressly accepted responsibility for maintenance.

IT IS HEREBY FURTHER ORDERED Marion County further opts to extend the immunity contained in ORS 105.688 to the owners of land abutting any public easement in the county, and unimproved right of way in the county, and any non-profit corporation and its volunteers for the construction and maintenance of the trail or the structures in a public easement or unimproved right of way in the county.

IT IS HEREBY FURTHER ORDERED for avoidance of any possible ambiguity, Marion County opts in to the full extent of immunity allowed by law, including the full extent of immunity allowed by ORS 105.668(3)(a), (b), (c), and (d).

DATED this 11th day of February 2026.

MARION COUNTY BOARD OF COMMISSIONERS

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Chair

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Commissioner

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Commissioner



MARION COUNTY BOARD OF COMMISSIONERS

# Board Session Agenda Review Form

Meeting date: 2/11/2026

Department: Public Works

Title: Yard Debris Grinding Services

Management Update/Work Session Date: 01/27/2026 Audio/Visual aids

Time Required: 5 minutes Contact: Andrew Johnson Phone: x4184

Requested Action: Approve Contract PW-6934-26 with Nexterra, Inc. for yard debris grinding services at the Brown's Island Compost Facility through December 31, 2028 in the amount of \$350,000.00.

Issue, Description & Background: This contract will allow for the grinding of yard debris in preparation for composting at the Brown's Island Compost Facility. The Brown's Island facility accepts roughly 30,000 cubic yards of yard debris material annually. This material is brought in by both transfer stations, local governments, and from the public. This material must then be sized down through grinding to allow for the compost process to take place.

Financial Impacts: \$350,000.00 from the 510 (Environmental Services) Fund

Impacts to Department & External Agencies: This contract allows for Brown's Island to accept yard debris material from multiple local cities.

List of attachments: Contract PW-6934-26

Presenter: Andrew Johnson

Department Head Signature: Brian Nicholas Digitally signed by Brian Nicholas Date: 2026.01.08 15:39:14 -08'00'

# Contract Review Sheet

Contract for Services

**PW-6934-26**

Title: Yard Debris Grinding Services

Contractor's Name: Nexterra, Inc.

Department: Public Works Department

Contact: Janet Wilson

Analyst: Kathleen George

Phone #: (503) 566-4139

Term - Date From: Execution

Expires: December 31, 2028

Original Contract Amount: \$ 350,000.00

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ 350,000.00

Amd% 0%

Outgoing Funds  Federal Funds  Reinstatement  Retroactive  Amendment greater than 25%

Source Selection Method: 20-0260 Request for Proposal

RFP# PW1710-25

Description of Services or Grant Award

This contract provides yard debris grinding services at the Browns Island Compost Facility. The total annual amount of yard debris to be processed is approximately 30,000 cubic yards. The material is predominantly mixed yard debris (branches, trimmings, limbs, logs and leaves) that needs to be ground to a uniform particle size of roughly three-inch minus (3"-0) material.

Desired BOC Session Date: 2/11/2026

Contract should be in DocuSign by: 1/21/2026

Agenda Planning Date: 1/29/2026

Printed packets due in Finance: 1/27/2026

Management Update: 1/27/2026

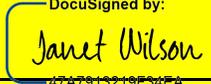
BOC upload / Board Session email: 1/28/2026

BOC Session Presenter(s) Andrew Johnson

Code: Y

## REQUIRED APPROVALS

DocuSigned by:  
  
 1/23/2026  
 Finance - Contracts Date

DocuSigned by:  
  
 1/24/2026  
 Contract Specialist Date

Signed by:  
  
 1/23/2026  
 Legal Counsel Date

DocuSigned by:  
  
 1/23/2026  
 Chief Administrative Officer Date

**MARION COUNTY  
CONTRACT FOR SERVICES  
PW-6934-26**

This Contract is between Marion County (a political subdivision of the State of Oregon) hereinafter called County, and Nexterra, Inc., an Oregon Corporation hereinafter called Contractor.

**RECITALS**

WHEREAS, County issued Request for Proposal PW1710-25 for Yard Debris Grinding Services on September 29, 2025.

WHEREAS, Nexterra, Inc. submitted a proposal in response to PW1710-25 on October 26, 2025, which was determined to be responsive.

WHEREAS, County evaluated and scored all proposals received and issued a Notice of Intent of Award to Nexterra, Inc. on December 16, 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 the date it has been signed by all parties and all required County approvals have been obtained. This Contract expires on **December 31, 2028**. The parties may extend the term of this Contract provided that the total Contract term does not extend beyond December 31, 2030.

**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

**3. CONSIDERATION**

- A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$350,000.00**. 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:  
Nexterra, Inc.  
joe@nexterrainc.com  
900 60th Ave NE  
Salem, Oregon, 97317-2303

To County  
Contracts and Procurement Manager  
[PO\\_Contracts@co.marion.or.us](mailto: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 Items/Equipment delivered to/granted to 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:  
Brian Melodas  
9793BA7ACD0D443... 1/23/2026  
Department Director or designee Date

Authorized Signature: DocuSigned by:  
Jan Fritz  
DC16351248DE4EC... 1/23/2026  
Chief Administrative Officer Date

Reviewed by Signature: Signed by:  
Scott Norris  
60C98A6F708240B... 1/23/2026  
Marion County Legal Counsel Date

Reviewed by Signature: DocuSigned by:  
[Signature]  
A3538E7AEC704F4... 1/23/2026  
Marion County Contracts & Procurement Date

**NEXTERRA, INC. SIGNATURE**

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

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

**EXHIBIT A  
STATEMENT OF WORK**

**1. STATEMENT OF SERVICES**

Contractor shall perform Services as described below.

**A. GENERAL INFORMATION.**

The County, through its Public Works Department, operates and maintains the Brown's Island Demolition Landfill located at 2895 Faragate Ave S, Salem, OR 97302. The Brown's Island Compost Facility accepts yard debris, mostly branches, trimmings, limbs, logs, and leaves, from public and private entities, which need to be processed into marketable compost. County requires grinding of approximately 30,000 cubic yards of debris annually.

**B. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.**

**i. Contractor Responsibilities**

- a. Perform all grinding services on site at the Brown's Island Demolition Landfill located at 2895 Faragate Ave S, Salem, OR 97302.
- b. Load the yard debris into the grinder and operate the grinder.
- c. Grind yard debris into uniform particle sizes of three-inch minus (3"-0), suitable for composting. Grind material down to one-inch minus (1"-0), upon County's request.
- d. Contractor shall be on site performing grinding services no earlier than 7:00 AM and no later than 5:00 PM PST.

**ii. County Responsibilities**

- a. Move grindings and form windrows with an on-site front-end loader, as necessary.

**C. SPECIAL REQUIREMENTS.**

- i. The work shall be performed at the County's request, primarily February through March and September through October annually. Additional times at the request of County may be required.
- ii. Required equipment for processing yard debris:
  - a. A mobile horizontal grinder meeting or exceeding the following specifications:
    - (1) Capable of processing at least 300 cubic yards per hour.
    - (2) 650 horsepower
    - (3) Self-propelled, tracked
    - (4) Suitable for asphalt surface work that does not cause damage to Marion County Property
  - b. Excavator capable of feeding grinder sufficient volume to maintain processing rate of more than 300 cubic yards per hour.

- iii. 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.
- iv. 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 **\$350,000.00**.

- A. **METHOD OF PAYMENT FOR SERVICES:**  
County shall pay Contractor \$598.00 per hour up to but not in excess of \$350,000.00 for completing all Services required under this Contract.
- B. **BASIS OF PAYMENT FOR 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: Public Works Department, Andrew Johnson**  
**5155 Silverton Rd NE**  
**Salem, OR 97305**  
**PWAP@co.marion.or.us**



MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: February 11, 2026

Department: Tax Office

Title: Property tax refund for Greenacres II LLC

Management Update/Work Session Date: \_\_\_\_\_ Audio/Visual aids

Time Required: 15 min. Contact: Natasha McVey, Tax Collector Phone: ext. 2249

Requested Action: Approve order authorizing property tax refund for Greenacres II LLC.

Issue, Description & Background: The Tax Collector received duplicate payments on account 526403 for the 2025-26 tax year. ORS 311.806(1) requires the county governing body to issue refunds in situations like this. The total amount of the refund due is \$57,554.81. The Board has delegated authority to issue tax refunds under \$20,000 to the tax collector; all others must go to the Board for approval. By statute, no interest is due on this refund.

Financial Impacts: The amount of the refund is \$57,554.81.

Impacts to Department & External Agencies: None, beyond the processing of the refund itself.

List of attachments: 1. Property tax petition for refund of Greenacres II LLC, with supporting documentation. 2. Board Order.

Presenter: Natasha McVey, Tax Collector

Department Head Signature: *Natasha McVey*

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of approving property)  
tax refund as submitted by the        )  
Marion County Tax Collector.         )

**Order No.**

This matter came before the Board of Commissioners upon the recommendation of the Marion County Tax Collector regarding a tax refund petition on account no. 526403, attached hereto and incorporated herein by this reference; and

WHEREAS, the Board finds that the petitioner has demonstrated that a tax refund is due in the amount as set forth on the petition; and

WHEREAS, the Board finds that the Marion County Tax Collector approved the refund as to the amount; and

WHEREAS, the Board finds that Marion County Legal Counsel has approved the refund as to legal form,

NOW, THEREFORE, IT IS HEREBY ORDERED that a refund be made to the petitioner on account no. 526403 in the amount indicated on the petition.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner



Tax Account: **526403**

MARION COUNTY BOARD OF COMMISSIONERS  
C/O MARION COUNTY TAX COLLECTOR  
PO BOX 2511  
SALEM, OR 97308-2511

**REFUND PETITION**

**PETITIONER:** GREENACRES II LLC  
15570 SW JENKINS RD  
BEAVERTON OR 97006

Petitions the Board of County Commissioners for a refund under ORS 311.806 of taxes paid on Real property.

Tax Account	Tax Year	Tax Amount	Interest through N/A	Refund Amount
526403	2025	\$57,554.81	N/A	\$57,554.81

**REASON FOR REFUND:**

THE TAX OFFICE RECEIVED TWO TAX PAYMENTS FOR THIS ACCOUNT, CREATING THE OVERAGE.

Signed: See Attached File

Petition verified and refund recommended:

J. McLaughlin, Marion County Tax Collection Dept. Date 1/15/2026

Approved as to Form <i>Scott A. Now</i> 1/22/26 Legal Counsel
--



TAX COLLECTION DEPARTMENT

Account Number: 526403

Natasha McVey, Tax Collector
Phone: (503) 588-5215 Fax: (503) 566-3911
E-mail: PropertyTax@co.marion.or.us



OREGON

Dec 02 2025

PAYER A:
RESERS FINE FOODS
PO BOX 8
BEAVERTON OR 97075

RECEIVED

DEC 13 2025

MARION COUNTY
TAX COLLECTOR

PAYER B:
GREENACRES II LLC
15570 SW JENKINS RD
BEAVERTON OR 97006

Account: 526403
Prop. Owners: RESER, PATRICIA J
Prop. Location: 3060 INDUSTRIAL WAY NE SALEM OR 97301
Map Tax Lot: 073W14AA01200
Amt. of Refund: \$57,554.81
Cause of Overage: DUPLICATE PMT

We have received, and applied 2025 property tax payments from both payers, noted above. The amount of \$57554.81 will be refunded to only one party. [NOTE: Refund amounts cannot be altered.]

We recommend that you contact the other payer, shown above, then notify us in writing as to who should receive the refund, even if it is not one of the payers listed above. We need written refund instructions from both parties that paid. Please sign and return this notice to the Tax Collection Department.

Please refund this overage to the following name and address:

Green Acres II LLC
15570 SW Jenkins Rd.
Beaverton, OR 97006
Att: Karl Leary

Signed: X [Signature] Date: 12/10/25

0120



OREGON

# TAX COLLECTION DEPARTMENT

Natasha McVey, Tax Collector  
Phone: (503) 588-5215 Fax: (503) 566-3911  
E-mail: PropertyTax@co.marion.or.us

Account Number: **526403**



Dec 02 2025

**PAYER A:**  
GREENACRES II LLC  
15570 SW JENKINS RD  
BEAVERTON OR 97006

RECEIVED

MARION COUNTY  
TAX COLLECTOR

**PAYER B:**  
RESERS FINE FOODS  
PO BOX 8  
BEAVERTON OR 97075

Account: **526403**  
Prop. Owners: RESER, PATRICIA J  
Prop. Location: 3060 INDUSTRIAL WAY NE SALEM OR 97301  
Map Tax Lot: 073W14AA01200  
Amt. of Refund: **\$57,554.81**  
Cause of Overage: **DUPLICATE PMT**

We have received, **and applied 2025** property tax payments from both payers, noted above. The amount of **\$57554.81** will be refunded to only one party. **[NOTE: Refund amounts cannot be altered.]**

**We recommend that you contact the other payer**, shown above, then notify us **in writing** as to who should receive the refund, *even if it is not one of the payers listed above*. **We need written refund instructions from both parties that paid.** Please sign and return this notice to the Tax Collection Department.

**Please refund this overage to the following name and address:**

Green Acres II LLC  
15570 SW Jenkins Rd  
Beaverton OR 97006  
Attn Paul Leary

Signed: X

Date: 12/10/25



December 10, 2025

Marion County Tax Collection Department  
PO Box 2511  
Salem, OR 97308-2511

To Whom It May Concern,

Regarding the below real property account:

**Account Number:** 526403  
**Prop. Location:** 3060 INDUSTRIAL WAY NE SALEM OR 97301  
**Map Tax Lot:** 073W14AA01200

Please refund the duplicate payment of \$57,554.81 on this tax account to the following entity:

GREENACRES II LLC  
15570 SW JENKINS RD  
BEAVERTON, OR 97006  
ATTENTION: PAUL LEAVY

Paul Leavy is one of the property owners listed on the account, the chief operating officer of Reser's Fine Foods, Inc., and a principal officer of Greenacres II LLC. His signature should serve as an authorization to issue this refund on behalf of both parties involved.

Sincerely,

A handwritten signature in black ink, appearing to read 'Morgan Miller'.

Morgan Miller  
Assistant Controller  
Reser's Fine Foods, Inc.  
(503) 643-6431





MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: February 11, 2026

Department: Tax Office

Title: Property tax refund for Reese Real Estate & Investment Co. Inc.

Management Update/Work Session Date: \_\_\_\_\_ Audio/Visual aids

Time Required: 15 min. Contact: Natasha McVey, Tax Collector Phone: ext. 2249

Requested Action: Approve order authorizing property tax refund for Reese Real Estate & Investment Co. Inc.

Issue, Description & Background: The Tax Collector received duplicate payments on account 569316 for the 2025-26 tax year. ORS 311.806(1) requires the county governing body to issue refunds in situations like this. The total amount of the refund due is \$56,417.62. The Board has delegated authority to issue tax refunds under \$20,000 to the tax collector; all others must go to the Board for approval. By statute, no interest is due on this refund.

Financial Impacts: The amount of the refund is \$56,417.62.

Impacts to Department & External Agencies: None, beyond the processing of the refund itself.

List of attachments: 1. Property tax petition for refund of Reese Real Estate & Investment Co. Inc., with supporting documentation. 2. Board Order.

Presenter: Natasha McVey, Tax Collector

Department Head Signature: Natasha McVey

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of approving property)  
tax refund as submitted by the        )  
Marion County Tax Collector.         )

**Order No.**

This matter came before the Board of Commissioners upon the recommendation of the Marion County Tax Collector regarding a tax refund petition on account no. 569316, attached hereto and incorporated herein by this reference; and

WHEREAS, the Board finds that the petitioner has demonstrated that a tax refund is due in the amount as set forth on the petition; and

WHEREAS, the Board finds that the Marion County Tax Collector approved the refund as to the amount; and

WHEREAS, the Board finds that Marion County Legal Counsel has approved the refund as to legal form,

NOW, THEREFORE, IT IS HEREBY ORDERED that a refund be made to the petitioner on account no. 569316 in the amount indicated on the petition.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner



Tax Account: **569316**

MARION COUNTY BOARD OF COMMISSIONERS  
C/O MARION COUNTY TAX COLLECTOR  
PO BOX 2511  
SALEM, OR 97308-2511

**REFUND PETITION**

**PETITIONER:** REESE REAL ESTATE & INVESTMENT CO INC  
9150 S 300 W  
SANDY UT 84070

Petitions the Board of County Commissioners for a refund under ORS 311.806 of taxes paid on Real property.

Tax Account	Tax Year	Tax Amount	Interest through N/A	Refund Amount
569316	2025	\$56,417.62	N/A	\$56,417.62

**REASON FOR REFUND:**

Signed: See Attached File

Petition verified and refund recommended:

*[Signature]*, Marion County Tax Collection Dept. Date 1/16/2026

Approved as to Form, <i>[Signature]</i> 1/22/26 Legal Counsel
--



O R E G O N

**TAX COLLECTION DEPARTMENT**

Account Number: **569316**

Natasha McVey, Tax Collector

Phone: (503) 588-5215 Fax: (503) 566-3911

E-mail: PropertyTax@co.marion.or.us



January 16, 2026

THE CLAWSON GROUP  
292 E 12200 S STE 200  
DRAPER UT 84020

Account: 569316  
Prop. Owners: REESE REAL ESTATE & INVESTMENT CO INC  
Prop. Location: 3515 DEL WEBB AVE NE SALEM OR 97303  
Map Tax Lot: 073W11DB00900  
Amt. of Overage: \$56,417.62  
Cause of Overage: DUPLICATE PMT

According to our records, the 2025 property taxes on the above account are overpaid.

Please advise this office in writing who should receive the refund. **Unless a response requesting this refund is received by January 13 2026, the refund will be issued to the PROPERTY OWNER, who also paid, according to their instructions.**

We urge you to give your prompt attention to this matter.

Sincerely,

Marion County Tax Collector  
By Refund Clerk



O R E G O N

**TAX COLLECTION DEPARTMENT**

Natasha McVey, Tax Collector  
Phone: (503) 588-5215 Fax: (503) 566-3911  
E-mail: PropertyTax@co.marion.or.us

Account Number: **569316**



Nov 14 2025

**PAYER A:**  
REESE REAL ESTATE & INVESTMENT CO INC  
9150 S 300 W  
SANDY UT 84070

**PAYER B:**  
THE CLAWSON GROUP  
292 E 12200 S STE 200  
DRAPER UT 84020

Account: **569316**  
Prop. Owners: REESE REAL ESTATE & INVESTMENT CO INC  
Prop. Location: 3515 DEL WEBB AVE NE SALEM OR 97303  
Map Tax Lot: 073W11DB00900  
Amt. of Refund: **\$56,417.62**  
Cause of Overage: **DUPLICATE PMT**

We have received, **and applied 2025** property tax payments from both payers, noted above. The amount of **\$56417.62** will be refunded to only one party. **[NOTE: Refund amounts cannot be altered.]**

**We recommend that you contact the other payer**, shown above, then notify us **in writing** as to who should receive the refund, *even if it is not one of the payers listed above*. **We need written refund instructions from both parties that paid.** Please sign and return this notice to the Tax Collection Department.

**Please refund this overage to the following name and address:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signed: **X** \_\_\_\_\_ Date: \_\_\_\_\_





MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: February 11, 2026

Department: Tax Office

Title: Property tax refund for Sublimity CIC Partners LLC

Management Update/Work Session Date: \_\_\_\_\_ Audio/Visual aids

Time Required: 15 min. Contact: Natasha McVey, Tax Collector Phone: ext. 2249

Requested Action: Approve order authorizing property tax refund for Sublimity CIC Partners LLC.

Issue, Description & Background: The Tax Collector received duplicate payments on account 529015 for the 2025-26 tax year. ORS 311.806(1) requires the county governing body to issue refunds in situations like this. The total amount of the refund due is \$30,224.37. The Board has delegated authority to issue tax refunds under \$20,000 to the tax collector; all others must go to the Board for approval. By statute, no interest is due on this refund.

Financial Impacts: The amount of the refund is \$30,224.37.

Impacts to Department & External Agencies: None, beyond the processing of the refund itself.

List of attachments: 1. Property tax petition for refund of Sublimity CIC Partners LLC, with supporting documentation. 2. Board Order.

Presenter: Natasha McVey, Tax Collector

Department Head Signature: *Natasha McVey*

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

In the matter of approving property)  
tax refund as submitted by the        )  
Marion County Tax Collector.         )

**Order No.**

This matter came before the Board of Commissioners upon the recommendation of the Marion County Tax Collector regarding a tax refund petition on account no. 529015, attached hereto and incorporated herein by this reference; and

WHEREAS, the Board finds that the petitioner has demonstrated that a tax refund is due in the amount as set forth on the petition; and

WHEREAS, the Board finds that the Marion County Tax Collector approved the refund as to the amount; and

WHEREAS, the Board finds that Marion County Legal Counsel has approved the refund as to legal form,

NOW, THEREFORE, IT IS HEREBY ORDERED that a refund be made to the petitioner on account no. 529015 in the amount indicated on the petition.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner



Tax Account: **529015**

MARION COUNTY BOARD OF COMMISSIONERS  
C/O MARION COUNTY TAX COLLECTOR  
PO BOX 2511  
SALEM, OR 97308-2511

**REFUND PETITION**

**PETITIONER:** SUBLIMITY CIC PARTNERS LLC  
300-838 HASTINS ST W  
VANCOUVER BC V6C 0A6

Petitions the Board of County Commissioners for a refund under ORS 311.806 of taxes paid on Real property.

Tax Account	Tax Year	Tax Amount	Interest through N/A	Refund Amount
529015	2025	\$30,224.37	N/A	\$30,224.37

**REASON FOR REFUND:**

WE RECEIVED PROPERTY TAX PAYMENTS FROM TWO ENTITIES ON THIS ACCOUNT. THE REFUND IS BEING ISSUED TO THE PROPERTY OWNER.

Signed: See Attached File

Petition verified and refund recommended:

*[Signature]*, Marion County Tax Collection Dept. Date 1/16/2026

Approved as to Form <i>Scott A. Nis</i> 1/22/26 Legal Counsel
--



O R E G O N

## TAX COLLECTION DEPARTMENT

Account Number: **529015**

Natasha McVey, Tax Collector

Phone: (503) 588-5215 Fax: (503) 566-3911

E-mail: PropertyTax@co.marion.or.us



December 30, 2025

SUBLIMITY CIC PARTNERS LLC  
VANCOUVER BC V6C 0A6  
CANADA

CORELOGIC TAX SVCS  
3001 HACKBERRY RD  
IRVING TX 75063

Account: 529015  
Prop. Owners: SUBLIMITY CIC PARTNERS LLC  
Prop. Location: 340 NE CREST ST # 42 SUBLIMITY OR 97385  
Map Tax Lot: 081W34AC00100  
Amt. of Overage: \$30,224.37  
Cause of Overage: DUPLICATE PMT

According to our records, the 2025 property taxes on the above account are overpaid.

However, SUBLIMITY CIC PARTNERS LLC and CORELOGIC TAX SVCS have sent conflicting instructions regarding the refund of this overage. ***Both payers have requested the refund, so one payer must withdraw their request.***

**The refund will be issued more quickly when the two payers agree upon the recipient of the overage.**

We urge you to please discuss this matter with the other payer listed above and determine who should receive the refund. A written response is requested from both parties before the refund can be processed.

Please give this matter your prompt attention.

Sincerely,

Marion County Tax Collector  
By Refund Clerk

529015

RE: Sublimity - Tax Payment- Loan #820127159 - Sublimity Village



Cee, Sofia <sofia.cee@wellsfargo.com>

To: propertytax@co.marion.or.us; Marjan Ahmadian

Cc: WF.CMSTax; Vega, Daniella; Stewart, Leondra; Williams, Latonya

Follow up. Start by January 16, 2026. Due by January 16, 2026.

You don't often get email from [sofia.cee@wellsfargo.com](mailto:sofia.cee@wellsfargo.com). [Learn why this is important](#)

Hello,

Wells Fargo escrow for taxes on parcel# 528995 (paid \$796.21) and 529015 (paid \$29,428.16).

Wells Fargo uses a third-party tax vendor Cotality (Formerly CoreLogic).

The Borrower also paid the above taxes.

Wells Fargo is requesting that you refund the Borrower directly due to a duplicate payment.

Please send the tax refund check to the mailing address below.

- Sublimity CIC Partners LLC
- 340 NE Crest Street, Suite 103
- Sublimity, OR 97385
- Phone: 604-669-2663 Ext 265

RECEIVED

JAN 16 2026

MARION COUNTY  
TAX COLLECTOR

Thank you,

Sofia Cee

Commercial Mortgage Loan Administration Specialist | Senior AVP

Wells Fargo Corporate Investment & Banking Loan Operations (CIBLO)

4101 Wiseman Blvd. | San Antonio, TX 78251-4200

MAC T7422-019

Customer Service 1-855-735-3282

[sofia.cee@wellsfargo.com](mailto:sofia.cee@wellsfargo.com)

General Mailbox: [WF.CMSTax@wellsfargo.com](mailto:WF.CMSTax@wellsfargo.com)

Customer Service: [wf.commercial.Servicing@wellsfargo.com](mailto:wf.commercial.Servicing@wellsfargo.com)

CMSView: [wf.cmsview@wellsfargo.com](mailto:wf.cmsview@wellsfargo.com)

Reserves: [wf.cmsreserves@wellsfargo.com](mailto:wf.cmsreserves@wellsfargo.com)

Collections: [wf.cmscollections@wellsfargo.com](mailto:wf.cmscollections@wellsfargo.com)

Insurance Questions: [wf.cmsinsur@wellsfargo.com](mailto:wf.cmsinsur@wellsfargo.com)

Insurance Documents: [wf.cmsinsuranceGeneral@wellsfargo.com](mailto:wf.cmsinsuranceGeneral@wellsfargo.com)

Regards

Marjan

529015

Natasha McVey

**From:** Marjan Ahmadian <marjan@himhc.com>  
**Sent:** Wednesday, January 14, 2026 12:24 PM  
**To:** PropertyTax  
**Subject:** RE: 2025-26 Property Tac Duplicate Payment

**⚠ WARNING:** This email originated outside of Marion County.  
**DO NOT CLICK** links or attachments unless you trust the sender and know the content is safe.

Hello Austin,  
Thank you for updating. Based on your reply, you received request from 2 sides to refund extra amount.  
Could you please let me know what can I do for the next step?  
From our side it is not problem if you refund money to other party.  
Regards  
Marjan



**MARJAN AHMADIAN**  
ACCOUNTANT  
+1(604) 669-2663 x265  
harmonyinternational.com  
marjan@himhc.com  
300 - 838 W. Hastings St  
Vancouver, BC V6C 0A6

~~RECEIVED  
JAN 12 2026  
MARION COUNTY  
TAX COLLECTOR~~

RECEIVED  
JAN 14 2026  
MARION COUNTY  
TAX COLLECTOR

**From:** PropertyTax <PropertyTax@co.marion.or.us>  
**Sent:** January 6, 2026 11:11 AM  
**To:** Marjan Ahmadian <marjan@himhc.com>  
**Subject:** RE: 2025-26 Property Tac Duplicate Payment

**At this time, our office is still awaiting withdrawal of the refund request from one of the paying parties for the property tax refund associated with tax account number 529015, located at 340 NE Crest St. #42, Sublimity, OR 97385.**

**Unless one payer withdraws their request or the two parties coordinate to reach an agreement, the refund will remain in a pending status. If no action is taken before the expiration date, the overpayment will be issued to the current owner of record in accordance with applicable procedures.**

**Please let us know if you have any questions or wish to update your instructions.**

**Sincerely**

**Dulcimer Traylor**

529015

RECEIVED

**From:** Marjan Ahmadian <marjan@himhc.com>  
**Sent:** Wednesday, November 19, 2025 11:15 AM  
**To:** PropertyTax  
**Cc:** Caine Liu; Lotfi Fetoui  
**Subject:** 2025-26 Property Tax Duplicate Payment  
**Attachments:** 2025-26 Tax Statement (1).pdf; 2025-26 Tax Statement (2).pdf; Tax Payment 528995.pdf; Tax Payment 529015.pdf; Chq876.pdf

MARION COUNTY  
TAX COLLECTOR

**⚠ WARNING:** This email originated outside of Marion County.  
**DO NOT CLICK** links or attachments unless you trust the sender and know the content is safe.

Hello,

Regarding to 2025-2026 property Tax for Sublimity CIC Partners LLC, the amount of \$29428.16 (Tax Account# 529015) and \$796.21 (Tax Account#528995) totalling \$30224.37 were paid has paid twice.

One of the payments was made by cheque#876 which has already been cashed on 10/24/2025.

The second payment was processed by the lender via electronic transfer.

Based on my conversation with Mr. Austin, both payments have been received. Per his advice, I am sending this email to request a refund of the duplicate payment.

Regards  
Marjan



**MARJAN AHMADIAN**  
ACCOUNTANT

+1(604) 669-2663 x265  
harmonyinternational.com  
marjan@himhc.com  
300 - 838 W. Hastings St  
Vancouver, BC V6C 0A6



OREGON

TAX COLLECTION DEPARTMENT

Natasha McVey, Tax Collector
Phone: (503) 588-5215 Fax: (503) 566-3911
E-mail: PropertyTax@co.marion.or.us

Account Number: 529015



36

Dec 02 2025

PAYER A: CORELOGIC TAX SVCS
3001 HACKBERRY RD
IRVING TX 75063

RECEIVED

DEC 26 2025

MARION COUNTY
TAX COLLECTOR

PAYER B: SUBLIMITY CIC PARTNERS LLC
VANCOUVER BC V6C 0A6
CANADA

Account: 529015
Prop. Owners: SUBLIMITY CIC PARTNERS LLC
Prop. Location: 340 NE CREST ST # 42 SUBLIMITY OR 97385
Map Tax Lot: 081W34AC00100
Amt. of Refund: \$30,224.37
Cause of Overage: DUPLICATE PMT

We have received, and applied 2025 property tax payments from both payers, noted above. The amount of \$30224.37 will be refunded to only one party. [NOTE: Refund amounts cannot be altered.]

We recommend that you contact the other payer, shown above, then notify us in writing as to who should receive the refund, even if it is not one of the payers listed above. We need written refund instructions from both parties that paid. Please sign and return this notice to the Tax Collection Department.

Please refund this overage to the following name and address:

CoreLogic Commercial Real Estate Services INC.
3001 Hackberry Rd
Irving, TX 75063

Signed: X [Signature] Date: 12/26/2025





MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: February 11, 2026

Department: Community Services

Title:

**Marion County Fair Board Member Appointments**

Management Update/Work Session Date: January 27, 2026 Audio/Visual aids

Time Required: 5 min. Contact: Brian Smith Phone: x5234

Requested Action:

Appoint Greg Martin and Joseph Billington to the Marion County Fair Board.

Issue, Description & Background:

Greg Martin and Joseph Billington have both been recently on the Marion County Fair Board; both have been completing a vacated position's term. Greg has been on the board since January of 2024, and Joseph since February of 2025. Their existing terms ended 12/31/25. They both wish to be appointed to the fair board for another term.

Financial Impacts:

A board member bond of \$50,000 in coverage is purchased for each fair board member.

Impacts to Department & External Agencies:

None

List of attachments:

Member applications, board orders, fair board roster

Presenter:

Chip Bury

Department Head Signature:

*Kelli Wuse*

**Note: Information on this page is considered public record and may be made available upon request.**

Name: GREG MARTIN

City of residence: SALEM (MARION COUNTY)

**Business information:**  
Occupation/business: RETIRED  
Business address: \_\_\_\_\_  
City: SALEM, Oregon Zip code: 97317 Business telephone: N/A  
Business e-mail: \_\_\_\_\_ Business fax: \_\_\_\_\_

I would like to be considered for the FAIR BOARD MEMBER position on the MARION COUNTY FAIR BOARD (lay or representative designation) (name of committee, board, council, task force or commission)

The reason I am applying for this appointment is  
I'D LIKE TO CONTINUE SERVING IN CHARGE OF HONOR DAY, ASSISTING W/ BANDS & "VOICE OF THE FAIR"

The personal and professional interests that prompted me to apply for this appointment are  
I HAD A FRIEND WHO SERVED ON THE BOARD; IT SEEMED BOTH CHALLENGING & REWARDING.

Have you served on any other Marion County board, commission, committee, council, or task force? (If yes, please list)

- 1. DPSST POLICY COMMITTEES, SALEM 2. OSP SAFETY COMMITTEE, UNION SGT AT ARMS.

Please list qualifications and skills you have which you believe would be valuable if you are appointed to this position (include relevant skills, activities, training, and education)

RETIRED FROM BOTH CORRECTIONS AND MILITARY. EARNED A MASTERS DEGREE FROM WOU, AND EXPERIENCE FROM COMMITTEES LISTED ABOVE.

SERVED AS: PLT SGT, W/ASE CHIEF, COMBAT EN, COMPANY CMDR, RECRUITER  
What community or school activities, committees or special activities have you participated in?

I'M AN OUTREACH SPECIALIST FOR DUAL DIAGNOSIS ANONYMOUS OF OREGON, CERTIFIED BY OREGON HEALTH AUTHORITY AS A PEER SUPPORT SPECIALIST, FACILITATING 4 MEETINGS A WEEK, YOUTH DRUG AWARENESS COORDINATOR AT SALEM ELKS LODGE.

For Internal Use:  
Application Rcd by: S. Lintner Dept: HR/VSC Date: 12/02/2025

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the Matter of Appointment            )  
to the Marion County Fair Board        )

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

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on February 11, 2026 to consider the appointment of Greg Martin to the Marion County Fair Board.

IT APPEARING to the Board that it has authority pursuant to ORS 565.210 to appoint members to the county fair board; that each member of the county fair board must furnish Marion County with a performance bond pursuant to ORS. 565.210 (3); and that Greg Martin is a resident of Marion County and is qualified and willing to continue to serve on the Marion County Fair Board; now, therefore,

IT IS ORDERED that Greg Martin be appointed as a member of the Marion County Fair Board with a term beginning on February 11<sup>th</sup>, 2026 and ending on December 31, 2028 effective immediately to serve at the pleasure of the Marion County Board of Commissioners.

IT IS FURTHER ORDERED that Greg Martin shall file with the Marion County Clerk, a good and sufficient bond in favor of Marion County, conditioned upon the faithful performance of the duties of the office of member of the Marion County Fair Board in the sum of \$50,000 for the 2026-2028 fiscal years.

DATED at Salem, Oregon, this \_\_\_\_ day of February 2026.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

ori: Clerk  
cc: CS  
Vol. Coord  
Appointees



## Advisory Board Application

Applicant's Name: **Joseph Billington**  
Adv. Board: **Fair Board**  
City of Residence: **Salem** Zip Code: **97305**  
Occupation: **Educator, Molalla High School**  
Application Rcd: **January 13, 2026**

---

### The reason I am applying:

I am eager to continue my service on the Fair Board, building upon the experience I gained during my previous year.

### More about my personal and professional interests:

I want to continue to help make the Fair the best it can be for the community.

### Tell us more about your community involvement:

Salem/Keizer FFA Alumni. 4-H leader and 4-H superintendent.

### Previous board service at Marion County:

Yes. For the past year, I have been a member of the Fair Board.

### Qualifications and Skills:

I am a team player and enjoy collaborating to achieve the best possible outcomes.

### More about yourself and why you are applying:

For many years, I have been involved with the fair in one way or another. Now that my kids are graduating and leaving home, and are no longer involved with the fair, I want to find a way to continue giving back.

### References: **Melanie McCabe, personal reference**

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## Signature

### Agreement Statement:

I give my permission for the named references to be contacted, either verbally or in writing. All the information on this application is true to the best of my knowledge and I understand I am applying for a volunteer position with Marion County.

I understand that appointed members of a Marion County advisory board, commission, committee, or council are considered public officials under Oregon law. Marion County will provide orientation and more information upon appointment.

I Agree \*

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the Matter of Appointment            )  
to the Marion County Fair Board        )

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

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on February 11, 2026 to consider the appointment of Joseph Billington to the Marion County Fair Board.

IT APPEARING to the Board that it has authority pursuant to ORS 565.210 to appoint members to the county fair board; that each member of the county fair board must furnish Marion County with a performance bond pursuant to ORS. 565.210 (3); and that Joseph Billington is a resident of Marion County and is qualified and willing to serve on the Marion County Fair Board; now, therefore,

IT IS ORDERED that Joseph Billington be appointed as a member of the Marion County Fair Board with a term ending December 31, 2028 effective immediately to serve at the pleasure of the Marion County Board of Commissioners.

IT IS FURTHER ORDERED that Joseph Billington shall file with the Marion County Clerk, a good and sufficient bond in favor of Marion County, conditioned upon the faithful performance of the duties of the office of member of the Marion County Fair Board in the sum of \$50,000 for the 2026-2028 fiscal years.

DATED at Salem, Oregon, this \_\_\_\_ day of February 2026.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

ori: Clerk  
cc: CS  
Vol. Coord  
Appointees

## 2026 Fair Board Member Roster

CAPACITY	ORIGINAL APPOINTMENT DATE	TERM EXPIRES
<b>Member</b>		
Joseph Billington	2/19/2025 (Filling Prior Member's position)	12/31/2025
Brandi Crandall*	1/18/2024	12/31/2026
Dana Castano	1/18/2024	12/31/2027
Greg Martin	1/18/2024	12/31/2025
Amy Goulter Allen	4/5/2023	12/31/2027
Shannon Gubbels	1/30/2002	12/31/2027
Pam Zielinski	12/21/2005	12/31/2026
<b>Key Volunteer</b>		

\*BOC approved Crandall's membership of her move to out of county residency at the Management Update August 27, 2024.

Updated: 01/26



MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: 2/11/26

Department: Health & Human Services

Title: Community Mental Health Programs (CMHP)

Management Update/Work Session Date: 1/27/26 Audio/Visual aids

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

Requested Action: Seeking Approval of the contract with OHA for Community Mental Health Programs (CMHP).

Issue, Description & Background: Intergovernmental Agreement for the Financing of Community Mental Health Programs (CMHP). PO-44300-00054297

Financial Impacts: Total contract amount \$23,827,481.04

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

List of attachments: Original

Presenter: Ryan Matthews

Department Head Signature: DocuSigned by: Ryan Matthews 7D28A787656F458...

# Contract Review Sheet

Intergovernmental Agreement

**HE-6706-26**

Title: Community Mental Health Programs (CMHP)

Contractor's Name: Oregon Health Authority

Department: Health and Human Services

Contact: Kristina Ballow

Analyst: Chalyce MacDonald

Phone #: (503) 588-5409

Term - Date From: January 1, 2026

Expires: June 30, 2027

Original Contract Amount: \$ 23,827,481.04

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ 23,827,481.04 Amd% 0%

**Incoming Funds**  Federal Funds  Reinstatement  Retroactive  Amendment greater than 25%

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

Description of Services or Grant Award

Intergovernmental Agreement for the Financing of Community Mental Health Programs (CMHP).

Desired BOC Session Date: 2/11/2026

Contract should be in DocuSign by: 1/21/2026

Agenda Planning Date: 1/29/2026

Printed packets due in Finance: 1/27/2026

Management Update: 1/27/2026

BOC upload / Board Session email: 1/28/2026

BOC Session Presenter(s) Ryan Matthews

Code: Y

## REQUIRED APPROVALS

Finance - Contracts \_\_\_\_\_ Date \_\_\_\_\_

Contract Specialist \_\_\_\_\_ Date \_\_\_\_\_

Legal Counsel \_\_\_\_\_ Date \_\_\_\_\_

Chief Administrative Officer \_\_\_\_\_ Date \_\_\_\_\_

**REQUEST FOR AUTHORIZATION OF CONTRACT  
HE-6706-26**

**Date:** 1/12/2026  
**To:** Chief Administrative Officer  
**Cc:** Contract File  
**From:** Kristina Ballow

**I. Subject: Retroactive**

The Marion County Health and Human Services is requesting approval of a retroactive contract as described in Section 10-0580 of the Marion County Public Contracting Rules. The contract is with Oregon Health Authority (OHA) for Community Mental Health Programs (CMHP) with a value of \$23,827,481.04 and will be effective retroactive to 1/1/2026 upon approval.

**A. BACKGROUND**

These incoming funds through an Intergovernmental Agreement from OHA to MCHHS provide financing of Community Mental Health Programs.

**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:**

Marion County participated in extensive and prolonged contract negotiations with the Oregon Health Authority (OHA), the Oregon Department of Justice (DOJ), and the Governor's Office to resolve substantive issues related to contract terms and conditions. These negotiations extended beyond the anticipated start date of services and involved multiple revisions to ensure legal sufficiency, alignment with state and county requirements, and protection of public interests.

During this period, Marion County continued to collaborate with state partners in good faith to avoid disruption of critical services while final contract language was being resolved. The delay in submission was not due to inaction by the County, but rather the time required to reach agreement among all parties on final contract provisions.

**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:**

MCHHS is committed to coordinating with all relevant departments and contractors throughout the contract review and drafting process. We will continue to collaborate with OHA to ensure that agreements are received by the County with adequate lead time for processing, thereby avoiding the need for retroactive implementation.

Submitted by:

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Kristina Ballow  
Health and Human Services

Acknowledged by:

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Department Head

Reviewed by:

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Contracts & Procurement

Acknowledged by:

---

Jan Fritz, CAO

**In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications, and other electronic formats. To request an alternate format, please send an e-mail to [dhs-oha.publicationrequest@odhsoha.oregon.gov](mailto:dhs-oha.publicationrequest@odhsoha.oregon.gov) or call 503-378- 3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.**

**AGREEMENT # 44300-00054297**

**2026-2027 INTERGOVERNMENTAL AGREEMENT  
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH PROGRAMS**

This 2026-2027 Intergovernmental Agreement for the Financing of Community Mental Health Programs (this “**Agreement**”) is between the State of Oregon acting by and through its Oregon Health Authority (“**OHA**”) and **Marion County**, a political subdivision of the State of Oregon (“**County**”).

**RECITALS**

1. OHA is authorized to assist Oregon counties and groups of Oregon counties in the establishment and financing of Community Mental Health Programs (as hereinafter defined) operated or contracted for by one or more counties;
2. County has established and proposes, during the term of this Agreement, to operate or contract for the operation of a Community Mental Health Program in accordance with the policies, procedures, and administrative rules of OHA;
3. County has requested Financial Assistance (as hereinafter defined) from OHA to operate or contract for the operation of its Community Mental Health Program;
4. OHA is willing, upon the terms and conditions of this Agreement, to provide Financial Assistance to County to operate or contract for the operation of its Community Mental Health Program to provide the Services (as hereinafter defined); and
5. Various statutes authorize OHA and County to collaborate and cooperate in providing for basic services and incentives for community-based care in a manner that ensures appropriate and adequate statewide Service delivery capacity.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Effective Date and Duration.** This Agreement shall become effective on January 1, 2026 (the “**Effective Date**”). Unless terminated earlier in accordance with its terms, this Agreement shall expire on June 30, 2027.
2. **Agreement Documents, Order of Precedence.** This Agreement consists of the following documents:  
This Agreement without exhibits  
Exhibit A      Definitions

Exhibit B	Service Descriptions
Exhibit C	Financial Assistance Award
Exhibit D	Special Terms and Conditions
Exhibit E	General Terms and Conditions
Exhibit F	Standard Terms and Conditions
Exhibit G	Required Federal Terms and Conditions
Exhibit H	Insurance Requirements
Exhibit I	Catalog of Federal Domestic Assistance (CFDA) Number Listing

In the event of a conflict between two or more provisions within any of the documents comprising this Agreement, the language in the provision with the highest precedence will control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: (i) this Agreement without exhibits, (ii) Exhibit G, (iii) Exhibit A, (iv) Exhibit C, (v) Exhibit D, (vi) Exhibit B, (vii) Exhibit F, (viii) Exhibit E, (ix) Exhibit H, (x) Exhibit I.

**EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**3. Signatures.**

**Marion County**

**By:**

_____	_____	_____	_____
Authorized Signature	Printed Name	Title	Date

**State of Oregon, acting by and through its Oregon Health Authority**

**By:**

_____	_____	_____	_____
Authorized Signature	Printed Name	Title	Date

**Approved by: Director, OHA Behavioral Health Division**

**By:**

_____	_____	_____	_____
Authorized Signature	Printed Name	Title	Date

**Approved for Legal Sufficiency:**

Approved by Lisa Gramp, Sr. Assistant Attorney General on December 18, 2025; email in Agreement file

**ADDITIONAL MARION COUNTY SIGNATURES FOR  
COMMUNITY MENTAL HEALTH PROGRAMS (CMHP) IGA #PO-44300-00054297 -  
HE-6706-26**

**between  
MARION COUNTY and OREGON HEALTH AUTHORITY**

**MARION COUNTY SIGNATURES  
BOARD OF COMMISSIONERS:**

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

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

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

Authorized Signature: \_\_\_\_\_  
Chief Administrative Officer Date

Reviewed by Signature: \_\_\_\_\_  
Marion County Legal Counsel Date

Reviewed by Signature: \_\_\_\_\_  
Marion County Contracts & Procurement Date

**2026-2027 INTERGOVERNMENTAL AGREEMENT  
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH PROGRAMS**

**EXHIBIT A  
DEFINITIONS**

As used in this Agreement, the following words and phrases have the indicated meanings. Certain additional words and phrases are defined in the Service Descriptions and Special Conditions. When a word or phrase is defined in a particular Service Description or Special Condition, the word or phrase will not have the ascribed meaning in any part of the Agreement other than the particular Service Description or Special Condition in which it is defined.

1. **“Addiction Treatment, Recovery, & Prevention Services”** means Services for Individuals at risk of developing or diagnosed with SUD.
2. **“Aging and People with Disabilities”** or **“APD”** means a division within the Oregon Department of Human Services that is responsible for management, financing, and regulating services for aging adults and people with disabilities.
3. **“Agreement Settlement”** means OHA’s reconciliation, after termination or expiration of this Agreement, of amounts OHA actually disbursed to County with amounts that OHA is obligated to pay to County under this Agreement from the Financial Assistance Award, as determined in accordance with the Financial Assistance calculation methodologies set forth in the Service Descriptions.
4. **“Allowable Costs”** means the costs described in 2 CFR Part 200 or 45 CFR Part 75, as applicable, except to the extent such costs are limited or excluded by other provisions of this Agreement, whether in the applicable Service Descriptions, Special Conditions identified in the Financial Assistance Award, or otherwise.
5. **“Allowable Services”** means the reasonable, allocable, and necessary Services eligible for funding through this Agreement.
6. **“Behavioral Health”** refers to mental and emotional wellbeing or actions that affect wellness.
7. **“Behavioral Health Disorder”** means a mental illness, Mental or Emotional Disturbance, or Substance Use Disorder.
8. **“Behavioral Health Division”** or **“BHD”** means for the purpose of this Agreement, the division of OHA that is responsible for the functions described in [ORS 430.021\(2\)](#), including but not limited to coordinating, assisting, and directing a Community Mental Health Program in cooperation with local government units and integrate such a program with the state Community Mental Health Program, and direct and coordinate Addiction Treatment, Recovery, & Prevention Services.
9. **“Behavioral Health Prevention”** means interventions to minimize Behavioral Health Problems by addressing determinants of Behavioral Health Problems before a specific Behavioral Health Problem has been identified in the Individual, group, or population of focus.
10. **“Behavioral Health Problem”** means a mental illness, Mental or Emotional Disturbance, Substance Use Disorder, or serious psychological distress and suicide.

11. **“Behavioral Health Promotion”** means a set of strategies that encourage and increase protective factors and health behaviors to help prevent the onset of a diagnosable Behavioral Health Disorders and reduce risk factors that can lead to the development of a Behavioral Health Disorder.
12. **“Budget”** means the written plan of projected income and expenditures for Services paid for with the Financial Assistance, as approved by OHA.
13. **“Community Mental Health Program”** or **“CMHP”** means an entity established under [ORS 430.620](#) that is responsible for planning and delivery of Services for Individuals with or at risk of developing a Behavioral Health Disorder in a specific geographic area of the state under an agreement with OHA or a Local Mental Health Authority.
14. **“Coordinated Care Organizations”** or **“CCO”** means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under [ORS 414.572](#) to be accountable for care management and to provide integrated and coordinated health care for each of the organization’s members.
15. **“County Financial Assistance Administrator”** means a County appointed officer to administer this Agreement and amend the Financial Assistance Award on behalf of County, by execution and delivery of amendments to this Agreement in the name of County, in hard copy or electronically.
16. **“Federal Funds”** means all funds paid to County under this Agreement that OHA receives from an agency, instrumentality, or program of the federal government of the United States.
17. **“Financial Assistance Award”** or **“FAA”** means the description of financial assistance set forth in [Exhibit C](#).
18. **“Financial Assistance”** means all or a portion of the Financial Assistance Award.
19. **“Individual”** or **“Client”** means any person being considered for or receiving Services funded with the Financial Assistance.
20. **“Local Mental Health Authority”** or **“LMHA”** has the meaning set forth in [ORS 430.630\(9\)\(a\)](#).
21. **“Local Plan”** or **“Plan”** means the comprehensive plan, adopted by the Local Mental Health Authority as set forth in [ORS 430.630\(9\)](#) and approved by OHA in accordance with [ORS 430.640\(1\)\(f\)](#). Each Local Mental Health Authority that operates or contracts for the operation of a Community Mental Health Program shall determine the need for local services and adopt a comprehensive Local Plan for the delivery of services for children, families, adults and older adults that describes the methods by which the Local Mental Health Authority shall provide or ensure provision of those services. The Local Plan must describe, among other things, how County will provide or ensure provision of the Services outlined in [Exhibit B](#) with the Financial Assistance. The Plan shall be consistent with content and format to that of OHA’s Local Plan guidelines located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. County shall provide Services in accordance with the Local Plan and Budget.
22. **“Mandated State Data System”** means the OHA data system that stores non-Medicaid Service data submitted by OHA contractors and subcontractors.

23. **“Medicaid”** means the federal grant-in-aid program to state governments to provide medical assistance to eligible individuals under Title XIX of the Social Security Act. ([OAR 309-019-0105](#)(96)).
24. **“Mental or Emotional Disturbance”** means a disorder of emotional reactions, thought processes, or behavior that results in substantial subjective distress or impaired perceptions of reality or impaired ability to control or appreciate the consequences of the person's behavior and constitutes a impairment of the resident’s social, educational, or economic functioning. Medical diagnosis and classification must be consistent with the Diagnostic and Statistical Manual of Mental Disorders (DSM 5-TR) of the American Psychiatric Association."
25. **“Misexpenditure”** means funds, other than an Overexpenditure, disbursed to County by OHA under this Agreement and expended by County that are:
  - a. Identified by the federal government as expended contrary to applicable statutes, rules, OMB Circulars, or 45 CFR Part 75, as applicable, or any other authority that governs the permissible expenditure of such funds, for which the federal government has requested reimbursement by the State of Oregon, whether in the form of a federal determination of improper use of federal funds, a federal notice of disallowance, or otherwise; or
  - b. Identified by the State of Oregon or OHA as expended in a manner other than that permitted by this Agreement, including without limitation any funds expended by County contrary to applicable statutes, rules, OMB Circulars, or 45 CFR Part 75, as applicable, or any other authority that governs the permissible expenditure of such funds; or
  - c. Identified by the State of Oregon or OHA as expended on the delivery of a Service that did not meet the standards and requirements of this Agreement with respect to that Service.
26. **“ODHS”** means the Department of Human Services of the State of Oregon.
27. **“Older Adults”** means adults who are 60 years old or older.
28. **“OHA Contract Administrator”** means the person identified in Section 16 of [Exhibit F](#) or their designee.
29. **“Overexpenditure”** means funds disbursed to County by OHA under this Agreement and expended by County that is identified by the State of Oregon or OHA, through Agreement Settlement or any other disbursement reconciliation permitted or required under this Agreement, as in excess of the funds County is entitled to as determined in accordance with [Exhibit C](#), “Financial Assistance Award” or in [Exhibit D](#), “Special Terms and Conditions.”
30. **“Provider”** means an entity or qualified person that holds all licenses, certificates, authorizations, and other approvals required by applicable law to deliver the Services. Provider also includes County if County provides the Service directly.
31. **“Provider Contract”** means the agreement by and between County and a Provider under which County subcontracts for the provision of certain Services, the terms and conditions of which must be consistent with this Agreement with regard to any duties or obligations that are subcontracted. OHA’s consent to any Provider or Provider Contract does not relieve County of any of its duties or obligations under this Agreement and County remains responsible for such duties or obligations regardless of any Provider Contract. The Provider Contract must be in writing, identify for sub-recipients the amount of federal funds included in the Provider Contract and provide the CFDA number.

32. **“Qualifying Mental Disorder”** means:
- a. A developmental or intellectual disability, traumatic brain injury, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of the defendant’s or youth’s functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM 5-TR) of the American Psychiatric Association; or
  - b. Any diagnosis of a psychiatric condition which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of the defendant’s or youth’s functioning and is defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM 5-TR) of the American Psychiatric Association.
  - c. Qualifying Mental Disorder does not include:
    - (1) A diagnosis solely constituting the ingestion of substances (e.g., chemicals or alcohol), including but not limited to transitory, episodic alcohol or drug-induced psychosis;
    - (2) An abnormality manifested solely by repeated criminal or otherwise antisocial conduct;
    - (3) An abnormality constituting a personality disorder; or
    - (4) Constituting solely a conduct disorder for a youth.

33. **“Required Federal Terms and Conditions”** mean the requirements set forth in Exhibit G.

34. **“Service(s)”** or **“Core Service Area(s)”** means any one of the following Services or group of related Services as described in the Service Descriptions.

Service Name	Service Code
Core Service Area(s):	BHD 500
a. System Management & Coordination	
b. Crisis Services	
c. Forensic & Involuntary Services	
d. Outpatient & Community-Based Services	
e. Residential & Housing Services	
f. Behavioral Health Promotion & Prevention	
g. Block Grant Funded Services	
h. Invoiced Services	

35. **“Service Description”** means the description of the Services as set forth in Exhibit B.

36. **“Service Priorities”** means the tiered provision of Services set forth in Section 2 of Exhibit B, provided that such Service Priorities do not conflict with ORS Ch. 430.

37. **“Special Condition”** means a clause added to a specific line item in the Financial Assistance Award.

38. **“Substance Use Disorder”** or **“SUD”** means, as defined in DSM-5-TR, disorders related to the taking of a drug of abuse including alcohol, the side effects of a medication, or a toxin exposure. The disorders include substance use disorders and substance-induced disorders, which include substance intoxication and withdrawal, and substance-related disorders such as delirium, neuro-

cognitive disorders, and substance-induced psychotic disorder.

39. **“Substantial Compliance”** means a level of adherence to applicable administrative rules, statutes, other applicable regulations, and the required metrics associated with each Core Service Area that, even if one or more requirements is not met in the reasonable determination of OHA, subject to any and all ORS 183 appeal rights, does not:
- a. Constitute a danger to the health, welfare, or safety of any Individual or to the public;
  - b. Constitute a willful, negligent, or ongoing violation of the rights of any Individuals as set forth in administrative rules; or
  - c. Constitute significant impairment to the accomplishment of the purposes in providing funding through this Agreement.
40. **“Trauma Informed Services”** means services that are reflective of the consideration and evaluation of the role that trauma plays in the lives of people seeking mental health and substance use services, including recognition of the traumatic effect of misdiagnosis and coercive treatment. Trauma Informed Services are responsive to the vulnerabilities of trauma survivors and are delivered in a way that avoids inadvertent re-traumatization and facilitates individual direction of services. ([OAR 309-019-0105](#)(162)).
41. **“Underexpenditure”** means funds disbursed by OHA under this Agreement that remain unexpended at Agreement termination or expiration, other than funds County is permitted to retain and expend in the future under Exhibit E, “General Terms and Conditions,” section 3.b.”
42. **“Young Adult in Transition”** means an Individual who is developmentally transitioning into independence, sometime between the ages of 14 to 25. ([OAR 309-019-0105](#)(172)).

**2026-2027 INTERGOVERNMENTAL AGREEMENT  
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH PROGRAMS**

**EXHIBIT B  
SERVICE DESCRIPTIONS**

The parties acknowledge and agree that the Financial Assistance provided in this Agreement may not be sufficient to fully provide the Services to all Individuals. Likewise, the parties acknowledge and agree that the Local Plan and Budget, as well as County’s CMHP obligations under ORS 430.630, encompass obligations that are not covered by this Agreement. Nothing in this Agreement entitles a third party to enforce its terms.

In addition, OHA acknowledges that County is not a party to the Mink-Bowman litigation. The intention of this Agreement is, consistent with ORS 430.646(1)-(3) and ORS 430.644, to ensure that the Financial Assistance is prioritized for the Service Priorities. In no event will County be required to use funds other than the Financial Assistance to fund the Services in this Exhibit B. Likewise, this Agreement does not create an obligation for County to create residential infrastructure.

County shall provide the Services described in this Exhibit B with the Financial Assistance Award provided by this Agreement, in accordance with the approved Local Plan and corresponding Budget. In providing the Services described in this Exhibit B, County shall follow the Service Priorities identified in Section 2. of this Exhibit B. To the extent that the Service Priorities set forth in Section 2.a. are adequately funded with the Financial Assistance, then, to the extent that Financial Assistance remains available, County shall provide the lower tiered Service Priorities in Section 2. County’s compliance with this Exhibit B will be solely determined based on whether: (i) County has an approved Local Plan and Budget; (ii) is in Substantial Compliance with the required metrics for each Core Service Area in consideration of the approved Local Plan and Budget; and (iii) is in Substantial Compliance with the required services section for each Core Service Area in consideration of the approved Local Plan and Budget.

- 1. Goals.** The parties agree that the goals of this Agreement are to:
  - a.** Provide a coordinated crisis system to all Individuals within the geographic service area of the County(ies).
  - b.** Provide individualized services to ensure that people are served in the least restrictive most integrated setting possible allowing Individuals across the lifespan to live as independently as possible.
  - c.** Coordinate access to stable housing to prevent Individuals with Behavioral Health Disorders and their families from being unhoused.
  - d.** Services address the unique needs of Individuals without regard to race, ethnicity, gender, gender identity, gender presentation, sexual orientation, religion, creed, national origin, age, intellectual and/or developmental disability, IQ score, or physical disability.
  - e.** Reduce risk of unnecessary emergency department utilization, criminal/legal involvement, and acute psychiatric hospitalizations by providing upstream services.
  - f.** Provide a trained, competent and compassionate system for Individuals at risk of involuntary civil or forensic commitment that focuses on diversion these services, when appropriate.
  - g.** Engage, and when appropriate, lead in community efforts that decrease deaths by suicide.
  - h.** Engage, and when appropriate, lead in community efforts that decrease overdose and overdose deaths.
  - i.** Engage, and when appropriate, lead in community efforts that decrease unnecessary criminal/legal involvement for Individuals with Behavioral Health Disorders.

2. **Service Priorities. The Individuals described under each subsection below are listed in no particular order. County shall be in Substantial Compliance with the required metrics and required services under each Core Service Area in consideration of the approved Local Plan and Budget.**
- a. **County shall give first priority in providing Services to each of the following, based on community need:**
- (1) **Aid & Assist – Individuals who the court:**
    - (a) Has reason to doubt are fit to proceed by reason of incapacity (as defined in [ORS 161.360](#)) under [ORS 161.365](#);
    - (b) Has determined lack the fitness to proceed under [ORS 161.370](#) but has not yet determined what action to take under [ORS 161.370\(2\)\(c\)](#);
    - (c) Has found to lack fitness to proceed under [ORS 161.370](#) and are committed to the custody of the superintendent of the Oregon State Hospital (OSH); or
    - (d) Has determined lack of fitness to proceed under [ORS 161.370](#) and are ordered to engage in community restoration services.
    - (e) Has determined to have no substantial probability of gaining or regaining fitness under [ORS 161.367](#) and who are being discharged to the community.
  - (2) **Psychiatric Security Review Board (PSRB – Individuals who:**
    - (a) Are found guilty except for insanity of a criminal offense under [ORS 161.327](#) or responsible except for insanity under [ORS 419C.529](#); or
    - (b) Are committed as extremely dangerous persons with qualifying mental disorders under [ORS 426.701](#), or recommitted under [ORS 426.702](#).
  - (3) **Civil Commitment - Individuals who:**
    - (a) Are currently committed to OHA for treatment under [ORS 426.130](#) or recommitted to OHA under [ORS 426.307](#);
    - (b) Are diverted through the civil commitment process to voluntary treatment, conditional release, outpatient commitment, and assisted outpatient treatment (AOT) as described in [ORS 426.125](#) through [ORS 426.133](#), or [ORS 426.237](#); or
    - (c) Require emergency hold, custody, or secure transport services under [ORS 426.228](#), [ORS 426.231](#), [ORS 426.232](#) and [ORS 426.233](#), or are being held on a warrant of detention pending a civil commitment hearing under [ORS 426.070](#).
- b. **Depending on the availability of funds, County shall give second priority in providing Services to Individuals who are 18 years or older, and have a mental illness(es), including co-occurring mental health and Substance Use Disorders, and who as a result of their symptoms from their mental illness:**
- (1) Have had law enforcement contact that could have resulted in an arrest, citation, booking, criminal charge, or transport to jail, but have instead been referred to County for Services;
  - (2) Are in jail and are in need of mental health treatment; or
  - (3) In the previous six months, have been twice detained on an emergency hold under [ORS 426.232](#) or on a warrant of detention under [ORS 426.070](#) but have not yet, as a result, been civilly committed.
- c. **Depending on the availability of funds, County shall give third priority in providing Services to all other Individuals, who do not otherwise qualify under Subsection 2.a and 2.b of Exhibit B, who:**
- (1) Are at immediate risk of hospitalization for the treatment of Mental or Emotional Disturbances, or are in need of Services to avoid hospitalization or posing a health or safety risk to themselves or others;

- (2) Are under 18 years of age who, in accordance with the assessment of professionals in the field of mental health, are at immediate risk of removal from their homes for treatment of Mental or Emotional Disturbances or exhibit behavior indicating high risk of developing disturbances of a severe or persistent nature;
  - (3) Because of the nature of their mental illness, their geographic location or their family income, are least capable of obtaining assistance from the private sector; or
  - (4) In accordance with the assessment of professionals in the field of mental health, are experiencing Mental or Emotional Disturbances but will not require hospitalization in the foreseeable future.
- d. **Depending on the availability of funds, County shall give fourth priority in providing Services to all other Individuals who do not otherwise qualify under Subsections 2.a through 2.c of Exhibit B, and who have or are at risk of developing a Mental or Emotional Disturbance or Substance Use Disorder.**

**3. Core Service Areas**

**a. System Management and Coordination**

**(1) Planning and Service Delivery**

- (a) **Description:** County is responsible for developing a comprehensive Local Plan that describes how County will deliver mental health Services for Individuals that are responsive to the needs of Individuals in their community, as described in [ORS 430.630\(9\)](#).
- (b) **Population:** County shall provide a delivery system for Services responsive to Individuals with Behavioral Health needs in their geographic service area, which specifically addresses the needs of Individuals described in Section 2.a of Exhibit B.
- (c) **Required Services:** County shall:
  - i. Establish and maintain a structure for meaningful system design and oversight of Services funded with the Financial Assistance;
  - ii. Submit a comprehensive Local Plan, consistent with [ORS 430.630\(9\)](#) and this Agreement;
  - iii. Implement the delivery of Services as described in the County’s Local Plan approved by OHA;
  - iv. Monitor the delivery of Services described in the County’s Local Plan approved by OHA;
  - v. Evaluate delivery of Services described in the County’s Local Plan approved by OHA;
  - vi. Ensure adequate administrative support for:
    - A. Activities related to contract negotiation, administration, and monitoring as needed to meet the Service needs of Individuals receiving Services under this Agreement;
    - B. Data collection, performance measurement, and reporting;
    - C. Activities to support the County’s mental health advisory committee required in [ORS 430.630\(7\)](#); and
    - D. Activities to support collaboration in new developments for residential treatment, foster homes, crisis stabilization centers supported housing, and independent living resources.
  - vii. Provide complex case consultation, care coordination, and transition coordination as appropriate to the needs, preferences, and choices of each Individual including, but not limited to:
    - A. Coordination of Services not funded by Medicaid;



- (c) **Required Services:** County shall provide protective services as described in [OAR Chapter 419 Division 110](#), and ensure they are completed in the least intrusive manner feasible and support the greatest level of independence.

**b. Crisis Services**

- (1) **Description:** Crisis services are designed to prevent or ameliorate a Behavioral Health crisis or reduce acute symptoms of a mental illness or a Substance Use Disorder.
- (2) **Population:** Individuals experiencing a Behavioral Health crisis as defined by [OAR 309-023-0110](#). The prioritization categories, described in Section 2 of [Exhibit B](#), do not apply to crisis services.
- (3) **Required Services:** County shall provide or ensure provision of mobile crisis intervention services (MCIS) and mobile response and stabilization services (MRSS) delivered in accordance with [OAR Chapter 309 Division 72](#) as may be revised from time to time.
- (4) **Other Allowable Services (Subject to Availability of Funds):** To the extent that MCIS and MRSS Services are in Substantial Compliance with [OAR Chapter 309 Division 72](#), as may be revised from time to time, funds may also be allocated to support the following Services provided at a certified location:
  - (a) Crisis stabilization centers operated in accordance with [OAR Chapter 309 Division 73](#) as may be revised from time to time.
  - (b) Walk-in Crisis Services: Outpatient clinics that operate for walk-in visits with no appointment needed for immediate mental health and substance use support during day hours. Services may include, but are not limited to:
    - i. Screening;
    - ii. Assessment;
    - iii. Brief intervention;
    - iv. Prescribing capabilities; and
    - v. Referrals and linkages to longer term Services.
  - (c) Crisis line services provided in accordance with [OAR 309-019-0300](#), as may be revised from time to time.
- (5) **Required Metrics:** County shall be in Substantial Compliance with the following requirements:
  - (a) MCIS and MRSS responses are conducted within the timelines required in [OAR Chapter 309 Division 72](#).
  - (b) Individuals receiving an MCIS response are contacted (or contact attempts are made and documented) for follow-up within 72 hours of the MCIS response.
  - (c) Adults receiving MCIS receive the Services necessary to remain in the community following the initial MCIS response.
  - (d) Youth receiving MRSS receive the Services necessary to remain in the community following the initial MRSS response.
  - (e) Youth are screened for stabilization services following the initial MCIS response.
  - (f) Youth and families that consent to stabilization services are enrolled in stabilization services.
  - (g) Youth enrolled in stabilization services are referred to the recommended ongoing Services prior to discharge from stabilization services.

**c. Forensic & Involuntary Services**

- (1) **Aid and Assist and Competency Restoration Services:**
  - (a) **Description:** Competency restoration services are provided to assist Individuals in gaining or regaining their competency in the most integrated,

least restrictive setting possible. Competency restoration services, for Individuals found unable to aid and assist in their own defense, are provided either in the community or at OSH. Services include, but are not limited to, community transition planning, treatment designed to restore competency, placement in appropriate community-based care, monitoring and coordination of Services, coordination with providers and the court, and periodic assessment of the Individual’s fitness to proceed.

**(b) Population:** Individuals who are described in Subsection 2.a(1) of Exhibit B.

**(c) Required Services:** County shall:

- i.** Ensure that community consultations are conducted as required in [OAR 309-088-0125](#);
- ii.** Provide community restoration services as defined in [OAR 309-088-0115](#) including, but not limited to:
  - A.** Competency restoration services as defined in [OAR 309-088-0115](#);
  - B.** Forensic care coordination as defined in [OAR 309-088-0115](#); and
  - C.** Supportive services as defined in [OAR 309-088-0115](#) necessary to support community integration.
- iii.** Provide competency restoration services during commitment at OSH including, but not limited to:
  - A.** Community transition planning defined in [OAR 309-088-0115](#);
  - B.** Forensic care coordination defined in [OAR 309-088-0115](#); and
  - C.** If applicable, the plan of resolution described in Exhibit D.
- iv.** Ensure compliance with [OAR 309-088-0130](#) including, but not limited to:
  - A.** Developing within 30 calendar days of admission and updating at least once every 30 calendar days a community transition plan for the Individual in the least restrictive, most integrated setting appropriate to meet the Individual’s Behavioral Health needs, preferences, choices, and strengths;
  - B.** Have both a primary community transition plan and at least one backup community transition plan;
  - C.** In developing the community transition plan, County shall be primarily guided by the State Hospital’s treating clinical team’s recommendations. County may provide information to the State Hospital’s treating clinical team to inform their recommendations.
  - D.** The community transition plan must provide information about the availability of the State Hospital treating clinical team’s clinical recommendations in the community, including any reasonable and clinically appropriate alternatives if the State Hospital treating clinical team’s clinical recommendations are not present or available in the community.
  - E.** Completion or coordination of any referrals, screenings, or other work to implement the community transition plan: and

- F.** Monitoring the status of any referrals, screenings, or other work to implement the community transition plan.
- G.** At least every 30 calendar days, County staff are required to:
  - I.** Meet with the hospital to facilitate an effective transition back to the community. These meetings are required to create, update, or implement a community transition plan that aligns with the Individual's specific treatment needs outside of a hospital level of care setting. These meetings must include, but are not limited to:
    - (A)** Attending Treatment Team meetings; or
    - (B)** Speaking with the assigned qualified mental health professional (QMHP).
  - II.** Meet with the Individual (in-person or by phone call or video conference) to discuss transition planning and treatment available in the community. These meetings also help with creating, reviewing, updating or implementing a community transition plan.
  - III.** Determine whether community restoration services have become present and available. Consulting with Providers, agencies, CCOs, exceptional needs care coordinators (ENCCs), and Tribes (if applicable) helps to inform the 30-day review.
- v.** After OSH issues notice that an Individual is ready to place (RTP) under [ORS 161.371\(3\)\(a\) or \(4\)\(a\)](#), and the court orders a community consultation, County shall:
  - A.** Attempt to consult with the Individual and with any local entity that would be responsible for providing community restoration services, if the Individual were to be released in the community, to determine whether community restoration services are present and available in the community;
  - B.** Identify appropriate Providers that are able to meet the Individual's Behavioral Health needs and willing to provide that care, treatment, and Services to the Individual;
  - C.** Identify Providers and planning for a community restoration placement, primarily guided by the level of Services, supervision or type of placement identified by OSH in its RTP notice, and advise whether those resources are present and available in the community;
  - D.** Coordinate access to Services provided in the least restrictive and most integrated setting appropriate to meet the Individual's Behavioral Health needs;
  - E.** Facilitate timely discharge from OSH and diversion from placement at a secure residential treatment facility (SRTF) when consistent with the level of Services, supervision or type

- of placement identified by OSH in its RTP notice, whenever possible;
  - F.** Obtain any necessary approvals from the Provider to allow admission, if it is a residential placement;
  - G.** Continue to send referrals to Providers until the Individual is accepted and can be immediately placed unless otherwise ordered by the court, if and when the court orders community restoration for the Individual;
  - H.** Complete the standardized consultation report template available at <https://www.oregon.gov/oha/osh/legal/pages/information-mental-health-providers.aspx>; and
  - I.** Within five judicial days, provide a copy of the consultation to OHA at [aidand.assistadmin@odhsoha.oregon.gov](mailto:aidand.assistadmin@odhsoha.oregon.gov), the court and OSH if applicable at [cmhp.consults@odhsoha.oregon.gov](mailto:cmhp.consults@odhsoha.oregon.gov).
  - J.** If the court does not discharge the Individual from OSH due to a lack of an available and appropriate Provider, continue to send referrals and update the community transition plan until the Individual is discharged from OSH, collaborating with the extended care management unit (ECMU) unless otherwise ordered by the court.
- vi.** County shall provide Services to youth under juvenile fitness to proceed who the court:
- A.** Has determined lack of fitness to proceed as defined in [ORS 419C.378](#) and court has ordered into an OHA designated facility for restoration services.
  - B.** Services include case management and placement in appropriate community-based care.
- vii.** As directed by OHA, County shall attend and participate in weekly ECMU care coordination meetings and collaborate with ECMU staff to:
- A.** Facilitate timely Client transition across the residential system from OSH to supported housing.
  - B.** Facilitate effective utilization of Services and facility-based care in the community.
  - C.** Collaborate with care coordination teams and other state agencies as necessary to secure placements that meet individual Client needs.
  - D.** Begin discharge planning to more integrated settings as soon as an Individual is admitted to OSH, SRTF, RTF settings.
  - E.** Make referrals to the most integrated settings appropriate for the Individual’s assessed needs and level of care.
  - F.** Assist in identification of financial alternatives for Individuals who are over resourced for Medicaid.

- viii.** Participate in OSH interdisciplinary meetings for each Individual within the County’s Service area to update the discharge plan and to coordinate appropriate community-based Services.
- ix.** For Individuals receiving community restoration services, County shall coordinate the Individual’s Behavioral Health and medical treatment in the community:
  - A.** Attempt to conduct an individualized assessment of the Individual and develop a treatment Service plan in coordination with the Individual’s Provider and consistent with any court-ordered conditions; If the Individual does not participate in the initial assessment, continued efforts should be made to engage with the Individual to complete the assessment and develop a treatment Service plan;
  - B.** Monitor the care, custody, and treatment of the Individual while on community restoration;
  - C.** Monitor the Individual’s progress in their treatment Service plan, and identify when the Individual may receive Services in a lower level of care and report that to the court;
  - D.** Ensure treatment Service planning continues throughout the Individual’s receipt of Services with the goal of the Individual receiving Services in the lowest level of care that will maintain their mental and physical health long term;
  - E.** Provide care coordination to facilitate ongoing communication and collaboration to meet the Individual’s needs, such as:
    - I.** Facilitating communication between natural supports, community resources, Providers, agencies (if eligible for APD or I/DD Services) and CCOs (if an enrolled member);
    - II.** Organizing, facilitating and participating in client staffing meetings;
    - III.** Providing for continuity of care by creating linkages to and managing transitions between levels of care;
    - IV.** Coordinating or providing transportation to and from the forensic evaluations and court appearances in this case; and
    - V.** Communication of court ordered requirements, limitations, and court dates to the defendant.
  - F.** Provide coordination and consultation to the jurisdictional court or other designated agencies within the criminal justice system and OSH while the Individual is residing in the community and in the process of being returned to fitness. Services include, but are not limited to:
    - I.** Coordination of the periodic assessments of the Individual’s fitness to proceed as required in OAR Chapter 309 Division 88;



- iii. Individuals under aid & assist orders at OSH who have been found ready to place will have a completed community transition plan by the time the community consult is sent to the court.
  - iv. All reports associated with aid & assist populations are completed and returned to OHA as required in [OAR Chapter 309 Division 88](#).
- (2) **Monitoring, Security and Supervision Services for Individuals Under the Jurisdiction of the Psychiatric Security Review Board (PSRB)**
- (a) **Description:** Monitoring, security, and supervision Services delivered in accordance with [OAR 309-019-0160](#).
  - (b) **Population:** Individuals who are described in Subsection 2.a(2) of [Exhibit B](#).
  - (c) **Required Services:** County shall:
    - i. Complete requests for evaluation order as required by [OAR 309-019-0160](#);
    - ii. Provide supervision and urinalysis drug screen consistent with the requirements of the PSRB Conditional Release Order;
    - iii. Coordinate with OSH and OHA (e.g. Civil, ECMU, aid & assist), a hospital, or facility designated by OHA on transition activities related to conditional release of an Individual to the community;
    - iv. Provide intensive case management for identified programs at approved budgeted rates;
    - v. Complete administrative activities related to the monitoring services described above, including but not limited to:
      - A. Reporting of the Individual's compliance with the conditional release requirements, as identified in the order for conditional release, through monthly progress notes to the PSRB;
      - B. Providing interim reports for the purpose of communicating the current status of an Individual to the PSRB;
      - C. Submitting requests for modifications of conditional release orders to the PSRB;
      - D. Implementing board-approved modifications of conditional release orders;
      - E. Implementing revocations of conditional release due to violation(s) of conditional release orders and facilitating readmission to OSH or facility designated by OHA;
      - F. Contacting the Individual when County is notified by the law enforcement data system that the Individual under the jurisdiction of PSRB has had an encounter with a law enforcement agency; and
      - G. Completion of the annual comprehensive review of supervision and treatment services to determine if significant modifications to the conditional release order should be requested from the PSRB.
      - H. Utilize an OHA approved risk assessment tool for the purposes of providing structured risk feedback to the PSRB, inclusion in the annual comprehensive review, and in determining security payment rates; and

- I. Report to OHA in writing to the GEI Coordinator at [oha.gei.coordinator@odhsoha.oregon.gov](mailto:oha.gei.coordinator@odhsoha.oregon.gov) the next business day, when there is concern that the County cannot provide the appropriate care and supervision that is needed for an Individual as stated in the conditional release plan. This concern and the communication with OHA must be documented in the Individual’s Service record.
  - vi. Providing expert witness testimony to the PSRB from both the case monitor and a licensed medical professional who can speak to the Individual’s current treatment regimen, including psychotropic medications;
  - vii. Completion of evaluation reports and the summary of conditions of release plan, if the Individual is accepted to a placement, as required [by OAR 309-019-0160](#);
  - viii. Completion of monthly reports as required [by OAR 309-019-0160](#);
  - ix. Completion of annual comprehensive reviews as required [by OAR 309-019-0160](#); and
  - x. Coordinating transition from forensic services for Individuals ending jurisdiction under the PSRB within six months of termination.
- (d) **Required Metrics:** County shall be in Substantial Compliance with the following requirements:
- i. Conditional release evaluations for GEIs are completed and submitted within 30 calendar days of receiving the orders.
  - ii. PSRB monthly reports are submitted to PSRB as required [by OAR 309-019-0160](#);
  - iii. Comprehensive annual reviews are submitted to OHA as required [by OAR 309-019-0160](#);
  - iv. Treatment plans are reviewed and updated within 364 calendar days of the previous plan.
  - v. OHA approved risk assessments are updated within 180 calendar days of the previous assessment.
- (3) **Civil Commitment Services**
- (a) **Description:** Civil commitment services include pre-commitment services, placement and post-commitment activities, and outreach and stabilization activities.
  - (b) **Population:** Individuals who are described in Subsection 2.a(3) of [Exhibit B](#).
  - (c) **Required Services:** County shall:
    - i. **Provide pre-commitment services including:**
      - A. Providing notice as required under [ORS 426.070](#), [ORS 426.233](#), [ORS 426.234](#), and [ORS 426.235](#);
      - B. Notifying and directing approved persons or peace officers to take custody and transport Individuals when appropriate;
      - C. Completing reporting and filing requirements relevant to authorized involuntary Services pursuant to [ORS Chapter 426](#) such as custody, admission to nonhospital facilities, and Notices of Mental Illness;

- D.** Receiving Notices of Mental Illness submitted from the community under [ORS 426.070](#) and from the circuit courts under [ORS 426.070 and ORS 426.234](#);
  - E.** Overseeing the placement and transfer of Individuals during the pre-hearing period of detention, including providing or arranging for transportation;
  - F.** Having a certified mental health investigator initiate and conduct a prehearing investigation, within applicable statutory timeframes, pursuant to [ORS 426.070](#), [ORS 426.074](#), [ORS 426.180](#), [ORS 426.200](#) and [OAR 309-033-0920 through OAR 309-033-0940](#);
  - G.** Providing notices required in [ORS Chapter 426](#) and OAR Chapter 309 Division 33 for Individuals eligible for diversion from civil commitment.
  - H.** Monitor the Individual's cooperation with the provider's treatment plan throughout and move for a hearing, as appropriate, if the Individual disengages or requests to discharge.
  - I.** Writing and submitting an investigation report as required under [ORS 426.070](#), including a recommendation to the court to pursue or not pursue a civil commitment hearing, or to pursue a hearing for AOT;
  - J.** Developing a person-centered treatment plan that is in the least restrictive, most integrated setting appropriate to meet the Individual's Behavioral Health needs, preferences, choices, and strengths, and addresses risk and protective factors;
  - K.** Monitoring the person's progress in completing the treatment plan and provide regular and as-requested updates to the court, including making requests for the appointment of a guardian ad litem when indicated; and
  - L.** Provide linkage to Services that enhance Individuals' life skills abilities including money management, nutrition, hygiene and personal care, shopping, social skills, and cooking.
- ii.** Provide placement and post-commitment Services including:
- A.** In providing recommendations, County shall ensure Individuals:
    - I.** Are recommended for Services in the least restrictive, most integrated setting appropriate to meet the Individual's Behavioral Health needs;
    - II.** Are certified for diversion or recommended for AOT whenever appropriate and feasible;
    - III.** Are diverted from placement in OSH, community hospitals or SRTFs whenever possible; and
    - IV.** Are considered for alternatives to inpatient placement such as voluntary treatment, conditional release,

outpatient commitment, and, if already in an inpatient setting, trial visit;

- B.** Ensure that transition planning begins with intake and that the Individual is considered for initial outpatient commitment placement whenever appropriate;
- C.** Ensure the placement of Individuals with an appropriate provider in the least restrictive, most integrated setting appropriate to meet the Individual’s Behavioral Health needs, preferences, choices and strengths;
- D.** Issue a written placement order immediately upon the civil commitment of the Individual and as required by [OAR 309-033-0290](#) thereafter. Submit completed placement orders to OHA as required by [OAR 309-033-0290](#);
- E.** Monitor the Individual’s progress in their placement, and identify when the Individual may benefit from a more integrated, less restrictive level of care, up to and including independent living, attributable to symptom improvement; discharging from a facility and accessing more integrated community-based resources and treatment; or discharging from civil commitment because the Individual is no longer a person with mental illness or the Individual’s best interest is to transfer to a voluntary status;
- F.** Monitor the Individual’s progress while placed in an inpatient setting and assess for readiness to step-down on a trial visit or discharge from civil commitment;
- G.** Monitor Individual’s progress while placed on outpatient commitment and assess for readiness to discharge for civil commitment;
- H.** Establish conditions of placement prior to placement on outpatient commitment or trial visit in accordance with [ORS 426.127](#), [ORS 426.273](#), and [ORS 426.278](#);
- I.** Support the Individual in adhering to the conditions of placement and completing the court requirements associated with the order for treatment if the Individual is placed in the community. This may include modifying conditions of placement as indicated in accordance with [ORS 426.273\(5\)](#) and [ORS 426.275\(3\)](#);
- J.** Provide notice to the court when the Individual is not adhering to the conditions of placement and when a revocation hearing is being requested. Complete revocation processes as indicated in [ORS 426.275](#) and [OAR 309-033-0320](#);
- K.** Facilitate communication between and collaborate with the Individual, family, natural supports, community resources, providers, ODHS if eligible for Aging and People with Disabilities (APD) or Intellectual and Developmental

Disabilities (I/DD) Services and the courts (when applicable);  
and

- L. If discharging the Individual from civil commitment prior to the expiration date of the civil commitment order, file a written certificate discharging the Individual early from civil commitment pursuant to [ORS 426.300](#) with the last committing court and the court in the county of residence.

- (d) **Other Allowable Services (Subject to Availability of Funds).** The County may provide outreach and stabilization services, which include:
  - i. Establishing practices and procedures to identify Individuals within the Service area who are eligible for outreach and stabilization services in order to prevent or divert from civil commitment Services;
  - ii. Providing community-based supportive engagement with Individuals with aim of establishing rapport, identifying chronic needs resulting in multiple custodies, detentions, or holds; and proactively engaging in low barrier Services to reduce crisis episodes, access longer term benefits, and prevent civil commitments.
  - iii. Facilitating communication between and collaborate with the Individual, family, natural supports, community resources, providers, ODHS if eligible for APD or I/DD services and the courts (when applicable);
  - iv. Supporting Individuals access to and assistance in completing a Declaration for Mental Health Treatment (DMHT) including coordinating with providers to have the DMHT made part of the medical record; and
  - v. Removing barriers to support the life skills development needed for the Individual to live as independently as possible in the community, including but not limited to providing assistance in navigating communities safely, managing prescriptions and health-related needs, shopping, hobbies and social engagement, housekeeping, laundry, and paying bills.
- (e) **Required Metrics:** County shall be in Substantial Compliance with the following requirements:
  - i. Individuals transitioning from OSH are referred to community navigator services.
  - ii. Individuals under civil commitment will be provided a blank DMHT and offered the opportunity to complete one within 30 calendar days of being transferred to County’s supervision.
  - iii. All reports associated with civil populations are completed and returned to OHA as required in [OAR Chapter 309 Division 33](#).

**(4) Forensic Diversion Services**

- (a) **Description:** Services designed to address Behavioral Health Disorders contributing to criminal behavioral and reduce unnecessary criminal justice involvement.
- (b) **Population:** Notwithstanding Section 2 of Exhibit B, the County shall prioritize providing forensic diversion services to:







- i. **Early Intervention:** Services that identify and address mental health or substance use issues at an early stage, often involving screening and brief interventions.
  - ii. **Partial Hospitalization Programs/Day Treatment:** A step between inpatient care and outpatient treatment, providing a higher level of care with daily programming while allowing Individuals to return home in the evenings.
  - iii. **Peer Delivered Services:** Community-based Services provided by peer support specialists, peer wellness specialists, family support specialists, and recovery mentors to Individuals or family members with similar lived experience. These Services are intended to support Individuals and families to engage Individuals in ongoing treatment and to live successfully in the community.
  - iv. **Care Coordination:** A process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs including facilitating communication between natural supports, community resources, and involved providers and agencies; organizing, facilitating, and participating in client staffing meetings; and providing for continuity of care by creating linkages to and managing transitions between levels of care.
  - v. **Case Management:** Services to assist Individuals to connect to and gain access to needed Services outlined in an Individual intervention plan; Substance Use Disorder treatment, health care, housing, employment and training, childcare and other applicable Services.
  - vi. **IPS Supported Employment** delivered in accordance with [OAR 309-019-0270 through 309-019-0295](#) or other evidence-based vocational supports.
  - vii. **Supported Education** delivered in accordance with SAMHSA’s Best Practices available at: <https://store.samhsa.gov/sites/default/files/d7/priv/sma11-4654-buildingyourprogram-sed.pdf>.
- (e) **Required Metrics:** County shall be in Substantial Compliance with the following requirements:
- i. Individuals are offered an appointment with a licensed medical provider within seven (7) business days of enrollment in EASA.
  - ii. Individuals enrolled in EASA are offered supported employment or supported education services.
  - iii. Individuals enrolled in EASA and their families will have access to structured family psychoeducational groups.
  - iv. Adults with mental illness enrolled in Services are screened for potential home and community-based services eligibility and are referred when indicated.
  - v. New mental illness or Substance Use Disorder diagnoses are followed up by treatment within 14 calendar days of initial diagnosis.
  - vi. New mental illness or Substance Use Disorder diagnoses are followed up by two engagement visits or medication treatments within 30 calendar days of initial treatment.

- vii. A letter of acceptance and entry is sent to Individuals deemed eligible for Assertive Community Treatment as required by [OAR 309-019-0248](#).

**(2) Gero-Specialist Services:**

- (a) **Description:** Specialized geriatric Services.
- (b) **Population:** Older or disabled adults subject to the prioritization described in Section 2. of [Exhibit B](#).
- (c) **Required Services:** County shall:
  - i. Provide direct care Services that are either supervised or delivered by a QMHP as defined in [OAR 309-019-0105](#), including, but not limited to:
    - A. Quarterly interagency staffing;
    - B. Follow-up Services after treatment in local or state inpatient psychiatric hospitals; and
    - C. Screening and referrals.
  - ii. Collaborate and coordinate with APD, ODHS’s Aging and Disabilities Resource Connection, ODHS’s Adult Protective Services, CCOs, CMHPs, acute care hospitals, OSH, caregivers, community partners, family members, and any other appropriate participants in an Individual’s care.
  - iii. Provide at least one workforce development training in geriatric Behavioral Health competencies each quarter. Trainings must include a competency confirmation verified by the gero-specialist including, but not limited to a certificate of attendance; and must be provided to a wide cross section of professionals, paraprofessionals, and volunteers using a variety of modalities such as:
    - A. Virtual webinars developed by OHA;
    - B. Team meetings,
    - C. Seminars, conferences, or symposiums;
    - D. Community of practice or learning collaboratives; or
    - E. Other community training forums.
  - iv. Provide complex case consultation and system navigation whether planned through a multidisciplinary team that meets regularly, ad hoc or crisis, or having regular office hours with APD/AAA to provide consultation to their case management staff; and
  - v. Provide consultation to key teams within the CMHP including, but not limited to, ACT, forensic services, SUD services, and crisis services. Regular complex care consultation meetings should include short didactic learning sessions on key Behavioral Health competencies.
- (d) **Other Allowable Services (Subject to Availability of Funds):** County may provide indirect care Services including, but not limited to:
  - i. Consultation;
  - ii. Assistance working with multiple systems;
  - iii. Case coordination and planning;
  - iv. Supporting interagency collaboration; and
  - v. Education and training to agencies and caregivers who provide Services that may affect older and disabled adults with mental illness or Substance Use Disorder.

- (e) **Required Metrics:** County shall be in Substantial Compliance with the following requirement: Older or disabled adults receiving Services are screened for potential home and community-based services eligibility and are referred when indicated.

**e. Residential & Housing Support Services**

- (1) **Description:** Services to ensure that Individuals with Behavioral Health Disorders are served in the most integrated, least restrictive setting possible based on their individualized needs and strengths.
- (2) **Population:** Individuals in need of residential Behavioral Health treatment subject to the prioritization described in Section 2. of Exhibit B.
- (3) **Required Services:** County shall:
  - (a) Ensure that a Service plan is in place for each Individual in the least restrictive, most integrated setting appropriate to meet the Individual’s Behavioral Health needs, preferences, choices, and strengths;
  - (b) Identify an appropriate residential services Provider that is able to meet the Individual’s Behavioral Health needs and willing to provide that care, treatment, and Services to the Individual;
  - (c) Ensure that Services are provided in the least restrictive and most integrated setting appropriate to meet the Individual’s Behavioral Health needs;
  - (d) Divert the Individual from placement at a state hospital, community hospital, or secure residential treatment facility, whenever possible;
  - (e) Obtain any necessary approvals from the Provider to allow admission, if it is a residential or state hospital placement;
  - (f) Continue to send referrals to Providers until the Individual is placed at or is no longer in need of residential Services;
  - (g) Monitor the Individual’s progress in their Service plan while in a residential placement and identify when the Individual may be transferred to a lower level of care; and
  - (h) Ensure that discharge planning is conducted throughout the Individual’s placement in a hospital or residential placement with the goal of moving the Individual to the lowest level of care that will maintain their mental and physical health.
  - (i) Provide care coordination to facilitate the Individual’s access to Services in the least restrictive, most integrated setting appropriate to meet the Individual’s Behavioral Health needs, preferences, choices and strengths, including:
    - i. Facilitate communication between the Individual, family, natural supports, community resources, Providers, and ODHS (if eligible for APD or I/DD Services);
    - ii. Identify Providers that can provide Behavioral Health Treatment Services consistent with the Individual’s treatment Service plan, whether it is provided on an inpatient, residential or outpatient basis;
    - iii. Organize, facilitate and participate in interdisciplinary team meetings with the Individual, Providers, and CCO care coordinators (if the Individual is a CCO member);

- iv. Facilitate access to community-based rehabilitative Behavioral Health treatment services that are recovery-oriented, culturally responsive, and geographically accessible;
  - v. Facilitate access to peer delivered services; and
  - vi. Collaborate with the ODHS, APD and I/DD divisions to support the Behavioral Health treatment needs of Individuals determined service-eligible for APD or I/DD.
- (j) Within the limits of the Part A funds awarded in this Agreement, County shall provide the following housing support services, as clinically indicated, for Individuals who qualify under Subsection 2.a of Exhibit B:
- i. **Rental Assistance:** Financial Assistance made on behalf of an Individual and their family, when applicable, that covers payment to landlords, property management companies, housing providers, property owners, or specific vendors for all or a portion of the monthly rent, or payment to specific vendors for resident utility expenses. Individuals who receive assistance may be living with other family members (e.g., where a parent is re-assuming custody of one or more children).
  - ii. **Housing Coordination Services:** Staff to support and assist Individuals to locate and secure safe, suitable housing, and provide referrals to other resources.
  - iii. **Services to Remove Barriers to Community-Based Care:** Financial Assistance made on behalf of an Individual may include, but is not limited to:
    - A. Room and board payments;
    - B. Utility deposits and fees including past due utility bills;
    - C. Phone or internet bills;
    - D. Moving and storage costs;
    - E. Household goods and supplies;
    - F. Cleaning or pest management Services; and
    - G. Interpreter Services.
- (4) **Other Allowable Services (Subject to Availability of Funds):** County may provide:
- (a) **Peer Delivered Services:** Services provided by peer support specialists, peer wellness specialists, family support specialists, and recovery mentors to Individuals or family members with similar lived experience. These Services are intended to support Individuals and families to engage Individuals in ongoing treatment and to live successfully in the community.
  - (b) **Respite Services:** Short-term residential services (less than 30 calendar days) for Individuals who require 24-hour observation and support but do not require acute psychiatric hospitalization. Services include access to multidisciplinary treatment including therapeutic supports and may include treatment with medications.
  - (c) Housing support services, as clinically indicated, for Individuals who meet second, third, or fourth priority criteria outlined in Section 2. above:
    - i. **Rental Assistance:** Financial Assistance made on behalf of an Individual and their family, when applicable, that covers payment to

landlords, property management companies, housing providers, property owners, or specific vendors for all or a portion of the monthly rent, or payment to specific vendors for resident utility expenses. Individuals who receive assistance may be living with other family members (e.g., where a parent is re-assuming custody of one or more children).

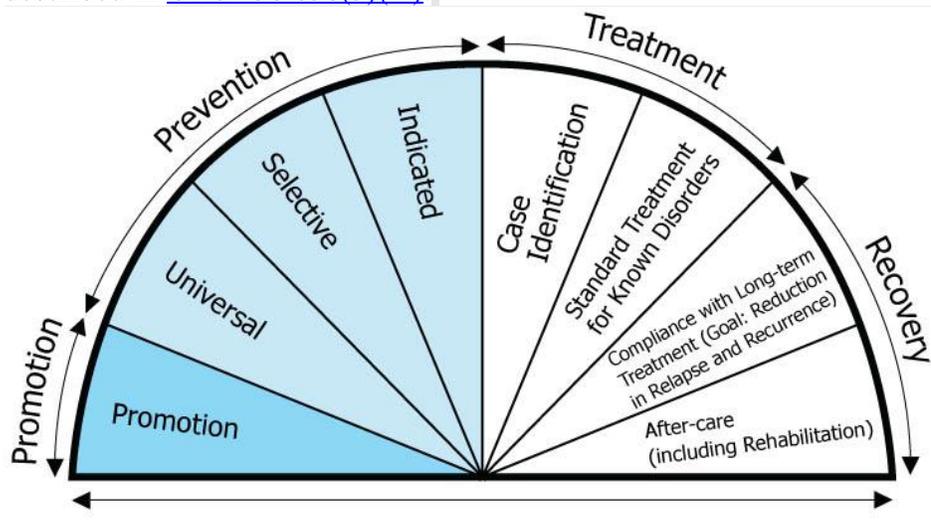
- ii. **Housing Coordination Services:** Staff to support and assist Individuals to locate and secure safe, suitable housing, and provide referrals to other resources.
- iii. **Services to Remove Barriers to Community-Based Care:** Financial assistance made on behalf of an Individual may include, but is not limited to:
  - A. Room and board payments;
  - B. Utility deposits and fees including past due utility bills;
  - C. Phone or internet bills;
  - D. Moving and storage costs;
  - E. Household goods and supplies;
  - F. Cleaning or pest management services; and
  - G. Interpreter services.

- (5) **Required Metrics:** County shall be in Substantial Compliance with the following requirements:
  - (a) Individuals who need residential treatment services are screened for potential home and community-based services eligibility and are referred when indicated.
  - (b) Individuals who receive housing support services are screened for potential home and community-based services eligibility and are referred when indicated.
  - (c) Individuals receiving residential Behavioral Health treatment are offered Services to assist with their transition to outpatient Services prior to discharge from residential treatment.
  - (d) Individuals enrolled in Behavioral Health treatment services establish or maintain housing prior to completion of treatment.

**f. Behavioral Health Promotion & Prevention**

- (1) **Description:** Strategies aimed at improving mental health or preventing mental illness or Substance Use Disorders before they occur.
- (2) **Population:** Individuals with or at risk of developing a Mental or Emotional Disturbance or a Substance Use Disorder, subject to the prioritization described in Section 2 of Exhibit B.
- (3) **Required Services:** Using a framework, such as the Institute of Medicine’s Continuum of Care Model (see graphic below) or other Behavioral Health Promotion and Prevention framework or strategy, the County shall:
  - (a) Create and implement an evidence-based continuum of activities, strategies, and supports that align with existing local prevention and promotion strategies;
  - (b) Provide preventive mental health Services for children and adolescents, including primary prevention efforts, early identification and early intervention Services as described in [ORS 430.630\(3\)\(L\)](#); and

- (c) Preventive mental health Services for older adults, including primary prevention efforts, early identification and early intervention Services as described in [ORS 430.630\(3\)\(m\)](#).



- (4) **Other Allowable Services (Subject to Availability of Funds):** County may:
  - (a) Develop and implement strategies and/or activities that prioritize the following determinants of Behavioral Health wellness across the life span.
  - (b) Develop and implement strategies to maintain healthy communities: Strategies and/or activities may include but are not limited to, community safety promotion, violence reduction, bullying prevention, social connectivity, and resource dissemination activities;
  - (c) Individual skill development: Strategies and/or activities may include but are not limited to, skill-building programs in schools, community and senior centers, assisted living facilities, and other community-based settings that emphasize social connection, problem solving and development of self-regulation; and
  - (d) Social emotional competence: Strategies and/or activities may include but are not limited to developing or sustaining community infrastructure, parenting/grandparenting education, stress reduction classes, communication skills classes, programs that address social isolation and loneliness, grief and other post distress supports, divorce and other losses, and community-based activities.
- (5) **Required Metrics:** County shall be in Substantial Compliance with the following requirements:
  - (a) Individuals receiving Behavioral Health Prevention and Promotion Services report an increased understanding of mental health, substance use prevention, and available resources.
  - (b) Individuals receiving Behavioral Health Prevention and Promotion Services report a change in attitude toward mental health, substance use, or coping strategies.
  - (c) Individuals receiving Behavioral Health Prevention and Promotion Services report an increased likelihood of engaging in behavior change such as accessing counseling Services or delaying or decreasing use of alcohol and other drugs.

**g. Block Grant Funded Services:**

- (1) **Description:** Activities and Services to address the complex needs of Individuals, families, and communities impacted by mental illness and Substance Use Disorders

and associated problems paid for, in whole or in part, by Substance Use, Prevention, Treatment, and Recovery Services Block Grant (“**SUPTRS BG**”) or Community Mental Health Services Block Grant (“**MHBG**”) funds awarded in this Agreement.

- (2) **Definitions:** For use in this section:
  - (a) “**Serious Mental Illness**” or “**(SMI)**” means an Individual 18 years of age or older who, within the past year, has had a diagnosable mental, behavioral, or emotional disorder that substantially interferes with their life and ability to function.
  - (b) “**Serious Emotional Disturbance**” or “**(SED)**” means an Individual under the age of 18 who, within the past year, has had a diagnosable mental, behavioral, or emotional disorder that resulted in functional impairment that substantially interferes with or limits the child’s role or functioning in family, school, or community activities.
- (3) **Population:**
  - (a) County shall ensure that MHBG funds awarded through this Agreement are used to support Services for the MHBG Priority Populations:
    - i. Children with Serious Emotional Disturbance;
    - ii. Adults with Serious Mental Illness including Older Adults; and
    - iii. Individuals with SMI or SED in rural areas and who are experiencing homelessness.
  - (b) County shall ensure that SUPTRS BG funds awarded through this Agreement are used to support Services for the SUPTRS BG Priority Populations:
    - i. Pregnant women with dependent children;
    - ii. Persons who inject drugs;
    - iii. Persons in need of recovery support Services for Substance Use Disorder;
    - iv. Individuals with a co-occurring mental illness and Substance Use Disorder;
    - v. Persons experiencing homelessness;
    - vi. Services for persons with SUD who have or are at risk of:
      - A. HIV/AIDS, designated states per CDC only; or
      - B. Tuberculosis; and
    - vii. Services for Individuals in need of substance use primary prevention.
- (4) **Required Services:** County shall:
  - (a) Comply, and as indicated, require all Providers to comply with the Required Federal Terms and Conditions for Services funded in whole or in part by MHBG or SUPTRS BG funds;
  - (b) Allocate and expend no less than the minimum MHBG amount indicated in the Financial Assistance Award for Crisis Services;
  - (c) Allocate and expend no less than the minimum MHBG amount indicated in the Financial Assistance Award for EASA Services; and
  - (d) County shall ensure that MHBG or SUPTRS BG funds be directed toward the following purposes:
    - i. To fund priority treatment and support Services for Individuals without insurance or who cycle in and out of health insurance coverage;
    - ii. To fund those priority treatment and support Services not covered by Medicaid, Medicare or private insurance and that demonstrate success in improving outcomes and/or supporting recovery;
    - iii. To fund universal, selective, and targeted prevention activities and Services;

- iv. To collect performance and outcome data to determine the ongoing effectiveness of Behavioral Health prevention, treatment, and recovery support Services and to plan the implementation of new Services on a nationwide basis. Additionally, SAMHSA strongly supports that states provide additional recovery support Services with SUPTRS BG funds beyond the scope of treatment programs currently available in most communities across the nation;
- v. To ensure Oregonians have access to a comprehensive, integrated physical and Behavioral Health Service array statewide that is inclusive and where Individuals can choose providers that best fit their needs and cultural preferences within their community;
- vi. To ensure that Individuals transitioning from a hospital level of care, including OSH, to community-based settings will be fully supported through care coordination, and inclusive Services and support;
- vii. To ensure that older adults who live in rural areas of Oregon receive accessible and affordable Services;
- viii. To ensure that Individuals have access to necessary Services and eliminate disparities in accessing care;
- ix. To foster healthy families and environments through integrated care that promotes equitable health and well-being, for pregnant and post-partum persons;
- x. To provide peer support services for Individuals transitioning between levels of care;
- xi. To promote and provide activities that support physical health, substance use treatment, and mental health Services for young adults 18-25; or
- xii. To increase prevention efforts including overdose, crisis response, and chronic disease prevention.

**(5) Other Allowable Services (Subject to Availability of Funds):** County may:

- (a) Promote participation by Individuals with SMI, SED, or Substance Use Disorders in shared decision making and self-direction of their Services;
- (b) Ensure access to effective culturally and linguistically appropriate Services for underserved populations including Tribes, racial and ethnic minorities, and LGBTQI+ Individuals;
- (c) Promote recovery, resiliency, and community integration for adults with SMI and children with SED and their families;
- (d) Prevent the use, misuse, and abuse of alcohol, tobacco products, illicit drugs, and prescription medications;
- (e) Conduct outreach to encourage Individuals injecting or using illicit and/or licit drugs to seek and receive treatment;
- (f) Provide early intervention Services for HIV at the sites at which Individuals receive Substance Use Disorder treatment Services;
- (g) Coordinate Behavioral Health Prevention, early identification, treatment and recovery support services with other health and social services;
- (h) Increase accountability for prevention, early identification, treatment, and recovery support activities through uniform reporting regarding substance use and abstinence, criminal justice involvement, education, employment, housing, and recovery support services;

- (i) Ensure access to a comprehensive system of care, including education, employment, housing, case management, rehabilitation, dental services, and health services, as well as Behavioral Health services; and
  - (j) Provide continuing education regarding substance abuse prevention and Substance Use Disorder treatment services to any facility or program receiving amounts from the SUPTRS BG for such activities or Services.
- (6) **Required Metrics:** County shall be in Substantial Compliance with the following requirements:
- (a) Reduce the rate at which Individuals with a Mental or Emotional Disturbance or a Substance Use Disorder are admitted to the emergency room.
  - (b) SUD treatment Services are made available to Individuals who are pregnant or post-partum and request such Services.
  - (c) Ensure Individuals have a culturally responsive healthcare provider.

**h. Invoiced Services**

- (1) **Description:** Services eligible for reimbursement through Part C funds identified in Exhibit C.
- (2) **Invoicable Services:** County may invoice OHA for:
  - (a) **Mental Health Residential Services:**
    - i. Daily Service rate for mental health residential treatment Services provided to adults age 18 years old or older in a secure residential treatment facility, residential treatment facility, or residential treatment home licensed under [OAR Chapter 309 Division 35](#), who:
      - A. Are uninsured, underinsured, not eligible for Medicaid, or have exhausted Medicaid Services, including those who meet the criteria for Citizen Alien Waived Medical Program; or
      - B. Have been ordered by a court or PSRB to receive Services in a level of care for which the Individual does not meet medical necessity.
    - ii. Daily Service rate for mental health residential treatment Services provided to young adults in transition (YAT) age 17 through 25 years old in a YAT residential treatment home licensed under [OAR Chapter 309 Division 35](#) who:
      - A. Are uninsured, underinsured, not eligible for Medicaid, or have exhausted Medicaid Services, including those who meet the criteria for citizen alien waived medical program; or
      - B. Have been ordered by a court to receive Services in a level of care for which the Individual does not meet medical necessity.
  - (b) **Room and board for:**
    - i. Adults age 18 years old or older with limited or no income residing in a secure residential treatment facility, residential treatment facility, or residential treatment home licensed under [OAR Chapter 309 Division 35](#); and
    - ii. YAT age 17 through 25 years old with limited or no income residing in a YAT residential treatment home licensed under [OAR Chapter 309 Division 35](#).
  - (c) **Personal Incidental Funds for:**
    - i. Adults age 18 years old or older with limited or no income residing in a secure residential treatment facility, residential treatment facility, or residential treatment home licensed under [OAR Chapter 309 Division 35](#); and

- ii. YAT age 17 through 25 years old with limited or no income in a YAT residential treatment home licensed under [OAR Chapter 309 Division 35](#).
- (d) **PSRB Security and Supervision Services**
  - i. Security services as identified in the PSRB conditional release order, which are not medically necessary Services but are required for the safety of the Individual and the public, and are covered at a rate based on a determination of the risk and care needs identified in the security services matrix below:

Security Services Matrix (Community)	Low Risk	Med Risk	High Risk
High Care	Rate 1	Rate 2	Rate 3
Med Care	Rate 2	Rate 3	Rate 4
Low Care	Rate 3	Rate 4	Rate 5

- ii. Supervision services are non-medically necessary Services that are necessary for an Individual to maintain compliance with terms set by a court or other supervising authority including, but not limited to:
  - A. Assessment;
  - B. Evaluation (including evaluations ordered beyond typical monitoring required by the PSRB);
  - C. Outpatient treatment; and
  - D. Polygraph if such expenses are needed to maintain compliance with the terms of a conditional release and not covered by some other mechanism.
- (3) **Invoice Requirements:** Invoices must be submitted by email to [BHD.Contracts@oha.oregon.gov](mailto:BHD.Contracts@oha.oregon.gov) using the BHD’s forms and procedures available at <http://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>.

**4. Reporting Requirements**

- a. County shall:
  - (1) Prepare a Local Plan and Budget using forms and procedures prescribed by OHA located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. County shall submit a draft Local Plan and Budget April 1, 2027 for the 2027-2029 biennium for review and approval by OHA electronically, to [BHD.Contracts@oha.oregon.gov](mailto:BHD.Contracts@oha.oregon.gov) no later than June 30, 2027.
  - (2) Prepare quarterly Local Plan implementation and financial expenditure reports using forms and procedures prescribed by OHA located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. County shall submit the quarterly Local Plan implementation and financial expenditure report electronically, to [BHD.Contracts@oha.oregon.gov](mailto:BHD.Contracts@oha.oregon.gov) no later than 45 calendar days following the end of each subject quarter for which Financial Assistance is awarded through this Agreement.
  - (3) Prepare and submit monthly aid & assist reports using forms and procedures prescribed by OHA located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. no later than 14 calendar days following the end of each subject month for which Financial Assistance is awarded through this Agreement.

- (4) Prepare a quarterly MCIS report using forms and procedures prescribed by OHA, located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. County shall submit the quarterly MCIS report electronically, to [mobilecrisisinfo@ohsu.edu](mailto:mobilecrisisinfo@ohsu.edu) no later than 30 calendar days following the end of each subject quarter for which Financial Assistance is awarded through this Agreement.
- (5) Prepare a quarterly MRSS report using forms and procedures prescribed by OHA, located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. County shall submit the quarterly MRSS report electronically, to [stabilizationsvcinfo@ohsu.edu](mailto:stabilizationsvcinfo@ohsu.edu) no later than 30 calendar days following the end of each subject quarter for which Financial Assistance is awarded through this Agreement.
- (6) Prepare quarterly EASA data using forms and procedures prescribed by OHA, located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. County shall submit the quarterly EASA data electronically, to Oregon Health & Science University using the EASA RedCap Data System at <https://octri.ohsu.edu/redcap/> no later than 15 calendar days following the end of each subject quarter for which Financial Assistance is awarded through this agreement. Instructions for data entry into RedCap are located at <https://www.easacommunity.org/resources-for-professionals.php>.
- (7) Prepare quarterly older adult Behavioral Health data using forms and procedures prescribed by OHA, located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. County shall submit quarterly older adult Behavioral Health data electronically, to Portland State University through Qualtrics at <https://sso.pdx.edu/idp/profile/SAML2/Redirect/SSO?execution=e1s1> no later than 45 calendar days following the end of each subject quarter for which Financial Assistance is awarded through this agreement.

## 5. **Financial Assistance Calculation, Disbursement, and Confirmation Requirements**

- a. **OHA provides funding for Services through Part A, B, or C awards.** The award type is identified in Exhibit C, “Financial Assistance Award,” on lines in which column “Part ABC,” contains an “A” for Part A award, a “B” for Part B award, and a “C” for Part C award:
  - (1) Funds awarded to County or Provider are subject to the following:
  - (2) OHA shall not authorize in aggregate, under this “Financial Assistance Calculation and Disbursement” section, Financial Assistance requested for Services in excess of the contractual Not-to-Exceed amount. “Total aggregate funding” means the total of all funding authorized in Exhibit C, “Financial Assistance Award.” The monthly rate will be prorated for any month in which the Individual does not receive Services for a portion of the month. Funding received by County or Service Provider from an Individual, the Individual’s health insurance provider, another person’s health insurance provider under which Individual is also covered, or any other Third-Party Resource (TPR) in support of Individual’s care and Services, in addition to payments received under this Financial Assistance agreement for the same Service, during the same time period or date of Service for the same Individual, must be returned to OHA unless TPR funding is used to provide additional Service – increasing capacity.
  - (3) County must make reasonable efforts to obtain payment first from other resources consistent with OAR 410-120-1280. County is obligated to report to OHA, by email at [BHD.Contracts@oha.oregon.gov](mailto:BHD.Contracts@oha.oregon.gov), any TPR payments received, no later than 30 calendar days following expiration of this Agreement. The following information shall be provided:

- (a) OHA Contract name and number;
  - (b) Client name and date of birth;
  - (c) Service for which payment was received;
  - (d) Date of Service covered by payment;
  - (e) Date of TPR payment received by County or Service Provider; and
  - (f) Amount of payment.
- (4) County is not entitled to funding in combination with Medicaid funds for the same Service, during the same time period or date of Services for the same Individual;
  - (5) At no time will OHA pay above the Medicaid rate.
  - (6) OHA is not obligated to provide funding for any Services that are not properly reported in accordance with the “Reporting Requirements” section of this Agreement or as required in an applicable Specialized Service Requirement by the date 60 calendar days after the earlier of expiration or termination of this Agreement, termination of OHA’s obligation to provide funding for Services, or termination of County’s obligation provide Services.

**b. Part A awards:**

- (1) OHA provides Financial Assistance for Services through Part A awards for non-Medicaid-eligible Services. County and Service Providers shall maintain compliance with [OAR 410-172-0600 through 410-172-0860](#) (Medicaid Payment for Behavioral Health), and [OAR 943-120-0310 through 943-120-0320](#) (Provider Rules).
- (2) Calculation of Financial Assistance: OHA will provide Financial Assistance for Services provided under a particular line of Exhibit C, “Financial Assistance Award,” containing an “A” in column “Part ABC,” from funds identified in that line in an amount equal to that line of the Financial Assistance Award during the period specified in that line. The total of OHA funds for all Services delivered under a particular line of Exhibit C, “Financial Assistance Award” containing an “A” in column “Part ABC,” shall not exceed the total of awards for Services as specified in that line of the Financial Assistance Award and are subject to the limitations described herein.
- (3) Disbursement of Financial Assistance: Unless a different disbursement method is specified in that line of Exhibit C, “Financial Assistance Award,” OHA will disburse the Part A allotments for Services provided under a particular line of the Financial Assistance Award containing an “A” in column “Part ABC,” to County in substantially equal monthly allotments during the period specified in that line of the Financial Assistance Award subject to the following:
  - (a) OHA may, upon written request of County, adjust monthly allotments;
  - (b) Upon amendment to the Financial Assistance Award, OHA shall adjust monthly allotments as necessary, to reflect changes in the funds shown for Services provided under that line of the Financial Assistance Award; and
  - (c) OHA may, after 30 calendar days (unless parties agree otherwise) written notice to County, reduce the monthly allotments based on under-used funding identified through MOTS the state mandated data system and other reports in accordance with the “Reporting Requirements” and “Special Reporting Requirements” sections or applicable special conditions.

**c. Part B awards:** [Reserved – Not currently in use]

**d. Part C awards:**

- (1) Part C awards are calculated and applied as follows:
  - (a) Unless a different disbursement method is specified in that line of Exhibit C, “Financial Assistance Award,” OHA will disburse the Part C funds for Services provided under a particular line of the Financial Assistance Award

containing a “C” in column “Part ABC” to County per receipt and approval of a written invoice with required attachments, as specified below, in the monthly allotment during the period specified in that line of the Financial Assistance Award. Invoice and required attachments are due no later than 45 calendar days following the end of the subject month or quarter, and must be submitted to [BHD.Contracts@oha.oregon.gov](mailto:BHD.Contracts@oha.oregon.gov), with the subject line “Invoice, contract # (your contract number), contractor name.”

- (b) For Services to Medicaid-eligible Individuals for whom the Services provided are not covered under Medicaid but are medically appropriate, County shall attach a copy of the Plan of Care (POC) and Coordinated Care Organization (CCO) refusal of payments for the item or Service. OHA will provide funding at the Medicaid Fee Schedule rate. At no time will OHA provide funding above the Medicaid Fee Schedule rate for Services.
- (c) For Services to non-Medicaid-eligible Individuals, County shall attach a copy of the bill or receipt, for the item or Service, to a combined monthly invoice, itemized by Individual. Part C funding for Psychiatric Security Review Board (PSRB) non-medically approved Services are only for the time period shown and do not carry forward into following years’ allotments.

**e. Confirmation of Performance Requirements:**

- (1) OHA uses Confirmation of Performance requirements at the end of each contracting period.
- (2) County shall be required to demonstrate through the data properly reported in accordance with the “Reporting Requirements section, the qualifying Services to which these Services can be attributed, how funds awarded were utilized consistent with the terms and limitations herein to meet the performance requirements of the Service Description, and that County shall be subject to the monitoring and review of performance requirements and quality measures by the OHA Contract Administrator for the Program under which these Services fall and subject to the terms and limitations in this Agreement.

**2026-2027 INTERGOVERNMENTAL AGREEMENT  
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH PROGRAMS**

**EXHIBIT C  
FINANCIAL ASSISTANCE AWARD**

MOD#: \_\_\_\_\_

CONTRACT#: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

INPUT CHECKED BY: \_\_\_\_\_

DATE CHECKED: \_\_\_\_\_

COLUMN HEADERS:

<u>SE#</u>	<u>FUND</u>	<u>PROJ CODE</u>	<u>CPMS</u>	<u>PROVIDER</u>	<u>EFFECTIV E DATES</u>
<u>SLOT CHANGE / TYPE</u>	<u>RATE</u>	<u>OPERATING DOLLARS</u>	<u>PART ABC</u>	<u>PAAF CD</u>	<u>BASE</u>
<u>CLIENT CODE</u>	<u>SP#</u>				

## Exhibit C Financial Pages

### MODIFICATION INPUT REVIEW REPORT

MOD#: A0246

CONTRACT#: 054297

CONTRACTOR: MARION COUNTY

INPUT CHECKED BY: \_\_\_\_\_

DATE CHECKED: \_\_\_\_\_

SE#	FUND	CODE	CPMS	PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
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FISCAL YEAR: 2025-2026

		<b>BASEAD</b>	<b>TOBACCO MASTER SETTL</b>												
500	411	TMSA			1/1/2026 - 6/30/2026	0	/NA	\$0.00	\$58,716.86	\$0.00	A	1	Y		
		<b>BASEAD</b>	<b>BEER AND WINE 40%</b>												
500	421	BW40%			1/1/2026 - 6/30/2026	0	/NA	\$0.00	\$113,188.74	\$0.00	A	1	Y		
		<b>BASEAD</b>	<b>MARIJUANA TAX 40%</b>												
500	450	MJTX			1/1/2026 - 6/30/2026	0	/NA	\$0.00	\$302,743.91	\$0.00	A	1	Y		
		<b>BASEAD</b>	<b>SUBSTANCE USE PREVEN</b>												
500	520	SUPTRS			1/1/2026 - 6/30/2026	0	/NA	\$0.00	\$321,774.91	\$0.00	A	1	Y		
		<b>BASEAD</b>	<b>SUD GENERAL FUND</b>												
500	807	SUDGF			1/1/2026 - 6/30/2026	0	/NA	\$0.00	\$11,853.75	\$0.00	A	1	Y		
								<b>TOTAL FOR SE# 500</b>	<u>\$808,278.17</u>	<u>\$0.00</u>					
								<b>TOTAL FOR 2025-2026</b>	<u>\$808,278.17</u>	<u>\$0.00</u>					

FISCAL YEAR: 2026-2027

		<b>BASEAD</b>	<b>TOBACCO MASTER SETTL</b>												
500	411	TMSA			7/1/2026 - 6/30/2027	0	/NA	\$0.00	\$117,433.72	\$0.00	A	1	Y		
		<b>BASEAD</b>	<b>BEER AND WINE 40%</b>												
500	421	BW40%			7/1/2026 - 6/30/2027	0	/NA	\$0.00	\$226,377.48	\$0.00	A	1	Y		
		<b>BASEAD</b>	<b>MARIJUANA TAX 40%</b>												
500	450	MJTX			7/1/2026 - 6/30/2027	0	/NA	\$0.00	\$605,487.82	\$0.00	A	1	Y		
		<b>BASEAD</b>	<b>SUBSTANCE USE PREVEN</b>												
500	520	SUPTRS			7/1/2026 - 6/30/2027	0	/NA	\$0.00	\$643,549.82	\$0.00	A	1	Y		
		<b>BASEAD</b>	<b>SUD GENERAL FUND</b>												
500	807	SUDGF			7/1/2026 - 6/30/2027	0	/NA	\$0.00	\$23,707.50	\$0.00	A	1	Y		
								<b>TOTAL FOR SE# 500</b>	<u>\$1,616,556.34</u>	<u>\$0.00</u>					
								<b>TOTAL FOR 2026-2027</b>	<u>\$1,616,556.34</u>	<u>\$0.00</u>					
								<b>TOTAL FOR A0246 054297</b>	<u>\$2,424,834.51</u>	<u>\$0.00</u>					

OREGON HEALTH AUTHORITY  
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: MARION COUNTY

Contract#: 054297

DATE: 10/29/2025

REF#: 000

REASON FOR FAAA (for information only):

Payments provided through the County Financial Assistance Agreement (CFAA) are for the financing of Community Mental Health Programs, as allocated within OHA's 2025-2027 Legislative Approved Budget (LAB). The CFAA may require modification by written amendment to reflect the actual funding amounts remaining in the 2025-2027 LAB. The CFAA may also require modification by administrative amendment, if used only to change the fund source coding and not the amount of funding. It is OHA's intension to issue future amendments to the CFAA to provide LAB funding for 2027-2029 and 2029-2031 respectively.

MODIFICATION INPUT REVIEW REPORT

MOD#: M1310

CONTRACT#: 054297

CONTRACTOR: MARION COUNTY

INPUT CHECKED BY: \_\_\_\_\_

DATE CHECKED: \_\_\_\_\_

SE#	FUND	PROJ CODE	CPMS PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
FISCAL YEAR: 2025-2026													
	CMHS	MH BLOCK GRANT											
500	301	BLOCK		1/1/2026 - 6/30/2026	0 /NA	\$0.00	\$124,234.87	\$0.00	A	1	Y		
	CMHS	MH BLOCK GRANT											
500	307	EASA		1/1/2026 - 6/30/2026	0 /NA	\$0.00	\$45,002.53	\$0.00	A	1	Y		
	CMHS	MH BLOCK GRANT											
500	309	CRISIS		1/1/2026 - 6/30/2026	0 /NA	\$0.00	\$22,501.26	\$0.00	A	1	Y		
	BASE	MH MARIJUANA TAX											
500	401	MHMJTX		1/1/2026 - 6/30/2026	0 /NA	\$0.00	\$19,009.00	\$0.00	A	1	Y		
	BASE	MH TOBACCO TAX											
500	406	MHTBTX		1/1/2026 - 6/30/2026	0 /NA	\$0.00	\$508,549.11	\$0.00	A	1	Y		
	BASE	988 STATE TAX											
500	407	988TX		1/1/2026 - 6/30/2026	0 /NA	\$0.00	\$613,559.52	\$0.00	A	1	Y		
	BASE	INVOICE SERVICES											
500	804	INVOIC		1/1/2026 - 6/30/2026	0 /NA	\$0.00	\$180,000.00	\$0.00	C	1	Y		1
	BASE	MH GENERAL FUND											
500	804	MHGF		1/1/2026 - 6/30/2026	0 /NA	\$0.00	\$4,001,878.15	\$0.00	A	1	Y		
	BASE	NIMH GENERAL FUND											
500	806	NIMHGF		1/1/2026 - 6/30/2026	0 /NA	\$0.00	\$1,333,805.44	\$0.00	A	1	Y		
	BASE	MOBILE RESPONSE AND											
500	815	MRSS		1/1/2026 - 6/30/2026	0 /NA	\$0.00	\$285,675.63	\$0.00	A	1	Y		
TOTAL FOR SE# 500							\$7,134,215.51	\$0.00					
TOTAL FOR 2025-2026							\$7,134,215.51	\$0.00					

FISCAL YEAR: 2026-2027

	CMHS	MH BLOCK GRANT											
500	301	BLOCK		7/1/2026 - 6/30/2027	0 /NA	\$0.00	\$248,469.74	\$0.00	A	1	Y		
	CMHS	MH BLOCK GRANT											
500	307	EASA		7/1/2026 - 6/30/2027	0 /NA	\$0.00	\$90,005.05	\$0.00	A	1	Y		
	CMHS	MH BLOCK GRANT											
500	309	CRISIS		7/1/2026 - 6/30/2027	0 /NA	\$0.00	\$45,002.53	\$0.00	A	1	Y		
	BASE	MH MARIJUANA TAX											
500	401	MHMJTX		7/1/2026 - 6/30/2027	0 /NA	\$0.00	\$38,018.00	\$0.00	A	1	Y		

MODIFICATION INPUT REVIEW REPORT

MOD#: M1310

CONTRACT#: 054297

CONTRACTOR: MARION COUNTY

INPUT CHECKED BY: \_\_\_\_\_ DATE CHECKED: \_\_\_\_\_

SE#	FUND	PROJ CODE	CPMS PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
FISCAL YEAR: 2026-2027													
		BASE	MH TOBACCO TAX										
500	406	MHTBTX		7/1/2026 - 6/30/2027	0 /NA	\$0.00	\$1,017,098.22	\$0.00	A	1	Y		
		BASE	988 STATE TAX										
500	407	988TX		7/1/2026 - 6/30/2027	0 /NA	\$0.00	\$1,227,119.05	\$0.00	A	1	Y		
		BASE	INVOICE SERVICES										
500	804	INVOIC		7/1/2026 - 6/30/2027	0 /NA	\$0.00	\$360,000.00	\$0.00	C	1	Y		1
		BASE	MH GENERAL FUND										
500	804	MHGF		7/1/2026 - 6/30/2027	0 /NA	\$0.00	\$8,003,756.29	\$0.00	A	1	Y		
		BASE	NIMH GENERAL FUND										
500	806	NIMHGF		7/1/2026 - 6/30/2027	0 /NA	\$0.00	\$2,667,610.88	\$0.00	A	1	Y		
		BASE	MOBILE RESPONSE AND										
500	815	MRSS		7/1/2026 - 6/30/2027	0 /NA	\$0.00	\$571,351.26	\$0.00	A	1	Y		
TOTAL FOR SE# 500							\$14,268,431.02	\$0.00					
TOTAL FOR 2026-2027							\$14,268,431.02	\$0.00					
TOTAL FOR M1310 054297							\$21,402,646.53	\$0.00					

OREGON HEALTH AUTHORITY  
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: MARION COUNTY  
DATE: 10/29/2025

Contract#: 054297  
REF#: 001

REASON FOR FAAA (for information only):

Payments provided through the County Financial Assistance Agreement (CFAA) are for the financing of Community Mental Health Programs, as allocated within OHA's 2025-2027 Legislative Approved Budget (LAB). The CFAA may require modification by written amendment to reflect the actual funding amounts remaining in the 2025-2027 LAB. The CFAA may also require modification by administrative amendment, if used only to change the fund source coding and not the amount of funding. It is OHA's intension to issue future amendments to the CFAA to provide LAB funding for 2027-2029 and 2029-2031 respectively.

The following special condition(s) apply to funds as indicated by the special condition number in column 9. Each special condition set forth below may be qualified by a full description in the Financial Assistance Award.

M1310 1 These funds are for invoice services and supports from 1/1/2026 to 6/30/2027 with Part C.

## EXPLANATION OF FINANCIAL ASSISTANCE AWARD

The Financial Assistance Award set forth above and any Financial Assistance Award amendment must be read in conjunction with this explanation for purposes of understanding the rights and obligations of OHA and County reflected in the Financial Assistance Award.

### 1. **Format and Abbreviations in Financial Assistance Award**

**a. Heading.** The heading of the Financial Assistance Award consists of the following information:

- (1) **MOD#** is the alphanumeric modification code, assigned by the OHA BHD contracts unit staff member, for that specific Financial Assistance Award. A MOD# beginning with an M is a mental health modification; a MOD# beginning with an A is a Substance Use Disorder modification.
- (2) **CONTRACT#** is the unique identification number of this Agreement containing the Financial Assistance Award. This number is assigned by the Office of Contracts & Procurement (OC&P).
- (3) **CONTRACTOR** is the County or the legal entity named in and for that specific Agreement containing the Financial Assistance Award.
- (4) **Input Checked** is for OHA's internal use only.
- (5) **Date Checked** is for OHA's internal use only.

**b. Financial and Service Information.** Each Service awarded funds is listed by Fiscal Year and then by the Service Element number. The amount of Financial Assistance awarded for each Service and certain other Service information is listed below the Fiscal Year and then by the Service Element number on one or more lines. Financial Assistance awarded for a particular Service may not be used to cover the costs of any other Service, except as permitted under Exhibit E, "General Terms and Conditions," section 3.a, of this Agreement. The funds, as set forth on a particular line, will be disbursed in accordance with and are subject to the restrictions set forth on that particular line. The awarded funds, disbursement information and restrictions on a particular line are displayed in a columnar format as follows:

- (1) **Column 1, SE#:** The Service Element number(s) identifies the Services to be delivered as set forth on that particular line of the Financial Assistance Award.
- (2) **Column 2, Fund:** This column identifies the fund number and description of the funding source, according to BHD's financial system, used for payments for this specific line of the Financial Assistance Award. The types of funds are as follows:
  - (a) **301: Mental Health Block Grant (MHBG) – Federal Funds:** County shall ensure expenditure of MHBG funds only as allowed by [sections 1911-1920 of Title XIX, Part B, Subpart I and III of the Public Health Service Act](#)
  - (b) **307: MHBG EASA Services – Federal Funds:** County shall ensure expenditure of MHBG EASA Services funds only for EASA Services as described in Exhibit B.
  - (c) **309: MHBG Crisis Services – Federal Funds:** County shall ensure expenditure of MHBG Crisis Services funds only for Crisis Services as described in Exhibit B.
  - (d) **401: Mental Health Marijuana Tax – Other Funds:** County shall ensure expenditure of Mental Health Marijuana Tax funds only as allowed by [ORS 475C.726\(d\)\(B\)](#).

- (e) **406: Tobacco Tax New Investments – Other Funds:** County shall ensure expenditure of Tobacco Tax New Investments funds only for Services described in Exhibit B.
- (f) **407: 988 Tax Revenue – Other Funds:** County shall ensure expenditure of 988 Tax Revenue funds only for the expansion and ongoing funding of mobile crisis intervention teams as defined in ORS 430.626.
- (g) **411: Tobacco Master Settlement Account – Other Funds:** County shall ensure expenditure of Tobacco Master Settlement Account funds only for Services described in Exhibit B.
- (h) **421: Beer and Wine Tax (40%) Treatment – Other Funds:** County shall ensure expenditure of Beer and Wine Tax (40%) Treatment funds only as allowed by ORS 430.380.
- (i) **450: Marijuana Tax (40%) – Other Funds:** County shall ensure expenditure of Marijuana Tax (40%) funds only as allowed by ORS 475C.726(d)(B).
- (j) **520: Substance Use Prevention, Treatment, and Recovery Services Block Grant (SUPTRS BG) – Federal Funds:** County shall ensure expenditure of SUPTRS BG funds only as allowed by section 1921 of Title XIX, Part B, Subpart II and III of the Public Health Service Act.
- (k) **804: Mental Health General Fund – General Funds:** County shall ensure expenditure of Mental Health General Fund funds only for Services described in Exhibit B that are provided for Individuals with or at risk of developing a Mental or Emotional Disturbance which may include a co-occurring Substance Use Disorder.
- (l) **806: Mental Health New Investments – General Funds:** County shall ensure expenditure of Mental Health New Investment funds only for Services described in Exhibit B that are provided for Individuals with or at risk of developing a Mental or Emotional Disturbance which may include a co-occurring Substance Use Disorder.
- (m) **807: Alcohol and Drug Treatment – General Funds:** County shall ensure expenditure of Alcohol and Drug Treatment funds only for Services described in Exhibit B provided for Individuals with or at risk of developing a Substance Use Disorder which may include a co-occurring Mental or Emotional Disturbance.
- (n) **815: Mobile Response and Stabilization Services (MRSS) – General Fund:** County shall ensure expenditure of MRSS funds only for MRSS Services as described in Exhibit B.

Additional fund numbers may be added during the term of this Agreement and in the Financial Assistance Award by using an Administrative Memo to Counties via email to the contact person listed in Exhibit F, “Standard Terms and Conditions,” section 16., “Notice.” to note the new code number and description.

The fund numbers with source descriptions identifying General Funds or Other Funds as the funding source may actually be paid under a different fund number and source based upon actual funds available at the time of payment. Changes to the Financial Assistance Award to move amounts from one fund source to another fund source but otherwise Budget neutral will be processed as an Administrative Adjustment rather than issuing an Amendment to the Financial Assistance Award.

The notice of Administrative Adjustment will be sent to County via email to the contact person listed in Exhibit F, “Standard Terms and Conditions,” Section 18., “Notice.” County shall have 30 calendar days to request OHA replace the Administrative Adjustment notice with an Amendment to the Financial Assistance Award. If County does not make such a request, the Financial Assistance Award shall be deemed amended as noted in the Administrative Adjustment and agreed to by both parties.

- (3) **Column 3, Proj Code:** This item is for OHA’s internal use only.
- (4) **Column 4, CPMS:** This item is for OHA’s internal use only.
- (5) **Column 5, Provider:** This is either the Provider’s name or a description for a specific Service as set forth on that particular line of the Financial Assistance Award.
- (6) **Column 6, Effective Dates:** This specifies the time period during which the Service or Service capacity, as applicable, is expected to be delivered utilizing the approved Service funds as set forth on that particular line of the Financial Assistance Award. For purposes of disbursement method “A” (as described in Section (10), “Column 10, Part ABC,” below), these dates also specify the time period during which the approved Service funds will be disbursed to County.
- (7) **Column 7, Slot Change/Type:** This is either the number of slots or number of days of Service or Service capacity, as applicable, OHA anticipates County to deliver during the period specified and utilizing the approved Service funds set forth on that particular line of the Financial Assistance Award. The Service or Service capacity, as applicable, must be delivered in the amounts and over the course of the time period specified on that line of the Financial Assistance Award. This column will be blank, followed by “NA” if the basis of payment set forth in the applicable Service Description is not tied to actual delivery of Services or Service capacity. The Slot Change/Type is the unit of measurement associated with the Effective Dates set forth in column 6. The Slot Change/Type is expressed in three-character designations and have the following meanings:
  - (a) **CSD:** One CSD (or Client Service Day) is one day of Service or Service capacity, as applicable, delivered to one Individual or made available for delivery to one Individual, as applicable.
  - (b) **N/A:** N/A means Slot Change/type is not applicable to the particular line.
  - (c) **SLT:** One SLT (or Slot) is the delivery or capacity to deliver, as applicable, the Service to an Individual during the entire period specified in the corresponding line of the Financial Assistance Award.
- (8) **Column 8, Rate:** This is the cost per day, per month, or per Slot Change/Type measurement for the Service or Service capacity, as applicable, to be delivered utilizing the approved Service funds as set forth on that line of the Financial Assistance Award.
- (9) **Column 9, Operating Dollars:** This is the total amount of Financial Assistance Award for delivery of the Services and is OHA’s maximum, not-to-exceed obligation during the time period specified on that particular line, in support of the Services described on that particular line, of the Financial Assistance Award.
- (10) **Column 10, Part ABC:** This column indicates the method by which OHA disburses the Financial Assistance. The disbursement method listed in this column, as indicated by the letter A, B, or C, will usually be consistent with the disbursement method set forth in the Service Description for the particular Service

Element. The characters A, B and C indicate the following disbursement methods:

- (a) The letter ‘A’ indicates OHA will disburse the awarded funds to County in substantially equal monthly allotments during the period set forth in Column 6, “Effective Dates.”
- (b) [Reserved] (The letter ‘B’ is no longer used.)
- (c) The letter ‘C’ indicates OHA will disburse the awarded funds in the manner specified in Column 14, “SP#.”

If the disbursement method listed in this column is different than the method set forth in the Service Description, the disbursement method listed in this column shall control. This column only indicates the disbursement method to be used should County be entitled to receive Financial Assistance, which shall be determined in accordance with the basis of payment as set forth in the applicable Service Element. Any disbursements made to County in excess of the funds County is entitled to, as determined in accordance with the applicable basis of payment and through the Agreement Settlement process, will be recovered by OHA in accordance with the terms of this Agreement.

- (11) **Column 11, PAAF CD:** This column is the Plan/Amendment Approval Form (PAAF) code, which is the lookup field to title the various sections of the PAAF based on this PAAF code.
- (12) **Column 12, Base:** This is the code used to indicate how the Services being provided, as set forth on that line of the Financial Assistance Award, are to be handled at the end of the respective biennium, as follows:
  - (a) The letter “Y” in this field indicates the Services subject to and modified by this Agreement, hereafter referred to as MOD, as set forth on that line of the Financial Assistance Award may continue into the next biennium. This will be contingent on the Services still being required, at that time and at that level, and upon OHA’s funding being continued at the present funding level or higher, through the legislatively adopted budget for that specific biennium.
  - (b) The letter “N” in this field indicates the Services being modified in this MOD, as set forth on that line of the Financial Assistance Award, are not continuing into the next biennium.
  - (c) The letter “M” in this field indicates the Services being modified in this MOD, as set forth on that line of the Financial Assistance Award, are “maybe” going to continue into the next biennium. This will be determined at the time OHA is preparing the next biennium’s Agreements. This code is typically used for Services paid by Federal Grants.
- (13) **Column 13, Client Code:** This column is used when Service funds, as set forth on that line of the Financial Assistance Award, are for a specific Individual. The coded Individual name indicates the approved Service funds may only be expended on the delivery of the specified Service to the specified Individual. If this column is blank, Service funds are not intended for any particular Individual.
- (14) **Column 14, SP#:** This column is for Special Conditions, if any, that must be complied with when providing the Service using approved Service funds set forth on that line of the Financial Assistance Award. For certain Services, the Special Conditions specify the rate at which Financial Assistance will be calculated for delivery of that Service or delivery of capacity for that Service. The Special Conditions are identified by a numeric code. A table or tables listing the Special

Conditions by numeric code is included in the Financial Assistance Award.

- c. **Format and Abbreviations in Financial Assistance Award Amendments.** The format and abbreviations in a Financial Assistance Award amendment are the same as those used in the initial Financial Assistance Award. If a Financial Assistance Award amendment amends the financial and Service information in the Financial Assistance Award, the financial and Service information line in the amendment will either amend an existing line in the financial and Service information of the Financial Assistance Award or constitute a new line added to the financial and Service information of the Financial Assistance Award. A financial and Service information line in a Financial Assistance Award amendment (an “Amending Line”) amends an existing line of the Financial Assistance Award (a “Corresponding Line”) if the line in the Financial Assistance Award amendment awards funds for the same Service in the Financial Assistance Award and specifies a date range falling within the Effective Dates specified in that existing line (as previously amended, if at all). If an Amending Line has a positive number in the approved Operating Dollars column, those funds are added to the approved Operating Dollars of the Corresponding Line for the period specified in the Amending Line. If an Amending Line has a negative number in the approved Operating Dollars column, those funds are subtracted from the approved Operating Dollars of the Corresponding Line for period specified in the Amending Line. If an Amending Line has a positive number in the Slot Change/Type column, those Slots are added to the Slot Change/Type in the Corresponding Line for the period specified in the Amending Line. If an Amending Line has a negative number in the Slot Change/Type column, those Slots are subtracted from the Slot Change/Type in the Corresponding Line for the period specified in the Amending Line. All Special Conditions identified in a Corresponding Line apply to funds identified on an Amending Line (unless a Special Condition or portion thereof on an Amending Line specifies a rate). If an Amending Line contains a Special Condition or portion of a Special Condition that specifies a rate, that Special Condition or portion thereof replaces, for the period specified in the Amending Line, any Special Condition or portion thereof in the Corresponding Line that specifies a rate. If a financial and Service information line in a Financial Assistance Award amendment is not an Amending Line, as described above, it is a new line added to the Financial Assistance Award.

**2026-2027 INTERGOVERNMENTAL AGREEMENT  
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH PROGRAMS**

**EXHIBIT D  
SPECIAL TERMS AND CONDITIONS**

1. **County Expenditures on Services.** In accordance with [ORS 430.345 to ORS 430.380](#) (the “**Mental Health Alcoholism and Drug Services Account**”), County shall maintain its 2025-2026 financial contribution to alcohol and other drug treatment and prevention services at an amount not less than that for fiscal year 2024. Furthermore, and in accordance with the Mental Health Alcoholism and Drug Services Account, County shall maintain its 2026-2027 financial contribution to alcohol and other drug treatment and prevention services at an amount not less than that for fiscal year 2025. OHA may waive all or part of the financial contribution requirement in consideration of severe financial hardship or any other grounds permitted by law.
  
2. **Basic Accounting Records.** County shall comply with the basic record keeping standards prescribed in [OAR 309-013-0120 through OAR 309-013-0220](#).
  
3. **Local Plan Revisions.**
  - a. County shall notify OHA if, at any time, it determines that the Financial Assistance is insufficient to adequately fund the Service Priorities identified in Subsection 2.a. and other mandatory Services in [Exhibit B](#), in which case, the parties shall work in good faith to create a mutually agreed upon revised Local Plan and Budget.
  - b. Once approved, a Local Plan is valid until changes are mutually agreed upon. In no event will County be required to expend funds other than Financial Assistance to fund any such revised Local Plan and Budget for the Services.
  - c. Upon notification from OHA that OHA has received a court order or written court appointed monitor directive that may require a change to the Local Plan and Budget, and if so, the parties shall work in good faith to prepare and complete an agreed upon revised Local Plan and Budget within 30 calendar days of such notification. Any such OHA approved revised Local Plan and Budget must be initiated within 30 calendar days of OHA’s approval or such date that the parties agree. In no event will County be required to expend funds other than Financial Assistance to fund any such revised Local Plan and Budget for the Services.
  
4. **Services for Children, Youth, and Families.** Services funded with the Financial Assistance must be guided by the following policy:
  - a. Each child and youth is an Individual with unique strengths and needs and must be met with developmentally, culturally and linguistically appropriate and individually responsive services that recognize the as a whole person;
  - b. Children, youth and their families are the experts on their lives and needs and must be meaningfully included in all decisions about their Individual services and be meaningfully included in policy making and service design;
  - c. All children and youth, regardless of the type or severity of diagnoses or the disability they experience, must be supported to live, work, play and attend school in integrated community settings and must be supported to safely and successfully remain in their family homes and local schools to the maximum extent possible;
  - d. The unique strengths and potential of each child, youth, and family must be proactively

- e. recognized and built upon;
  - e. Child, youth, and family-centered supports must be prioritized toward prevention and recovery;
  - f. Children and youth must not be restricted to a single-Service setting or delivery system and must be provided with access to all Services for which the children or youth are eligible regardless of their disability type or family situation; and
  - g. Children, youth and their families must be supported to access the appropriate comprehensive home and community-based services that prevent crises from happening or from reoccurring and that provide support and stabilization in the event of a crisis.
5. **Trauma Informed Services** also referred to as **Trauma Informed Care (TIC)**. County shall ensure that the Services funded by the Financial Assistance comply with [OAR 309-019-0105\(162\)](#) and OHA’s Trauma Informed Care Policy. The Local Plan must include County’s TIC plan and will describe how County has incorporated TIC as a core principle in policies, mission statements, and written program and Service information, in accordance with the OHA Trauma Informed Care (TIC) Policy located at <https://www.oregon.gov/oha/HSD/BH-Child-Family/Documents/Trauma-Informed%20Services%20Policy.pdf>. County will initiate and complete an agency self-assessment and have a quality assurance structure/process to further develop and sustain TIC.
6. **Clinical Interventions and Support Services** provided to any Individual enrolled in the Oregon Health Plan (OHP) who is covered for these Services and for which the CCO or Medical Assistance Programs (MAP) pays for these Services are not eligible for Services. The OHP benefit package includes many of the Services provided under this Agreement. The intent is not to duplicate OHP but rather augment the package of Services.
7. **Corrective Action Plan.** Upon OHA’s identification of any deficiencies in County’s performance under this Agreement, including without limitation failure to submit reports as required, failure to expend available funding, or failure to meet performance requirements, County shall prepare and submit to OHA within 30 calendar days a Corrective Action Plan (CAP) to be reviewed and approved by OHA. The CAP shall include, but is not limited to, the following information:
- a. Reason or reasons for the CAP;
  - b. The date the CAP will become effective, with timelines for implementation;
  - c. Planned action already taken to correct the deficiencies, as well as proposed resolutions to address remaining deficits identified, with oversight and monitoring by OHA; and
  - d. Proposed remedies, short of termination, should County not come into compliance within the timeframe set forth in the CAP.
8. **Mandated State Data System Reporting Requirement.** All Individuals receiving Services paid for with the Financial Assistance must be enrolled and that Individual’s record maintained in ROADS (Resilience Outcomes Analysis and Data Submission), the mandated state data system, as required in [OAR 309-019-0135\(1\)\(e\)](#).
9. **Plan of Resolution Related to Individuals in OSH or Community Hospitals**
- a. County acknowledges that OHA does not provide direct Services to the following Individuals, except for some services at Oregon State Hospital, and that OHA provides the Financial Assistance for County to provide placement-related Services to:
    - (1) Individuals who the court:
      - (a) Are found to lack fitness to proceed under [ORS 161.370](#) and are



- (3) If OHA does not approve County's Plan of Resolution, meet with OHA within 10 business days of receipt of the non-approval in order to discuss it, unless the timeframe is extended by the mutual written agreement of County and OHA;
  - (4) After the meeting, submit a first Revised Plan of Resolution to OHA within 10 business days; and
  - (5) Implement the OHA-approved Plan of Resolution or OHA-approved Revised Plan of Resolution within the reasonable deadline set by OHA in its approval notice or by the mutually agreed upon deadline set by the County and OHA, whichever is longer.
- d. If County's Plan of Resolution and first Revised Plan of Resolution are not approved by OHA, County shall elevate the issue to senior management or appropriate designee.
- (1) County's senior management or their designee shall meet with OHA's senior management or designee to discuss the first Revised Plan of Resolution and the ways OHA can support County in resolving the issue within 10 business days from the date of OHA's notice of non-approval of the first Revised Plan of Resolution.
  - (2) County shall continue to submit Revised Plans of Resolution to OHA for review until it is approved by OHA. If County and OHA agree that further revisions will not resolve the barriers or allow County to provide the Services to the Individual, no further revisions of the Plan of Resolution will be required.
  - (3) If a revised Plan of Resolution is approved by OHA, County shall implement it within the reasonable deadline set by OHA in its approval notice or by the mutually agreed upon deadline set by County and OHA, whichever is longer.
- e. OHA agrees to provide the following support to County for Services provided to Individuals described in Subsections 9.a of Exhibit D:
- (1) Provide complex case management support to assist County in locating placements or Services for Individuals with placement barriers (e.g., sex offender history, special medical needs, and dual diagnosis).
  - (2) Assist County in resolving coordination issues with Coordinated Care Organizations, ODHS, and any other entities involved in providing or funding the Individual's Services.
  - (3) Act as a good faith partner with County to address shortages in staffing, capacity, or other needs required by County to provide the Services to Individuals described in Subsections 9.a of this Exhibit D.
- f. If County submits a Plan of Resolution or Revised Plan of Resolution under Subsections 9.c and 9.d of this Exhibit D, OHA shall:
- (1) Review the Plan of Resolution or Revised Plan of Resolution;
  - (2) OHA will send a written notice of approval or non-approval of the Plan of Resolution or Revised Plan of Resolution within three (3) business days of receiving it;
  - (3) If OHA does not approve County's Plan of Resolution or Revised Plan of Resolution, meet with County within 10 business days as described in Subsections 9.c and 9.d of this Exhibit D;
  - (4) Not unreasonably withhold approval of County's Plan of Resolution or Revised Plan of Resolution; and
  - (5) Set a reasonable timeframe, as determined by OHA, to implement the OHA-approved Plan of Resolution or Revised Plan of Resolution based on the type of actions to be implemented by County to resolve the issue.

- g.** If OHA does not approve County's Plan of Resolution and first Revised Plan of Resolution, OHA shall elevate the issue to senior management or appropriate designee.
  - (1)** OHA's senior management or designee shall meet with County's senior management or designee to discuss the first Revised Plan of Resolution and the ways OHA can support County in resolving the issue within 10 business days from the date of OHA's notice of non-approval of the first Revised Plan of Resolution.
  - (2)** OHA shall continue to work with County and review any subsequently submitted Revised Plans of Resolution and shall respond to County with approval or non-approval of that Plan within 3 business days of receiving it. If County and OHA agree that further revisions will not resolve the barriers or allow County to provide the Services to the Individual, no further revisions will be required.

**10. Mid-Term Agreement Changes.**

- a.** Any changes by OHA to policies, forms, templates, procedures, or other external documents that are referenced by web links without being attached as exhibits to this Agreement that have a material effect require a fifteen (15) calendar day advance written notice of such change by OHA to County, and a copy of such notice must be sent by mail and to any emails designated in writing by County for this purpose. County will then have fifteen (15) calendar days from the date of the notice to consent or object to the change, and an objection can be sent to the email account from which OHA emailed the notice. If County does not object timely to the change, it will be binding on County. Any timely objected to changes will not go into effect unless negotiated and implemented through any amendment.
- b.** Any subsequent change to an administrative rule referenced in this Agreement is not binding on County if such change is determined by a court of competent jurisdiction to exceed OHA's authority or is otherwise invalid.

**2026-2027 INTERGOVERNMENTAL AGREEMENT  
FOR THE FINANCING OF COMMUNITY MENTAL PROGRAMS**

**EXHIBIT E  
GENERAL TERMS AND CONDITIONS**

- 1. Disbursement and Recovery of Financial Assistance.**
  - a. Disbursement Generally.** Subject to the conditions precedent set forth below, OHA shall disburse the Financial Assistance described in the Financial Assistance Award to County in accordance with the procedures set forth below and, as applicable, in the Service Descriptions and the Financial Assistance Award. Disbursement procedures may vary by Service.
    - (1) Disbursement of Financial Assistance for Services.** As set forth in the Service Description for a particular Service, OHA will generally disburse financial assistance that is described in the Financial Assistance Award to County in monthly allotments in advance of actual delivery of the Service.
    - (2) Disbursements Remain Subject to Recovery.** All disbursements of Financial Assistance, including disbursements made directly to Providers, remain subject to recovery from County, in accordance with Recovery of Financial Assistance section below.
  - b. Conditions Precedent to Disbursement.** OHA’s obligation to disburse Financial Assistance to County is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
    - (1)** No County default, as described in Section 6 of Exhibit F, “Standard Terms and Conditions,” has occurred.
    - (2)** County’s representations and warranties, as set forth in Section 4 of Exhibit F, “Standard Terms and Conditions,” are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
  - c. Recovery of Financial Assistance.**
    - (1) Notice of Underexpenditure, Overexpenditure.** If OHA believes there has been an Underexpenditure or Overexpenditure of moneys disbursed under this Agreement, OHA shall provide County with written notice thereof, with a detailed spreadsheet providing supporting data of an under or over expenditure, and OHA and County shall engage in the process described in the Recovery of Underexpenditure or Overexpenditure section below. If OHA believes there has been a Misexpenditure of moneys disbursed to County under this Agreement, OHA shall provide County with written notice thereof and OHA and County shall engage in the process described in Recovery of Misexpenditures section below.
    - (2) Recovery of Underexpenditure or Overexpenditure.**
      - (a) County’s Response.** County shall have 90 calendar days from the effective date of the notice of Underexpenditure or Overexpenditure or from the date of receipt of the notice, whichever is later, to pay OHA in full or notify OHA that it wishes to engage in the appeals process set forth in the Appeals Process section below. If County fails to respond within that 90 calendar-day time period, County shall promptly pay the noticed Underexpenditure or Overexpenditure.
      - (b) Appeals Process.** Upon receipt of the final notice, if County notifies OHA that it wishes to engage in the Appeals Process, County and OHA shall

engage in non-binding discussions to give County an opportunity to present reasons why it believes that there was no Underexpenditure or Overexpenditure, or that the amount of the Underexpenditure or Overexpenditure was different than the amount identified by OHA, and to give OHA the opportunity to reconsider its notice. County and OHA may negotiate an appropriate apportionment of responsibility for the repayment of an Underexpenditure or Overexpenditure. At County request, OHA will meet and negotiate with County in good faith concerning appropriate apportionment of responsibility for repayment of an Underexpenditure or Overexpenditure. In determining an appropriate apportionment of responsibility, County and OHA may consider any relevant factors. An example of a relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure. If OHA and County reach agreement on the amount owed to OHA, County shall promptly repay that amount to OHA by issuing payment to OHA or by directing OHA to withhold future payments pursuant to the Recovery from Future Payment section below. If OHA and County are unable to agree to whether there has been an Underexpenditure or Overexpenditure or as to the amount owed, the parties may agree to consider further appropriate dispute resolution processes, including, subject to State of Oregon Department of Justice and County Counsel approval, arbitration. If both parties are unable to agree to further dispute resolution, the parties shall proceed according to the procedures described in the Recovery from Future Payments section below.

- (c) **Recovery from Future Payments.** To the extent that OHA is entitled to recover an Underexpenditure or Overexpenditure pursuant to this Recovery of Underexpenditure or Overexpenditure section, OHA may recover the Underexpenditure or Overexpenditure by offsetting the amount thereof against future amounts owed to County by OHA, including, but not limited to, any amount owed to County by OHA under any other agreement between County and OHA, present or future. OHA shall provide County written notice of its intent to recover the amount of the Underexpenditure or Overexpenditure from amounts owed County by OHA as set forth in this Section and shall identify the amounts, which OHA intends to offset, (including the agreements, if any, under which the amounts owed arose and from those from which OHA wishes to deduct payments). County shall then have 14 calendar days from the date of OHA's notice in which to request the deduction be made from other amounts owed to County by OHA and identified by County. OHA shall comply with County's request for alternate offset. In the event that OHA and County are unable to agree on which specific amounts, owed to County by OHA, OHA may offset in order to recover the amount of the Underexpenditure or Overexpenditure, OHA may select the particular agreements, between OHA and County, and amounts from which it will recover the Underexpenditure or Overexpenditure, after providing notice to County and subject to the following limitations: OHA shall first look to amounts owed to County (but unpaid) under this Agreement. If that amount is insufficient, then OHA may look to any other amounts currently owing or owed in the future to County by OHA. In no

case, without the prior consent of County, shall OHA deduct from any one payment due to County under the agreement from which OHA is offsetting funds an amount in excess of twenty-five percent (25%) of that payment. OHA may look to as many future payments as necessary in order to fully recover the amount of the Underexpenditure or Overexpenditure.

**(3) Recovery of Misexpenditure.**

- (a)** If OHA believes there has been a Misexpenditure of money disbursed to County under this Agreement, OHA shall provide to County a written notice of recovery, with a detailed spreadsheet providing supporting data of the Misexpenditure attached, and OHA and County shall engage in the process described in the Appeal Process section below.
- (b) County’s Response.** From the effective date of the Misexpenditure notice or from the date of receipt of notice, whichever is later, County shall have the lesser of 60 calendar days; or if a Misexpenditure relates to a federal government request for reimbursement, 30 calendar days fewer than the number of days (if any) OHA has to appeal a final written decision from the federal government, to either:
  - i.** Make a payment to OHA in the full amount of the Misexpenditure as identified by OHA in the notice; or
  - ii.** Notify OHA that County wishes to repay the amount of the Misexpenditure, as identified by OHA in the notice, from future payments pursuant to the Recovery from Future Payments section below; or
  - iii.** Notify OHA that it wishes to engage in the applicable appeal process, as set forth in the Appeal Process section below.

If County fails to respond within the time required by this Section, OHA may recover the amount of the Misexpenditure identified in the notice from future payments as set forth in Recovery from Future Payment section below.

- (c) Appeal Process.** If County notifies OHA that it wishes to engage in an appeal process with respect to a notice of Misexpenditure from OHA, the parties shall comply with the following procedures, as applicable:
  - i. Appeal from OHA-Identified Misexpenditure.** If OHA’s notice of Misexpenditure is based on a Misexpenditure solely of the type described in Section 20(b) or (c) County and OHA shall engage in the process described in this Appeal Process section to resolve a dispute regarding the notice of Misexpenditure. First, County and OHA shall engage in non-binding discussions, to give County an opportunity to present reasons why it believes that there is, in fact, no Misexpenditure or that the amount of the Misexpenditure is different than the amount identified by OHA in the notice, and to give OHA the opportunity to reconsider its notice. County and OHA may negotiate an appropriate apportionment of responsibility for the repayment of the Misexpenditure. At County’s request, OHA will meet and negotiate with County in good faith concerning appropriate apportionment of responsibility for repayment of the Misexpenditure. In determining an appropriate apportionment of responsibility, County and OHA may consider any relevant factors. An example of a

relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure. If OHA and County reach agreement on the amount owed to OHA, County shall promptly repay that amount to OHA by issuing payment to OHA or by directing OHA to withhold future payments pursuant to the Recovery from Future Payments section below. If OHA and County continue to disagree as to whether there has been a Misexpenditure or as to the amount owed, the parties may agree to consider further appropriate dispute resolution processes, including, subject to State of Oregon Department of Justice and County Counsel approval, arbitration.

**ii. Appeal from Federal-Identified Misexpenditure.**

**A.** If OHA’s notice of Misexpenditure is based on a Misexpenditure of the type described in Section 20(a) and the relevant federal agency provides a process either by statute or administrative rule to appeal the determination of improper use of federal funds, the notice of disallowance or other federal identification of improper use of funds, and if the disallowance is not based on a federal or state court judgment founded in allegations of Medicaid fraud or abuse, then County may, 30 calendar days prior to the applicable federal appeals deadline, request that OHA appeal the determination of improper use, notice of disallowance or other federal identification of improper use of funds in accordance with the process established or adopted by the federal agency. If County so requests that OHA appeal the determination of improper use of federal funds, federal notice of disallowance or other federal identification of improper use of funds, the amount in controversy shall, at the option of County, be retained by County or returned to OHA pending the final federal decision resulting from the initial appeal. If County requests, prior to the deadline set forth above, that OHA appeal, OHA shall appeal the determination of improper use, notice of disallowance or other federal identification of improper use of funds in accordance with the established process and shall pursue the appeal until a decision is issued by the Departmental Grant Appeals Board of the Department of Health and Human Services (the “Grant Appeals Board”) pursuant to the process for appeal set forth in 45 C.F.R. Subtitle A, Part 16, or an equivalent decision is issued under the appeal process established or adopted by the federal agency. County and OHA shall cooperate with each other in pursuing the appeal. If the Grant Appeals Board or its equivalent denies the appeal then either County, OHA, or both may, at their discretion, pursue further appeals. Regardless of any further appeals, within 90 calendar days of the date the federal decision resulting from the initial appeal is

final, County shall repay to OHA the amount of the Misexpenditure (reduced, if at all, as a result of the appeal) by issuing payment to OHA or by directing OHA to withhold future payments pursuant to Recovery from Future Payments section below. To the extent that County retained any of the amount in controversy while the appeal was pending, County shall also pay to OHA the interest, if any, charged by the federal government on such amount.

- B.** If the relevant federal agency does not provide a process either by statute or administrative rule to appeal the determination of improper use of federal funds, the notice of disallowance or other federal identification of improper use of funds or County does not request that OHA pursue an appeal 30 calendar days prior to the applicable federal appeals deadline, and if OHA does not appeal, within 90 calendar days of the date the federal determination of improper use of federal funds, the federal notice of disallowance or other federal identification of improper use of funds is final, County shall repay to OHA the amount of the Misexpenditure by issuing a payment to OHA or by directing OHA to withhold future payments pursuant to the Recovery from Future Payments section below.
- C.** If County does not request that OHA pursue an appeal of the determination of improper use of federal funds, the notice of disallowance or other federal identification of improper use of funds 30 calendar days prior to the applicable federal appeals deadline but OHA nevertheless appeals, County shall repay to OHA the amount of the Misexpenditure (reduced, if at all, as a result of the appeal), within 90 calendar days of the date the federal decision resulting from the appeal is final, by issuing payment to OHA or by directing OHA to withhold future payments pursuant to the Recovery from Future Payments section below.
- D.** Notwithstanding County's Response section above, if the Misexpenditure was expressly authorized by OHA rule or an OHA writing that applied when the expenditure was made but was prohibited by federal statutes or regulations that applied when the expenditure was made, County will not be responsible for repaying the amount of the Misexpenditure to OHA, provided that:
  - I.** Where post-expenditure official reinterpretation of federal statutes or regulations results in a Misexpenditure, County and OHA will meet and negotiate in good faith an appropriate apportionment of responsibility between them for repayment of the Misexpenditure.
  - II.** For purposes of this Section, an OHA writing must interpret this Agreement or OHA rule and be signed

by the Director of OHA, the Director of Behavioral Health Division or the Section Director.

OHA shall designate an alternate officer in the event the Behavioral Health Division is abolished. Upon County's request, OHA shall notify County of the names of the Individual officers listed above. OHA shall send OHA writings described in this paragraph to County by mail and email and to County directors by email.

- III.** The OHA writing must be in response to a request from County for expenditure authorization or a statement intended to provide official guidance to County or counties generally for making expenditures under this Agreement. The writing must not be contrary to this Agreement or contrary to law or other applicable authority that is clearly established at the time of the OHA writing.
- IV.** If the OHA writing is in response to a request from County for expenditure authorization, County's request must be in writing and signed by the director of a County department with the authority to make such a request or by County Counsel. It must identify the supporting data, provisions of this Agreement and provisions of applicable law relevant to determining if the expenditure should be authorized.
- V.** An OHA writing expires on the date stated in the writing, or if no expiration date is stated, six years from the date of the writing. An expired OHA writing continues to apply to County expenditures that were made in compliance with the writing and during the term of the writing.
- VI.** OHA may revoke or revise an OHA writing at any time if it determines in its sole discretion that the writing allowed expenditure in violation of this Agreement, law, or any other applicable authority. However, County is not responsible for a Misexpenditure that was based on an OHA writing that was effective at the time of the Misexpenditure.
- VII.** OHA rule does not authorize an expenditure that this Agreement prohibits.

- (d) Recovery from Future Payments.** To the extent that OHA is entitled to recover a Misexpenditure pursuant to the Appeal Process section above, OHA may recover the Misexpenditure by offsetting the amount thereof against future amounts owed to County by OHA, including, but not limited to, any amount owed to County by OHA under this Agreement or any amount owed to County by OHA under any other agreement between County and OHA, present or future. OHA shall provide County written notice of its intent to recover the amount of the Misexpenditure from

amounts owed County by OHA as set forth in this Section, and shall identify the amounts owed by OHA which OHA intends to offset (including the agreements, if any, under which the amounts owed arose and from those from which OHA wishes to deduct payments). County shall then have 14 calendar days from the date of OHA's notice to request the deduction be made from other amounts owed to County by OHA and identified by County. OHA shall comply with County's request for alternate offset. In the event that OHA and County are unable to agree on which specific amounts, owed to County by OHA, OHA may offset in order to recover the amount of the Misexpenditure, then OHA may select the particular agreements between OHA and County and amounts from which it will recover the amount of the Misexpenditure, after providing notice to County, and subject to the following limitations: OHA shall first look to amounts owed to County (but unpaid) under this Agreement. If that amount is insufficient, then OHA may look to any other amounts currently owing or owed in the future to County by OHA. In no case, without the prior consent of County, shall OHA deduct from any one payment due County under the agreement from which OHA is offsetting funds an amount in excess of twenty-five percent (25%) of that payment. OHA may look to as many future payments as necessary in order to fully recover the amount of the Misexpenditure.

- (4) **Additional Provisions related to parties' rights and obligations with respect to Underexpenditures, Overexpenditures and Misexpenditures.**
- (a) County shall cooperate with OHA in the Agreement Settlement process.
  - (b) OHA's right to recover Underexpenditures, Overexpenditures and Misexpenditures from County under this Agreement is not subject to or conditioned upon County's recovery of any money from any other entity.
  - (c) If the exercise of OHA's right to offset under this provision requires County to complete a re-budgeting process, nothing in this provision shall be construed to prevent County from fully complying with its budgeting procedures and obligations, or from implementing decisions resulting from those procedures and obligations.
  - (d) Nothing in this provision shall be construed as a requirement or agreement by County to negotiate and execute any future contract with OHA.
  - (e) Nothing in this Section shall be construed as a waiver by either party of any process or remedy that might otherwise be available.

2. **Use of Financial Assistance.** County shall use the Financial Assistance solely to cover actual Allowable Costs reasonably and necessarily incurred to deliver Services during the term of this Agreement.

3. **Award Adjustments**

- a. County may use Financial Assistance to cover actual Allowable Costs reasonably and necessarily incurred to deliver Services, from the Effective Date of this Agreement through the termination or expiration of this Agreement.
  - (1) If County uses Financial Assistance described in the Financial Assistance Award in reliance on this Award Adjustments section (1) or (2) above, County shall promptly notify OHA in writing of such use.
- b. Financial Assistance disbursed to County under this Agreement that County would be

entitled to retain if used prior to the termination or expiration of this Agreement (as calculated in accordance with the methodologies set forth in the applicable Service Descriptions), may be retained by County even if not used prior to the termination or expiration of this Agreement provided that other provisions of this Agreement do not require the Financial Assistance to be used by County prior to the termination or expiration of this Agreement and provided further that County uses the Financial Assistance solely to deliver future Services for the purpose it was originally awarded.

**4. Amendments Proposed by OHA.**

- a. Amendments of Financial Assistance Award.** County shall review all proposed amendments to the Financial Assistance Award prepared and presented to County by OHA in accordance with this Section. Amendments to the Financial Assistance Award will be presented to County in electronic form. OHA may withdraw a proposed amendment by and effective upon written notice to County. If not sooner accepted or rejected by County, or withdrawn by OHA, a proposed amendment will be deemed rejected by County 60 calendar days after County's receipt thereof and OHA's offer to amend the Financial Assistance Award will be automatically revoked. If County chooses to accept a proposed amendment presented in electronic form, County shall return the proposed amendment to OHA signed by County Financial Assistance Administrator. Upon OHA's actual physical receipt and signature of a proposed amendment signed by County Financial Assistance Administrator but otherwise unaltered, the proposed amendment will be considered accepted by the parties and the Financial Assistance Award, as amended by the proposed amendment, will become the Financial Assistance Award under this Agreement. If County returns a proposed amendment altered in any way (other than by signature of County Financial Assistance Administrator), OHA may, in its discretion, accept the proposed amendment as altered by County but only if County Financial Assistance Administrator has initialed each alteration. A proposed amendment altered by County and returned to OHA will be considered accepted by OHA on the date OHA initials each alteration and on that date the Financial Assistance Award, as amended by the proposed amendment (as altered), will become the Financial Assistance Award.
- b. Other Amendments.** County shall review all proposed amendments to this Agreement prepared and presented to County by OHA, other than those described in the previous subsection a., promptly after County's receipt thereof. If County does not accept a proposed amendment within 60 calendar days of County's receipt thereof, County shall be deemed to have rejected the proposed amendment and the offer to amend the Agreement, as set forth in the proposed amendment, will be automatically revoked. If County chooses to accept the proposed amendment, County shall return the proposed amendment to OHA signed by a duly authorized County official. Upon OHA's actual physical receipt and signature of a proposed amendment signed by a duly authorized County official but otherwise unaltered, the proposed amendment will be considered accepted by the parties and this Agreement will be considered amended as set forth in the accepted amendment. If County returns a proposed amendment altered in any way (other than by signature of a duly authorized County official), OHA may, in its discretion, accept the proposed amendment as altered by County but only if a duly authorized County official has initialed each alteration. A proposed amendment altered by County and returned to OHA will be considered accepted by OHA on the date OHA initials each alteration and on that date this Agreement will be considered amended as set forth in the accepted amendment.

5. **Provider Contracts.** Except when the Service expressly requires the Service or a portion thereof to be delivered by County directly and subject to the Provider Monitoring section below, County may use the Financial Assistance to purchase a particular Service from a Provider through a Provider Contract. Subject to the Provider Monitoring section below, County may permit a Provider to purchase the Service, or a portion thereof, from another person or entity under a subcontract and such subcontractors will also be considered Providers for purposes of this Agreement and those subcontracts will be considered Provider Contracts under this Agreement. County shall maintain an originally executed copy of each Provider Contract at its office and shall furnish a copy of any Provider Contract to OHA upon request.
  
6. **Provider Monitoring.** County shall monitor each Provider's delivery of = and promptly report to OHA when County identifies a deficiency in a Provider's delivery of a Service or in a Provider's compliance with the Provider Contract between the Provider and County. County shall promptly take all necessary action to remedy any identified deficiency on the part of the Provider. County shall also monitor the fiscal performance of each Provider and shall take all lawful management and legal action necessary to pursue this responsibility. In the event of a deficiency in a Provider's delivery of a Service or in a Provider's compliance with the Provider Contract between the Provider and County, nothing in this Agreement shall limit or qualify any right or authority OHA has under state or federal law to take action directly against the Provider.
  
7. **Alternative Formats and Translation of Written Materials, Interpreter Services.**  
In connection with the delivery of Services, County shall make available to Client, without charge, upon the Client's reasonable request:
  - a. All written materials related to the Services provided to the Client in alternate formats, including accessible electronic formats, brail documents, and large print upon request. If County does not have access to such alternate formats, then County can request them from OHA.
  - b. All written materials related to the Services provided to the Client in the Client's language. If County does not have access to such languages, then County can request written materials in the Client's language from OHA.
  - c. Oral interpretation services related to the Services provided to the Client in the Client's language.
  - d. Sign language interpretation services and telephone communications access services related to the Services provided to the Client. County shall work with OHA if it does not have staff that fluently speak the language of an eligible Client, including qualified Sign Language Interpreters for Client's who are deaf or hard of hearing and whose preferred mode of communication is sign language.

For purposes of the foregoing, "written materials" means materials created by County, in connection with the Service being provided to the requestor. County may develop its own forms and materials and with such forms and materials County shall be responsible for making them available to a Client, without charge to the Client in the prevalent non-English language(s) within County Service area. OHA shall be responsible for making its forms and materials available, without charge to the Client or County, in the prevalent non-English language(s) within County Service area.
  
8. **Operation of CMHP.** County shall operate or contract for the operation of a CMHP during the term of this Agreement. If County uses Financial Assistance for a particular Service, County shall include that Service in its CMHP from the date it begins using Financial Assistance for that

Service until the earlier of: (a) termination or expiration of this Agreement; (b) termination by OHA of OHA's obligation to provide the Financial Assistance for that Service in accordance with Exhibit F, Termination section; or (c) termination by County, in accordance with Exhibit F, Termination section, of County's obligation to include in its CMHP a Core Service Area that includes that Service.

9. **OHA Reports.** To the extent resources are available to OHA to prepare and deliver the information, OHA shall, during the term of this Agreement, provide County with the following reports:
  - a. Summary reports to County and County's Providers from data as reported to OHA through the mandated state data system under this Agreement; and
  - b. Monthly reports to County that detail disbursement of Financial Assistance under the Financial Assistance Award for the delivery of Services.
10. **Technical Assistance.** During the term of this Agreement, OHA shall provide technical assistance to County in the delivery of Services to the extent resources are available to OHA for this purpose. If the provision of technical assistance to County concerns a Provider, OHA may require, as a condition to providing the assistance, that County take all action with respect to the Provider reasonably necessary to facilitate the technical assistance.
11. **Payment of Certain Expenses.** If OHA requests that an employee of County or a Provider or a citizen of County attend OHA training or an OHA conference or business meeting and County has obligated itself to reimburse the Individual for travel expenses incurred by the Individual in attending the training or conference, OHA may pay those travel expenses on behalf of County but only at the rates and in accordance with the reimbursement procedures set forth in the Oregon Accounting Manual available at: <https://www.oregon.gov/das/financial/acctng/pages/oam.aspx> under 40.10.00 as of the date the expense was incurred and only to the extent that OHA determines funds are available for such reimbursement.
12. **Effect of Amendments Reducing Financial Assistance.** If County and OHA amend this Agreement to reduce the amount of Financial Assistance awarded, County is not required by this Agreement to utilize other County funds to replace the funds no longer received under this Agreement as a result of the amendment and County may, from and after the date of the amendment, reduce the quantity of that Service included in its CMHP commensurate with the amount of the reduction in Financial Assistance awarded for that Service. Nothing in the preceding sentence shall affect County's obligations under this Agreement with respect to Financial Assistance actually disbursed by OHA under this Agreement or with respect to Services actually delivered.
13. **Resolution of Disputes over Additional Financial Assistance Owed County After Termination or Expiration.** If, after termination or expiration of this Agreement, County believes that OHA disbursements of Financial Assistance under this Agreement are less than the amount of Financial Assistance that OHA is obligated to provide to County under this Agreement, as determined in accordance with the applicable Financial Assistance calculation methodology, County shall provide OHA with written notice thereof. OHA shall have 90 calendar days from the effective date of County's notice to pay County in full or notify County that it wishes to engage in a dispute resolution process. If OHA notifies County that it wishes to engage in a dispute resolution process, County and OHA's Chief Health Systems Officer for the Behavioral Health Division shall engage in non-binding discussion to give OHA an opportunity to present reasons why it believes that it

does not owe County any additional Financial Assistance or that the amount owed is different than the amount identified by County in its notices, and to give County the opportunity to reconsider its notice. If OHA and County reach agreement on the additional amount owed to County, OHA shall promptly pay that amount to County. If OHA and County continue to disagree as to the amount owed, the parties may agree to consider further appropriate dispute resolution processes, including, subject to Department of Justice and County Counsel approval, binding arbitration. Nothing in this Section shall preclude County from raising underpayment concerns at any time prior to termination or expiration of this Agreement under Alternative Dispute Resolution below.

- 14. 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.
- 15. Purchase and Disposition of Equipment.**
- a. For purposes of this Section, “Equipment” means tangible, non-expendable personal property having a useful life of more than one year and a net acquisition cost of more than \$10,000 per unit. However, for purposes of information technology equipment, the monetary threshold does not apply (except as provided below for Software and storage devices). Information technology equipment shall be tracked for the mandatory line categories listed below:
    - (1) Network;
    - (2) Personal Computer;
    - (3) Printer/Plotter;
    - (4) Server;
    - (5) Storage device that will contain Client information;
    - (6) Storage device that will not contain Client information, when the acquisition cost is \$100 or more; and
    - (7) Software, when the acquisition cost is \$100 or more.
  - b. For any Equipment authorized by OHA for purchase with funds from this Agreement, ownership shall be in the name of County and County is required to accurately maintain the following Equipment inventory records:
    - (1) Description of the Equipment;
    - (2) Serial number;
    - (3) Where Equipment was purchased;
    - (4) Acquisition cost and date; and
    - (5) Location, use, and condition of the Equipment.
  - c. County shall provide the Equipment inventory list electronically to the Agreement Administrator at [BHD.Contracts@oha.oregon.gov](mailto:BHD.Contracts@oha.oregon.gov) no later than 45 calendar days following the end of this Agreement. County shall be responsible to safeguard any Equipment and maintain the Equipment in good repair and condition while in the possession of County or any Providers. County shall depreciate all Equipment, with a value of more than \$10,000, using the straight-line method.
  - d. Upon termination of this Agreement, or any Service thereof, for any reason whatsoever, County shall, upon request by OHA, immediately, or at such later date specified by OHA, tender to OHA any and all Equipment purchased with funds under this Agreement as OHA may require to be returned to the State. At OHA’s direction, County may be required to deliver said Equipment to a subsequent contractor for that contractor’s use in the delivery of

Services formerly provided by County. Upon mutual agreement, in lieu of requiring County to tender the Equipment to OHA or to a subsequent contractor, OHA may require County to pay to OHA the current value of the Equipment. Equipment value will be determined as of the date of Agreement or Service termination.

- e. If funds from this Agreement are authorized by OHA to be used as a portion of the purchase price of Equipment, requirements relating to title, maintenance, Equipment inventory reporting and residual value shall be negotiated, and the agreement reflected in a Special Condition authorizing the purchase.
- f. Notwithstanding anything herein to the contrary, County shall comply with [45 CFR 75.320](#), which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal grant funds.

- 16.** Nothing in this Agreement shall cause or require County or OHA to act in violation of state or federal constitutions, statutes, regulations, or rules. The parties intend this limitation to apply in addition to any other limitation in this Agreement, including limitations in Disbursement and Recovery of Financial Assistance above.

**2026-2027 INTERGOVERNMENTAL AGREEMENT  
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH PROGRAMS**

**EXHIBIT F  
STANDARD TERMS AND CONDITIONS**

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “Claim”) between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives 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. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
  
2. **Compliance with Law.** Both parties shall comply with laws, regulations, and executive orders to which they are subject, and which are applicable to the Agreement or to the delivery of Services. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, rules, regulations and executive orders to the extent they are applicable to the Agreement:
  - a. [OAR 943-005-0000 through 943-005-0070](#), prohibiting discrimination against Individuals with disabilities and all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations;
  - b. All state laws governing operation of Community Mental Health Programs, including without limitation, all administrative rules adopted by OHA related to Community Mental Health Programs or related to Client rights;
  - c. All state laws requiring reporting of Client abuse;
  - d. [ORS 659A.400 to 659A.409](#), [ORS 659A.145](#); and
  - e. 45 CFR 164 Subpart C, and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Services.
  - f. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and OHA that employ subject workers who provide services in the State of Oregon shall comply with [ORS 656.017](#) and provide the required Workers’ Compensation coverage, unless such employers are exempt under [ORS 656.126](#).
  
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in [ORS 30.265](#) or otherwise.
  
4. **Representations and Warranties.** County represents and warrants as follows:
  - a. **Organization and Authority.** County is a political subdivision of the State of Oregon

duly organized and validly existing under the laws of the State of Oregon. County has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.

- b. **Due Authorization.** The making and performance by County of this Agreement:
  - (a) have been duly authorized by all necessary action by County; (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County’s charter or other organizational document; and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by County of this Agreement.
- c. **Binding Obligation.** This Agreement has been duly executed and delivered by County and constitutes a legal, valid, and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors’ rights generally.
  - (1) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in County’s industry, trade, or profession;
  - (2) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Services; and
  - (3) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- d. **Services.** To the extent Services are performed by County, the delivery of each Service will comply with the terms and conditions of this Agreement and meet the standards for such Service as set forth herein, including but not limited to, any terms, conditions, standards, and requirements set forth in the Financial Assistance Award, applicable Service Description, and applicable Specialized Service Requirement.
- e. OHA represents and warrants as follows:
  - (1) **Organization and Authority.** OHA has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
  - (2) **Due Authorization.** The making and performance by OHA of this Agreement: (a) have been duly authorized by all necessary action by OHA; (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency; and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which OHA is a party or by which OHA may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by OHA of this Agreement, other than approval by the Department of Justice if required by law.
  - (3) **Binding Obligation.** This Agreement has been duly executed and delivered by OHA and constitutes a legal, valid, and binding obligation of OHA, enforceable in

accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- f. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**5. Ownership of Intellectual Property.**

- a. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA will not own the right, title and interest in any intellectual property created or delivered by County or a Provider in connection with the Services. With respect to that portion of the intellectual property that County owns, County grants to OHA a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to: (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property; (2) authorize third parties to exercise the rights set forth in Section 5.a.(1) on OHA's behalf; and (3) sublicense to third parties the rights set forth in Section 5.a.(1).
- b. If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then County shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or OHA. To the extent that OHA becomes the owner of any intellectual property created or delivered by County in connection with the Services, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free, and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
- c. County shall include in its Provider Contracts terms and conditions necessary to require that Providers execute such further documents and instruments as OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

**6. County Default.** County shall be in default under this Agreement upon the occurrence of any of the following events:

- a. County fails to perform, observe, or discharge any of its covenants, agreements or obligations set forth herein;
- b. Any representation, warranty or statement made by County herein or in any documents or reports made in connection herewith or relied upon by OHA to measure the delivery of Services, the expenditure of Financial Assistance or the performance by County is untrue in any material respect when made;
- c. County: (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property; (2) admits in writing its inability, or is generally unable, to pay its debts as they become due; (3) makes a general assignment for the benefit of its creditors; (4) is adjudicated a bankrupt or insolvent; (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect); (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (7) 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 Bankruptcy Code; or (8) takes any action for the

- purpose of effecting any of the foregoing;
- d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking:
- (1) The liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County;
  - (2) The appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets; or
  - (3) Similar relief in respect to County 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 consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); or
  - (4) The delivery of any Service fails to comply with the terms and conditions of this Agreement or fails to meet the standards for Service as set forth herein, including but not limited to, any terms, condition, standards, and requirements set forth in the Financial Assistance Award and applicable Service Description.

7. **OHA Default.** OHA shall be in default under this Agreement upon the occurrence of any of the following events:

- a. OHA fails to perform, observe, or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by OHA herein or in any documents or reports made in connection herewith or relied upon by County to measure performance by OHA is untrue in any material respect when made.

8. **Termination.**

- a. **County Termination.** County may terminate this Agreement in its entirety or may terminate its obligation to include a particular Program Area in its CMHP:
  - (1) For its convenience, upon at least three calendar months advance written notice to OHA, with the termination effective as of the first day of the month following the notice period;
  - (2) Upon 45 calendar days advance written notice to OHA, if County does not obtain funding, appropriations, and other expenditure authorizations from County's governing body, federal, state, or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
  - (3) Upon 30 calendar days advance written notice to OHA, if OHA is in default under this Agreement and such default remains uncured at the end of said 30 calendar day period or such longer period, if any, as County may specify in the notice; or
  - (4) Immediately upon written notice to OHA, if Oregon statutes or federal laws, regulations or guidelines are modified, changed, or interpreted by the Oregon Legislative Assembly, the federal government, or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.
- b. **OHA Termination.** OHA may terminate this Agreement in its entirety or may terminate its obligation to provide Financial Assistance:
  - (1) For its convenience, upon at least three calendar months advance written notice to

- County, with the termination effective as of the first day of the month following the notice period;
- (2) Upon 45 calendar days advance written notice to County, if OHA does not obtain funding, appropriations, and other expenditure authorizations from federal, state, or other sources sufficient to meet the payment obligations of OHA under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, OHA may terminate this Agreement in its entirety or may terminate its obligation to provide Financial Assistance under this Agreement for one or more particular Services, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces OHA's legislative authorization for expenditure of funds to such a degree that OHA will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 calendar days from the date the action is taken;
  - (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed, or interpreted by the Oregon Legislative Assembly, the federal government, or a court in such a way that OHA no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide the Financial Assistance from the funding source it had planned to use;
  - (4) Upon 30 calendar days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 calendar day period or such longer period, if any, as OHA may specify in the notice;
  - (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a Provider to deliver a Service described in the Financial Assistance Award is for any reason denied, revoked, suspended, not renewed, or changed in such a way that County or a Provider no longer meets requirements to deliver the Service. This termination right may only be exercised with respect to the particular Service or Services impacted by loss of necessary licensure or certification; or
  - (6) Immediately upon written notice to County, if OHA reasonably determines that County or any of its Providers have endangered or are endangering the health or safety of a Client or others in performing the Services covered in this Agreement.

## **9. Effect of Termination.**

### **a. Entire Agreement.**

- (1) Upon termination of this Agreement in its entirety, OHA shall have no further obligation to pay or disburse Financial Assistance to County under this Agreement, whether or not OHA has paid or disbursed to County all Financial Assistance described in the Financial Assistance Award except: (a) with respect to funds described in the Financial Assistance Award, to the extent OHA's disbursement of Financial Assistance for a particular Service, the Financial Assistance for which is calculated on a rate per unit of Service or Service capacity basis, is less than the applicable rate multiplied by the number of applicable units of Service or Service capacity of that type performed or made available from the effective date of this

Agreement through the termination date; and (b) with respect to funds described in the Financial Assistance Award, to the extent OHA’s disbursement of Financial Assistance for a particular Service, the Financial Assistance for which is calculated on a cost reimbursement basis, is less than the cumulative actual Allowable Costs reasonably and necessarily incurred with respect to delivery of that Service, from the effective date of this Agreement through the termination date.

(2) Upon termination of this Agreement in its entirety, County shall have no further obligation under this Agreement to operate a CMHP.

**b. Individual Program Area or Service.**

(1) Upon termination of OHA’s obligation to provide Financial Assistance for a particular Service, OHA shall have no further obligation to pay or disburse any Financial Assistance to County for that Service, whether or not OHA has paid or disbursed to County all Financial Assistance described in the Financial Assistance Award for that Service except: (a) with respect to funds described in the Financial Assistance Award and if the Financial Assistance for that Service is calculated on a rate per unit of Service or Service capacity basis, to the extent that OHA’s prior disbursement of Financial Assistance for that Service is less than the applicable rate multiplied by the number of applicable units of Service or Service capacity of that type performed or made available during the period from the first day of the period for which the funds were awarded through the earlier of the termination of OHA’s obligation to provide Financial Assistance for that Service or the last day of the period for which the funds were awarded; and (b) with respect to funds described in the Financial Assistance Award and if the Financial Assistance for that Service is calculated on a cost reimbursement basis, to the extent that OHA’s prior disbursement of Financial Assistance for that Service is less than the cumulative actual Allowable Costs reasonably and necessarily incurred by County with respect to delivery of that Service, during the period from the effective date of this Agreement through the termination of OHA’s obligation to provide Financial Assistance for that Service.

(2) Upon termination of OHA’s obligation to provide Financial Assistance for a particular Service, County shall have no further obligation under this Agreement to include that Service in its CMHP.

(3) Upon termination of County’s obligation to include a Program Area in its CMHP, OHA shall have (a) no further obligation to pay or disburse Financial Assistance to County for System Management and Coordination –whether or not OHA has paid or disbursed to County all Financial Assistance described in the Financial Assistance Award for local administration of Services in that Program Area; and (b) no further obligation to pay or disburse any Financial Assistance to County for Services in that Program Area, whether or not OHA has paid or disbursed to County all Financial Assistance described in the Financial Assistance Award for those Services except: (1) with respect to funds described in the Financial Assistance Award, to the extent OHA’s disbursement of Financial Assistance for a particular Service falling within that Program Area, the Financial Assistance for which is calculated on a rate per unit of Service or Service capacity basis, is less than the applicable rate multiplied by the number of applicable units of Service or Service capacity of that type performed or made available during the period from the Effective Date of this Agreement through the termination of County’s obligation to include the Program Area, in which that Service falls, in County’s

CMHP; and (2) with respect to funds described in the Financial Assistance Award, to the extent OHA’s disbursement of Financial Assistance for a particular Service falling within that Program Area, the Financial Assistance for which is calculated on a cost reimbursement basis, is less than the cumulative actual Allowable Costs reasonably and necessarily incurred by County with respect to delivery of that Service, during the period from the Effective Date of this Agreement through the termination of County’s obligation to include the Program Area, in which that Service falls, in County’s CMHP.

(4) Upon termination of County’s obligation to include a Program Area in its CMHP, County shall have no further obligation under this Agreement to include that Program Area in its CMHP.

c. **Disbursement Limitations.** Notwithstanding subsections (a) and (b) above:

(1) Under no circumstances will OHA be obligated to provide Financial Assistance to County in excess of the amount awarded under this Agreement for that Service as set forth in the Financial Assistance Award; and

(2) Under no circumstances will OHA be obligated to provide Financial Assistance to County from funds described in the Financial Assistance Award in an amount greater than the amount due County under the Financial Assistance Award for Services, as determined in accordance with the Financial Assistance calculation methodologies in the applicable Services Descriptions.

d. **Survival.** Exercise of a termination right set forth in the Termination section of this exhibit or expiration of this Agreement in accordance with its terms, shall not affect County’s right to receive Financial Assistance to which it is entitled hereunder, as described in subsections a. and b. above and as determined through the Agreement Settlement process, or County’s right to invoke the dispute resolution processes under Sections 14 and 15 of Exhibit E. Notwithstanding subsections a. and b. above, exercise of the termination rights in Section 8 of this exhibit or expiration of this Agreement in accordance with its terms, shall not affect County’s obligations under this Agreement or OHA’s right to enforce this Agreement against County in accordance with its terms, with respect to Financial Assistance actually disbursed by OHA under this Agreement, or with respect to Services actually delivered. Specifically, but without limiting the generality of the preceding sentence, exercise of a termination right set forth in Section 8 of this exhibit or expiration of this Agreement in accordance with its terms shall not affect County’s representations and warranties, reporting obligations, record-keeping and access obligations, confidentiality obligations, obligation to comply with applicable federal requirements, the restrictions and limitations on County’s use of Financial Assistance actually disbursed by OHA hereunder, County’s obligation to cooperate with OHA in the Agreement Settlement process, or OHA’s right to recover from County, in accordance with the terms of this Agreement, any Financial Assistance disbursed by OHA under this Agreement that is identified as an Underexpenditure, Overexpenditure or Misexpenditure. If a termination right set forth in Section 8 of this exhibit is exercised, both parties shall make reasonable, good faith efforts to minimize unnecessary disruption or other problems associated with the termination.

10. **Insurance.** County shall require Providers to maintain insurance as set forth in Exhibit H, “Provider Insurance Requirements,” which is attached hereto.

11. **Information Privacy/Security/Access.** If the Services performed under this Agreement requires County or its Provider(s) to access or otherwise use any OHA Information Asset or Network and

Information System to which security and privacy requirements apply, and OHA grants County, its Provider(s), or both access to such OHA Information Assets or Network and Information Systems, County shall comply and require its Provider(s) to which such access has been granted to comply with the terms and conditions applicable to such access or use, including [OAR 943-014-0300 through OAR 943-014-0320](#). For purposes of this section, “Information Asset” means any information, also known as data, provided through OHA, regardless of the source or media, which requires measures for security and privacy of the information ([OAR 943-014-0305\(6\)](#)) and “Network and Information System” means the State of Oregon's computer infrastructure, which provides personal communications, client records and other sensitive information assets, regional, wide area and local area networks, and the internetworking of various types of networks on behalf of OHA ([OAR 943-014-0305\(7\)](#)).

- 12. Assignment of Agreement, Successors in Interest.**

  - a.** County shall not assign or transfer its interest in this Agreement without prior written approval of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in this Agreement.
  - b.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement, and their respective successors and permitted assigns.
- 13. No Third Party Beneficiaries.** OHA and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County’s performance under this Agreement is solely for the benefit of OHA to assist and enable OHA to accomplish its statutory mission. 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 any greater than the rights and benefits enjoyed by the general public unless such third persons are Individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 14. Amendment.** No amendment, modification or change of terms of this Agreement will bind either party unless in writing and signed by both parties and when required by the Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.
- 15. Severability.** The parties agree that 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 the Agreement did not contain the particular term or provision held to be invalid.
- 16. Notice.** 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, or mailing the same, postage prepaid to County or OHA at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five calendar days after mailing. Any communication or notice given by personal delivery shall be effective when actually delivered to the addressee.

**OHA:** Marisha L. Elkins  
CFAA Administrator  
500 Summer Street NE, E-86  
Salem, OR 97301  
Telephone: 971-900-7366  
E-mail address: [CFAA.Administrator@oha.oregon.gov](mailto:CFAA.Administrator@oha.oregon.gov)

**COUNTY:** Contact Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

- 17. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
- 18. **Counterparts.** This Agreement and any subsequent amendments 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 and any amendments so executed shall constitute an original.
- 19. **Integration and Waiver.** This Agreement, including all exhibits, constitutes the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
- 20. **Construction.** This Agreement is the product of extensive negotiations between OHA and County. The provisions of this Agreement are to be interpreted and their legal effects determined as a whole. An arbitrator or court interpreting this Agreement shall give a reasonable, lawful, and effective meaning to the Agreement to the extent possible, consistent with the public interest.
- 21. **Contribution.** 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.

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

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

- 22. Indemnification by Providers.** County shall include in all Provider Contracts with Provider(s) that are not units of local government as defined in [ORS 190.003](#), if any, a requirement to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (the “**Indemnitee**”) 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 Provider or any of the officers, agents, employees or subcontractors of Provider (“**Claims**”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Provider from and against any and all Claims. Provided, however, neither Provider nor any attorney engaged by Provider may defend any Claim in the name of the Indemnitee, nor purport to act as legal representative for the Indemnitee, without first receiving from the Oregon Attorney General in a form and manner determined appropriate by the Oregon Attorney General, authority to act as legal counsel for the Indemnitee, nor may Provider settle any Claim on behalf of the Indemnitee without the approval of the Oregon Attorney General.

**2026-2027 INTERGOVERNMENTAL AGREEMENT  
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH PROGRAMS**

**EXHIBIT G  
REQUIRED FEDERAL TERMS AND CONDITIONS**

In addition to the requirements of Section 2 of Exhibit F, County shall comply, and as indicated, require all Providers to comply with the following federal requirements when federal funding is being used. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws.

- 1. Miscellaneous Federal Provisions.** County shall comply and require all Providers to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Services. Without limiting the generality of the foregoing, County expressly agrees to comply and require all Providers to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement:
  - a. Title VI and VII of the Civil Rights Act of 1964, as amended;
  - b. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
  - c. The Americans with Disabilities Act of 1990, as amended;
  - d. Executive Order 11246, as amended;
  - e. The Health Insurance Portability and Accountability Act of 1996, as amended;
  - f. The Age Discrimination in Employment Act of 1967, as amended;
  - g. The Age Discrimination Act of 1975, as amended;
  - h. The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
  - i. All regulations and administrative rules established pursuant to the foregoing laws;
  - j. All other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and
  - k. All federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Services in violation of 42 U.S.C. 14402.
  
- 2. Equal Employment Opportunity.** [RESERVED]
  
- 3. Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all Providers to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. County shall include and require all Providers to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.
  
- 4. Energy Efficiency.** County shall comply and require all Providers to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon

energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).

- 5. Truth in Lobbying.** By signing this Agreement, County certifies, to the best of County's knowledge and belief that:
- a.** No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
  - b.** If 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 contract, grant, loan or cooperative agreement, County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - c.** County shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
  - d.** This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - e.** No part of any federal funds paid to County under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
  - f.** No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
  - g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending, or future Federal, State, or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

- h.** No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
  
- 6. Resource Conservation and Recovery.** County shall comply and require all Providers to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
  
- 7. Audits.** Sub recipients, as defined in 45 CFR 75.2, which includes, but is not limited to County, shall comply, and County shall require all Providers to comply, with applicable Code of Federal Regulations (CFR) governing expenditure of federal funds including, but not limited to, if a sub-recipient expends \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, a sub-recipient shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If a sub-recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR part 75, subpart F. Copies of all audits must be submitted to OHA within 30 calendar days of completion. If a sub recipient expends less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials.
  
- 8. Debarment and Suspension.** County shall not permit any person or entity to be a Provider if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or Non-procurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Providers with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
  
- 9. Drug-Free Workplace.** County shall comply and require all Providers to comply with the following provisions to maintain a drug-free workplace: (i) County certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in County's workplace or while providing Services to Clients. County's notice shall specify the actions that will be taken by County against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, County's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon

employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide Services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction; (v) Notify OHA within ten (10) calendar days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any Provider to comply with subparagraphs (i) through (vii) above; (ix) Neither County, or any of County's employees, officers, agents or Providers may provide any Service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe County or County's employee, officer, agent, or Provider has used a controlled substance, prescription or non-prescription medication that impairs County or County's employee, officer, agent, or Provider's performance of essential job function or creates a direct threat to Clients or others. Examples of abnormal behavior include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of this Agreement.

**10. Pro-Children Act.** County shall comply and require all Providers to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).

**11. Medicaid Services.** To the extent County provides any Service in which costs are paid in whole or in part by Medicaid, County shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:

- a. Keep such records as are necessary to fully disclose the extent of the Services provided to Individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a (a) (27); 42 CFR Part 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396 (a) (57) and (w), 42 CFR Part 431.107 (b) (4), and 42 CFR Part 489 subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
- e. Entities receiving \$5 million or more annually (under this Agreement and any other

Medicaid agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, Providers and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a (1)(68).

12. **ADA.** County shall comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 U.S.C. 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Services.
13. **Agency-Based Voter Registration.** If applicable, County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an Individual may apply for or receive an application for public assistance.
14. **Disclosure.**
  - a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an Individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (Individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.
  - b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste, and abuse under federal law. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider who has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
  - c. OHA reserves the right to take such action required by law, or where OHA has discretion, it deems appropriate, based on the information received (or the failure to receive) from the provider, fiscal agent, or managed care entity.

**15. Special Federal Requirements Applicable to Addiction Treatment, Recovery, & Prevention Services for Counties receiving Substance Use Prevention, Treatment, and Recovery Services (SUPTRS) Block Grant funds.**

**a. Order for Admissions:**

- (1) Pregnant women who inject drugs;
- (2) Pregnant substance abusers;
- (3) Other Individuals who inject drugs; and
- (4) All others.

**b. Pregnant Women.** If County provides any Addiction Treatment, Recovery, & Prevention Services, County must:

- (1) Within the priority categories, if any, set forth in Exhibit B - Service Descriptions, give preference in admission to pregnant women in need of treatment, who seek or are referred for and would benefit from such Services, within 48 hours;
- (2) If County has insufficient capacity to provide treatment Services to a pregnant woman, County must refer the women to another Provider with capacity or if no available treatment capacity can be located, the outpatient Provider that the Individual is enrolled with will ensure that Interim Services are being offered. Counseling on the effects of alcohol and drug use on the fetus must be given within 48 hours, including a referral for prenatal care; and
- (3) Perform outreach to inform pregnant women of the availability of treatment Services targeted to them and the fact that pregnant women receive preference in admission to these programs.

**c. Intravenous Drug Abusers.** If County provides any Addiction Treatment, Recovery, & Prevention Services, County must:

- (1) Within the priority categories, if any, set forth in Exhibit B - Service Descriptions and subject to the preference for pregnant women described above, give preference in admission to intravenous drug abusers;
- (2) Programs that receive funding under the grant and that treat Individuals for intravenous substance abuse, upon reaching 90 percent of its capacity to admit Individuals to the program, must provide notification of that fact to the State within 7 calendar days;
- (3) If County receives a request for admission to treatment from an intravenous drug abuser, County must, unless it succeeds in referring the Individual to another Provider with treatment capacity, admit the Individual to treatment not later than:
  - (a) 14 calendar days after the request for admission to County is made;
  - (b) 120 calendar days after the date of such request if no Provider has the capacity to admit the Individual on the date of such request and, if Interim Services are made available not less than 48 hours after such request; or
  - (c) If County has insufficient capacity to provide treatment Services to an intravenous drug abuser, refer the intravenous drug abuser to another Provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that Interim Services are being offered. If the Individual is not enrolled in outpatient treatment and is on a waitlist for residential treatment, the provider from County of the Individual's residence that is referring the Individual to residential Services will make available counseling and education about human immunodeficiency virus (HIV) and tuberculosis(TB), risk of sharing needles, risks of transmission to sexual

partners and infant, steps to ensure HIV and TB transmission does not occur, referral for HIV or TB treatment Services, if necessary, within 48 hours.

- (d) **“Interim Services”** as described in 45 CFR §96.121, means:
  - i. Services provided, until an Individual is admitted to substance abuse treatment program, for reducing the adverse health effects of such abuse, promoting the health of the Individual, and reducing the risk of transmission of disease. At a minimum Interim Services include counseling and education about HIV and tuberculosis, the risks of needle sharing, the risks of transmission of disease to sexual partners and infants, and steps that can be taken to ensure that HIV and tuberculosis transmission does not occur;
  - ii. Referral for HIV or TB treatment Services, where necessary; and
  - iii. Referral for prenatal care, if appropriate, until the Individual is admitted to a Provider’s Services.
  - iv. If County treats recent intravenous drug users (those who have injected drugs within the past year) in more than one-third of its capacity, County shall carry out outreach activities to encourage Individual intravenous drug users in need of such treatment to undergo treatment and shall document such activities.

d. **Infectious Diseases.** If County provides any Addiction Treatment, Recovery, & Prevention Services, County shall:

- (1) Complete a risk assessment for infectious disease including Human Immunodeficiency Virus (HIV) and tuberculosis, as well as sexually transmitted diseases, based on protocols established by OHA, for every Individual seeking Services from County; and
- (2) Routinely make tuberculosis Services available to each Individual receiving Services for alcohol/drug abuse either directly or through other arrangements with public or non-profit entities and, if County denies an Individual admission on the basis of lack of capacity, refer the Individual to another provider of tuberculosis Services.
- (3) For purposes of (2) above, “tuberculosis Services” means:
  - (a) Counseling the Individual with respect to tuberculosis;
  - (b) Testing to determine whether the Individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the Individual; and
  - (c) Appropriate treatment Services.

e. **OHA Referrals.** If County provides any Addiction Treatment, Recovery, & Prevention Services, within the priority categories, if any, set forth in Exhibit B - Service Descriptions and subject to the preference for pregnant women and intravenous drug users described above, give preference in Addiction Treatment, Recovery, & Prevention Service delivery to persons referred by OHA.

f. **Barriers to Treatment.** Where there is a barrier to delivery of any Addiction Treatment, Recovery, & Prevention Service due to culture, gender, language, illiteracy, or disability, County shall develop support Services available to address or overcome the barrier, including:

- (1) Providing, if needed, hearing impaired or foreign language interpreters.
- (2) Providing translation of written materials to appropriate language or method of

communication.

- (3) Providing devices that assist in minimizing the impact of the barrier.
- (4) Not charging Clients for the costs of measures, such as interpreters, that are required to provide nondiscriminatory treatment.

- g. **Misrepresentation.** County shall not knowingly or willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or Services for which payments may be made by OHA.
- h. **Oregon Residency.** Addiction Treatment, Recovery, & Prevention Services funded through this Agreement may only be provided to residents of Oregon. Residents of Oregon are Individuals who live in Oregon. There is no minimum amount of time an Individual must live in Oregon to qualify as a resident so long as the Individual intends to remain in Oregon. A child's residence is not dependent on the residence of his or her parents. A child living in Oregon may meet the residency requirement if the caretaker relative with whom the child is living is an Oregon resident.
- i. **Tobacco Use.** If County has Addiction Treatment, Recovery, & Prevention Services treatment capacity that has been designated for children, adolescents, pregnant women, and women with dependent children, County must implement a policy to eliminate smoking and other use of tobacco at the facilities where the Services are delivered and on the grounds of such facilities.
- j. **Client Authorization.** County must comply with 42 CFR Part 2 when delivering an Addiction Treatment, Recovery, & Prevention Service that includes disclosure of Client information for purposes of eligibility determination. County must obtain Client authorization for disclosure of billing information, to the extent and in the manner required by 42 CFR Part 2, before a Disbursement Claim is submitted with respect to delivery of an Addiction Treatment, Recovery, & Prevention Service to that Individual.

- 16. **Community Mental Health Block Grant (MHBG)** funds, if any, awarded under this Agreement are subject to the federal use restrictions and requirements set forth in Catalog of Federal Domestic Assistance Number 93.958 and to the federal statutory and regulatory restrictions imposed by or pursuant to the Community Mental Health Block Grant portion of the Public Health Services Act, 42 U.S.C. 300x-1 *et. seq.*, and County shall comply with those restrictions.
- 17. **Substance Use Prevention, Treatment, and Recovery Support Services (SUPTRS BG).** To the extent County provides any Service in which costs are paid in whole or in part by the Substance Use, Prevention, Treatment, and Recovery Services Block Grant, County shall comply with federal rules and statutes pertaining to the Substance Use, Prevention, Treatment, and Recovery Services Block Grant, including the reporting provisions of the Public Health Services Act (42 U.S.C. 300x through 300x-66) and 45 CFR 96.130 regarding the sale of tobacco products. Regardless of funding source, to the extent County provides any substance abuse prevention or treatment Services, County shall comply with the confidentiality requirements of 42 CFR Part 2. County may not use the funds received under this Agreement for inherently religious activities, as described in 45 CFR Part 87.
- 18. **Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200.** All required data elements in accordance with 45 CFR 75.352 are available at: <https://www.oregon.gov/oha/hsd/amh/Pages/federal-reporting.aspx>.
- 19. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by

the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:

- a. Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
- b. Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters [279A](#), [279B](#), and [279C](#) or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
- c. Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this exhibit, are, to the extent applicable, obligations of recipient, and recipient shall also include these contract provisions in its contracts with non-Federal entities.

**2026-2027 INTERGOVERNMENTAL AGREEMENT  
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH PROGRAMS**

**EXHIBIT H  
PROVIDER INSURANCE REQUIREMENTS**

County shall require its first tier Providers(s) that are not units of local government as defined in [ORS 190.003](#), if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the Providers perform under contracts between County and the Providers (the "Provider Contracts"); and ii) maintain the insurance in full force throughout the duration of the Provider Contracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OHA. County shall not authorize Providers to begin work under the Provider Contracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Provider Contracts permitting it to enforce Provider compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Provider Contracts as permitted by the Provider Contracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Provider to work under a Provider Contract when County is aware that the Provider is not in compliance with the insurance requirements. As used in this section, a "first tier" Provider is a Provider with whom County directly enters into a Provider Contract.

**TYPES AND AMOUNTS.**

1. **Workers Compensation:** Must be in compliance with [ORS 656.017](#), which requires all employers that employ subject workers, as defined in [ORS 656.027](#), to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under [ORS 656.126\(2\)](#).
  
2. **Professional Liability:**  **Required by OHA**  **Not required by OHA.**  
 Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the Services to be provided under the Provider Contract, with limits not less than the following, as determined by OHA, or such lesser amount as OHA approves in writing:  
 **Per occurrence for all claimants for claims arising out of a single accident or occurrence: \$1,000,000 per occurrence with \$2,000,000 aggregate.**
  
3. **Commercial General Liability:**  **Required by OHA**  **Not required by OHA.**  
 Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to OHA. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OHA, or such lesser amount as OHA approves in writing:  
**Bodily Injury, Death and Property Damage:**  
 **Per occurrence for all claimants for claims arising out of a single accident or occurrence:**

**\$1,000,000 per occurrence with \$2,000,000 aggregate.**

4. **Automobile Liability:**  **Required by OHA**  **Not required by OHA.**  
 Automobile Liability Insurance covering all owned, non-owned and 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”).  
 Automobile Liability Insurance must be in not less than the following amounts as determined by OHA, or such lesser amount as OHA approves in writing:  
**Bodily Injury, Death and Property Damage:**  
 **Per occurrence for all claimants for claims arising out of a single accident or occurrence:**  
**\$1,000,000 per occurrence with \$2,000,000 aggregate.**
  
5. **Additional Insured.** The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees, and agents as Additional Insureds but only with respect to the Provider's activities to be performed under the Provider Contract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
  
6. **Notice of Cancellation or Change.** The Provider or its insurer must provide written notice to County at least 30 calendar days before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
  
7. **“Tail” Coverage.** If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance, the Provider shall maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of the Provider Contract, for a minimum of 24 months following the later of : (i) the Provider’s completion and County ’s acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the Provider Contract. Notwithstanding the foregoing 24-month requirement, if the Provider elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the 24-month period described above, then the Provider may request and OHA may grant approval of the maximum “tail” coverage period reasonably available in the marketplace. If OHA approval is granted, the Provider shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.
  
8. **Certificate(s) of Insurance.** County shall obtain from the Provider a certificate(s) of insurance for all required insurance before the Provider performs under the Provider Contract. The certificate(s) or an attached endorsement must specify: i) all entities and Individuals who are endorsed on the policy as Additional Insured; and ii) for insurance on a “claims made” basis, the extended reporting period applicable to “tail” or continuous “claims made” coverage.

**2026-2027 INTERGOVERNMENTAL AGREEMENT  
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH PROGRAMS**

**EXHIBIT I**

**CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER LISTING**

- 1. 93.958 – Block Grants for Community Mental Health Services (MHBG)**
- 2. 93.959 – Block Grants for Prevention and Treatment of Substance Abuse (SUPTRS BG)**



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: February 11, 2026

Department: Public Works

Title: Consider accepting appeal of the Hearing Officer decision denying Administrative Review 25-015/Remington BESS, LLC.

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

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

Requested Action: Staff recommended motion: Accept the appeal of the Hearing Officer decision denying Administrative Review 25-015/Remington BESS, LLC. Other motion options for consideration are: 1. Deny the appeal and uphold the Hearing Officer decision.. 2. Remand the matter back to the Hearing Officer.

Issue, Description & Background: Administrative Review 25-015 is an application for establishment of a BESS (Battery Energy Storage System) requiring determination that a BESS is a "utility facility necessary for public service" on a 133.77-acre parcel in an EFU (Exclusive Farm Use) zone located in the 5200 block of Pearson Rd SE, Turner. The Planning Director issued a decision denying the application on August 1st, 2025. The applicant appealed the staff denial. The Marion County Hearings Officer held a duly noticed hearing on the application on November 6, 2025. The Hearings Officer issued a decision on January 21, 2026 denying Administrative Review 25-015. The applicants appealed the Hearings Officer decision. Staff recommends the Board accept the appeal in order that the Board would make the final decision for the County.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Appeal, Hearing Officer Decision

Presenter: John Speckman

Department Head Signature: [Handwritten Signature]



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Marion County Clerk, Bill Burgess

4 FEB '26 PM 1:48

February 4, 2026

**VIA MESSENGER**

Marion County Board of Commissioners  
Attn: County Clerk  
555 Court Street NE, Suite 2130  
Salem, OR 97301

Steven L. Pfeiffer  
SPfeiffer@perkinscoie.com  
D. +1.503.727.2261

Ryan Thomas  
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D. +1.425.635.1450

**Re: Remington BESS, LLC Notice of Appeal  
Case No. AR 25-015**

Dear Board of County Commissioners:

On behalf of our client, Remington BESS, LLC, please find enclosed for filing in the above referenced case two copies of the following materials:

- Check in the amount of \$500.00 for filing fee;
- Remington's Notice of Appeal Form; and
- Remington's Notice of Appeal, including Exhibit 1 through Exhibit 3.

Remington BESS, LLC files this appeal pursuant to MCC 17.111.070, MCC 17.115.110(G), and MCC 17.122.120. Two hard copies of the appeal documents are being delivered to the Clerk's Office and to the Planning Department by messenger.

Thank you for your attention to this matter.

Sincerely,

Ryan C. Thomas

Steven L. Pfeiffer

Enclosures

**RECEIVED**  
FEB 04 2026  
MARION COUNTY  
BOARD OF COMMISSIONERS





### 3. Compliance with Appeal Requirements

Appellant is entitled to appeal the Order under MCC 17.122.120 as an aggrieved and affected party. The County's procedures to appeal and request a hearing of an administrative review decision by the Hearings Officer are set forth in MCC 17.115.110(G) which states: "MCC 17.122.070 through 17.122.130 shall apply to any appeals from the decision of the hearings officer." MCC 17.122.120 further states that:

An appeal may be taken to the board by any person, firm, or corporation... aggrieved or affected by the decision of the ... hearings officer on an application []. An appeal must be filed with the county clerk within 15 days from the date of mailing of notice of the decision of the planning commission or hearings officer... The appeal shall state wherein the planning commission or hearings officer failed to conform to the provisions of this title.

This appeal is timely filed on February 4, 2026. This Notice of Appeal identifies where and how the Order was factually or legally incorrect, and how the Order failed to conform to the applicable provisions of the Marion County Code and Oregon law. The reasons that the Hearing Officer erred in rendering the Order include, but are not limited to, the assignments of error identified below.

1. The Order was legally incorrect and inconsistent with applicable law, by misinterpreting and misapplying ORS 215.283(1)(c) and ORS 215.275, together with relevant case law including but not limited to *Cox v. Polk County*, 174 Or App 332, 342-44, 25 P3d 970 (2001), *rev den*, 332 Or 558 (2001).
2. The Order misapplied ORS 215.283(1)(c) and applicable law by concluding that the proposed BESS facility is not and cannot be a utility facility necessary for public service, and such conclusions are not supported by substantial evidence in the record.
3. The Order misapplied the law when it created new elements of the definition "utility facility" by requiring the owner of a "utility facility" to be a regulated utility providing electrical service directly to customers, while the standard articulated in case law is that the facility provide a service, which BESS provides. *Cox v. Polk County*, 174 Or App 332, 25 P3d 970 (2001).
4. The Order misapplied applicable law when it determined that ORS 215.283(1)(c) requires a showing that the utility facility is required to provide the service directly to consumers, and that but for the system, service to consumer would be interrupted, thereby creating a new legal standard not found in and inconsistent with the express terms of ORS 215.283(1) and *Brentmar v. Jackson County*, 900 P2d 1030, 321 Or App 481 (1995) including appellate rulings.
5. The Order misapplied the law by creating a new definition of "utility facility" that requires a showing that "but for" the proposed facility electric service could not be provided, which is inconsistent with the controlling provisions of ORS 215.275, *Cox v. Polk County*, 174 Or App 332, 25 P3d 970 (2001), and *Brentmar v Jackson County*, 900 P2<sup>nd</sup> 1030, 321 Or App 481 (1995).

6. The Order was legally incorrect and inconsistent with applicable law by misinterpreting and misapplying the alternative siting factors in ORS 215.275(2) and OAR 660-033-0130(16) (which are also in MCC 17.136.040(I)), to elevate each factor as mandatory review criteria. Appellant applied under factors (a), (b), and (c) under ORS 215.275, yet the Order analyzed the Proposed Development under all six factors, including (d), (e), and (f). The Order conflates the public health and safety factor, analyzing the factor as if it required an affirmative showing from Appellant rather than an optional factor (which Appellant is not applying under); the Order also unlawfully analyzes the health and safety factor within the locational dependence factor.
7. The Hearing Officer erred and misapplied ORS 215.275 and applicable case law interpreting the same by failing to consider the applicant's analysis and actual basis for its business needs that advance the objective of providing the utility service, inconsistent with *Sprint PCS v. Washington County*, 186 Or App 470, 481, 63 P3d 1261 (2003). Contrary to *Sprint*, the Order does not consider the applicant's "decision about its service needs," which should be respected under *Sprint*, and that "a site that does not meet those needs is not a reasonable alternative" when those decisions advance the goal of providing service. *Id.*
8. The Order was legally incorrect and inconsistent with applicable law, including ORS Ch. 215, Statewide Planning Goal 3, and interpreting case law, including but not limited to *Brentmar v. Jackson Cnty.*, 900 P2d 1030, 321 Or 481 (1995) by applying and relying upon and applying local review criteria (including the definition of utility facility in MCC 17.110.584) to an EFU use allowed under ORS 215.283(1)(c).
9. The Order was factually incorrect and not supported by substantial evidence, including by stating that "Applicant did not provide any evidence to support the assertion that they examined other locations in the county for compatibility with the project," when in fact Appellant provided a detailed, 15-page alternatives analysis.
10. The Order incorrectly concludes that the Applicant failed to demonstrate that the BESS satisfies one or more of the factors in ORS 215.275(2) and MCC 17.136.040(I) notwithstanding substantial evidence to the contrary in the record.
11. The Order unlawfully relies upon MCC 17.110.584 and related County implementing land use regulations rather than controlling state statute and implementing Land Conservation and Development Commission ("LCDC") regulation to support the conclusion that the proposed BESS is not a utility facility subject to ORS 215.283(1)(c).
12. The Order improperly applies MCC 17.136.060(A)(1) and ORS 215.296 (the farm impacts test) by concluding that a use allowed under ORS 215.183(1)(c) is subject to either review criteria notwithstanding the express provisions of ORS 215.296(1) and *Brentmar*. While the farm impacts test does not apply, Appellant provided evidence from the owner of the land to demonstrate that the Proposed Development would not cause a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.

The Hearing Officer rendered its decision on January 21, 2026. Ex. 2. The Hearing Officer's Order states that an appeal must be filed by February 5, 2026. *Id.* at 21. This Notice of Appeal, dated February 4, 2026, is therefore timely and complies with MCC 17.115.110 and MCC 17.122.120.

For purposes of providing additional clarity and notice to the Board of Commissioners regarding the legal and factual errors within the Planning Director's initial Administration Decision and incorporated by the Hearings Officer in affirmance of the earlier decision, the Appellant's legal memorandum dated October 31, 2025, and submitted to the Hearing Officer, is incorporated herein as additional reasons for this appeal and provided as Exhibit 3.

**4. Prayer for Relief**

For the reasons stated herein, Appellant provides this Notice of Appeal to the Board of County Commissioners and requests that the Board reverse the Order, find that the Proposed Development is a utility facility necessary for public service under ORS 215.283(1) and ORS 215.275, and approve Appellant's application for Administrative Review, No. 25-015.



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Portland, OR 97209-4128  
Phone: (503)-727-2261

Dated: 2/4/2026

*Appellant's Representatives*

**EXHIBITS**

- Exhibit 1: Planning Division Decision on Administrative Review No. 2025-015
- Exhibit 2: Hearing Officer Order on Case No. 2025-015, Administrative Review
- Exhibit 3: Remington BESS, LLC's Pre-Hearing Brief, dated October 31, 2025

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  
ADMINISTRATIVE REVIEW CASE NO. 25-015**

**APPLICATION:** Application of Remington BESS, LLC, on behalf of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust for an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 15-acre portion of a 133.77-acre parcel located in the 5200 block of Pearson Rd SE, Turner (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200).

**DECISION:** The Planning Director for Marion County has **DENIED** the above-described Administrative Review.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **August 18<sup>th</sup>, 2025**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 19<sup>th</sup>, 2025**, unless appealed.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding Exclusive Farm Use (EFU) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the northern side of Pearson Rd SE within a half mile of the intersection with Parrish Gap Rd SE. The proposed area for the Battery Energy Storage System (BESS) is the approximately 15 acres north of the PacifiCorp Parrish Gap Substation which is located on Pearson Rd SE, east-adjacent to the property at 5387 Pearson. The proposed area is in agricultural use for either grass seed or hay production with the rest of the 133.77-acre parcel. There are two mapped perennial streams and one mapped intermittent stream across the subject parcel. Based on the site plan, the BESS would be sited upon the southernmost perennial stream and the intermittent stream, as well as being nearly adjacent to the northern perennial stream. All three of these flow into canals managed by the Santiam Water Control District for the purpose of providing water rights to farmers in the district.

The subject property was itself the subject of a property line adjustment in 2008 (PLA08-044) which clarifies that the 46.35-acre tax lot upon which the BESS is proposed is itself part of a larger 133.77-acre parcel consisting of three tax lots (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200). The property line adjustment was between two parcels, and yielded a 5-acre parcel which contains the homesite at 5387 Pearson Rd SE (not involved in this application) and the 133.77-acre parcel upon which the 15-acre BESS is proposed by this application. While the subject parcel consists of three tax lots, it appears by all indications that PLA08-044 was completed and therefore the subject parcel is legal for land use purposes.

3. Surrounding uses are agricultural and residential. Lands north and east of the subject parcel are in the EFU zone and devoted to large scale agriculture, particularly of grass seed and hay. Lands directly to the south are in the SA (Special Agriculture) zone and in use for agriculture and rural homesites. On the other side of those SA zoned lands is a relatively dense neighborhood of AR (Acreage Residential) zoned parcels. To the west of the subject parcel is another parcel in agricultural use in conjunction with the subject parcel, and a parcel in rural residential use. Those parcels are bordered by Parrish Gap Rd SE, and west of Parrish Gap is the southeastern corner of a large (approximately 375-acre) AR zoned area devoted to rural residences and hobby farms. The lands to the north and east, devoted to agricultural purposes, are mostly devoid of trees, and east of Duckflat Rd SE is a significant area of wetlands (both natural and manmade). The lands to the west and south of the subject parcel, and specifically south of Pearson Rd and West of Parrish Gap, are relatively densely developed and densely treed lands.

4. The applicants are proposing to place a battery energy storage system (BESS) on a 15-acre area of the subject parcel to store electricity.
5. The subject parcel is comprised of approximately 63.5% high value soils. The proposed 15-acre project area is primarily sited upon class 2 Abiqua silty clay loam, class 2 McAlpin silty clay loam, and class 3 Waldo silty clay loam.
6. Various agencies replied for the request for comment regarding the application:

Marion County Building Department commented: “No Building Inspection concerns. Structural permit is not required as the energy storage facility is for utility purposes and not subject to the requirements of the 2022 OSSC. Separate electrical permit(s) is required to be obtained prior to development.”

Marion County Land Development, Engineering and Permits requested the following be included:

**ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits an Access Permit will be required. In order to achieve maximum intersection sight distance, the access approach shall be situated as close to directly opposing the driveway serving #5288 Pearson Rd, as feasible, based upon preliminary field observation.
- B. Stormwater detention may be required upon 0.5-acres or more of development.
- C. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits.
- D. Utility work in the public right-of-way, such as electrical Point of Interconnection (POI) serving the facility, requires a separate PW Engineering permit.

Marion County Fire District No.1 commented regarding fire code requirements. These can be found in full in the case file.

Friends of Marion County provided comments on the proposal and specifically requested denial because a BESS is not a utility facility, is not necessary for public service, is not a commercial power generation facility, and because appropriate conditions have not been developed. The full comments from FOMC can be found in the case file. FOMC also submitted six exhibits:

- (1) Tax assessor information for Tax Account No. 535412
  - (2) 2025-2025 Property Tax Account No. 535412,
  - (3) The applicant’s site plan
  - (4) A map of PGE substations located in Marion County,
  - (5) EFSC Meeting May 2, 2025 Agenda Item C Overview of Battery Energy Storage Systems
  - (6) The agenda review form for the June 11, 2025 Marion County Board of Commissioners session to discuss BESS, including a memo with proposed new code language that was subsequently adopted on July 9, 2025
- The FOMC exhibits can be found in full in the case file.

Oregon Department of Fish and Wildlife commented: “Prior to site development (grading, vegetation management), the applicant should complete grassland bird surveys. Disturbance to nesting grassland birds should be minimized by limiting these actions so that they occur outside of the breeding season (April 1 – July 15).”

Santiam Water Control District (SWCD) commented with concerns regarding adverse impacts on water quality from construction stormwater, adverse impacts on water quality from increased impervious surfaces, adverse impacts on water quality due to pollutants from the BESS operation, and adverse impacts on farm use. SWCD explains that the area proposed for the BESS has water rights that will need to be transferred. The property has a water pump that will be oversized for the reduced water right and without modification would dispense an illegal amount of water after the forfeiture of the existing water right. Therefore, SWCD will require an SWCD-approved method of measuring water use on the property.

SWCD suggests the following conditions of approval (paraphrased by staff) if the county were to approve the proposal:

- A. The applicant shall construct on-site stormwater detention facilities sufficient for a 50-year storm event.
- B. The applicant shall enter into a consent agreement with SWCD.
- C. The applicant shall provide environmental planning for review by the County and SWCD to ensure that no pollution from the proposed BESS enters the drainage ditch and/or SWCD facilities.
- D. The landowner shall deed its interest in the SWCD Water back to SWCD.
- E. The property owner shall amend its SWCD water delivery contract to exclude the 15-acres.
- F. The property owner shall install an SWCD-approved method of measuring water use on the property.

The entire comment submitted by SWCD is included in the case file.

Turner Fire District has reviewed this project and has the following comments.

1. Fire service features including fire apparatus access and fire protection water supplies are required to comply with the 2022 Oregon Fire Code (OFC). In order to assist applicants, design professionals, and developers, fire agencies throughout Marion County have provided the 2024 Marion County Fire Code Applications Guide (MCFCAG). The following links to the OFC and the MCFCAG are provided as follows.

- a. The 2022 Oregon Fire Code contains the currently adopted fire and life safety regulations for the State of Oregon. The full text of the OFC is available through the International Code Council's website at the following link: <https://codes.iccsafe.org/content/ORFC2022P1>
- b. The 2024 Marion County Fire Code Applications Guide contains guidelines established by the fire agencies throughout Marion County to assist designers and applicants with how OFC requirements are to be applied to their projects. The following link to the 2024 MCFCAG is provided on the Turner Fire District website: Click the "Public Information" link at the bottom of the main page. Click the "Rural Access Standards" link. This opens the MCFCAG document which is located at the following link: [https://www.turnerfire.com/content/files/M\\_C%20App%20Guide%207-2024\(3\).pdf](https://www.turnerfire.com/content/files/M_C%20App%20Guide%207-2024(3).pdf)

2. OFC 505 Address identification signs shall be provided.

3. OFC 506 Key box(s) is/are to be installed in an approved location where access to or within a structure or an area is necessary for lifesaving or fire-fighting purposes when required by the fire code official. **NOTE:** TFD does not require key boxes. However, *if occupants choose* to secure property, facilities, structures, or areas in such a manner which will inhibit immediate fire access, key boxes if installed, shall be of a design approved by Turner Fire District.

4. OFC 509 Fire protection equipment, gas shutoff valves, electric meters, service switches, and other utility equipment shall be clearly identified, readily visible, and legibly marked in an approved manner. Rooms containing controls shall be identified for the use of the fire department. Signs shall be constructed of durable materials, permanently installed, and maintained.

5. OFC 1207 Electrical energy storage systems (ESS) shall be in accordance with OFC Chapter 12 and specifically section 1207.

All other commenting agencies either declined to comment or stated no objection to the proposal.

7. On April 15<sup>th</sup>, 2025, the Marion County Board of Commissioners held a work session to discuss Battery Energy Storage Systems (BESS). These systems are not expressly contemplated in county zoning code, state statute or state administrative rule. The Marion County Board of Commissioners determined that BESSs are not a "Utility Facility Necessary for Public Service" as found in MCC 17.137.040(I), and that furthermore there is no use identified in the MCC that a BESS could fall under. Therefore, BESSs are not permitted in any zone within Marion County. The board expressed a desire to clarify the applicability of existing code to this use and on May 14<sup>th</sup>, 2025, initiated a process to consider code amendments. On June 11<sup>th</sup>, 2025, the Board held a hearing to consider amendments to clarify existing code provisions related to BESSs in the Marion County Urban and Rural Zone Codes (MCC) chapters 16 and 17.

The Marion County Board of Commissioners signed Ordinance 1480 on July 9<sup>th</sup>, 2025, in order to add clarifying sections of text in chapters 16 and 17 of the MCC that outright prohibit BESSs. These sections of code were added for clarification only, because BESSs were not permitted under any section of code prior to July 9<sup>th</sup>, 2025.

The applicant was made aware of the County's determination but still chose to apply for an administrative review to construct a BESS under the erroneous classification of a utility facility necessary for public service. There is no way to approve a BESS in Marion County and therefore the application must be denied.

8. While a BESS is not a utility facility necessary for public service, the applicant's statements regarding the approval criteria for a utility facility necessary for public service are addressed below:

*MCC 17.137.040(I). Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is "necessary" if it must be situated in the EFU zone in order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more of the following factors as found in OAR 660-033-0130(16):*

1. *Technical and engineering feasibility;*

The applicant did not provide any evidence to suggest that the proposed location is related to the technical or engineering feasibility of the proposal beyond being adjacent to a substation. The applicant references options for varying design of the facility in other sections of this application that suggest the project has not been

planned in detail. Without actual plans for construction of the BESS, there can be no conclusion about the technical and/or engineering feasibility of the proposal on any lands, let alone an proposed requirement to site the facility on high value farmland in the EFU zone. As addressed below, the applicant mentions risk of fire but does not address in detail how that risk will be mitigated. The risk of fire itself carries a cascading list of associated environmental and health impacts. As a result of a lithium fire there would be release of toxic chemicals into the air, soil and water, potential injury to first responders and citizens in the area such as respiratory issues, skin irritation, and long-term health issues. Beyond the safety issues are the environmental dangers posed by mass release of chemicals in the event of a failure of any of the batteries on site. The applicant does not address any of the technical details of these potential risks or how those risks could be mitigated. The applicant does not provide any evidence towards the feasibility of the proposed BESS to be engineered so as to mitigate the dangers inherent with BESSs. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

2. *The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*

The applicant suggests that other substations in the area would not meet the technical and engineering feasibility criterion because they would require upgrades to the networks, capacity, or new long transmission lines. The applicant states that other locations were not suitable specifically due to requiring new overhead transmission line installation for compatibility. The applicant did not provide any evidence to support the assertion that they examined other locations in the county for compatibility with the project. The location proposed poses dangers to surrounding farmland due to soil contamination, groundwater contamination, and chemical leakage. The applicant did not provide any information about potential emergency response at the proposed location. The applicant specifically proposes an intensive use on EFU land in a rural area instead of in an urban area adjacent to one of many substations within cities in Marion County where such a use would be potentially more appropriate from an environmental and emergency response standpoint. The applicant suggests prolonging the life of the facility beyond the average 20-25 years for a BESS by frequent replacement of parts. Decommissioning requires collection of hazardous materials, and the applicant does not explain how decommissioning of the facility could be performed. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

3. *Lack of available urban and nonresource lands;*

The applicant states that there are no other lands "in proximity to the Parrish Gap Substation". A BESS requires a substation, but not the Parrish Gap Substation specifically. The map of substations submitted by FOMC shows that there are many substations in Marion County on urban and nonresource lands. The applicant did not provide information to suggest that other potential siting locations on urban or nonresource lands were considered for the proposed BESS. Evidence on the record does not support the assertion that the proposed location is due to the lack of available urban and nonresource lands. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

4. *Availability of existing right-of-way;*

The proposal is for a facility that would not be appropriate to cite within a right-of-way. The proposed BESS is not a utility facility necessary for public service, but if it was, this criterion would not apply.

5. *Public health and safety; and*

The applicant states they will comply with all local building and fire codes and that the facility does not produce any emissions or discharges. The applicant states that appropriate signage will be placed on the high voltage substation equipment. The applicant states that BESS Staff will be trained in fire prevention and fire department notification policies, furthermore staff will be required to follow those policies. The applicant does not describe the number of staff present, what hours they will be present, or what their non-emergency responsibilities will be. The applicant does not explain what the policies or procedures for these staff will be. The staff for BESSs after initial construction are generally only on site for routine inspections and maintenance, not around the clock supervision of the system.

The applicant states that prior to construction they will consult with relevant first responders to ensure there are suitable procedures in place in the event of a fire or other emergency, and the resources to provide training and demonstrations relevant to handling a fire or other emergency at the BESS facility. There is no indication that the applicant consulted with the Turner Fire District prior to applying to discuss the proposal and what may be required by the fire department. The applicant did not provide explanation of what these procedures

would be, nor if they have existing training resources. The applicant does not explain what specialized equipment for fighting battery fires at a BESS may be necessary. No emergency response plan was provided with the application.

Under the "Fire Safety" section of the application, the applicant states that there will be fire extinguishers at strategic locations throughout the 15-acre Battery Energy Storage System. Electrical Energy Storage Systems are subject to Oregon Fire Code (OFC 2022) section 1207, the applicant did not provide evidence that the proposal could or would comply with the requirements of that section.

The Marion County Board of Commissioners has determined that BESSs are not accounted for within Marion County Code and are therefore not permitted under any circumstances. The Board simultaneously directed Planning Department staff to begin working with industry leaders to develop standards for BESS so that they may be permitted in the future subject to standards that mitigate potential adverse impacts. The applicant was informed of this process and chose to apply prior to the development of any standards. The applicant has not provided significant evidence to suggest that their proposal will not impact public health or create a significant safety hazard within the county. The applicant had access to the public record of concerns discussed at the public hearing regarding BESSs. These concerns include significant inherent risks and potential impacts that result from establishment of a BESS.

Perhaps the most serious risk is the potential for thermal runaway resulting in lithium fires and explosions of the batteries themselves. These kinds of fires are extremely dangerous and difficult to extinguish. They can result in injury to first responders both in the short term due to unpredictable velocity of fluctuating temperatures when responders enter the facility, and in the long term due to health issues resulting from the release of toxic aerial chemicals that may cause respiratory issues and skin damage.

After a BESS fire is extinguished, there is still significant long-term risk to the health of people living in the area, and environmental hazards. The chemicals required for fire suppression of a large scale lithium fire can runoff into the surrounding soils, groundwater, and streams across the subject parcel. The chemical leakage of the damaged batteries themselves can result in hazardous material soaking into the soil and groundwater. At this location, due to the intermittent and perennial streams that flow through the proposed facility, this chemical leakage could directly pollute water bodies. Those streams flow into canals utilized by Santiam Water Control District to provide water to farms in the area.

Contamination of the groundwater and the streams on the subject parcel may result in a loss of water supply required by farmers in the area to successfully grow crops, and the groundwater supply depended upon for drinking water. Consumption of heavy metals and harmful materials that may leak from the BESS into the water supply could cause long term health issues for individuals living in the area.

During the eventual decommissioning of the facility in 20 to 25 years, there will be more risk of hazardous materials being released from metal in the batteries and chemical leakage into the soil, groundwater, and adjacent streams. If failing batteries are removed, these hazards will simply be moved to a different site. The applicant did not explain a plan for disposal of the batteries.

The risks to the residents, farming operations, and environment in the immediate area are significant. These risks carry associated costs for cleanup in the cases of fire, explosion, failing/leaking batteries, and eventual decommissioning. In the case of an emergency at the BESS, several forms costly damage on the surrounding area may be incurred. Crops may be destroyed. The soil may require capping if significantly contaminated. Farmland may be permanently lost. Water sources may be contaminated. The ecosystem may be permanently degraded. All of these potential side effects could create significant financial burden on property owners in the area. The applicant did not address any of these risks, or suggest how Remington BESS LLC could or would pay for any of the damages to property owners and residents that may result from the dangers of their proposed BESS.

In the case of an emergency at the BESS, temporary evacuation of nearby residents may be required. Neighbors would need somewhere to evacuate to, whether that be a temporary shelter or hotels in the area. An appropriate plan would provide details in the event of an evacuation and give property owners the chance to review and provide comments on the plan during the land use process. The applicant did not provide any evacuation plan.

The public health and safety concerns regarding BESSs are significant and the potential adverse impacts to agriculture and the environment resulting from BESSs are equally significant. The necessity for mitigation of the risks imposed by these facilities is one reason the county is prohibiting BESSs until specific standards can be developed. The applicant did not provide any significant evidence that the proposed BESS will not create

significant hazards to public health and safety. If it were possible to approve this application, it would circumvent the standards that may be implemented by the county to ensure the safe development of BESSs in the future. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

*6. Other requirements of state and federal agencies.*

- a. Costs associated with any of the factors listed above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.*

The applicant states that cost was only one of the factors analyzed when selecting this location. The applicant did not provide analysis of any other factors. The evidence on the record suggests that cost is the sole deciding factor when selecting this location. This location has existing overhead transmission lines. The applicant states that they analyzed other locations near substations in the surrounding area, but all those stations would require upgrades such as installation of overhead transmission lines. The upgrades to a location are costs associated with that location. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

- b. The owner of a utility facility approved under this section shall be responsible for restoring to its former condition as nearly as possible any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing upon a contractor the responsibility for restoration.*

The applicant states that they will comply with this section of code when the useful life of the facility is realized. They did not provide any plan for decommissioning and restoration, and furthermore have not provided any evidence that it is possible to restore the project site to agricultural use after developing it with a BESS. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

- c. The applicant shall address the requirements of MCC 17.136.060(A)(1).*

MCC 17.136.060(A)(1) contains the criteria for the farm impacts test in the EFU zone. The farm impacts test has been recently updated by the Department of Land Conservation and Development to accurately represent case law.

- 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.*

*For purposes of this section, a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:*

- A. Identification and description of the surrounding lands, the farm and forest operations on those lands and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;*
- B. An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices. This assessment applies practice by practice and farm by farm; and*
- C. An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.*
- D. For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.*

*E. For purposes of this section, potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under this section.*

*F. In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in this section.*

The applicant addressed the farm impacts test by stating that the project will not result in any discharges or emissions to the environment, and that they are committed to environmentally responsible development. The applicant went on the state that if the county requires them to determine environmental monitoring and mitigation plans, then they would be willing to do so sometime in the future. The applicant provided no information about how the environmental monitoring could be conducted or what mitigation plans would entail. The applicant provided no detailed information about the environmental impacts of covering 15 acres with lithium batteries.

The applicant did not provide a detailed description of the surrounding lands or agricultural activities. The applicant did not provide any information about how the BESS might impact the surrounding agricultural activities. The limited evidence on the record does not support the claim that the project will neither result in change in, or significantly increase the cost of, farm activities in the area. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not pass the farm impacts test as required by this criterion.

*d. In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.*

*e. The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.*

*f. If the criteria contained in this subsection (I) for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a transmission line, the utility provider shall, after the route is approved by the siting authorities and before construction of the transmission line begins, consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult. The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process. For the purposes of this subsection:*

*i. "Consult" means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.*

*ii. "Transmission line" means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users.*

No sewer system is proposed. The proposed facility is not a natural gas pipeline or transmission line. The proposed BESS is not a utility facility necessary for public service, but if it was, the above criteria d, e, & f would not apply.

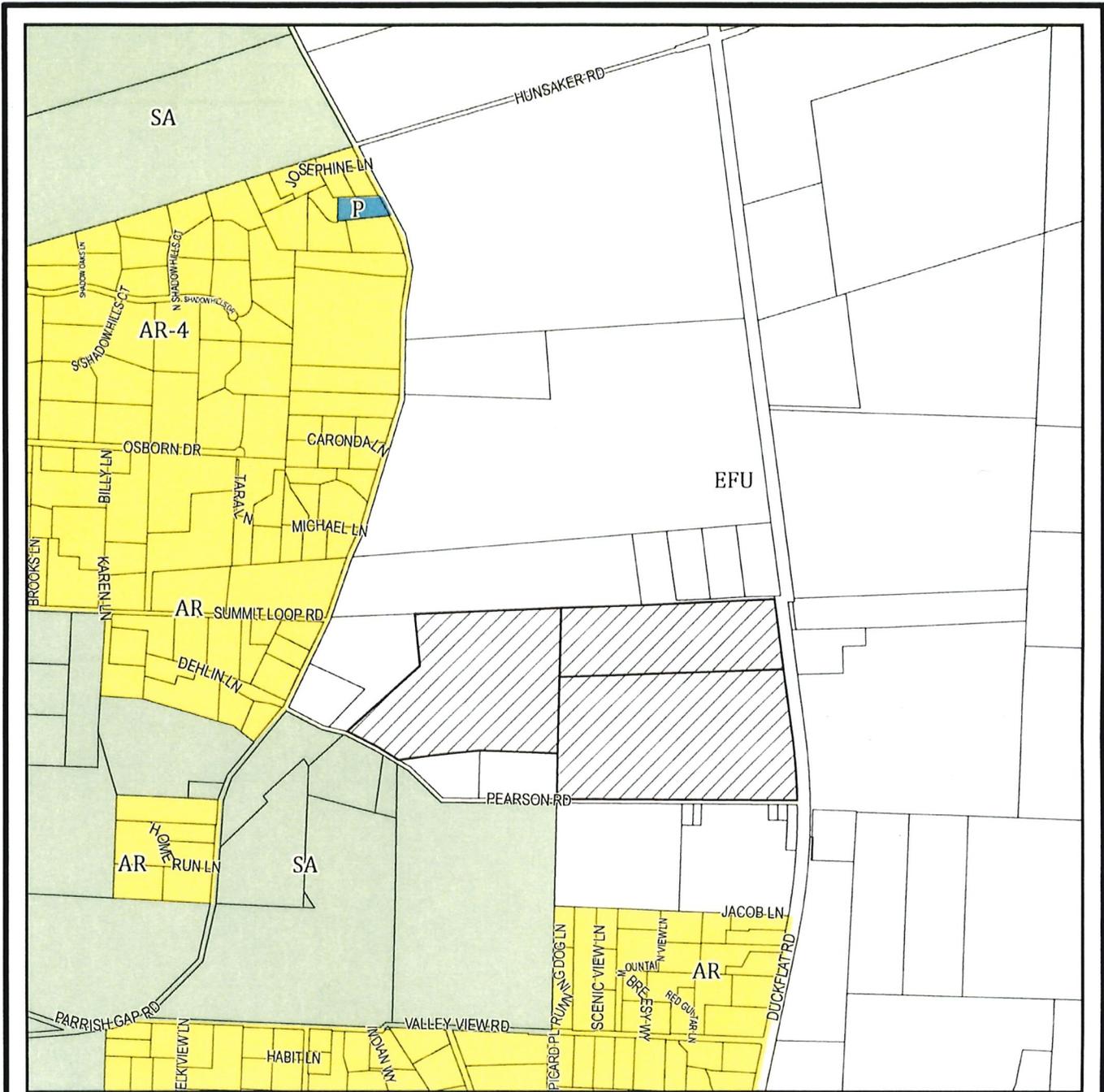
18. Battery Energy Storage Systems are not an identified use in any zone in Marion County Code. The applicant applied for this BESS as if it were a utility facility necessary for public service, but BESSs are not utility facilities necessary for public service. If a BESS could be approved as a utility facility necessary for public service, this proposal would be unable to satisfy the applicable criteria. The application is **DENIED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: August 1<sup>st</sup>, 2025

If you have any questions regarding this decision contact John Speckman at (503) 588-5038

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

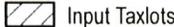
Input Taxlot(s): 092W20D000100, 092W21C000100, 092W21C000200

Owner Name: NEILS PAUL & IRMA L JENSEN JRT  
JENSEN, NEILS PAUL TRE

Situs Address: 5927 PEARSON RD SE  
City/State/Zip: TURNER, OR, 97392

Land Use Zone: EFU  
School District: CASCADE  
Fire District: TURNER

### Legend

-  Input Taxlots
-  Lakes & Rivers
-  Highways
-  Cities



scale: 1 in = 1,303 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon 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.

**BEFORE THE MARION COUNTY HEARINGS OFFICER**

In the Matter of the Application of ) Case No. 25-015  
Remington BESS LLC, on behalf of the )  
Neils Paul Jensen and Imma L. Jensen Joint ) **ADMINISTRATIVE REVIEW**  
Revocable Trust. )

**ORDER**

**I. Nature of the Application**

This matter came before the Marion County Hearings Officer on the Application of Remington BESS, LLC, on behalf of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust for an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 15-acre portion of a 133.77-acre parcel located in the 5200 block of Pearson Rd SE, Turner (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200).

**II. Relevant Criteria**

The standards and criteria relevant to this Application are found in Oregon Revised Statutes, and the Marion County Code (MCC), Title 17, especially MCC 17.136 (Exclusive Use Zone).

**III. Hearing**

A public hearing was held on this matter on November 6, 2025. At the hearing, the Planning Division file was made a part of the record. The record includes the following Pre-Hearing submissions and additional material:

1. Remington BESS, LLC Pre-Hearing Brief with Alternatives Analysis Appendix and Exhibits 1-22 (Received October 31, 2025)
2. Remington BESS, LLC BESS Mitigation (Received November 3, 2025)
3. Testimony from John J. Audley in Support of Application to Site a Battery Energy Storage System in Marion County (Received November 5, 2025)
4. Santiam Water Control District Comments (Received November 5, 2025)

The following persons appeared and provided testimony:

- |    |                   |                                 |
|----|-------------------|---------------------------------|
| 1. | John Speckman     | Marion County Planning Division |
| 2. | Ryan Thomas       | Attorney for Applicant          |
| 3. | Christina Gispert | Applicant Representative        |
| 4. | Brent Stevenson   | Santiam Water Control District  |

No objections were raised to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing. No documents were entered into the record as exhibits.

The record was held open to allow the parties to provide supplemental comments. The following submissions were received:

November 13, 2025: Santiam Water Control District Supplemental Comments to Remington BESS Administrative Review 25-015

November 20, 2025: Applicant's Response to Santiam Water Control District Comments on BESS Project submitted by Ryan Thomas

#### **IV. Executive Summary**

Applicant requests an administrative review to place a battery energy storage system ("BESS") on Exclusive Farm Use ("EFU") zoned land as a utility facility necessary for public service (the "Project").

The Planning Director denied the application, and Remington BESS, LLC appealed on the basis that (1) a battery energy storage system is a utility facility necessary for public service, and (2) Remington BESS, LLC complied with ORS 215.275 in demonstrating it considered reasonable alternatives to siting the project in the EFU zone. Remington BESS, LLC also argues that to the extent the denial was predicated upon Marion County Ordinance 1480, which bans BESS in all County zone designations, Ordinance 1480 is invalid on its face and does not apply to the current application because the application was submitted prior to the adoption of Ordinance 1480.

Evidence submitted by Applicant, including expert testimony, establishes that electrical utilities incorporated the use of energy storage systems, including BESS, into their integrated resource and clean energy planning. The Project would provide battery energy storage services to the PacifiCorp's electrical grid. The evidence suggests that BESS may be beneficial, efficient, and may advance important energy objectives, including clean power and meeting renewable energy targets.

The term "utility facility," as used in ORS 215.283(1)(c) and MCC 17.110.584 refers to infrastructure that directly delivers a utility service to the public. The proposed BESS functions solely as energy storage. The proposed BESS would interact with the electric grid, but support of a utility system is not the equivalent of providing a utility service. PacifiCorp will continue to provide service without the proposed BESS.

Under ORS 215.283(1)(c), ORS 215.275, and MCC 17.110.584, benefit, efficiency, or contribution to broader policy goals does not establish necessity. Because a privately owned BESS does not deliver electric service and does not require EFU siting to function, it does not meet the legal standard, even if it provides ancillary or system-wide benefits.

The application for an administrative review to construct a battery energy storage system as a utility facility necessary for public service is DENIED.

#### **V. Findings of Fact**

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding Exclusive Farm Use (EFU) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the northern side of Pearson Rd SE within a half mile of the intersection with Parrish Gap Rd SE. The proposed area for the Battery Energy Storage System (BESS) is the approximately 15 acres north of the PacifiCorp Parrish Gap Substation which is located on Pearson Rd SE, east-adjacent to the property at 5387 Pearson. The proposed area is in agricultural use for either grass seed or hay production with the rest of the 133.77-acre parcel. There are two mapped perennial streams and one mapped intermittent stream across the subject parcel. Based on the site plan, the BESS would be sited upon the southernmost perennial stream and the intermittent stream, as well as being nearly adjacent to the northern perennial stream. All three of these flow into canals managed by the Santiam Water Control District for the purpose of providing water rights to farmers in the district.

The subject property was itself the subject of a property line adjustment in 2008 (PLA08-044) which clarifies that the 46.35-acre tax lot upon which the BESS is proposed is itself part of a larger 133.77-acre parcel consisting of three tax lots (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200). The property line adjustment was between two parcels, and yielded a 5-acre parcel which contains the homesite at 5387 Pearson Rd SE (not involved in this application) and the 133.77-acre parcel upon which the 15-acre BESS is proposed by this application. While the subject parcel consists of three tax lots, it appears by all indications that PLA08-044 was completed and therefore the subject parcel is legal for land use purposes.

3. Surrounding uses are agricultural and residential. Lands north and east of the subject parcel are in the EFU zone and devoted to large scale agriculture, particularly of grass seed and hay. Lands directly to the south are in the SA (Special Agriculture) zone and in use for agriculture and rural homesites. On the other side of those SA zoned lands is a relatively dense neighborhood of AR (Acreage Residential) zoned parcels. To the west of the subject parcel is another parcel in agricultural use in conjunction with the subject parcel, and a parcel in rural residential use. Those parcels are bordered by Parrish Gap Rd SE, and west of Parrish Gap is the southeastern corner of a large (approximately 375-acre) AR zoned area devoted to rural residences and hobby farms.

The lands to the north and east, devoted to agricultural purposes, are mostly devoid of trees, and east of Duckflat Rd SE is a significant area of wetlands (both natural and manmade). The lands to the west and south of the subject parcel, and specifically south of Pearson Rd and West of Parrish Gap, are relatively densely developed and densely treed lands.

4. Applicant proposes to place a battery energy storage system (BESS) on a 15-acre area of the subject parcel to store electricity.
5. The subject parcel is comprised of approximately 63.5% high value soils. The proposed 15-acre project area is primarily sited upon class 2 Abiqua silty clay loam, class 2 McAlpin silty clay loam, and class 3 Waldo silty clay loam.
6. Various agencies were contacted with the proposal and given an opportunity to comment.

Marion County Building Department commented: "No Building Inspection concerns. Structural permit is not required as the energy storage facility is for utility purposes and not subject to the requirements of the 2022 OSSC. Separate electrical permit(s) is required to be obtained prior to development."

Marion County Land Development, Engineering and Permits requested the following be included:

#### **ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits an Access Permit will be required. In order to achieve maximum intersection sight distance, the access approach shall be situated as close to directly opposing the driveway serving #5288 Pearson Rd, as feasible, based upon preliminary field observation.
- B. Stormwater detention may be required upon 0.5-acres or more of development.
- C. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits.
- D. Utility work in the public right-of-way, such as electrical Point of Interconnection (POI) serving the facility, requires a separate PW Engineering permit.

Marion County Fire District No.1 commented regarding fire code requirements. These comments are found in full in the case file.

Friends of Marion County provided comments on the proposal and specifically requested denial because a BESS is not a utility facility, is not necessary for public service, is not a commercial power generation facility, and because appropriate conditions have not been developed. The full comments from FOMC are found in the case file. FOMC also submitted six exhibits:

- (1) Tax assessor information for Tax Account No. 535412
- (2) 2025-2025 Property Tax Account No. 535412,
- (3) The applicant's site plan
- (4) A map of PGE substations located in Marion County,
- (5) EFSC Meeting May 2, 2025 Agenda Item C Overview of Battery Energy Storage Systems
- (6) The agenda review form for the June 11, 2025 Marion County Board of Commissioners session to discuss BESS, including a memo with proposed new code language that was subsequently adopted on July 9, 2025

The FOMC exhibits are found in full in the case file.

Oregon Department of Fish and Wildlife commented: "Prior to site development (grading, vegetation management), the applicant should complete grassland bird surveys. Disturbance to nesting grassland birds should be minimized by limiting these actions so that they occur outside of the breeding season (April 1 – July 15)."

Santiam Water Control District (SWCD) commented with concerns regarding adverse impacts on water quality from construction stormwater, adverse impacts on water quality from increased impervious surfaces, adverse impacts on water quality due to pollutants from the BESS operation, and adverse impacts on farm use. SWCD explains that the area proposed for the BESS has water rights that will need to be transferred. The property has a water pump that will be oversized for the reduced water right and without modification would dispense an illegal amount of water after the forfeiture of the existing water right. Therefore, SWCD will require an SWCD-approved method of measuring water use on the property.

SWCD suggested conditions of approval if the county were to approve the proposal. SWCD's proposed conditions of approval, as stated by Planning, are as follows:

- A. The applicant shall construct on-site stormwater detention facilities sufficient for a 50-year storm event.
- B. The applicant shall enter into a consent agreement with SWCD.
- C. The applicant shall provide environmental planning for review by the County and SWCD to ensure that no pollution from the proposed BESS enters the drainage ditch and/or SWCD facilities.
- D. The landowner shall deed its interest in the SWCD Water back to SWCD.
- E. The property owner shall amend its SWCD water delivery contract to exclude the 15-acres.

- F. The property owner shall install an SWCD-approved method of measuring water use on the property.

The entire comment submitted by SWCD is included in the case file.

Turner Fire District has reviewed this project and has the following comments.

1. Fire service features including fire apparatus access and fire protection water supplies are required to comply with the 2022 Oregon Fire Code (OFC). In order to assist applicants, design professionals, and developers, fire agencies throughout Marion County have provided the 2024 Marion County Fire Code Applications Guide (MCFCAG). The following links to the OFC and the MCFCAG are provided as follows.
  - a. The 2022 Oregon Fire Code contains the currently adopted fire and life safety regulations for the State of Oregon. The full text of the OFC is available through the International Code Council's website at the following link:  
<https://codes.iccsafe.org/content/ORFC2022P1>
  - b. The 2024 Marion County Fire Code Applications Guide contains guidelines established by the fire agencies throughout Marion County to assist designers and applicants with how OFC requirements are to be applied to their projects. The following link to the 2024 MCFCAG is provided on the Turner Fire District website: Click the "Public Information" link at the bottom of the main page. Click the "Rural Access Standards" link. This opens the MCFCAG document which is located at the following link:  
[https://www.turnerfire.com/content/files/M\\_C%20App%20Guide%207-2024\(3\).pdf](https://www.turnerfire.com/content/files/M_C%20App%20Guide%207-2024(3).pdf)
2. OFC 505 Address identification signs shall be provided.
3. OFC 506 Key box(s) is/are to be installed in an approved location where access to or within a structure or an area is necessary for lifesaving or fire-fighting purposes when required by the fire code official. NOTE: TFD does not require key boxes. However, *if occupants choose* to secure property, facilities, structures, or areas in such a manner which will inhibit immediate fire access, key boxes if installed, shall be of a design approved by Turner Fire District.
4. OFC 509 Fire protection equipment, gas shutoff valves, electric meters, service switches, and other utility equipment shall be clearly identified, readily visible, and legibly marked in an approved manner. Rooms containing controls shall be identified for the use of the fire department. Signs shall be constructed of durable materials, permanently installed, and maintained.
5. OFC 1207 Electrical energy storage systems (ESS) shall be in accordance with OFC Chapter 12 and specifically section 1207.

All other agencies either declined to comment or stated no objection to the proposal.

7. On April 15, 2025, the Marion County Board of Commissioners held a work session to discuss Battery Energy Storage Systems (BESS). BESS are not expressly contemplated in county zoning code, state statute or state administrative rule. The Marion County Board of Commissioners determined that a BESS is not a “Utility Facility Necessary for Public Service” as found in MCC 17.137.040(I), and that furthermore there is no use identified in the Marion County Code under which a BESS could be considered.

The Board of Commissioners determined to clarify the applicability of existing code to allow BESS. On May 14, 2025, the Board initiated a process to consider code amendments. On June 11, 2025, the Board held a hearing to consider amendments to clarify existing code provisions related to BESS in the Marion County Urban and Rural Zone Codes (MCC) Chapters 16 and 17.

The Marion County Board of Commissioners signed Ordinance 1480 on July 9, 2025. The Board sought to add clarifying sections of text in Chapters 16 and 17 of the Marion County Code to specifically prohibit BESS in Marion County. The Board indicated that the sections of code prohibiting BESS were added for clarification only because BESS were not permitted under any section of code prior to July 9, 2025.

8. Applicant filed its application for Administrative Review pursuant to MCC 17.136.040 which allows for the certain uses in the EFU zone subject to approval based on satisfaction of the standards and criteria specified for each use pursuant to MCC 17.115. MCC 17.136.040(I), subject to specific criteria, allows for the use of utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is “necessary” if it must be situated in the EFU zone in order for the service to be provided.
9. Applicant’s proposed project is the construction and operation of the Remington Battery Energy Storage System (BESS) to be situated on approximately 15 acres of private property, located approximately 8 miles southeast of Salem. The Project would consist of battery containers, transformers, inverters, transmission lines, access roads, fencing, and associated infrastructure. The Project is intended to deliver electricity to the PacifiCorp transmission system via existing transmission infrastructure and associated utility easements and would interconnect to the existing Parrish Gap Substation immediately to the south of the proposed Project area.

Applicant states that states that Battery Energy Storage Systems (BESS) are a necessary and essential part of Oregon’s energy infrastructure and future. Oregon House Bill 2021 sets renewable energy targets, and to meet the targets, the Oregon legislature and the Oregon Department of Energy require the integration and development of BESS. Electric utilities, like PacifiCorp and Portland General Electric, have cited the need for

additional storage sources in their clean energy and integrated resource planning. BESS collect electric energy generated from energy sources, including electrical grid, wind, solar, geothermal sources, and store the energy for a period of time in rechargeable batteries, and then release it back to the grid to provide electricity to residential and commercial users. (Applicant's Brief, Exhibits 6-10)

10. PacifiCorp's 2025 Integrated Resource Plan (IRP) and siting requests indicated a need for BESS. The 2025 Oregon Siting RFP, which was approved by Oregon's Public Utilities Commission and is the means by which PacifiCorp must procure resources described in the IRP, specifically calls for energy storage resources, including at least 509 megawatts of new 4-hour lithium-ion battery storage resources needed in PacifiCorp's Oregon service territory by the end of 2029. Applicant states that the BESS Project is designed to respond to this need by providing 199 megawatts of 4-hour duration storage and by coming online before December 2029. (Applicant's Brief, Exhibits 12-17, Appendix A).
11. Applicant posits that BESS are necessary for the operation of the modern grid and essential to achieving the state's renewable energy targets. Applicant argues that state laws and policies demonstrate that BESS are utility facilities necessary for public service.

#### **VI. Additional Findings of Fact and Conclusions of Law**

1. Applicants have the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests.

Applicant must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely Applicant have not met their burden, and the application must be denied. If the evidence for every criterion is in Applicant's favor, then the burden of proof is met.

2. Applicant argues that County Ordinance 1480 (the "Ordinance"), which bans BESS in all County zone designations, does not apply to the current application. Applicant argues that the Ordinance is void because it conflicts with the plain language set forth in ORS 215.283(1). Applicant also argues that the Ordinance was not in effect at the time the application was submitted and cannot be applied as a standard and criteria that were not in effect at the time the application was submitted.

3. Ordinance 1480 added MCC 16.01.050 which states: Notwithstanding any other provision in this code, a commercial battery energy storage system, which uses batteries to store electrical energy for use on the electrical grid, is not allowed in any zone. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale. MCC 16.01.050 prohibits BESS in Marion County.
4. Ordinance 1480 was adopted on July 9, 2025. Applicant's application was submitted on June 30, 2025. Because the application pre-dates the Ordinance, the Hearings Officer considers (1) whether a BESS is a utility facility under Marion County Code; (2) whether a BESS is a utility facility that is permissible in the Exclusive Farm Use zone under ORS 215.283(1)(c); and (3) whether the BESS meets the siting factors in ORS 215.275 and MCC 17.136.040(I).

MCC 17.110.584

5. MCC 17.110.584 defines "utility facility" as any water, gas, sanitary sewer, storm sewer, electricity, telephone and wire communication service, and CATV (cable television) service lines, mains, pumping stations, reservoirs, police underground transmission facilities, substations, and related physical facilities which do not include buildings regularly occupied by employees, parking areas, or vehicle, equipment and material storage areas, wireless communications facility or wireless communications facility attached.

MCC 17.110.584 defines a utility facility as physical infrastructure for an enumerated service, but does not expressly list Battery Energy Storage Systems (BESS). Therefore, to meet the definition, a BESS must fit by analogy or context as a "related physical facility" for electric service.

6. The proposed facility is a standalone Battery Energy Storage System (BESS) consisting of battery containers and associated equipment designed to store electrical energy and later discharge that energy to the electrical grid or market.

Remington BESS is a battery storage asset owned and developed by RWE, an energy company. The BESS Project is to provide energy storage services to the PacifiCorp electrical grid.

Applicant is a private company that is not a public utility, and does not provide electric service to the public. The code definition of "utility facility" presumes facilities that are part of a utility service system, such as electric transmission or distribution infrastructure operated by or on behalf of a utility serving the public. In this case, Applicant's Project is not owned or operated by an electric utility. Applicant is not subject to public utility regulation for retail electric service. The proposed BESS does not provide direct electric service to customers. Applicant participates in energy storage and market operations for renewable energy. The proposed BESS lacks the public service character inherent in the utilities enumerated in MCC 17.110.584.

7. While MCC 17.110.584 includes “related physical facilities,” this language must be interpreted in context with the enumerated examples, all of which involve utility service delivery infrastructure. A privately owned BESS that could operate independently of transmission or distribution facilities, is not required to be located at a specific site to serve utility customers, and exists primarily for energy management or market participation, is not sufficiently related to the listed utility facilities to fall within the definition of “related physical facilities.”
8. A BESS is not a utility facility necessary for public service as defined in MCC 17.110.584.

ORS 215.283(1)(c)

9. ORS 215.283(1)(c) provides that utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height, may be established in the Exclusive Farm Use (EFU) zone. A utility facility necessary for public service may be established as provided in ORS 215.275.
10. The proposed BESS project is a stand-alone battery energy storage system designed to store electrical energy and discharge the energy to the electric grid. The evidence indicates that the supply to the electric grid is as needed, or as selected by the operator.
11. Applicant argues that Oregon courts have interpreted “utility facility” broadly. However the Oregon cases involved facilities that actually performed the service at issue, including power generation, transmission lines, communications facilities, and broadcasting towers. See, e.g. *Save our Rural Oregon v. Energy Facility Citing Council*, 339 Or 353, 121 P3d 1141 (2005) and *McCaw Communications, Inc. v. Marion County*, 96 Or App, 773 P2d 779 (1989).

In *Cox v. Polk County*, 174 Or App 332, 25 P3d 970 (2001), the Court considered the term “utility facility” as used in ORS 215.283(1)(c) to mean equipment or apparatus, whether standing alone or as part of a structure, that functions to perform or provide, in whole or in part, a service such as the production, transmission, delivery or furnishing of electricity or natural gas, the purification of drinking water, or the treatment of solid or liquid waste. “The equipment comprising the facility need not be extensive or complex; in addition, the facility may include ancillary or off-site equipment such as transmission lines. *Id.* at 344. The Court specified that, at a minimum, the facility must include some equipment or apparatus that itself performs the relevant production, transmission or similar function or service.

12. Applicant’s characterizes the proposed BESS as supporting PacifiCorp’s system, and PacifiCorp’s need for additional storage resources. Applicant states that the specific Project objectives include providing enhanced grid reliability, resiliency, and stability. Applicant states that the BESS will “maximize” the existing system’s capability and

“improve” PacifiCorp’s ability to serve growing customer loads while reducing the risk of voltage collapse. (See Remington BESS, LLC Prehearing Brief, Page 7).

Applicant argues that the BESS project supports renewable integration, grid reliability, and commitment to clean energy targets. These benefits are supported by the evidence submitted by Applicant, and the potential benefits are acknowledged. However, benefit, even public benefit, is not the legal standard.

13. The proposed BESS does not transmit or distribute electricity. The proposed BESS does not deliver electric service to consumers. The proposed BESS functions as storage and is operated for system-support purposes. Interaction with the electric grid does not convert a storage facility into a utility service-delivery facility.
14. ORS 215.283(1)(c) requires a showing that the utility facility is required to provide the service, not merely beneficial, important, or supportive of public policy goals. PacifiCorp will continue to provide electric service regardless of whether the BESS is constructed. The proposed BESS does not qualify as a “utility facility” for purposes of 215.283(1)(c).

ORS 215.275 and MCC 17.136.040(I)

15. ORS 215.283(1)(c) states in relevant part that a utility facility necessary for public service may be established as provided in ORS 215.275. MCC 17.136.040(I) sets out the standards under which a facility is necessary if it must be situated in the EFU zone in order for the service to be provided.

The Hearings Officer finds that the proposed BESS does not qualify as a utility facility and is not necessary for public service under ORS 215.283(1)(c). However, even if the proposed BESS could be characterized as a “utility facility,” Applicant must also demonstrate that it is necessary for the BESS to be located on EFU land to provide the public service and meet the siting factors in ORS 215.275 and MCC 17.136.040(I).

MCC 17.136.040(I) requires the same showing of locational necessity and lack of reasonable alternatives as ORS 215.275. Local governments may apply this standard so long as they do not expand state criteria. *Brentmar v. Jackson County*, 58 Or LUBA 416, 426–27 (2009).

16. Applicant’s statements regarding the approval criteria for a utility facility necessary for public service are addressed below:

*MCC 17.137.040(I) Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is “necessary” if it must be situated in the EFU zone in order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more of the following factors as found in OAR 660-033-0130(16):*

1. *Technical and engineering feasibility;*

Applicant did not provide any evidence to suggest that the proposed location is related to the technical or engineering feasibility of the proposal beyond being adjacent to a substation. Applicant emphasizes avoiding network upgrades, minimizing construction timelines, and meeting RFP deadlines.

These considerations reflect project efficiency and commercial feasibility, not technical infeasibility of non-EFU sites. The Applicant does not demonstrate that interconnection to the grid is technically impossible from non-EFU land, only that it may be more expensive or less desirable.

Applicant references options for varying design of the facility in other sections of this application that suggest the project has not been planned in detail. Without actual plans for construction of the BESS, there can be no conclusion about the technical and/or engineering feasibility of the proposal on any lands, let alone a proposed requirement to site the facility on high value farmland in the EFU zone.

As addressed below, Applicant addresses risk of fire but does not address in detail how that risk will be mitigated. The risk of fire itself carries a cascading list of associated environmental and health impacts. As a result of a lithium fire, there would be release of toxic chemicals into the air, soil and water, potential injury to first responders and citizens in the area such as respiratory issues, skin irritation, and long-term health issues. Beyond the safety issues are the environmental dangers posed by mass release of chemicals in the event of a failure of any of the batteries on site. Applicant does not address any of the technical details of these potential risks or how those risks could be mitigated. Applicant does not provide any evidence towards the feasibility of the proposed BESS to be engineered so as to mitigate the dangers inherent with BESSs.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

2. *The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*

A facility is locationally dependent only if it cannot reasonably operate unless it is located on EFU land.

Applicant argues that the BESS is locationally dependent because it must be located near a specific substation and within a particular transmission service area. Applicant suggests that other substations in the area would not meet the technical and engineering feasibility criterion because they would require upgrades to the networks, capacity, or new long transmission lines. Applicant states that other locations were

not suitable specifically due to requiring new overhead transmission line installation for compatibility.

Applicant did not provide any evidence to support the assertion that they examined other locations in the county for compatibility with the project. The location proposed poses dangers to surrounding farmland due to soil contamination, groundwater contamination, and chemical leakage. Applicant did not provide any information about potential emergency response at the proposed location. Applicant specifically proposes an intensive use on EFU land in a rural area instead of in an urban area adjacent to one of many substations within cities in Marion County where such a use would be potentially more appropriate from an environmental and emergency response standpoint.

Applicant suggests prolonging the life of the facility beyond the average 20-25 years for a BESS by frequent replacement of parts. Decommissioning requires collection of hazardous materials, and the Applicant does not explain how decommissioning of the facility could be performed.

Applicant's evidence demonstrates a preference for proximity, not a requirement that the facility occupy EFU land. Therefore, locational dependency under ORS 215.275 is not established.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

3. *Lack of available urban and nonresource lands;*

Applicant's alternative analysis narrows potential sites based upon a project-specific criteria, including parcel size, acquisition cost, network upgrade expense, and business objectives.

Applicant states that there are no other lands "in proximity to the Parrish Gap Substation". A BESS requires a substation, but not the Parrish Gap Substation specifically. The map of substations submitted by FOMC shows that there are many substations in Marion County on urban and nonresource lands. Applicant did not provide information to suggest that other potential siting locations on urban or nonresource lands were considered for the proposed BESS. Evidence on the record does not support the assertion that the proposed location is due to the lack of available urban and nonresource lands.

Applicant states that a core business objective of the Remington BESS Project is that the BESS be sited adjacent to a PacifiCorp substation to help address the utility needs of PacifiCorp. Applicant rejects FOMC's assertion that PGE substations or other substations are located outside of EFU zones and present alternative siting opportunities. Applicant contends that substations outside of PacifiCorp's system, or

outside the Parrish Gap Substation service area are not suitable due to operational and contractual considerations.

Applicant's position reflects a project preference and business strategy, not a showing of locational necessity as required under ORS 215.275 and MCC 17.136.040(I). The siting standard does not require the County to evaluate whether the proposed site is optimal or preferred for the Applicant's business model, but whether the facility must be located on EFU land in order for the public service to be provided.

The record demonstrates that a BESS requires a substation, but does not establish that it must be located adjacent to the Parrish Gap Substation specifically, nor that it must be located on EFU land to interconnect with the electric grid. Evidence submitted by FOMC includes mapping of multiple substations within Marion County, including substations located on urban and nonresource lands. Applicant did not provide evidence demonstrating that those substations were evaluated and rejected due to technical infeasibility, safety constraints, or regulatory barriers, as opposed to increased cost, longer timelines, or inconsistency with Applicant's preferred project configuration.

ORS 215.275 requires consideration of alternative locations, not alternatives that meet an applicant's preferred financial, contractual, or scheduling objectives. Evidence that alternative sites would require network upgrades, higher interconnection costs, or deviation from Applicant's business strategy does not establish that such sites are unavailable or infeasible for purposes of EFU siting.

Applicant's reliance on adjacency to a PacifiCorp substation demonstrates a preference for proximity, not a requirement that the facility be sited on EFU land. Applicant has therefore not demonstrated that the proposed location is necessary to provide the asserted public service, as required under ORS 215.275 and MCC 17.136.040(I).

ORS 215.275 requires consideration of alternative locations, not optimal or cost-effective alternatives. Evidence that non-EFU sites are more expensive or inconsistent with the Applicant's intended project and business plan does not establish that such sites are unavailable or unfeasible. Applicant's position is reasonable and justifiable, but it does not satisfy the requirements of ORS 215.275.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

4. *Availability of existing right-of-way;*

The proposal is for a facility that would not be appropriate to cite within a right-of-way. The proposed BESS is not a utility facility necessary for public service, but if it was, this criterion would not apply.

5. *Public health and safety; and*

Applicant states it will comply with all local building and fire codes and that the facility does not produce any emissions or discharges. Applicant also states that appropriate signage will be placed on the high voltage substation equipment. Applicant states that BESS staff will be trained in fire prevention and fire department notification policies, and that staff will be required to follow those policies. Applicant does not describe the number of staff present, what hours they will be present, or what their non-emergency responsibilities will be. The staff for the BESS after initial construction are generally only on site for routine inspections and maintenance, not around the clock supervision of the system.

Applicant has not provided significant evidence to suggest that their proposal will not impact public health or create a significant safety hazard within the county.

Applicant argues that ORS 215.275 does not require any showing regarding potential public health or safety risk and argues that those considerations are not relevant to the ORS 215.275 inquiry. However, ORS 215.275 explicitly includes public health and safety as one of the several factors that may be considered in whether EFU siting is necessary. ORS 215.275(2)(e).

ORS 215.275(2)(e) treats “public health and safety” as one of several considerations, and it is not a separate approval criteria. No single factor is dispositive, and the ultimate question is locational necessity.

Public safety may be considered to the extent it is a siting factor under ORS 215.275.

MCC 17.136.040(I) requires the same showing of locational necessity and lack of reasonable alternatives as ORS 215.275. Local governments may apply this standard so long as they do not expand state criteria. *Brentmar v. Jackson County*, 58 Or LUBA 416, 426–27 (2009).

Applicant had access to the public record of concerns discussed at the public hearing regarding BESS. These concerns include significant inherent risks and potential impacts that result from establishment of a BESS on EFU land.

The potential for thermal runaway resulting in lithium fires and explosions of the batteries themselves is a serious risk, and the risk for environmental hazards is significant. Chemicals for fire suppression could runoff into the surrounding soils, groundwater, and streams across the subject parcel. At this location, due to the intermittent and perennial streams that flow through the proposed facility, this

chemical leakage could directly pollute water bodies. Those streams flow into canals utilized by Santiam Water Control District to provide water to farms in the area.

Contamination of the groundwater and the streams on the subject parcel may result in a loss of water supply required by farmers in the area to successfully grow crops, and the groundwater supply depended upon for drinking water. The risks to the residents, farming operations, and environment in the immediate area are significant.

Public health and safety considerations are evaluated solely as a factor under ORS 215.275 to determine whether the proposed facility must be sited on EFU land, and are not relied upon as an independent approval criterion or separate basis for denial. However, Applicant did not address the potential adverse impacts to agriculture and the environment resulting from the BESS project.

The necessity for mitigation of the risks imposed by these facilities is one reason the county is prohibiting BESS through Ordinance 1480 until specific standards can be developed. This reference is for context only and is not relied upon as a basis for the decision, which is grounded exclusively in the statutes and code provisions in effect at the time the application was submitted.

Applicant did not provide any significant evidence that the proposed BESS will not create significant hazards to public health and safety or that public health or safety considerations require siting the facility on EFU land as opposed to non-EFU land.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

If public health and safety is not considered a “criterion” but rather one of several factors for consideration under ORS 215.275, fire risk supports denial. EFU land is not inherently safer for lithium battery fires than industrial or urban lands because EFU areas have limited fire response infrastructure, longer response times, the presence of agricultural operations may complicate fire suppression.

Public safety considerations do not independently justify denial as a criteria, however, battery fire risk is a legitimate public health and safety consideration, and does not demonstrate that the proposed BESS must be sited on EFU land. EFU land does not provide a safety advantage over non-EFU locations.

*6. Other requirements of state and federal agencies.*

- a. Costs associated with any of the factors listed above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.*

Applicant states that cost was only one of the factors analyzed when selecting this location. The applicant did not provide analysis of any other factors. The evidence on the record suggests that cost is the sole deciding factor when selecting this location. This location has existing overhead transmission lines. Applicant states that they analyzed other locations near substations in the surrounding area, but all those stations would require upgrades such as installation of overhead transmission lines. The upgrades to a location are costs associated with that location. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

- b. *The owner of a utility facility approved under this section shall be responsible for restoring to its former condition as nearly as possible any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing upon a contractor the responsibility for restoration.*

Applicant states that it will comply with this section of code when the useful life of the facility is realized. Applicant did not provide any plan for decommissioning and restoration, and furthermore have not provided any evidence that it is possible to restore the project site to agricultural use after developing it with a BESS.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

- c. *The applicant shall address the requirements of MCC 17.136.060(A)(1).*

MCC 17.136.060(A)(1) contains the criteria for the farm impacts test in the EFU zone. If the BESS is treated as a utility facility under ORS 215.283(1)(c), the farm impacts test does not apply, but the necessity and siting standards apply. Applicant argues that the farm impacts test does not apply because the Project qualifies under ORS 215.283(1)(c).

Because it is determined that the BESS is not a utility facility, the farm impacts test applies. The farm impacts test does not impose a new approval methodology, but

MCC 17.136.060(A)(1) governs non-farm uses in the AR/EFU context that are not utility facilities necessary for public service and expressly incorporates the standards of ORS 215.296. Where a proposed use does not qualify under ORS 215.283(1), MCC 17.136.060(A)(1) provides the only potential approval pathway, if any, and requires findings addressing impacts to accepted farm practices.

Local governments are required to apply ORS 215.296 where applicable and may not waive or ignore the farm-impacts test once a project falls outside ORS 215.283(1). *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 298 P3d 586 (2013).

Because the proposed BESS does not qualify under ORS 215.283(1)(c), the farm-impacts standards of ORS 215.296 and MCC 17.136.060(A)(1) must be considered.

The farm impacts test has been recently updated by the Department of Land Conservation and Development to accurately represent case law.

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.*

*For purposes of this section, a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:*

- A. *Identification and description of the surrounding lands, the farm and forest operations on those lands and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;*
- B. *An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices. This assessment applies practice by practice and farm by farm; and*
- C. *An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.*
- D. *For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.*
- E. *For purposes of this section, potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under this section.*
- F. *In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the*

*significant changes or significant increases in costs described in this section.*

Applicant disagrees that the farm impact test applies, but addressed the farm impacts test by stating that the project will not result in any discharges or emissions to the environment, and that they are committed to environmentally responsible development. Applicant acknowledges that if the county requires them to determine environmental monitoring and mitigation plans, then they would be willing to do so sometime in the future. The applicant provided no information about how the environmental monitoring could be conducted or what mitigation plans would entail. Applicant provided no detailed information about the environmental impacts of covering 15 acres with lithium batteries.

Applicant did not provide a detailed description of the surrounding lands or agricultural activities. Applicant did not provide any information about how the BESS might impact the surrounding agricultural activities. The limited evidence on the record, which is the result of Applicant's position that the farm impacts test does not apply, does not support the claim that the project will neither result in change in, or significantly increase the cost of, farm activities in the area.

Santiam Water Control District explicitly raised concerns that the Project will have an impact on surrounding lands, specifically an impact on water rights for farmers in the district. Applicant argues that it does not have water rights, and is not privy to the relationship between the landowner and water rights.

Applicant correctly stated at the hearing that it would be inappropriate to condition approval on a water rights analysis. However, because the farm impacts test applies, Applicant must address whether the Project will have an impact on surrounding lands.

Because the Project does not qualify as a utility facility necessary for public service under ORS 215.283(1)(c), it could be approved only, if at all, under MCC 17.136.060(A)(1). That section requires findings addressing impacts to accepted farm practices pursuant to ORS 215.296. Applicant did not seek approval under MCC 17.136.060(A)(1) and did not submit evidence sufficient to satisfy those criteria.

- d. In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.*
- e. The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.*
- f. If the criteria contained in this subsection (1) for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a*

*transmission line, the utility provider shall, after the route is approved by the siting authorities and before construction of the transmission line begins, consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult. The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process. For the purposes of this subsection:*

- i. "Consult" means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.*
- ii. "Transmission line" means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users.*

No sewer system is proposed. The proposed facility is not a natural gas pipeline or transmission line. The proposed BESS is not a utility facility necessary for public service, but if it was, the above criteria d, e, & f would not apply.

17. Applicant applied for approval of an administrative review to construct a battery energy storage system as a utility facility necessary for public service. A BESS is not utility facility necessary for public service. If a BESS could be approved as a utility facility necessary for public service, this proposal would be unable to satisfy the applicable criteria.

## **VII. Order**

It is hereby found that Applicant has not met its burden of proving the applicable standards and criteria for approval of an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 15-acre portion of a 133.77-acre parcel located in the 5200 block of Pearson Rd SE, Turner (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200).

For the reasons stated herein, the Hearings Officer determines that the proposed use does not satisfy the applicable requirements of Marion County Code, including but not limited to MCC 136.040(I) and the standards for siting a utility facility necessary for public service, ORS 215.283(1)(c), ORS 215.275. The application is hereby DENIED.

### VIII. Appeal Rights

An appeal of this decision may; be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court Str. NE, Suite 2130, Salem, Oregon by 5:00 p.m. on the 5<sup>th</sup> day of February, 2026. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon this 21<sup>st</sup> day of January, 2026.



Jill F. Foster  
Marion County Hearings Officer

**CERTIFICATE OF MAILING**

I hereby certify that I served the foregoing order on the following persons:

Linsey King  
4015 Filbert Avenue  
Keizer, OR 97303

Brent Stevenson  
284 E Water Street  
Stayton, OR 97383

Cristina Gispert  
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Nema Jain  
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Oakland, CA 94612

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Ethan Westcot  
7818 Rogers Avenue  
Wauwatosa, WI 53213

Justin Bieber  
2009 Lucky John  
Park City, UT 84060

Steve Pfeilter  
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City of Turner (via email)  
manager@cityofturner.org  
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Turner, OR 97392

Area Advisory Committee: (via email)  
Arkaye2@gmail.com (Aileen)

Roger Kaye  
Friends of Marion County  
P.O. Box 3274  
Salem, OR 97302

1000 Friends of Oregon  
133 SW 2nd Ave  
Portland, OR 97204-2597

Pudding River Watershed Council (via email)  
anna@puddingriverwatershed.org  
cleanpuddingriver@gmail.com

**County Agencies Notified:**

Assessor's Office (via email)  
assessor@co.marion.or.us

Tax Collector (via email)  
NMcVey@co.marion.or.us

Surveyor's Office (via email)  
KInman@co.marion.or.us

Fire District: (via email)  
denk@wvi.com

Planning Division (via email)  
breich@co.marion.or.us  
abarnes@co.marion.or.us  
jspeckman@co.marion.or.us  
ediaz@co.marion.or.us

Building Inspection (via email)  
[pwolterman@co.marion.or.us](mailto:pwolterman@co.marion.or.us)  
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Public Works LDEP Section (via email)  
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[mcldep@co.marion.or.us](mailto:mcldep@co.marion.or.us)  
[JShanahan@co.marion.or.us](mailto:JShanahan@co.marion.or.us)

School District:  
Cascade High School (via email)  
[charmon@cascade.k12.or.us](mailto:charmon@cascade.k12.or.us)

Code Enforcement (via email)  
[CGoffin@co.marion.or.us](mailto:CGoffin@co.marion.or.us)

**State Agencies Notified:**

Department of Environmental Quality  
4026 Fairview Industrial Drive SE  
Salem, OR 97302  
Oregon Department of State Lands  
4026 Fairview Industrial Drive SE  
Salem, OR 97302

Oregon Department of Fish and Wildlife  
4034 Fairview Industrial Drive SE Salem,  
OR 97302.

DLCD [hilary.foote@state.or.us](mailto:hilary.foote@state.or.us)

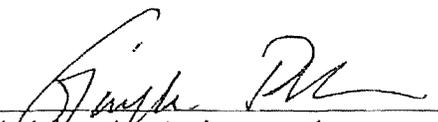
**Special Agencies Notified:**

Electricity - Pacific Corp (via email)  
[www.pacificcorp.com](http://www.pacificcorp.com)

Water District – Santiam  
284 E. Water St.  
Stayton, OR 97383

RWE Clean Energy  
Attn: AL Thompson  
1999 Harrison St. Suite 2720  
Oakland, CA 94612

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the     21st     day of Month, 2026 and that the postage thereon was prepaid.

  
\_\_\_\_\_  
Administrative Assistant to the  
Hearings Officer

**BEFORE THE PLANNING DIVISION  
FOR MARION COUNTY, OREGON**

**In the Matter of an Appeal by the  
Applicant, Remington BESS, LLC of a  
Decision by the Planning Director, dated  
August 1, 2025, Denying the Application for  
Administrative Review, Case No. 25-015**

**REMINGTON BESS, LLC  
PREHEARING BRIEF**

**I. INTRODUCTION**

Remington BESS, LLC<sup>1</sup> (“Remington” or “Applicant”) appeals the Marion County Planning Director’s (“Planning Director”) August 1, 2025, decision denying the proposed battery energy storage system project (“BESS Project”) on 15 acres of Exclusive Farm Use (“EFU”) zoned land next to a PacifiCorp substation.<sup>2</sup> The Planning Director erred in concluding that the BESS Project is not a “utility facility necessary for public service” under Marion County Code (“MCC”) 17.136.040(I) and applicable Oregon statutes, and in determining that Remington failed to demonstrate reasonable alternatives for siting the project based on one or more of the factors set forth in Oregon Revised Statutes (“ORS”) 215.275(2).<sup>3</sup>

This appeal is about two things: whether a battery energy storage system (“BESS”) is a utility facility necessary for public service, and if the answer to that question is “yes,” whether the Applicant demonstrated that it considered reasonable alternatives and that the BESS Project must be sited in the EFU zone based on consideration of one or more of the factors set forth in ORS 215.275. Here, the answer to both of those questions is yes.

The Planning Director’s denial of the BESS Project is wrong for at least five reasons:

1. **The BESS is a Utility Facility.** The Planning Director failed to recognize that the BESS is a utility facility pursuant to ORS 215.283(1)(c). As detailed in this brief, the term “utility facility” has been broadly interpreted by Oregon courts to include any equipment

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<sup>1</sup> RWE Clean Energy, LLC (“RWE”) is the parent company for the project applicant, Remington BESS, LLC.

<sup>2</sup> Administrative Review (“AR”) 25-015.

<sup>3</sup> The relevant standards and definitions are set forth in state law at ORS 215.283(1) and ORS 215.275. The Marion County Code restates these requirements as they relate to utility facilities at MCC 17.36.040(I). Because the state statutes control, and local jurisdictions cannot add to or modify that framework, this brief references applicable state law throughout.

or apparatus that functions to perform or provide, in whole or in part, a service. *See Cox v. Polk County*, 174 Or App 332, 343–44, 25 P3d 970 (2001), *rev den*, 332 Or 558 (2001); *Keicher v. Clackamas County*, 175 Or App 633, 29 P3d 1155 (2001). BESS are essential for utilities to store generated power and release that power back to the grid. They are a key component of providing electrical service and are utility facilities.

2. **For BESS to be Necessary for Public Service, One Factor, Not All, Must be Satisfied.** The Planning Director misinterpreted and misapplied the “factors” in ORS 215.275 and MCC 17.136.040(I) that must be considered by the Applicant in assessing non-EFU alternative sites. The Planning Director treated the factors as “approval criteria” that each must be satisfied—an incorrect interpretation and application of the law. Instead, the Applicant needs to show only that considerations based on “one or more of the following factors” require siting the project on EFU land. Remington’s application is based on factors one, two, and three, which address technical and engineering feasibility, locational dependence, and the lack of available urban and nonresource lands. The other factors are not the basis of the application and should not be considered.
3. **Counties Cannot Add Local or Other Restrictions to the Approval Criteria for Uses Allowed Under ORS 215.283(1).** The Planning Director impermissibly imposed additional substantive criteria on the BESS Project—namely that BESS is prohibited in any zone in the County and that the farm impact test set forth in ORS 215.296 applies—an action prohibited for utility facilities necessary for public service under ORS 215.283(1)(c) and contrary to the express legislative set forth in ORS 215.296(1). The Oregon Supreme Court prohibits counties from applying local criteria or other non-statutory local restrictions to utility facilities necessary for public service: “[W]e conclude that the legislature intended that the uses delineated in ORS 215.213(1) be uses ‘as of right,’ which may not be subjected to additional local criteria.” *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030, 1038 (1995). Under *Brentmar*, the County is only authorized to apply the statutory provisions set forth in ORS 215.275. Further, ORS 215.296(1) clearly states that the farm impact test applies only to uses identified in ORS 215.283(2) and (4), and not uses allowed under subsection (1). Accordingly, the Planning Director’s application of additional review standards or criteria is prohibited. *Hanson v. Yamhill County*, State Land Use Board of Appeals (“LUBA”) No. 2024-065 (Final Opinion and Order) (Jan. 27, 2025).
4. **The Focus on Speculative Public Risks is Irrelevant.** The Planning Director spent much of the decision presenting speculative assertions about the risk and dangers of BESS to support the denial. This is impermissible for two reasons. First, “public health and safety” is one of the six factors under ORS 215.275 that can support a determination to allow a utility facility necessary for public service to be sited on EFU land, based upon consideration of whether the proposed utility use poses a significant risk such that it should not be located in more densely developed urban areas, and instead should be located on rural EFU lands. The Planning Director conflates the clear legislative intent of this factor by concluding, with no evidentiary support, that the BESS Project is so dangerous that it should not be sited on EFU land, turning the factor on its head. Instead, the Turner Fire District reviewed the application and provided technical comments about specific code standards that would apply, but expressed no concern about the BESS

Project and did not oppose its approval. Second, Remington has not relied upon the public health and safety factor to justify siting the BESS Project on EFU land; instead, Remington relies on the technical and engineering feasibility, and locational dependence and unavailability of urban/non-resource lands to support the finding that the BESS is a utility facility necessary for public service which requires an EFU location. ORS 215.275 does not require any consideration of potential public health or safety risks.

5. **The County's Ordinance Attempting to Ban BESS Does Not Apply to the BESS Project, Violates State Law as Applied to EFU Zoned Lands, and is Void as Applied to EFU Land.** To the extent the Planning Director's denial relies on County Ordinance 1480 (the "Ordinance"), which bans BESS in all County zone designations, that Ordinance is both invalid on its face as to EFU zoned land and does not apply to the current application. It is well established under Oregon law that when a County's EFU zoning code deviates from the statutory requirements in ways that conflict with the statute, the statute controls and the offending ordinance provisions are void. *See Hanson*, LUBA No. 2024-065; *Riggs v Douglas County*, 167 Or App 1, 9-10, 1 P3d 1042 (2000). Here, the County's outright ban of BESS conflicts with the plain language set forth in ORS 215.283(1) that utility facilities necessary for public service are allowed in EFU zones subject only to compliance with ORS 215.275. Consequently, this aspect of the County ordinance constitutes an impermissible additional local criterion or restriction. It is therefore void as contrary to applicable statutory requirements under the *Brentmar* ruling. *See Brentmar*, 321 Or 481. Second, under Oregon's statutory goal post standard set forth in ORS 215.427(3)(a), and the Planning Director's own interpretation provided via email and at the Ordinance adoption hearing,<sup>4</sup> the approval or denial of the application shall be based solely on the standards or criteria in effect at the time the application was submitted. Since the application was submitted prior to the Ordinance's passage and deemed complete<sup>5</sup> it simply cannot be applied by the Planning Director or the Hearing Officer to the subject application.

In summary, the BESS Project constitutes a utility facility necessary for public service under ORS 215.283(1)(c), and Remington's analysis and supporting evidence demonstrate Remington complied with ORS 215.275 to show that application of at least one of the statutory factors demonstrates that the BESS Project must be sited on EFU land. The Director's decision to deny the application misconstrued the applicable law and the Planning Director's findings are unsupported by substantial evidence. The Planning Director's denial should be reversed, and AR 25-015 should be approved on appeal.

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<sup>4</sup> *See Supra* Section II.C. ("these amendments don't affect th[e] application []. These amendments affect any application going forward, nothing that's currently in process.")

<sup>5</sup> Although not explicitly stated by the Planning Director, the application had to have been deemed complete upon submittal since the Planning Director did not conclude otherwise and issued the decision without requesting additional information.

## II. FACTUAL BACKGROUND AND CONTEXT

### A. BESS Are Necessary Components of Oregon’s Energy Infrastructure

Battery energy storage systems are a necessary and essential part of Oregon’s energy infrastructure and future, especially as Oregon pursues ambitious renewable energy targets set by House Bill (“HB”) [HB 2021](#).<sup>6</sup> To meet these targets, the Oregon legislature and the Oregon Department of Energy (“ODOE”) require the integration and development of BESS. In response, electric utilities, like PacifiCorp and Portland General Electric, have cited the need for additional storage resources in their clean energy and integrated resource planning documents, in order to deliver clean energy to the grid. As detailed below, the BESS Project responds specifically to that need for PacifiCorp within its Willamette Valley Service Area.<sup>7</sup>

#### 1. Oregon State Requirements for BESS

BESS facilities collect electric energy generated from energy sources (like the electrical grid, wind, solar, geothermal sources, etc.) and transmitted through the electrical grid, store that energy for a period of time in rechargeable batteries, and then release it back to the grid to provide electricity to residential and commercial users when needed most. *See* [HB 4015](#) amending ORS 469.300(5) to define BESS. BESS expand the benefits of renewable resources that are generated intermittently (like solar energy produced in daytime hours), allowing the overall grid to make use of that energy at a time of higher residential demand (nighttime hours).<sup>8</sup> Unlike electric generation resources that require ramp up and ramp down time, batteries can instantly dispatch the exact amount of electricity needed when demand rises.<sup>9</sup>

BESS are integral to Oregon’s energy utility services because they provide flexibility and reliability to power systems, particularly as Oregon pursues “ambitious renewable energy targets and seeks reliable, resilient power solutions.”<sup>10</sup> According to ODOE, BESS are “key tool[s] to integrate renewable resources into the electricity grid.”<sup>11</sup>

Several Oregon laws recognize the importance of integrating storage solutions in order to increase the use of renewable electricity and improve resilience of the power grid. For example:

- [HB 2193](#) requires electric companies to procure one or more qualifying energy storage systems that have capacity to store at least five megawatt (“MW”) hours of energy to provide reliable energy supplies. As summarized by the Oregon Legislature: “One of the distinctive characteristics of the electric power sector is that the amount of electricity that can be generated is relatively fixed over short periods of time, although demand for electricity fluctuates throughout the day. Electricity storage devices can manage the

<sup>6</sup> The text of HB 2021 is attached as Exhibit 1. The text of HB 4015 is attached as Exhibit 2.

<sup>7</sup> *See* Appendix A (Remington Alternatives Analysis) which describes this service area.

<sup>8</sup> *See* Exhibit 3 - Grid Reliability 101, American Clean Power (February 2024).

<sup>9</sup> *See id.*

<sup>10</sup> Exhibit 4 - Overview of Battery Energy Storage Systems for the May 16, 2025 EFSC Meeting (May 2, 2025), also available at: <https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/2025-05-16-EFSC-Item-C-Staff-Report-Battery-Storage-Technology-Overview.pdf>

<sup>11</sup> *See* Exhibit 5 - Energy Storage, Oregon Dep of Energy, Safety & Resiliency, also available at: <https://www.oregon.gov/energy/safety-resiliency/Pages/Energy-Storage.aspx>.

amount of power required to supply customers at times when need is greatest, which is during peak load. Many renewable energy sources, most notably solar and wind, produce intermittent power. Energy storage is one option to provide more reliable energy supplies.”<sup>12</sup>

- [HB 2021](#) requires retail electricity providers to reduce greenhouse gas emissions associated with electricity sold to Oregon consumers to 80% below baseline emissions levels by 2030, 90% below baseline emissions levels by 2035 and 100% below baseline emissions levels by 2040. To meet these ambitious targets, ODOE developed an energy strategy for Oregon, which specifically emphasizes the need for integrated storage solutions: “Investments in electricity generation, transmission, distribution, *and storage facilities* are critical to meeting Oregon’s economy wide clean energy goals. In the near term, this means planning for and investing in resources that can be built quickly, including distributed technologies like solar, *storage*, demand-side flexibility, and utility-scale resources *wherever they can be connected to electric grids*.”<sup>13</sup>

## 2. Electrical Utilities Need BESS

In an effort to meet these statewide targets, electrical utilities, like PacifiCorp and Portland General Electric, have incorporated the use of energy storage systems, including BESS, into their integrated resource planning and clean energy planning. Overall to meet HB 2021 emission reduction goals, PacifiCorp anticipates needing 11,838 MW of new proxy resources to serve Oregon customers’ energy and capacity needs, including 3,835 MW of storage resources.<sup>14</sup>

PacifiCorp’s 2025 Integrated Resource Plan (“IRP”), and resulting Situs Requests for Proposals (“RFPs”), affirm this need.<sup>15</sup> The 2025 Oregon Situs RFP, which was approved by Oregon’s Public Utilities Commission and is the means by which PacifiCorp must procure resources described in the IRP, specifically calls for energy storage resources, including at least 509 megawatts of new 4-hour lithium-ion battery storage resources needed in PacifiCorp’s Oregon service territory by the end of 2029.<sup>16</sup> The BESS Project is designed to respond to this need by providing 199 megawatts of 4-hour duration storage and by coming online before December 2029.<sup>17</sup>

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<sup>12</sup> Exhibit 6 - HB 2193A, House Committee on Energy and Environment, 2015 Regular Session, Final Measure Summary (Apr. 21, 2015).

<sup>13</sup> Exhibit 7 - ODOE, Oregon Energy Strategy, Draft for Public Comment (Aug. 2025) at 18, also available at: <https://www.oregon.gov/energy/Data-and-Reports/Documents/DRAFT-Oregon-Energy-Strategy.pdf>.

<sup>14</sup> See Exhibit 8 - PacifiCorp, Oregon 2023 Clean Energy Plan (“CEP”), dated May 31, 2023, at 12 (PacifiCorp has been attempting to procure over 2 GW of renewable, non-emitting, or storage resources), also available at: [https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificpower/about/2023\\_Oregon\\_Clean\\_Energy\\_Plan\\_October.pdf](https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificpower/about/2023_Oregon_Clean_Energy_Plan_October.pdf); Exhibit 8(a) - PacifiCorp, Clean Energy Plan Engagement Series Meeting, August 20, 2025 (2025 CEP: Key Findings) at Slide 13; Exhibit 8(b) – PacifiCorp, Oregon Clean Energy Planning Supplement, Docket No. LC 82 (Apr. 1, 2024) at 4.

<sup>15</sup> Exhibit 9 - PacifiCorp Integrated Resource Plan (“IRP”) (Mar. 31, 2025) at 243, 245 stating PacifiCorp’s 2025 preferred portfolio includes “significant storage resources,” also available at: <https://www.pacificorp.com/energy/integrated-resource-plan.html>

<sup>16</sup> Exhibit 10 - PacifiCorp 2025 Oregon Situs Request for Proposals (“RFP”) (Oct. 13, 2025) at 5, also available at: <https://www.pacificorp.com/suppliers/rfps/2025-oregon-situs-rfp.html>

<sup>17</sup> See Appendix A (Remington Alternatives Analysis).



### C. The BESS Project Fulfills Project Objectives and Specific Siting Criteria

The BESS Project fulfills general and specific project objectives necessary to provide battery energy storage services to the PacifiCorp electrical grid in PacifiCorp's Willamette Valley Service Area. Remington developed a detailed Alternatives Analysis to evaluate which sites in the Willamette Valley Service Area would meet the project objectives and siting criteria. Remington's Alternatives Analysis is attached as Appendix A.

As described in the Remington Alternatives Analysis, in addition to the general objective of providing storage for electricity for grid balancing purposes, specific Remington project objectives include:

- Responding to the eligibility and scoring criteria in PacifiCorp's 2025 Oregon Situs RFP such that the project will be commercially viable with PacifiCorp as the offtaker;
- Connecting to a PacifiCorp-owned substation in PacifiCorp's Willamette Valley Service Area;
- Building a storage capacity of at least 199 MW of BESS;
- Providing enhanced grid reliability, resiliency, and stability;
- Enabling integration of renewable energy resources into the grid and avoid rolling blackouts or loss of power;
- Maximizing the existing system's capability and improve PacifiCorp's ability to serve growing customer loads while reducing the risk of voltage collapse;
- Furthering the ability to provide peak shaving and load management;
- Supporting and defraying infrastructure costs to the transmission system;
- Providing backup electrical support to the grid that supports disaster recovery and critical infrastructure continuity services; and
- Assisting Oregon in meeting its greenhouse gas emissions reduction goals of 80% by 2030, 90% by 2035, and 100% by 2040, as required by Oregon's Clean Energy Bill (HB 2021).

The BESS Project was sited at the current location based on Remington's analysis of the above project objectives, together with specific siting criteria for RWE BESS projects. The siting criteria are detailed more fully in the Remington Alternatives Analysis and include the following:

- Location: within PacifiCorp's Willamette Valley Service Area.
- Proximity to Point of Interconnection (i.e., a utility-owned substation): Within 1 mile of a PacifiCorp-owned substation to account for utility crossing, franchise, encroachment

and easement agreements, engineering complexity, and power loss through transmission lines (note that for BESS, power must travel in both directions, in and out of the facility via project transmission lines).

- Substation voltage class and transfer capacity: 115kV or higher substation with “available transfer capacity,” meaning the specific substation can accept the Project’s power within the proposed timeframe (in this case, by the end of 2029).
- Land availability: A minimum of 15 contiguous acres of available land in order to site at least 199 MW of storage capacity (1 acre per 20 MW), plus 2 acres for a project substation and 3 acres to account for access roads, zoning-related setback requirements, environmental buffers, and the ability to increase project capacity by up to 40 additional megawatts. Setting aside land for future expansion is an industry-standard practice where feasible due to the favorable economies of scale for increasing capacity at existing sites compared to new sites. “Available” land is defined as land that could feasibly be leased or purchased for use as a BESS facility, as further described in Appendix A.
- Feasible network upgrades: Network upgrades are the developer-funded, utility-constructed upgrades to PacifiCorp’s facilities that would be necessary to allow the project to connect to the grid. These can consist of new breakers at the point of interconnection (PacifiCorp substation), new or extended transmission lines to create the grid capacity to charge and/or discharge storage resources, and other necessary equipment upgrades. Each project that enters the PacifiCorp interconnection queue and goes through a System Impact Study is assigned network upgrades based on the utility’s assessment of what is needed to accommodate the project. The feasibility of network upgrades can be measured in time and cost.
  - Timing: PacifiCorp (and any other affected utility systems) requires enough time to design, permit, procure equipment for, and install the necessary network upgrades. Procurement (i.e., purchasing and receiving equipment) can be one of the longest-lead time portions of this process due to the high demand for and limited production capacity of breakers, transformers, poles, and other equipment that often must be ordered several years in advance of delivery. The PacifiCorp 2025 OR Situs RFP includes a criterion of having a guaranteed commercial operation date on or before December 31, 2029. Therefore, the chosen Point of Interconnection must not require network upgrades that cannot be completed by mid-2029.
  - Cost: Interconnection at the chosen PacifiCorp substation does not result in Network Upgrade costs that would render the project financially infeasible. For the purposes of this analysis, RWE considered Network Upgrade costs above \$20 million to be prohibitive.
- Lack of slopes: slopes less than 15% to avoid substantial technical challenges, permitting challenges, and construction costs for ground disturbance, leveling (cut and fill), stabilization, and shoring to accommodate the BESS foundations. Developing BESS on

steep slopes results in loss of topsoil, substantially longer site preparation time, potential instability, and increased noise, dust, and risk of erosion.

- Lack of wetlands or other water features: within the project area, no regulated wetlands, water features, or environmentally critical areas that would impede development, reduce the available land, and could result in project impacts.
- Zoning: land use zoning allows for the permitting of utility facilities.
- Access: sufficient site access is available, including the ability to deliver construction equipment, BESS modules, utility poles, and other equipment without creating the need for substantial road construction.
- Avoids interference with existing utility easements: due to ground clearance needs, height constraints, inability to cross private and public lands, and space constraints.

**D. Remington’s Project Objectives and Siting Criteria Require the BESS Project to Be Sited at the Parrish Gap Substation**

In light of the foregoing objectives and criteria, Remington evaluated potential sites for the development of the BESS Project. As described in detail in Appendix A, to identify potential BESS project locations, Remington first identified eligible PacifiCorp-owned substations within the utility’s Willamette Valley Service Area. Remington focused on this service area due to information about demand, grid balancing, and anticipated transmission upgrades provided by the utility in its IRPs (2025 and previous years’ IRPs) and additional available transfer capacity (“ATC”) analyses performed by RWE, Remington’s parent company. The ATC analysis aggregates data from a variety of sources regarding substation capacity, ownership, prior studies, and other relevant data that helps RWE collect and analyze data about substations, ultimately providing information about the likelihood of available transfer capacity at any given substation. *See Appendix A for more details.*

PacifiCorp’s transmission system in the Willamette Valley is non-contiguous with its system in Washington and Central Oregon, connected only by transmission lines owned by other utilities. To store energy located within the Willamette Valley Service Area, the BESS Project has to be located within the same area. *See Appendix A, Maps 1 and 7.* Locating storage outside of the area would trigger “wheeling” charges (charges for transferring, or “wheeling,” electricity through lines owned by other utilities). *See Appendix A at 6.* It would also increase the transmission line loss, which is the loss of electricity from the system as it is carried over long distances. *Id.*

To identify viable sites that met both project objectives and siting criteria, Remington used queries of numerous databases, reviewed transmission studies available from PacifiCorp, and conducted other desktop and field research. Remington initially identified 30 PacifiCorp-owned substations with 115kV or higher within the study area. The additional ATC analyses then narrowed this list of eligible substations to 6 that may have available transfer capacity. Using the list of 6 substations developed based on the ATC analysis, Remington then used GIS mapping to apply filters and narrow eligible BESS Project sites based on the siting criteria explained above,

for example, land with appropriate zoning within 1 mile of the eligible substations. See Appendix A, Maps 1 to 6. With the siting criteria and project objectives applied, only the Remington Parrish Gap site is feasible.

The table below summarizes Remington’s analysis of potential alternative sites, which is provided in more detail in Appendix A.

Table 1: Substation Summary and Remington Analysis<sup>23</sup>

Substation Name	Voltage Class	County	Analysis
Parrish Gap	230 kV	Marion	No non-EFU lands meet the siting criteria. One R-AR zoned parcel within 1 mile of Parrish Gap Substation met land size requirements, but topography showed slopes greater than 15%.
Jefferson	115 kV	Marion	No non-EFU parcels within 1 mile of the Jefferson Substation met the land size and availability, and/or lack of water features requirements.
Diamond Hill	230 kV	Linn	No non-EFU zoning within 1 mile of the Diamond Hill Substation.
Fry	230 kV	Linn	No non-EFU zoning within 1 mile of the Fry Substation.
Calapooya & Brownsville	230 kV 115 kV	Linn	No non-EFU parcels (or potential assemblage of parcels) within 1 mile of the substations met the land size and land availability requirements.

### III. PROCEDURAL HISTORY

#### A. Marion County Approved a Similar BESS Project in 2024

On June 18, 2024, roughly a year prior to the submittal of the current AR 25-015 application, the Marion County Planning Director approved a very similar BESS project, also owned by RWE, on a 32-acre parcel in the Special Agriculture (“SA”) zone (the “Swift Project”).<sup>24</sup> See Exhibit 13, Administrative Review Case No. 24-009.<sup>25</sup> For that project, the Planning Director determined the BESS qualified as a “utility facility necessary for public service” under MCC 17.36.040(I). *Id.* The only apparent basis for the Planning Director’s opposite finding here relies on the aforementioned Ordinance now banning BESS. As described in more detail below, this basis provides no legal support for the Director’s decision as the Ordinance is inapplicable to EFU lands under the Oregon Supreme Court ruling in *Brentmar* and pursuant to ORS 215.427(3)(a).

<sup>23</sup> See Appendix A for the full analysis.

<sup>24</sup> The SA zone similarly allows utility facilities necessary for public service as a nonfarm use and applies the same criteria. MCC 17.137.040(I).

<sup>25</sup> Exhibit 13, AR 24-009, is also available at: <https://www.co.marion.or.us/PW/Planning/Documents/AR24-009.pdf>.

## **B. Remington Prepared the Current BESS Project Application in 2025**

Subsequent to that approval, Remington began preparing the current application, targeting submission in June 2025. Remington participated in regular conversations with the Planning Director and staff regarding the preparation of submittal materials. In early March 2025, the County expressed no concern during the pre-application for the BESS Project, and County staff instructed Remington to submit the BESS Project in the same fashion the Swift Project application was submitted.

On June 30, 2025, Remington filed the current application for Administrative Review under MCC 17.36.040(I) to construct and operate the BESS Project.<sup>26</sup> The BESS Project will be situated on 15 acres of land located in the County on land zoned EFU.<sup>27</sup>

## **C. In June 2025, Remington Learned the County Planned to Ban BESS**

On June 25, 2025, Remington learned through media reports that Marion County was proposing a code amendment to ban BESS facilities from being sited in all zones within the County.<sup>28</sup> Neither Remington nor the property owner received notice of this proposed amendment, and after months of preparation, they were shocked to hear the news.<sup>29</sup> By the time the relevant stakeholders were aware of the proceedings, the public record had closed and the parties were unable to submit formal written comments concerning the Ordinance.

In a July 10, 2025, email, the Planning Director wrote that the County did not provide notice to the property owner or Remington of the proposed amendments because “the amendments don’t affect the BESS already approved on [the] property, nor the recent application” submitted for the BESS Project.<sup>30</sup>

On July 9, 2025, the Marion County Board of County Commissioners (“Board”) considered the proposed code amendments banning BESS in all zones, which it adopted that day as Ordinance 1480.<sup>31</sup> MCC Title 16 (Marion County Urban Zone Code) and MCC Title 17 (Marion County Rural Zone Code) were amended to read:

Notwithstanding any other provision in code, a commercial battery energy storage system, which uses batteries to store electrical energy for use on the electrical grid, is not allowed in any zone. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale.

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<sup>26</sup> See Exhibit 11.

<sup>27</sup> Notice of Decision in this case, Administrative Review Case No. 25-015 (“Decision” or “Denial”) at 1.

<sup>28</sup> See Exhibit 14 - Marion County Board of Commissioner’s Agenda Review Form, *also available at*: [https://www.co.marion.or.us/BOC/Documents/2025%20Current%20Board%20Session/7\\_PW\\_%20Sched%20rdin%20Adpt\\_Battery%20Energy%20Storage%20Systems.pdf](https://www.co.marion.or.us/BOC/Documents/2025%20Current%20Board%20Session/7_PW_%20Sched%20rdin%20Adpt_Battery%20Energy%20Storage%20Systems.pdf). On April 15th, 2025, the Marion County Board of County Commissioners held a work session to discuss BESS facilities within the County.

<sup>29</sup> Exhibit 15, Letter from C. Gispert to Marion County Board of Commissioners dated July 9, 2025.

<sup>30</sup> Exhibit 16, Email from Brandon Reich to John Lewis, July 10, 2025, forwarded by Cristina Gispert.

<sup>31</sup> Exhibit 17, LA 25-001, Legislative Amendment, Administrative Ordinance No. 1480 related to battery energy storage systems in the Marion County Urban and Rural Zone Codes Chapters 16 and 17.

Remington provided comments in opposition at the Board's July 9 meeting. Remington also provided oral comments at the hearing, expressing concern that as a project applicant and on behalf of the property owner, no notice had been provided.<sup>32</sup>

The Planning Director, who ultimately issued the application denial in the instant case, presented oral testimony which expressly assured the Board that the BESS Project would not be subject to Ordinance, referring to the property owner:

He also has an application in. We received it last week for a different site, and these amendments don't affect that application either. These amendments affect any application going forward, nothing that's currently in process.<sup>33</sup>

The Planning Director's representation that the BESS Project application would not be affected by the legislation appeared to induce passage by the Board, and Remington reasonably relied upon the assurance that its application would not be affected by the newly enacted ordinance. But that comfort was short lived given the following contradictory findings in the Planning Director's denial, issued three weeks later, stating:

The Marion County Board of Commissioners signed Ordinance 1480 on July 9th, 2025, in order to add clarifying sections of text in chapters 16 and 17 of the MCC that outright prohibit BESSs. These sections of code were added for clarification only, because BESSs were not permitted under any section of code prior to July 9th, 2025.

The applicant was made aware of the County's determination but still chose to apply for an administrative review to construct a BESS under the erroneous classification of a utility facility necessary for public service. There is no way to approve a BESS in Marion County and therefore the application must be denied.<sup>34</sup>

In sum, despite the Planning Director's initial comments, the Planning Director still applied the Ordinance to deny Remington's Application. As noted above, the Planning Director's conclusion as to the applicability of the Board's action clearly is contrary to established law.

#### **D. The County Denied the BESS Project and Remington Appealed**

On August 1, 2025, the Planning Director denied Remington's application concluding that due to the passage of the Ordinance, BESS are not "utilities facilities" and there is not any other use they could fall under, therefore they are not allowed in any zone. The County further determined that even if BESS were to be allowed, the BESS Project does not qualify because Remington failed to satisfy applicable utility facility "necessity" criteria. Denial at 3.

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<sup>32</sup> See Exhibit 15.

<sup>33</sup> Exhibit 18 - Board of Commissioners for Marion County July 9, 2025 Meeting Transcribed at 3.

<sup>34</sup> Denial at 3.

On August 14, 2025, Remington timely filed the Notice of Appeal in this case under ORS 215.417 and MCC 17.115.110 identifying six legal errors, including that:

- The Decision was legally incorrect and inconsistent with applicable law, including by misinterpreting and misapplying the factors in MCC 17.136.040(I), ORS 215.275(2), and Oregon Administrative Rules (“OAR”) 660-033-0130(16) regarding utility facilities necessary for public service;
- The Decision was legally incorrect and inconsistent with applicable law, including ORS Ch. 215, Statewide Planning Goal 3, and interpreting case law, including but not limited to *Brentmar*, 321 Or 481;
- The Decision was factually incorrect and not supported by substantial evidence;
- The Decision incorrectly concludes that BESS cannot be utility facilities necessary for public service;
- The Decision incorrectly concludes that the BESS Project could not satisfy one or more of the factors in MCC 17.136.040(I); and
- The Decision improperly applies of ORS 215.296.

The Notice of Appeal is attached as Exhibit 19.

After the appeal was filed, Planning Department staff told Remington that the reason for the denial was the Ordinance. In the course of corresponding with the Remington and Remington’s counsel regarding scheduling this appeal hearing, the Planning Department staff stated plainly to Remington’s counsel that the Ordinance was the central rationale for denying the BESS Project, telling Remington that it would lose before the Hearings Officer and the Board because BESS “are not allowed in any zone in Marion County:”

With all due respect for you guys, there is no path to approval here and any preparation afforded by postponing the hearing won’t change that. The BOC is going to affirm their own interpretation that BESS are not in our code and are not allowed in any zone in Marion County. The HO will affirm the staff decision because it is correct. This process we are engaged in leads to an appeal of the County decision to the state land use board of appeals (LUBA).<sup>35</sup>

The Planning Director’s focus in denying the application seems to have been on the County’s Ordinance prohibiting BESS in all zones within the County.

The sections that follow detail why this conclusion is legally incorrect and should be reversed.

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<sup>35</sup> Exhibit 20 - Email from Associate Planner, John Speckman dated October 8, 2025.

#### IV. ARGUMENT

This section describes the applicable statutory criteria that apply to siting a utility facility on EFU land in Oregon, then applies that framework to the BESS Project. The heart of the issue is whether a BESS is a utility facility (yes), and whether Remington has demonstrated that there are no reasonable alternatives outside of the EFU zone to site the BESS Project (it has). This section then speaks to the limitations on counties to regulate utility facilities on EFU land, and describes why the Ordinance (banning BESS in all of Marion County) is void as it applies to EFU land.

##### A. Relevant Utility Facility Statutory Criteria

Two statutes are most relevant to the Hearing Officer's review of this case. First, ORS 215.283(1)(c) allows for "[u]tility facilities necessary for public service" to be sited on EFU-zoned land.<sup>36</sup> Generally, land that a county has designated as an EFU zone under its comprehensive land use plan is to be used exclusively for farm use, unless otherwise provided by specific statutes, such as here. *See* ORS 215.203(1); *Sprint PCS v. Washington County*, 186 Or. App 470, 481, 63 P3d 1261 (2003) (utility facilities are permitted uses on EFU lands because they advance public utility service needs.). "Utility facilities necessary for public service" are allowed uses as of "right" subject solely to ORS 215.275 and counties may not impose additional criteria beyond the applicable statutes. *Brentmar*, 321 Or at 483. The key question, then, is whether the BESS Project is a "utility facility necessary for public service." Subsection IV.B of this brief addresses why BESS are utility facilities.

Second, ORS 215.275 tells us how to determine whether a project is a utility facility that is "necessary for public service." Subsection (1) says that a utility facility is "necessary" for public service if the facility "must be sited in an exclusive farm use zone in order to provide the service," and subsection (2) sets out the "factors" which must be considered to demonstrate that a utility facility is "necessary." The heart of Subsection (2) is that it requires showing that "reasonable alternatives" to siting on EFU land were considered, but that, because of one of six factors enumerated in the statute, it nevertheless was necessary to site the utility facility on EFU land. Subsection IV.C of this brief addresses in detail why the BESS Project satisfies the alternatives analysis requirement.

The relevant portion of ORS 215.275 states as follows:

(2) To demonstrate that a utility facility is necessary, an applicant...must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(a) Technical and engineering feasibility;

(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or

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<sup>36</sup> Note that the difference between ORS 215.213(1)(c) and ORS 215.283(1)(c) is whether the County has adopted marginal lands system prior to 1993; however, the statutory language is the same for utility facilities. Because Marion County did not adopt a marginal lands system prior to 1993, ORS 215.283 applies.

more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(c) Lack of available urban and nonresource lands;

(d) Availability of existing rights of way;

(e) Public health and safety; and

(f) Other requirements of state or federal agencies.

ORS 215.275(2); *see also* OAR 660-033-0130(16) implementing ORS 215.275.

The provisions of ORS 215.275 strike a balance between the need to site utility facilities on EFU land and the legislative policy to preserve farmland. *Sprint PCS*, 186 Or App at 475. The six factors in ORS 215.275(2) are intended to provide a “roadmap to courts and county hearings officers for what they are to consider and what not to consider when defining necessity.” *Id.* at 476. When deciding whether it is necessary to site a public utility facility on EFU land, local governments must analyze any alternatives based on ORS 215.275. *Id.* They may not import additional policy considerations into their analysis. *Id.*

The two statutes combined tell us that two things are required to site a project on EFU land: (1) the facility is a “utility facility” and (2) reasonable alternatives were considered, but due to one or more of the factors—not all—the facility needs to be sited on EFU land. ORS 215.283(1)(c) and ORS 215.275 together with OAR 660-033-0130(16), are incorporated in the MCC at MCC 17.136.040(I).

**B. The BESS Project Fits Within the Broad General Category of “Utility Facility”; The County Erred by Finding Otherwise**

The Planning Director incorrectly concluded that the BESS Project is not a “utility facility necessary for public service.” The Planning Director provides no legal authority for this conclusion, apart from the Board’s own and wholly unsubstantiated interpretation that BESS were not expressly contemplated by the Legislative or the LCDC in ORS 215.283(1) or OAR 660.033, respectively. That interpretation is not only inconsistent with applicable case law; it is beyond the County’s interpretive authority, as described below.

**1. Oregon Courts interpret “utility facility” broadly to include any equipment or apparatus that functions to perform a service**

Although the term “utility facility” is not defined in Oregon state statute or rule, Oregon courts interpret the statutory phrase to encompass a broad, general category of utility facilities that function or perform or provide a public utility service need. *See Keicher*, 175 Or App 633; *Cox*, 174 Or App at 343–44. The Planning Director’s decision ignores this well-established precedent.

The Oregon Court of Appeals in *Cox* broadly described “utility facilities” as follows:

“[U]tility facility,” as used in ORS 215.283(1)(d), [] mean[s] *equipment or apparatus*, whether standing alone or as part of a structure, *that functions to perform or provide, in whole or in part, a service such as the production, transmission, delivery or furnishing of electricity or natural gas, the purification of drinking water, or the treatment of solid or liquid waste.* The equipment comprising the facility need not be extensive or complex; in addition, the facility may include ancillary or off-site equipment such as transmission lines. See, e.g., ORS 215.283(1)(L) (referring to the “placement of utility facilities overhead and in the subsurface of public roads and highways”). However, at a minimum, the facility must include some equipment or apparatus that itself performs the relevant production, transmission or similar function or service.” 174 Or App at 343–44.

Stated another way, “a project or site in which equipment or apparatus that is present...performs the critical functions that constitute a service at issue” are utility facilities within the meaning of ORS 215.283(1).

Oregon courts and LUBA have acknowledged a broad range of facilities that qualify as “utility facilities,” for example:

- Cell towers, while owned by private companies, are still utility facilities. *McCaw Communications v. Marion County*, 96 Or App 552, 773 P2d 779 (1989) and *Sprint PCS*, 186 Or App at 475 (cellular communication facilities provide a “...a public service...” and thus are an eligible “utility facility”).
- Radio transmission towers are “utility facilities necessary for public service.” *Meland v. Deschutes County*, LUBA No. 83-086 (Jan. 25, 1984) (Final Order) (citing 41 Op Atty Gen 77, 81 (1981) which found the same as radio towers “supply the public with a commodity or service of public consequence or need”).
- A 12-mile transmission line which transmitted energy from a single wind turbine electrical generator to the grid (as opposed to serving multiple generators) qualified as a “utility facility.” *WKN Chopin, LLC v. Umatilla County*, LUBA No. 2012-016 (July 11, 2012) (Final Order).

## 2. Legislative history supports an inclusive reading

This interpretation is consistent with available legislative history. No evidence indicates the Legislature intended “utility facilities necessary for public service” to exclude technology like a BESS, as the County has done here. “Utility facilities necessary for public service” have been permitted as nonfarm uses in farm zones since the original bill’s inception in 1963.

The first provisions that allowed for the establishment of nonfarm uses within farm zones were provided for in ORS 215.213 (enacted pursuant to Senate Bill (“SB”) 129 and HB 1230).<sup>37</sup> ORS 215.283(1)(d) was later adopted verbatim in 1983, specifically applying to nonmarginal county lands. ORS 215.213(1) and ORS 215.283(1) are identical.

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<sup>37</sup> Exhibit 21 – Second House Amendment to Senate Bill 129 by Unanimous Consent (May 28, 1963).

In enacting ORS 215.213, and in discussing why “utility facilities” were included in the bill, the legislature left the list open ended. Testimony at the committee hearing explained that the utility facility language was intended to capture “*such things as* power substations or transformer substations *and so on,*” which sometimes were sited in rural areas. See House Committee on Local Government Hearing, May 28, 1963, Audio Recording of Hearing at 51:25.<sup>38</sup> The Land Conservation and Development Council (“LCDC”) agreed at its July 20, 2001, public hearing regarding implementation of ORS 215.275 through administrative rule under OAR 660-033-0130(16). LCDC explained: “utility facility...has been in the statute since 1963 and is intended to cover a wide range of utility things, such as cell towers, sewer lines, [and] booster stations.”<sup>39</sup>

Further, in discussing the legislative history of ORS 215.283(1) specifically, the Oregon Supreme Court took judicial notice of the interpretation provided by the Energy Facility Siting Council’s Assistant Attorney General stating:

When those statutes were first adopted, there were five categories of non-farm use that were allowed on farm land. One of those five categories was utility facilities necessary for public service. So, at the very outset in the farm use laws of Oregon we had this provision allowing utility facilities on farm land[.] Then, about 10 years later, the legislature amended—made the first of many subsequent amendments to those statutes, and \* \* \* one of the things they did was divide up the utility facility category [and] create [ ] two subcategories. One was for power plants, they made that a conditional use[.] \* \* \* We believe what that history shows is general [legislative] intent \* \* \* to use [ORS] 215.283(1)(d) as what I would call a *general category for utility facilities*, and then they’ve created a number of specific subcategories for particular types of utility facilities.”

*Save Our Rural Oregon v. Energy Facility Siting Council*, 339 Or 353, 384, 121 P3d 1141 (2005) (emphasis added).

The BESS Project is the type of facility contemplated by the foregoing cases. Not only do the BESS equipment and facilities function to perform the service of storage and delivery of electricity, but as described in detail in Section II.A above, BESS are an increasingly critical element of the state’s energy infrastructure. The Oregon Legislature, ODOE, and electric utilities alike have acknowledged BESS are an essential part of achieving Oregon’s clean energy goals and mandates. BESS supply the public with a necessary electrical storage and delivery service that is integral to the larger grid, and here to the PacifiCorp grid, the Parrish Gap substation (as the POI) and related transmission (both indisputably utility facilities). The BESS Project would provide 199 MW of 4-hour duration storage, which PacifiCorp and the state of Oregon have both stated on numerous occasions is necessary for future electricity use, grid reliability, and to meet ambitious state clean energy goals.<sup>40</sup> *Supra* Section II.A. These are critical public utility service functions.

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<sup>38</sup> We are prepared to provide the audio recording upon request.

<sup>39</sup> Exhibit 22 at 5 (Statement of Ron Eber, LCDC Rural Lands Specialist at the time, responding to questions from Commissioner McRobert).

<sup>40</sup> 41 Op Atty Gen 77, 81 (1981), 1981 WL 15226 (Aug. 19, 1981) (A use is a “utility facility” under ORS 215.213(d) (currently codified as 215.213(c)) if it supplies the public with a commodity or service of public

In sum, the Director's decision includes no interpretive analysis or reference to established case law, and the decision of denial is inconsistent with such appellate rulings. Denial at 3, Conclusion 7.

**C. The BESS Project Satisfies the ORS 215.275 Siting Criteria**

Once it is established that a facility is a "utility facility," the question becomes whether it is necessary to site that facility on EFU land. The Legislature provided the sole framework for making this determination in ORS 215.275, as described in the Section IV.A above, and the County must use this framework to evaluate the BESS Project. When determining whether it is necessary to site a public utility facility on EFU land, local governments must analyze any non-EFU alternatives based solely on ORS 215.275. They may not import additional policy considerations into their analysis. *Sprint PCS*, 186 Or App at 476.

This Section IV.C. describes the characteristics of an alternatives analysis, shows how the County misapplied ORS 215.275(2), and shows why the BESS Project satisfies one or more of the factors ORS 215.275.

**1. The scope of the alternatives analysis is defined by the Applicant's business objectives that advance the goal of providing service**

While non-EFU alternative sites must be considered, Oregon courts and LUBA have imposed constraints on the scope of alternatives that must be considered. *See Sprint PCS*, 186 Or App 470.

Key constraints include the following:

- Only sites outside of EFU land must be considered. *Id.* at 479 ("reasonable alternatives" refers to reasonable alternative sites to EFU land").
- Costs of a project on an alternative site may be considered, but not land costs, and costs cannot be the only factor. *Id.*
- The applicant's reasonable business objectives that advance the goal of providing utility service define the scope of the alternatives to be considered. *Id.*

Remington's Alternatives Analysis (Appendix A) describes its key business objectives and identifies specific siting criteria that flow from those objectives, guiding how BESS sites are evaluated. For example, key objectives include connecting to a PacifiCorp-owned substation in the Willamette Valley Service Area with 115 kV higher of available transfer capacity. *See Supra* Section II.C; Appendix A.

Friends of Marion County ("FOMC") and the County make much of the map submitted by FOMC of Portland General Electric substations, arguing that it shows that the BESS Project could have been located outside of EFU zones. But a core business objective of the Remington

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consequence or need and is so impressed with a public interest that it comes within the field of public regulation, and "as such is a public utility within the broad meaning of the term.")

BESS Project, and one that is essential to providing utility service, is that the BESS be sited adjacent to a *PacifiCorp* substation to help address the utility needs of PacifiCorp. Put simply, PGE substations are irrelevant to this application. Taking FOMC's assertion to its logical conclusion would mean so long as one utility had a substation outside of EFU land with capacity for a BESS, then no other utility could have battery storage next to a substation in EFU. This is an illogical outcome that stems from an erroneous application of the alternatives analysis. Here, a key siting criterion for the BESS Project is the ability to connect to a PacifiCorp substation in order to provide battery storage to PacifiCorp. Portland General Electric substations are irrelevant to the analysis.

**2. The County misapplied ORS 215.275(2), treating the factors as criteria**

The County erred by treating the *factors* in ORS 215.275(2) as “approval criteria” that must each be satisfied. After each of the factors, the County stated “the proposal did not meet this criterion,” showing that it misunderstood that Remington only needs to meet *one* of the six factors. Here, not only did the County improperly import various additional policy considerations into its analysis, it also misinterpreted and misapplied the factors in MCC 17.136.040(I), ORS 215.275(1) and (2), and OAR 660-033-0130(16).

**3. Remington meets three of the factors to demonstrate necessity under ORS 215.275(2)**

ORS 215.275(2) sets out what an applicant must prove in order to demonstrate that a utility facility is necessary. An applicant must show that “reasonable alternatives have been considered” and that the facility “must be sited in an exclusive farm use zone due to one or more of [six] factors.” ORS 215.275(2). Textually, the factors set out in ORS 215.275(2) serve to define the focus of the applicant’s “consideration” of non-EFU alternatives “necessary” to reject reasonable alternatives. *Sprint PCS*, 186 Or App at 476.

Here, the record demonstrates that Remington considered reasonable non-EFU alternatives to the current location and the use of EFU lands, however, at least three of the statutory factors nevertheless required it to locate the facility in an EFU zone. *See* Appendix A.

**a. Technical and engineering feasibility**

Siting BESS projects involve numerous technical and engineering considerations, the most important of which here is the proximity to a substation with available capacity to interconnect to the grid within the proposed service area. Remington’s technical analysis demonstrates the BESS must be located within one mile of the Parrish Gap substation in order to provide the BESS service to PacifiCorp within the Willamette Valley Service Area. *See* Appendix A at 5–8.

The BESS Project must be sited within 1 mile to account for various crossing agreements, procurement lead times for project infrastructure like utility poles, and power loss in transmission lines as power from BESS must be able to travel in and out of the facility. Appendix A at 3–4. The BESS Project substation also must have “available transfer capacity” of 115kV or higher to accept the BESS Project’s power with feasible network upgrades that can be implemented within the PacifiCorp’s required timeframe (here by 2029). Appendix A at 4.

Based on these technical and engineering considerations, the Remington site adjacent to the Parrish Gap Substation is the only feasible location that could accommodate these criteria and meet PacifiCorp's timing requirements. Appendix A at 4–8.

**b. Locationally dependent**

The BESS is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands. OAR 660-033-0130(16).

Here, unique geographical needs of the project cannot be satisfied in other locations. Similar to above, no other sites could accommodate a minimum of 15 contiguous acres of land within 1 mile of a substation within PacifiCorp's transmission system in the Willamette Valley Service Area with available capacity of 115kV or higher. As described above, the BESS is not standalone and must be sited within 1 mile of a substation with available transfer capacity in order to allow for the requisite energy to flow back and forth to support that substation.

Further, PacifiCorp's transmission system in the Willamette Valley is non-contiguous with its system in Washington and Central Oregon. It is connected only by transmission lines owned by other utilities. To store energy located within the Willamette Valley Service Area, the BESS Project must be located within this same area. Locating storage outside of this area would trigger "wheeling" charges (charges for transferring, or "wheeling," electricity through lines owned by other utilities such as Portland General Electric or Bonneville Power Administration), as well as increase the transmission line loss, which is the loss of electricity from the system as it is carried over long distances.

**c. Lack of available urban and non-resource lands**

As detailed further in Appendix A, no urban or non-resource lands are available that meet the project objectives and siting criteria.

**4. The County conflated the public health and safety factor, but the BESS Project is not using that factor**

"Public health and safety" is another one of the six factors under ORS 215.275(2) that can allow a utility facility necessary for public service be sited in an EFU zone. This factor speaks to uses that come with significant risk such that they should not be located in more populated, urban areas. However, Remington does not argue that the BESS Project needs to be sited on EFU lands for public health and safety reasons. Instead, as outlined above, Remington relies on the technical, engineering and locational factors to support the finding that the BESS Project needs to be sited in EFU here.

Still, much of the Planning Director's Decision focuses on speculative reasons for why the BESS Project is dangerous or harmful, and therefore should not be allowed in EFU. *See* Denial at 5. The County misconstrues and misapplies this factor. ORS 215.275 does not require any showing regarding potential public health or safety risks and those considerations are not relevant to the

ORS 215.275 inquiry. The County is simply not permitted to import such unsubstantiated considerations into its review. *Brentmar*, 321 Or. at 496. And even if it could (which it cannot), the allegations are unsupported. Remington demonstrated and can provide further evidence at hearing that BESS systems are designed such that the chances of fire are nearly zero and mitigation is in place in the event those systems fail. BESS are designed in accordance with the national, state and local code standards, and are equipped with emergency response plans in place for the unlikely event of fire.<sup>41</sup> Further, the applicable fire district here, Turner Fire District, commented on the BESS Project, but the comments did not oppose the BESS Project. It instead listed Oregon Fire Code provisions that the BESS Project will need to comply with.<sup>42</sup>

**5. Remington properly considered costs as one of many factors in siting the BESS Project**

In supporting an alternatives analysis, costs related to non-EFU sites may be considered, they just cannot be the only consideration. ORS 215.275(3); OAR 660-033-0130(16)(a)(B). Contrary to the County's determination, cost was not the sole deciding factor in selecting the location for the BESS Project. Denial at 6. As described above and throughout Appendix A, the BESS Project objectives and siting criteria were crucial to the site selection, and cost of potential network upgrades to alternative sites was one of many factors considered.

**D. The County's Authority is Limited to Applying ORS 215.275, so the Farm Impacts Test Does Not Apply**

In addition to the errors described above, the County improperly required Remington to address the requirements of MCC 17.136.060(A)(1) (the "farm impacts test"). However, that test does not apply here and the County is precluded from considering standards, criteria or such policies external to ORS 215.275.

The farm impacts test requires a showing that "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." *Id.* This code section is derived from ORS 215.296. But ORS 215.296 only applies to uses allowed under ORS 215.213(2) or ORS 215.283(4). Neither are at issue here. A "utility facility necessary for public service" is allowed as of right under ORS 215.283(1). Therefore, the statutory criteria under ORS 215.296 simply does not apply. The County is prohibited from expanding applicability of the criteria under ORS 215.296 beyond subsection (2). *See Brentmar*, 321 Or 481. As detailed by the Court in *Brentmar*, uses delineated in ORS 215.213(1) or ORS 215.283(1) are uses "as of right," which are not subject to additional local criteria. And, in such cases of direct conflict with a statute, the code is invalid and statute controls. *See Hanson*, LUBA No. 2024-065.

But, even if the farm impacts test did apply, the BESS Project does not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, nor

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<sup>41</sup> See Exhibit 11(b) at 10-11, Section 2.4 (Safety).

<sup>42</sup> See Fire Marshal Comments Letter for Administrative Review 25015, submitted to the County via email July 24, 2025.

would it significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

**E. The Ordinance Banning BESS is Invalid as to EFU Land and Does Not Apply**

Underlying the Planning Director's denial is its reliance on the Ordinance banning BESS to conclude that BESS are not utility facilities and are not allowed in any County zone. In fact, the Ordinance appears to be the primary, if not sole, basis for the non-facility interpretation. As demonstrated herein, the Ordinance is unlawful and void on its face as applied to EFU land. It also does not apply to the current application, for the reasons set forth below.

First, it is well established under Oregon law that when a county's EFU zoning code deviates from the statutory requirements in ways that conflict with the statute, the statute controls and the offending ordinance provisions are void. *See Hanson*, LUBA No. 2024-065 (citing *Riggs*, 167 Or App at 9-10) ("Although counties adopt their own EFU zones, the EFU zone is a creature of statute. In cases where a county's EFU zone deviates from the statutory EFU zone in ways that conflict with the statute, the statute controls."). Therefore, in this context, local law implements state law, and no deference is afforded to the county's interpretation. *Id.* None should be afforded here.

Here, the County's ban of BESS as authorized utility facilities on EFU lands under the Ordinance conflicts with the plain language set forth in ORS 215.283(1) and 215.275 and related appellate rulings. The County is not authorized to impose additional local criteria beyond the statute. *Brentmar*, 321 Or at 483. This is all the more true when applied to a utility facility that meets one or more of the factors set out in ORS 215.275. The County's actions as to EFU lands are void.

Second, even if the Ordinance is valid as applied to EFU land, under Oregon's statutory goal post standard (ORS 215.427(3)(a)), and the County's own interpretation provided via email and at the Ordinance adoption hearing, the approval or denial of the application must be based on the standards or criteria in effect at the time the application was submitted. Remington's application was submitted prior to the Ordinance's passage and deemed complete within 180 days thereafter.

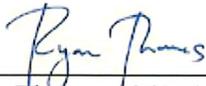
The Ordinance simply does not apply to the County's review and final action.

**V. CONCLUSION**

The BESS Project is a utility facility that is necessary for public service. Remington demonstrated that the project must be sited in the EFU zone at the proposed location based on consideration of reasonable alternatives and the factors set forth in ORS 215.275. The Director's decision to deny the application misconstrued the law and the County's findings are unsupported by substantial evidence. The denial should be reversed, and AR 25-015 should be approved on appeal.

DATED: October 31, 2025

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## Alternatives Analysis

### 1. Introduction and Overview

Oregon state law and Marion County Code require that in order to site a “utility facility necessary for public service” on land zoned for exclusive farm use (“EFU”), an applicant must show reasonable non-EFU alternatives have been considered, and that one or more of six statutory factors nevertheless require the utility facility to be located in an EFU zone. ORS 215.275(1)-(2); MCC 17.136.040(I).

This Alternatives Analysis describes the key objectives, siting criteria, and alternatives that were considered for the proposed Remington Battery Energy Storage System project (“BESS Project”), identifies the siting criteria Remington applied, and discusses why alternatives were eliminated from further consideration due to siting constraints.

### 2. Project Overview

The BESS Project will consist of battery containers, transformers, inverters, transmission lines, and associated infrastructure that will deliver electricity to the PacifiCorp transmission system, interconnecting with the existing Parrish Gap Substation (which is the point of interconnection or “POI”). The BESS will have a total electrical output capacity of approximately 199 MW (AC). Power from the BESS Project will be collected at the collector substation on site, and energy will then be transmitted from the collector substation to the POI, and subsequently into an existing PacifiCorp-owned transmission line.

The BESS Project responds to PacifiCorp’s need for additional storage in order to provide reliable electric service in western Oregon. As detailed in PacifiCorp’s 2025 Integrated Resource Plan (“IRP”),<sup>1</sup> at least 380 megawatts of new 4-hour storage resources are needed in its Oregon service territory by 2029 in order to:

- Provide enhanced grid reliability, resiliency and stability;

<sup>1</sup> Available at <https://www.pacificorp.com/energy/integrated-resource-plan.html>, see Table P.3 in Volume II.

- Enable integration of renewable energy resources into the grid and avoid rolling blackouts or loss of power;
- Maximize the existing system’s capability and improve PacifiCorp’s ability to serve growing customer loads while reducing the risk of voltage collapse;
- Further the ability to provide peak shaving and load management;
- Support and defray infrastructure costs to transmission system;
- Provide backup electrical support to the grid that supports disaster recovery and critical infrastructure continuity services; and
- Assist Oregon in meeting its greenhouse gas emissions reduction goals of 80% by 2030, 90% by 2035, and 100% by 2040, as required by Oregon’s Clean Energy Bill (House Bill 2021), signed into law on July 19, 2021.

PacifiCorp’s 2025 Oregon Sibus Request for Proposals (RFP), which was approved by the Oregon Public Utilities Commission and is the means by which PacifiCorp will procure the resources described in the IRP, requires project completion and achievement of commercial operations by December 2029. The Remington BESS project has been designed to address PacifiCorp’s needs and will do so by providing 199 megawatts of 4-hour duration storage and by coming online before December 2029.

### 3. Project Objectives

Battery storage enhances the performance of all types of power generation—including, but not limited to, fossil fuel, nuclear, and hydroelectric—by helping balance supply and demand and improving grid reliability. Battery energy storage systems are also a critical part of delivering energy generated by wind and solar projects to the grid when that energy is most needed. Due to fluctuations in the generation of energy from wind and solar depending on the weather, battery storage smooths delivery to the grid; absent battery storage, the grid may have an excess of energy during windy and sunny periods but have a deficit at night or during calm or cloudy periods.

In addition to the general objective of providing storage for electricity for grid balancing purposes, this project has specific project objectives necessary to provide battery storage services to the region. Those objectives are defined below:

#### Business Objectives:

- Respond to the eligibility and scoring criteria in PacifiCorp’s 2025 Oregon Sibus RFP<sup>2</sup> such that the project will be commercially viable with PacifiCorp as the offtaker;
- Connect to a PacifiCorp-owned substation in PacifiCorp’s Willamette Valley Service Area.<sup>3</sup> Internal studies indicate both demand for battery energy storage and available transmission to

<sup>2</sup> Available at [https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/suppliers/rfps/2025-or-sibus-rfp/2025\\_OR\\_Sibus\\_RFP\\_Main\\_Document.pdf](https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/suppliers/rfps/2025-or-sibus-rfp/2025_OR_Sibus_RFP_Main_Document.pdf).

<sup>3</sup> Shown on map at [https://www.oasis.oati.com/woa/docs/PPW/PPWdocs/PP\\_Service\\_Territory.pdf](https://www.oasis.oati.com/woa/docs/PPW/PPWdocs/PP_Service_Territory.pdf) includes the highlighted area within Marion, Linn, Polk, Lincoln, and Benton counties. See also Map 7.

and from said storage in this PacifiCorp service area, and the purpose of this project is to respond to this geographically specific demand; and

- Build a storage capacity of at least 199 MW of BESS. The Interconnection Queue Position held by Remington BESS, LLC is for 199 MW, and interconnection studies performed to date are specific to this capacity. The size of this project allows for economies of scale in developing, constructing, and operating the BESS, resulting in an economically viable project.

#### Public Service Objectives:

- Provide enhanced grid reliability, resiliency, and stability;
- Enable integration of renewable energy resources into the grid and avoid rolling blackouts or loss of power;
- Maximize the existing system's capability and improve PacifiCorp's ability to serve growing customer loads while reducing the risk of voltage collapse;
- Further the ability to provide peak shaving and load management;
- Support and defray infrastructure costs to transmission system;
- Provide backup electrical support to the grid that supports disaster recovery and critical infrastructure continuity services; and
- Assist Oregon in meeting its greenhouse gas emissions reduction goals of 80% by 2030, 90% by 2035, and 100% by 2040, as required by Oregon's Clean Energy Bill (House Bill 2021), signed into law on July 19, 2021.

#### 4. Remington Siting Criteria

In order to accomplish the project objectives, Remington BESS, LLC identified specific minimum siting criteria. These siting criteria were used to determine potential sites that satisfied the technical and feasibility needs of the BESS Project. The BESS Project requires:

1. Location: Within PacifiCorp's Willamette Valley Service Area, per the project objectives.
2. Proximity to Point of Interconnection ("POI," i.e., a utility-owned substation): Within 1 mile of a PacifiCorp-owned substation. This is a generally accepted screening criterion for BESS for several reasons, including but not limited to the need for utility crossing agreements, franchise and encroachment agreements in public roads, easement agreements across non-Project lands, engineering complexity, procurement lead times for utility poles, and power loss in transmission lines (note that for BESS, power must travel both in and out of the facility via the project transmission line). Each of these increase with increasing distance from the POI.
3. Substation voltage class and transfer capacity: 115kV or higher substation with "available transfer capacity," meaning the specific substation can accept the BESS Project's power within the proposed timeframe (in this case, by the end of 2029). An available transfer capacity ("ATC") analysis is determined by performing in-depth study of the transmission system to

determine whether injected power at the substation would cause any overload or reliability concerns on the transmission system. The ATC study is performed using study cases developed by the host utility, in this case PacifiCorp. Based on the results from the preliminary available transfer capacity analysis, an interconnection request is filed with the host utility. The host utility studies the addition of the project and ultimately determines the impact on the transmission system.

4. Land availability: A minimum of 15 contiguous acres of available land in order to site at least 199 MW of storage capacity (1 acre per 20 MW), plus 2 acres for a project substation and 3 acres to account for access roads, zoning-related setback requirements, environmental buffers, and the ability to increase project capacity by up to 40 additional megawatts. Setting aside land for future expansion is an industry-standard practice where feasible due to the favorable economies of scale for increasing capacity at existing sites compared to new sites. "Available" land is defined as land that could feasibly be leased or purchased for use as a BESS facility. Available land does not strictly need to be unoccupied; however, a parcel would not be considered available if it is already developed with uses that cannot reasonably be moved, removed, or repurposed, or if a landowner is unwilling to lease or sell the property. As an example, a BESS could not be reasonably sited by purchasing and removing numerous homes from a residential neighborhood or by demolishing an existing commercial or industrial facility that is not already at or near end-of-life.
5. Feasible network upgrades: Network upgrades are the developer-funded, utility-constructed upgrades to PacifiCorp's facilities that would be necessary to allow the project to connect to the grid. These can consist of new breakers at the point of interconnection (PacifiCorp substation), new or extended transmission lines to create the grid capacity to charge and/or discharge storage resources, and other necessary equipment upgrades. Each project that enters the PacifiCorp interconnection queue and goes through a System Impact Study is assigned network upgrades based on the utility's assessment of what is needed to accommodate the project. The feasibility of network upgrades can be measured in time and cost.
  - Timing: PacifiCorp (and any other affected utility systems) requires enough time to design, permit, procure equipment for, and install the necessary network upgrades. Procurement (i.e., purchasing and receiving equipment) can be one of the longest-lead time portions of this process due to the high demand for and limited production capacity of breakers, transformers, poles, and other equipment that often must be ordered several years in advance of delivery. The PacifiCorp 2025 OR Situs RFP includes a criterion of having a guaranteed commercial operation date (COD) on or before December 31, 2029. Therefore, the chosen Point of Interconnection must not require network upgrades that cannot be completed by mid-2029.
  - Cost: Interconnection at the chosen PacifiCorp substation does not result in Network Upgrade costs that would render the project financially infeasible. For the purposes of this analysis, RWE considered Network Upgrade costs above \$20 million to be prohibitive for purposes of the fiscal feasibility of an individual BESS facility.
6. Lack of slopes: slopes less than 15%. For slopes greater than this, the construction cost and ground disturbance to level land (cut and fill) to accommodate BESS foundations becomes

substantial. This can result in loss of topsoil, substantially longer site preparation time, and increased noise, dust, and risk of erosion.

7. Lack of wetlands or other water features: No major wetlands, water features, or environmentally critical areas that would impede development.
8. Zoning: land use zoning allows for permitting of utility facilities.
9. Access: sufficient site access is available, meaning that construction equipment and BESS modules, utility poles, and other equipment can be delivered to the site without creating the need for substantial new road-building.
10. Avoids interference with existing utility easements. Electrical substations are connected by high-voltage transmission lines that carry electricity over long distances. The required ground clearance for these lines, and the typically exclusive nature of the easements across private and public lands that they occupy, means that a BESS cannot be sited within a transmission line easement (e.g., beneath the lines themselves). Additionally, where existing underground utilities (e.g., water, sewer, gas pipeline, buried electrical) are located, the BESS facility must avoid these easements as well, for both legal and safety reasons. A potential site that is crossed by an existing utility easement may not have sufficient space for a BESS facility after designing around these encumbrances.

## 5. Alternatives Analyzed

Based on the projects objectives and siting criteria, Remington BESS evaluated potential sites for the development of the BESS Project. Several alternative sites were considered for the BESS Project which address the development of a similar project elsewhere in Oregon. These alternatives are infeasible for the following reasons:

### 5a. No Project Alternative

The No Project Alternative would mean that the Project would not be constructed. By not construction new storage capacity, this alternative would:

- Reduce grid reliability, resiliency, and stability as the energy mix on the grid becomes more intermittent (e.g., as more solar and wind energy sources are added to the electricity supply).<sup>4</sup> This may result in rolling blackouts or loss of power;
- Reduce integration of renewable energy resources into the grid, in opposition to the requirements of Oregon's Clean Energy Bill;
- Reduce the existing system's capability and reduce PacifiCorp's ability to serve growing customer loads while increasing the risk of voltage collapse;
- Reduce PacifiCorp's ability to provide peak shaving and load management; and

<sup>4</sup> A substantial addition of intermittent supplies to Oregon's electricity mix before December 31, 2027 is anticipated and facilitated by Governor Kotek's Executive Order 2025-25, available at <https://www.oregon.gov/gov/eo/eo-25-25.pdf>.

- Not address the need for backup electrical support to the grid that supports disaster recovery and critical infrastructure continuity services.

### 5b. Other Project Location Alternatives

The potential for relocating the BESS Project to another site in the area was considered but deemed infeasible.

To identify potential BESS Project locations, Remington BESS, LLC first identified eligible PacifiCorp-owned substations within the utility's Willamette Valley Service Area. Remington focused on this service area primarily due to: 1) information about demand, grid balancing, and anticipated transmission upgrades provided by the utility in its IRPs (2025 and previous years' IRPs); and 2) the proprietary available transfer capacity (ATC) analysis performed by Remington BESS, LLC's parent company, which indicated capacity may be available at the target POI. The ATC analysis aggregates data from a variety of sources regarding substation capacity, ownership, prior studies, and other relevant data that helps RWE collect and analyze data about substations, ultimately providing information about the likelihood of available transfer capacity at any given substation.

PacifiCorp's transmission system in the Willamette Valley is non-contiguous with its system in Washington and Central Oregon, connected only by transmission lines owned by other utilities. To store energy located within the Willamette Valley service area, the BESS Project would need to be located within the same area. Locating storage outside of the area would trigger "wheeling" charges (charges for transferring, or "wheeling," electricity through lines owned by other utilities, such as Portland General Electric or Bonneville Power Administration), as well as increase the transmission line loss, which is the loss of electricity from the system as it is carried over long distances.

Potentially eligible substations in this Willamette Valley Service Area included those of 115kV voltage class or higher and with available transfer capacity. Using queries of numerous databases, review of transmission studies available from PacifiCorp, and other desktop and field research, Remington BESS, LLC initially identified 30 PacifiCorp-owned substations 115kV or higher within the study area. The ATC analysis then narrowed this list of eligible substations to 6 that may have available transfer capacity.

It is important to note that the ATC analysis, which analyzes available information on the generation and output at each substation, can only indicate a likelihood of available transfer capacity, but is not proof that such capacity exists. Only the utility (here, PacifiCorp) can confirm this and notify the interconnection customer (here, Remington) whether major network upgrades must be constructed to accommodate a project. This is done through a series of technical studies performed by PacifiCorp *only* for projects that have entered its interconnection queue after applying for a queue position, demonstrating a minimum of project readiness criteria have been met, and paying the study costs. This study process can take several years before a project has enough information about its interconnection requirements to enter into an agreement with PacifiCorp to actually perform the necessary upgrades and ultimately construct and bring the project online. However, by reviewing the study results of other projects in the queue, it is possible to make educated decisions about which substations are the most viable candidates for a project POI.

Using the list of 6 substations developed based on the ATC analysis, Remington then used GIS mapping to apply filters and narrow eligible Project sites based on the site criteria explained above, for example, land with appropriate zoning within 1 mile of the eligible substations. See Maps 1-6. With the site

criteria and project objectives applied, only the Remington site is feasible. The sections that follow provide detail regarding that analysis by substation.

**Table 1: Substation Summary (See Map 1 for substation locations)**

Substation Name	Voltage Class	County	Map #
Parrish Gap	230 kV	Marion	2
Jefferson	115 kV	Marion	3
Diamond Hill	230 kV	Linn	4
Fry	230 kV	Linn	5
Calapooya	230 kV	Linn	6
Brownsville	115 kV	Linn	6

**Parrish Gap Substation (Marion County)**

No non-EFU lands meet the Siting Criteria.

As illustrated on Map 2, only one parcel zoned Rural - Acreage Residential (2-4 acres) (R-AR) within 1 mile of the Parrish Gap Substation meets the minimum site size requirement of 15 acres; however, the topography of the area showed slopes greater than 15% within all of the parcels on the west side of Parrish Gap Road SE as well as on the south side of Pearson Road NE. No other non-EFU parcels (or potential assemblage of parcels) are within 1 mile of the Parrish Gap substation and meet the size or slope criteria necessary for the BESS project.

**Jefferson Substation (Marion County)**

Remington identified several non-EFU parcels within 1 mile of Jefferson Substation; however, as illustrated on Map 3, no non-EFU lands meet the Siting Criteria. For example:

- Future Urban Development/Lower density residential, Commercial/Mixed-Use/Medium-density residential, Rural - Acreage Residential (2-4 acres), and Industrial – Light: All but one of the parcels with these zones are below the minimum site size requirement and already developed with homes, schools, and/or businesses. One 20-acre parcel is located near the Jefferson Substation, but is bisected by Morgan Creek and its associated riverine and freshwater forested/shrub wetlands, all of which are visible in desktop review of the site. The necessary setbacks from these jurisdictional features would remove enough of the parcel from the buildable area that there would be insufficient space to build a BESS of the required 199 MW capacity here. None of the parcels with this zoning are eligible based on size criteria or absence of waters and wetlands, and none could be included in an adequately-sized parcel assemblage that would not require inclusion of adjacent EFU-zoned parcels.
- Public & Semi-public uses: The parcels with this zoning are owned by the City of Jefferson and include a cemetery and the city’s new (2022) water treatment plant. These do not meet the availability criterion.

- Rural Industrial: The only parcel with this zoning is less than 2 acres, and it is fully developed and surrounded by small, developed residential parcels. This parcel does not meet the size or availability criteria.

#### **Diamond Hill Substation (Linn County)**

As illustrated on Map 4, there is no non-EFU zoning within 1 mile of the Diamond Hill Substation. The nearest non-EFU parcels would require a transmission line 2 miles in length to reach the substation, and would require a crossing of I-5, which in this location is a span of about 300 feet. This length of transmission line, considered with the need for a 300-foot bore beneath an interstate highway, would make the project financially infeasible (i.e., not commercially competitive). Therefore, this is not a reasonable alternative to the proposed location, and no non-EFU parcels in the vicinity of the Diamond Hill Substation meet the siting criteria.

#### **Fry Substation (Linn County)**

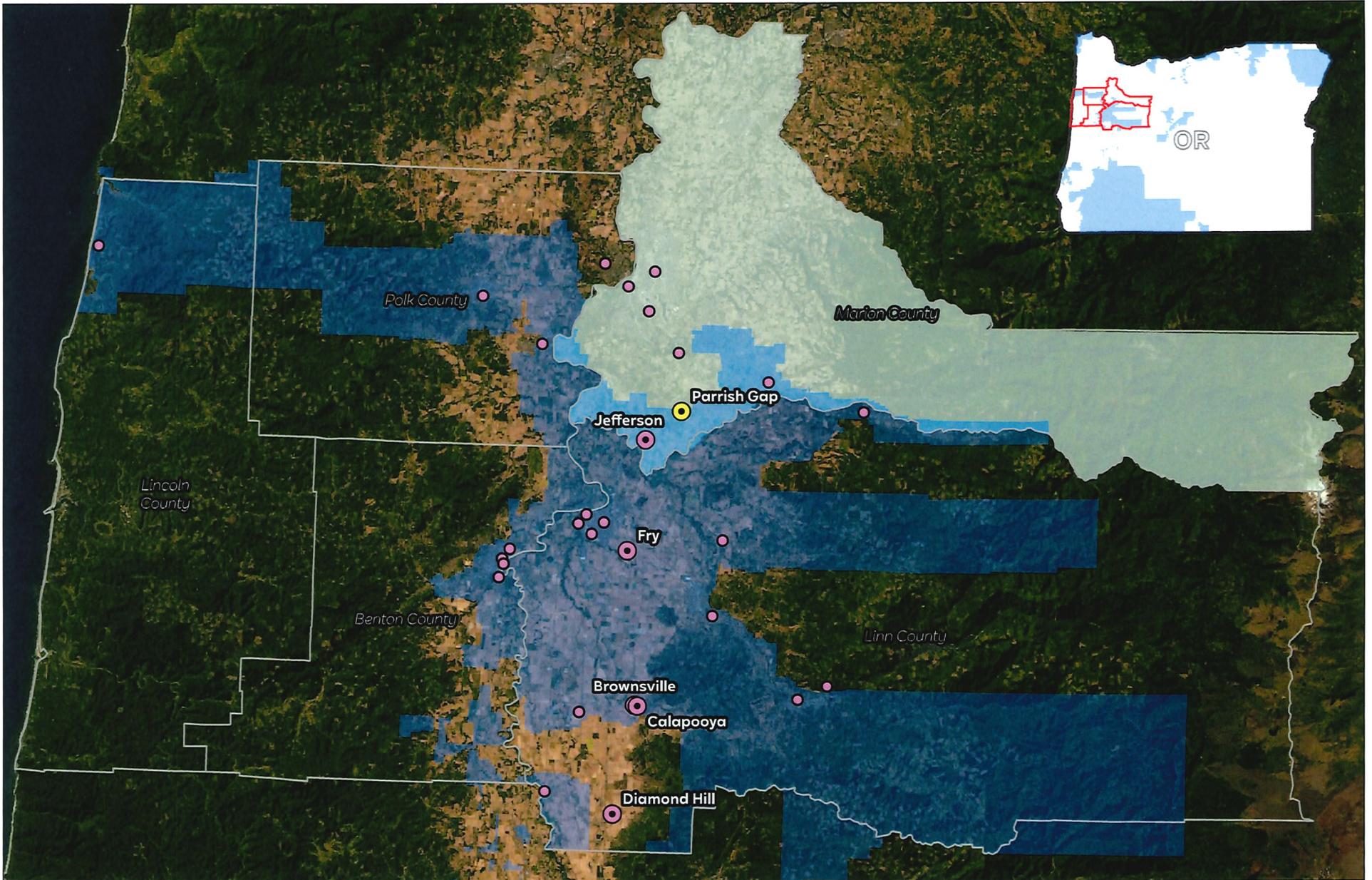
As illustrated on Map 5, there is no non-EFU zoning within 1 mile of the Fry Substation. The nearest non-EFU parcels are not available, being occupied with existing uses such as a foundry and several densely developed residential neighborhoods. No non-EFU parcels in the vicinity of the Fry Substation meet the siting criteria.

#### **Calapooya Substation and Brownsville Substation (Linn County)**

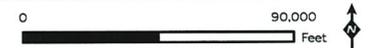
These substations are considered together because, as illustrated on Map 6, they are located only 1,000 feet from one another. The majority of the land within 1 mile of these substations is zoned EFU. There are some Light Industrial and Rural Industrial zoned parcels within 1 mile of these substations, but these parcels are already developed with businesses and homes.

### **6. Conclusion**

As demonstrated above, Remington assessed potential alternative sites but based on the project and siting criteria no other sites are feasible and the BESS Project must be sited at the Parrish Gap substation on EFU land.



October 24, 2025  
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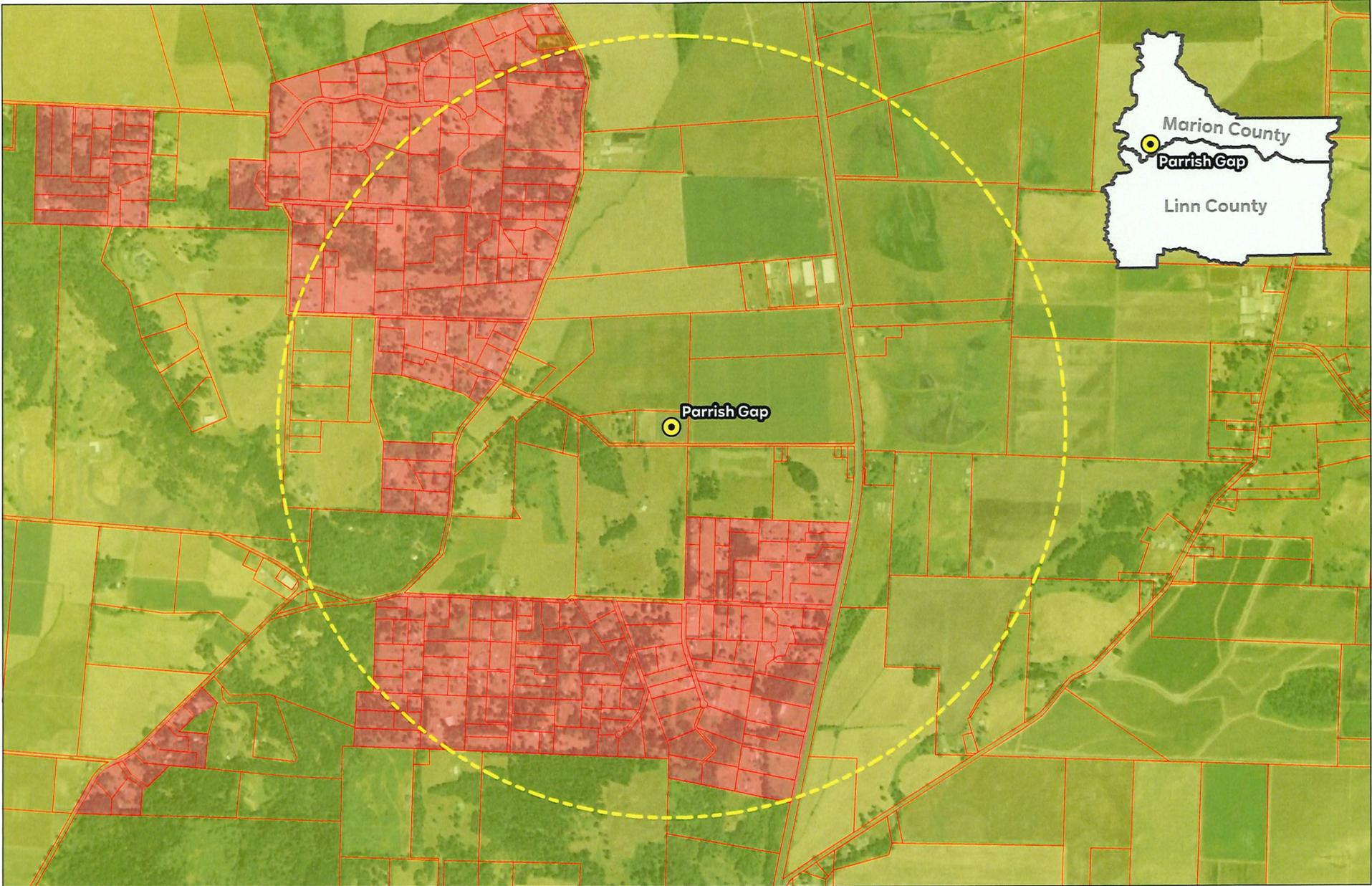
## Remington BESS

Map 1:  
 115+ kV PAC Substations  
 Western Oregon

- Proposed Project Substation
- Other Evaluated Substations
- PacifiCorps Willamette Valley Service Area
- Alternative Substations
- County Line



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**Remington BESS Zoning Maps**

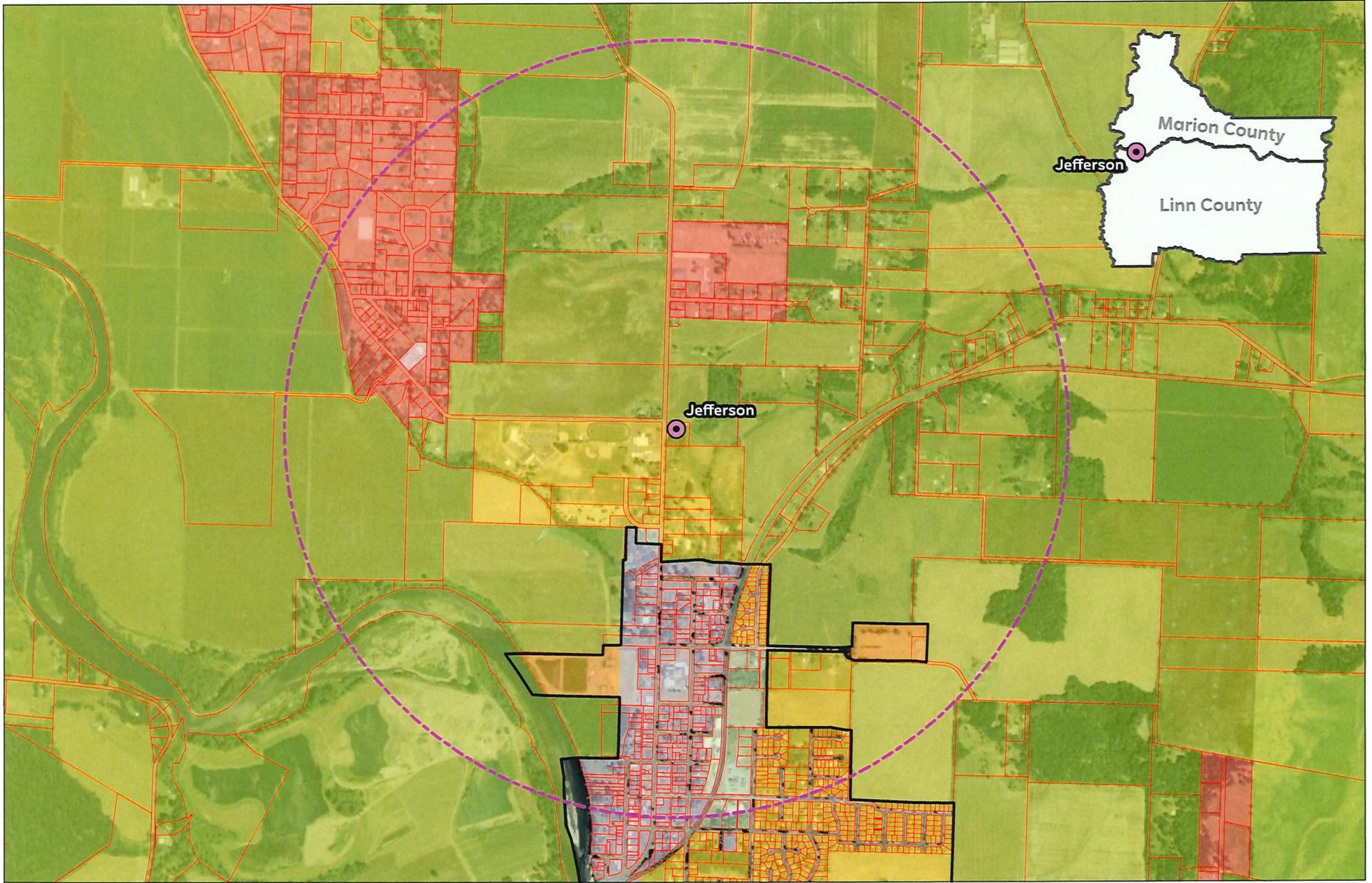
Map 2:  
 Parrish Gap Substation - 230 kV  
 Marion County, OR

- 1 mi Substation Buffer
- Parcel Boundaries
- Exclusive Farm Use 80
- Rural Residential (2-4 acres)
- Proposed Project Substation
- Public & Semi-public Uses

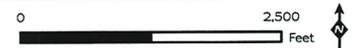


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**Exhibit 3**



October 27, 2025  
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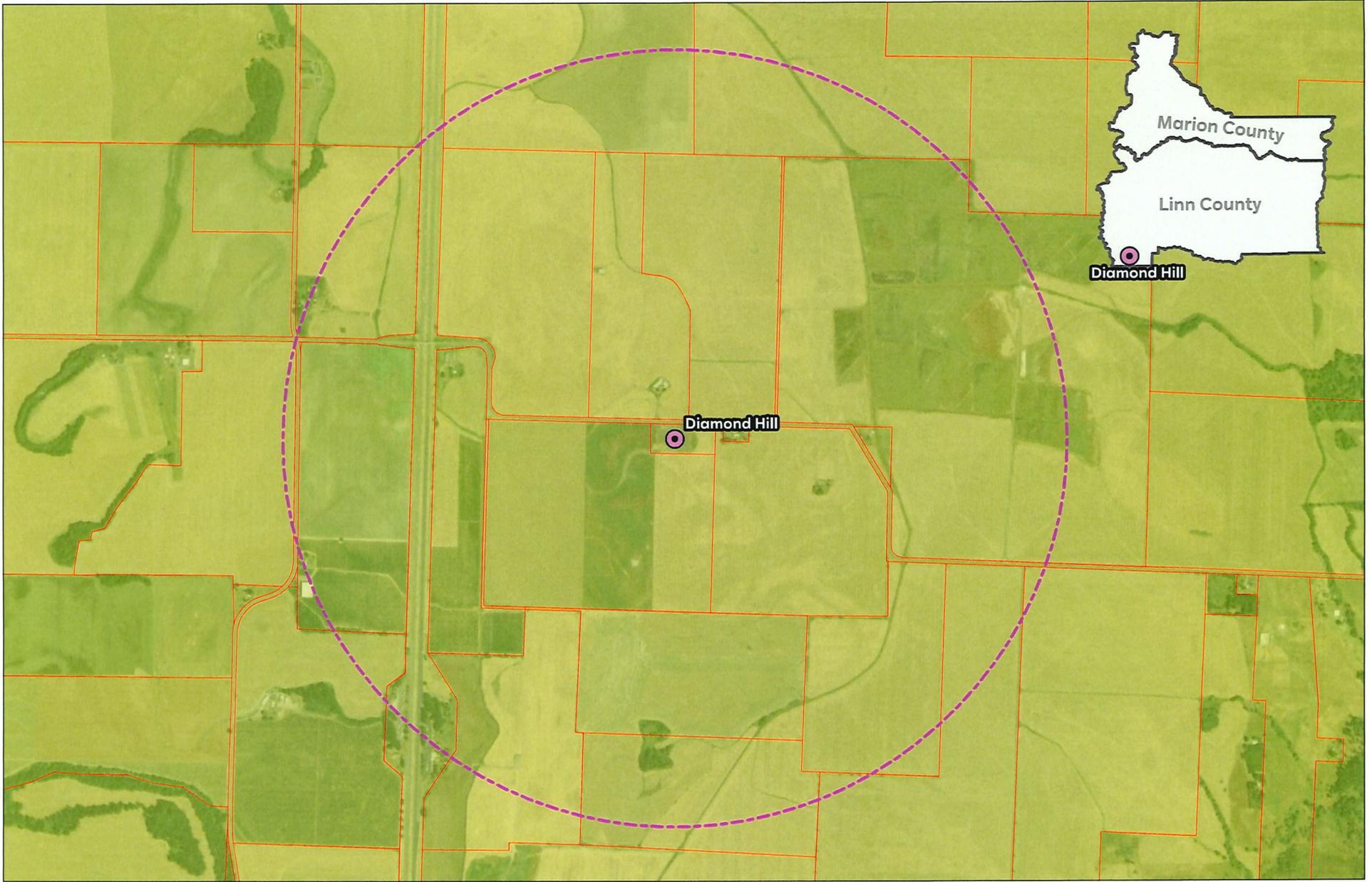


**Remington BESS Zoning Maps**  
 Map 3:  
 Jefferson Substation - 115 kV  
 Marion County, OR

- 1 mi Substation Buffer
- Parcel Boundaries
- Commercial - General
- Exclusive Farm Use 80
- Future Urban Development
- High-density Res.
- Industrial - Light
- Medium Low-density Res.
- Medium-density Res.
- Mixed Farm-Forest 80
- Mixed-Use Com. & Res. Med-high
- Public & Semi-public Uses
- Rural Industrial
- Rural Residential (2-4 acres)
- Municipal Boundary



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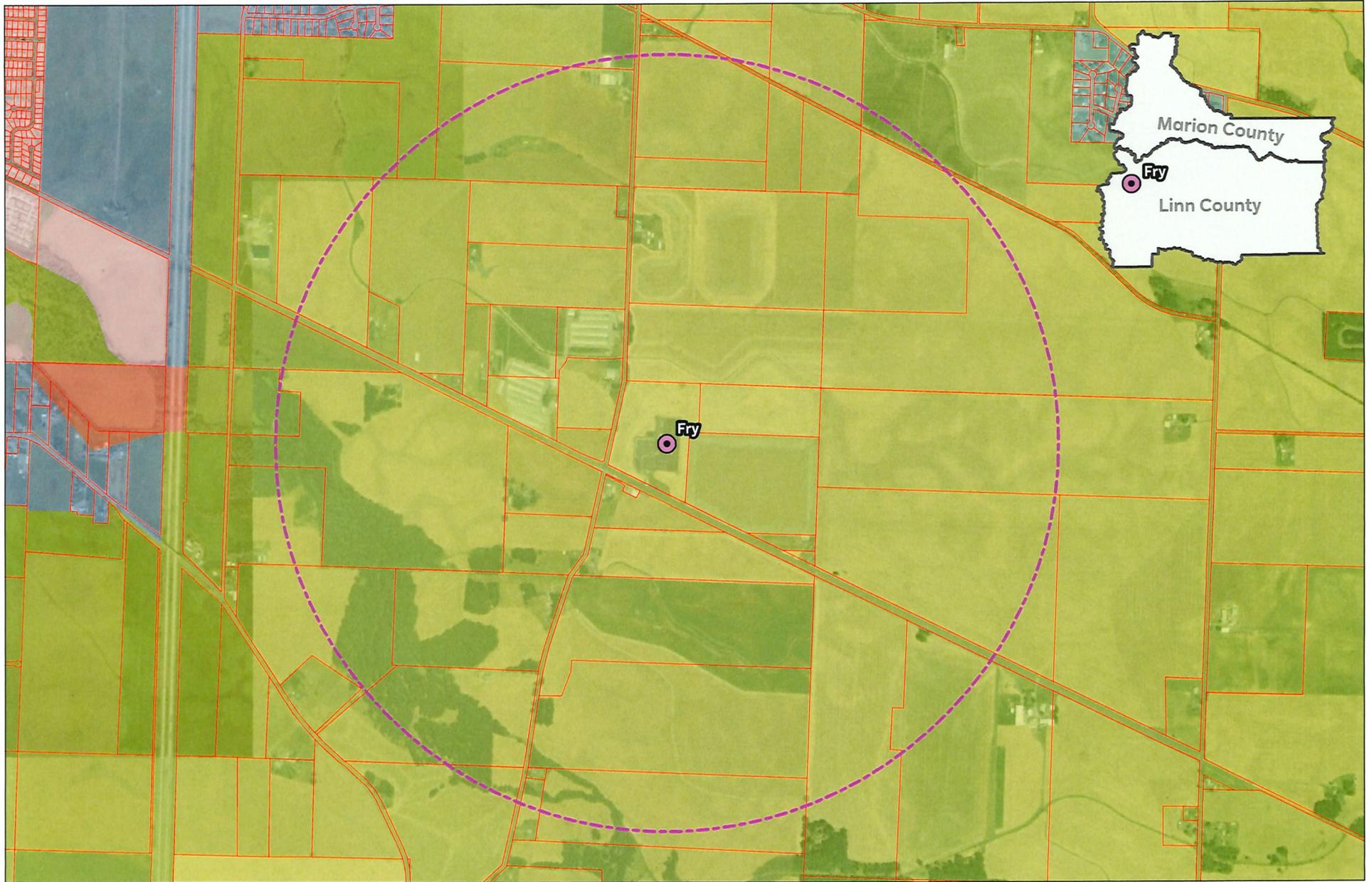
**Remington BESS Zoning Maps**

Map 4:  
 Diamond Hill Substation - 230 kV  
 Linn County, OR

-  Parcel Boundaries
-  1 mi Substation Buffer
-  Exclusive Farm Use 80



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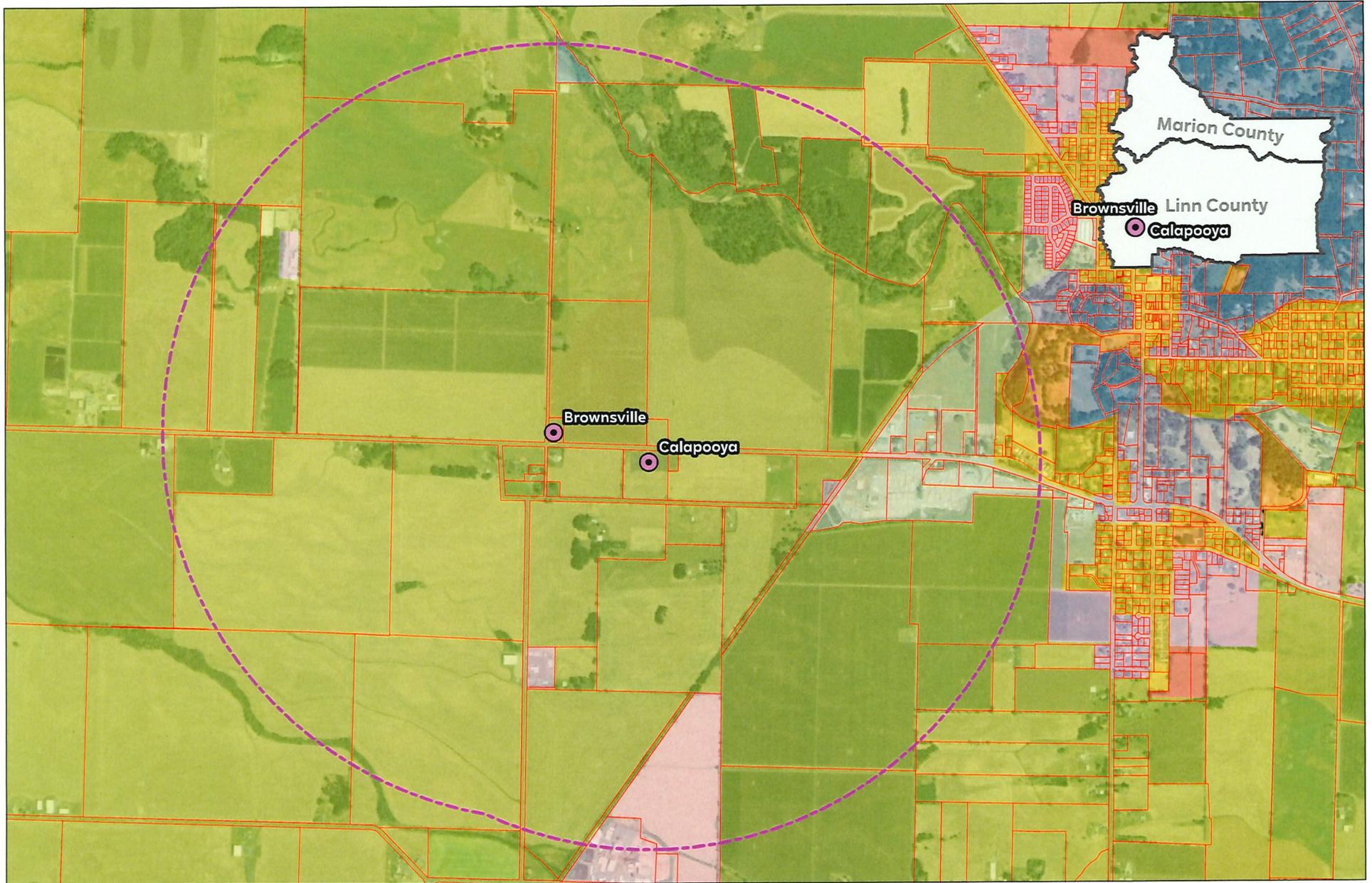
## Remington BESS Zoning Maps

Map 5:  
 Fry Substation - 230 kV  
 Linn County, OR

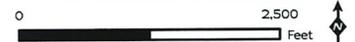
- |                        |                    |                           |
|------------------------|--------------------|---------------------------|
| Parcel Boundaries      | Middle Housing     | Rural Residential 1 acre  |
| Exclusive Farm Use 20+ | Other              | Rural Residential 5 acres |
| Exclusive Farm Use 80  | Parks & Open Space | 1 mi Substation Buffer    |



Map produced by RWE Clean Energy Development, LLC ("RWE"). Final locations to be verified on-site by RWE personnel. The recipient shall not reproduce or redistribute the map without the express written consent of RWE. By accepting the receipt of this map, the recipient agrees to use the map only as expressly authorized by RWE.



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**Remington BESS Zoning Maps**  
 Map 6: Brownsville Substation - 115 kV  
 Calapooya Substation - 230 kV  
 Linn County, OR

- |                       |                         |                           |                               |
|-----------------------|-------------------------|---------------------------|-------------------------------|
| Parcel Boundaries     | Industrial - Light      | Mineral and Aggregate     | Rural Industrial              |
| Commercial - Central  | Low-density Res.        | Mixed Farm-Forest 80      | Rural Residential (2-4 acres) |
| Commercial - General  | Medium Low-density Res. | Other                     | Rural Residential 5 acres     |
| Exclusive Farm Use 80 | Medium-density Res.     | Public & Semi-public Uses | 1 mi Substation Buffer        |



Map produced by RWE Clean Energy Development, LLC ("RWE"). Final locations to be verified on-site by RWE personnel. The recipient shall not reproduce or redistribute the map without the express written consent of RWE. By accepting the receipt of this map, the recipient agrees to use the map only as expressly authorized by RWE.



WASHINGTON

OREGON

CALIFORNIA

### Pacific Power Service Territory

- Service Territory
- County Boundary
- State



Data is projected in UTM Zone 11, NAD83, meters.

No Warranty. With respect to any information, including but not limited to the confidential information, which a Party furnishes or otherwise discloses to another Party for the purpose of evaluating compliance, it is understood and agreed that the disclosing Party does not make any representations or warranties as to the accuracy, completeness or timeliness of the information, and the receiving Party understands and agrees that no Party, or its representatives or agents, shall be liable for any errors or omissions in all the information or results, by another Party or to any other person or entity resulting from the use of any information furnished or otherwise provided pursuant to this Agreement.

**BEFORE THE MARION COUNTY HEARINGS OFFICER**

In the Matter of the Application of ) Case No. 25-015  
Remington BESS LLC, on behalf of the )  
Neils Paul Jensen and Imma L. Jensen Joint ) **ADMINISTRATIVE REVIEW**  
Revocable Trust. )

**ORDER**

**I. Nature of the Application**

This matter came before the Marion County Hearings Officer on the Application of Remington BESS, LLC, on behalf of the Neils Paul Jensen and Irma L. Jensen Joint Revocable Trust for an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 15-acre portion of a 133.77-acre parcel located in the 5200 block of Pearson Rd SE, Turner (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200).

**II. Relevant Criteria**

The standards and criteria relevant to this Application are found in Oregon Revised Statutes, and the Marion County Code (MCC), Title 17, especially MCC 17.136 (Exclusive Use Zone).

**III. Hearing**

A public hearing was held on this matter on November 6, 2025. At the hearing, the Planning Division file was made a part of the record. The record includes the following Pre-Hearing submissions and additional material:

- 1. Remington BESS, LLC Pre-Hearing Brief with Alternatives Analysis Appendix and Exhibits 1-22 (Received October 31, 2025)
- 2. Remington BESS, LLC BESS Mitigation (Received November 3, 2025)
- 3. Testimony from John J. Audley in Support of Application to Site a Battery Energy Storage System in Marion County (Received November 5, 2025)
- 4. Santiam Water Control District Comments (Received November 5, 2025)

The following persons appeared and provided testimony:

- 1. John Speckman Marion County Planning Division
- 2. Ryan Thomas Attorney for Applicant
- 3. Christina Gispert Applicant Representative
- 4. Brent Stevenson Santiam Water Control District

No objections were raised to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing. No documents were entered into the record as exhibits.

The record was held open to allow the parties to provide supplemental comments. The following submissions were received:

November 13, 2025: Santiam Water Control District Supplemental Comments to Remington BESS Administrative Review 25-015

November 20, 2025: Applicant's Response to Santiam Water Control District Comments on BESS Project submitted by Ryan Thomas

#### **IV. Executive Summary**

Applicant requests an administrative review to place a battery energy storage system ("BESS") on Exclusive Farm Use ("EFU") zoned land as a utility facility necessary for public service (the "Project").

The Planning Director denied the application, and Remington BESS, LLC appealed on the basis that (1) a battery energy storage system is a utility facility necessary for public service, and (2) Remington BESS, LLC complied with ORS 215.275 in demonstrating it considered reasonable alternatives to siting the project in the EFU zone. Remington BESS, LLC also argues that to the extent the denial was predicated upon Marion County Ordinance 1480, which bans BESS in all County zone designations, Ordinance 1480 is invalid on its face and does not apply to the current application because the application was submitted prior to the adoption of Ordinance 1480.

Evidence submitted by Applicant, including expert testimony, establishes that electrical utilities incorporated the use of energy storage systems, including BESS, into their integrated resource and clean energy planning. The Project would provide battery energy storage services to the PacifiCorp's electrical grid. The evidence suggests that BESS may be beneficial, efficient, and may advance important energy objectives, including clean power and meeting renewable energy targets.

The term "utility facility," as used in ORS 215.283(1)(c) and MCC 17.110.584 refers to infrastructure that directly delivers a utility service to the public. The proposed BESS functions solely as energy storage. The proposed BESS would interact with the electric grid, but support of a utility system is not the equivalent of providing a utility service. PacifiCorp will continue to provide service without the proposed BESS.

Under ORS 215.283(1)(c), ORS 215.275, and MCC 17.110.584, benefit, efficiency, or contribution to broader policy goals does not establish necessity. Because a privately owned BESS does not deliver electric service and does not require EFU siting to function, it does not meet the legal standard, even if it provides ancillary or system-wide benefits.

The application for an administrative review to construct a battery energy storage system as a utility facility necessary for public service is DENIED.

#### V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding Exclusive Farm Use (EFU) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the northern side of Pearson Rd SE within a half mile of the intersection with Parrish Gap Rd SE. The proposed area for the Battery Energy Storage System (BESS) is the approximately 15 acres north of the PacifiCorp Parrish Gap Substation which is located on Pearson Rd SE, east-adjacent to the property at 5387 Pearson. The proposed area is in agricultural use for either grass seed or hay production with the rest of the 133.77-acre parcel. There are two mapped perennial streams and one mapped intermittent stream across the subject parcel. Based on the site plan, the BESS would be sited upon the southernmost perennial stream and the intermittent stream, as well as being nearly adjacent to the northern perennial stream. All three of these flow into canals managed by the Santiam Water Control District for the purpose of providing water rights to farmers in the district.

The subject property was itself the subject of a property line adjustment in 2008 (PLA08-044) which clarifies that the 46.35-acre tax lot upon which the BESS is proposed is itself part of a larger 133.77-acre parcel consisting of three tax lots (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200). The property line adjustment was between two parcels, and yielded a 5-acre parcel which contains the homesite at 5387 Pearson Rd SE (not involved in this application) and the 133.77-acre parcel upon which the 15-acre BESS is proposed by this application. While the subject parcel consists of three tax lots, it appears by all indications that PLA08-044 was completed and therefore the subject parcel is legal for land use purposes.

3. Surrounding uses are agricultural and residential. Lands north and east of the subject parcel are in the EFU zone and devoted to large scale agriculture, particularly of grass seed and hay. Lands directly to the south are in the SA (Special Agriculture) zone and in use for agriculture and rural homesites. On the other side of those SA zoned lands is a relatively dense neighborhood of AR (Acreage Residential) zoned parcels. To the west of the subject parcel is another parcel in agricultural use in conjunction with the subject parcel, and a parcel in rural residential use. Those parcels are bordered by Parrish Gap Rd SE, and west of Parrish Gap is the southeastern corner of a large (approximately 375-acre) AR zoned area devoted to rural residences and hobby farms.

The lands to the north and east, devoted to agricultural purposes, are mostly devoid of trees, and east of Duckflat Rd SE is a significant area of wetlands (both natural and manmade). The lands to the west and south of the subject parcel, and specifically south of Pearson Rd and West of Parrish Gap, are relatively densely developed and densely treed lands.

4. Applicant proposes to place a battery energy storage system (BESS) on a 15-acre area of the subject parcel to store electricity.
5. The subject parcel is comprised of approximately 63.5% high value soils. The proposed 15-acre project area is primarily sited upon class 2 Abiqua silty clay loam, class 2 McAlpin silty clay loam, and class 3 Waldo silty clay loam.
6. Various agencies were contacted with the proposal and given an opportunity to comment.

Marion County Building Department commented: “No Building Inspection concerns. Structural permit is not required as the energy storage facility is for utility purposes and not subject to the requirements of the 2022 OSSC. Separate electrical permit(s) is required to be obtained prior to development.”

Marion County Land Development, Engineering and Permits requested the following be included:

#### **ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits an Access Permit will be required. In order to achieve maximum intersection sight distance, the access approach shall be situated as close to directly opposing the driveway serving #5288 Pearson Rd, as feasible, based upon preliminary field observation.
- B. Stormwater detention may be required upon 0.5-acres or more of development.
- C. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits.
- D. Utility work in the public right-of-way, such as electrical Point of Interconnection (POI) serving the facility, requires a separate PW Engineering permit.

Marion County Fire District No.1 commented regarding fire code requirements. These comments are found in full in the case file.

Friends of Marion County provided comments on the proposal and specifically requested denial because a BESS is not a utility facility, is not necessary for public service, is not a commercial power generation facility, and because appropriate conditions have not been developed. The full comments from FOMC are found in the case file. FOMC also submitted six exhibits:

- (1) Tax assessor information for Tax Account No. 535412
- (2) 2025-2025 Property Tax Account No. 535412,
- (3) The applicant's site plan
- (4) A map of PGE substations located in Marion County,
- (5) EFSC Meeting May 2, 2025 Agenda Item C Overview of Battery Energy Storage Systems
- (6) The agenda review form for the June 11, 2025 Marion County Board of Commissioners session to discuss BESS, including a memo with proposed new code language that was subsequently adopted on July 9, 2025

The FOMC exhibits are found in full in the case file.

Oregon Department of Fish and Wildlife commented: "Prior to site development (grading, vegetation management), the applicant should complete grassland bird surveys. Disturbance to nesting grassland birds should be minimized by limiting these actions so that they occur outside of the breeding season (April 1 – July 15)."

Santiam Water Control District (SWCD) commented with concerns regarding adverse impacts on water quality from construction stormwater, adverse impacts on water quality from increased impervious surfaces, adverse impacts on water quality due to pollutants from the BESS operation, and adverse impacts on farm use. SWCD explains that the area proposed for the BESS has water rights that will need to be transferred. The property has a water pump that will be oversized for the reduced water right and without modification would dispense an illegal amount of water after the forfeiture of the existing water right. Therefore, SWCD will require an SWCD-approved method of measuring water use on the property.

SWCD suggested conditions of approval if the county were to approve the proposal. SWCD's proposed conditions of approval, as stated by Planning, are as follows:

- A. The applicant shall construct on-site stormwater detention facilities sufficient for a 50-year storm event.
- B. The applicant shall enter into a consent agreement with SWCD.
- C. The applicant shall provide environmental planning for review by the County and SWCD to ensure that no pollution from the proposed BESS enters the drainage ditch and/or SWCD facilities.
- D. The landowner shall deed its interest in the SWCD Water back to SWCD.
- E. The property owner shall amend its SWCD water delivery contract to exclude the 15-acres.

- F. The property owner shall install an SWCD-approved method of measuring water use on the property.

The entire comment submitted by SWCD is included in the case file.

Turner Fire District has reviewed this project and has the following comments.

1. Fire service features including fire apparatus access and fire protection water supplies are required to comply with the 2022 Oregon Fire Code (OFC). In order to assist applicants, design professionals, and developers, fire agencies throughout Marion County have provided the 2024 Marion County Fire Code Applications Guide (MCFCAG). The following links to the OFC and the MCFCAG are provided as follows.
  - a. The 2022 Oregon Fire Code contains the currently adopted fire and life safety regulations for the State of Oregon. The full text of the OFC is available through the International Code Council's website at the following link:  
<https://codes.iccsafe.org/content/ORFC2022P1>
  - b. The 2024 Marion County Fire Code Applications Guide contains guidelines established by the fire agencies throughout Marion County to assist designers and applicants with how OFC requirements are to be applied to their projects. The following link to the 2024 MCFCAG is provided on the Turner Fire District website: Click the "Public Information" link at the bottom of the main page. Click the "Rural Access Standards" link. This opens the MCFCAG document which is located at the following link:  
[https://www.turnerfire.com/content/files/M\\_C%20App%20Guide%207-2024\(3\).pdf](https://www.turnerfire.com/content/files/M_C%20App%20Guide%207-2024(3).pdf)
2. OFC 505 Address identification signs shall be provided.
3. OFC 506 Key box(s) is/are to be installed in an approved location where access to or within a structure or an area is necessary for lifesaving or fire-fighting purposes when required by the fire code official. NOTE: TFD does not require key boxes. However, *if occupants choose* to secure property, facilities, structures, or areas in such a manner which will inhibit immediate fire access, key boxes if installed, shall be of a design approved by Turner Fire District.
4. OFC 509 Fire protection equipment, gas shutoff valves, electric meters, service switches, and other utility equipment shall be clearly identified, readily visible, and legibly marked in an approved manner. Rooms containing controls shall be identified for the use of the fire department. Signs shall be constructed of durable materials, permanently installed, and maintained.
5. OFC 1207 Electrical energy storage systems (ESS) shall be in accordance with OFC Chapter 12 and specifically section 1207.

All other agencies either declined to comment or stated no objection to the proposal.

7. On April 15, 2025, the Marion County Board of Commissioners held a work session to discuss Battery Energy Storage Systems (BESS). BESS are not expressly contemplated in county zoning code, state statute or state administrative rule. The Marion County Board of Commissioners determined that a BESS is not a “Utility Facility Necessary for Public Service” as found in MCC 17.137.040(I), and that furthermore there is no use identified in the Marion County Code under which a BESS could be considered.

The Board of Commissioners determined to clarify the applicability of existing code to allow BESS. On May 14, 2025, the Board initiated a process to consider code amendments. On June 11, 2025, the Board held a hearing to consider amendments to clarify existing code provisions related to BESS in the Marion County Urban and Rural Zone Codes (MCC) Chapters 16 and 17.

The Marion County Board of Commissioners signed Ordinance 1480 on July 9, 2025. The Board sought to add clarifying sections of text in Chapters 16 and 17 of the Marion County Code to specifically prohibit BESS in Marion County. The Board indicated that the sections of code prohibiting BESS were added for clarification only because BESS were not permitted under any section of code prior to July 9, 2025.

8. Applicant filed its application for Administrative Review pursuant to MCC 17.136.040 which allows for the certain uses in the EFU zone subject to approval based on satisfaction of the standards and criteria specified for each use pursuant to MCC 17.115. MCC 17.136.040(I), subject to specific criteria, allows for the use of utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is “necessary” if it must be situated in the EFU zone in order for the service to be provided.
9. Applicant’s proposed project is the construction and operation of the Remington Battery Energy Storage System (BESS) to be situated on approximately 15 acres of private property, located approximately 8 miles southeast of Salem. The Project would consist of battery containers, transformers, inverters, transmission lines, access roads, fencing, and associated infrastructure. The Project is intended to deliver electricity to the PacifiCorp transmission system via existing transmission infrastructure and associated utility easements and would interconnect to the existing Parrish Gap Substation immediately to the south of the proposed Project area.

Applicant states that states that Battery Energy Storage Systems (BESS) are a necessary and essential part of Oregon’s energy infrastructure and future. Oregon House Bill 2021 sets renewable energy targets, and to meet the targets, the Oregon legislature and the Oregon Department of Energy require the integration and development of BESS. Electric utilities, like PacifiCorp and Portland General Electric, have cited the need for

additional storage sources in their clean energy and integrated resource planning. BESS collect electric energy generated from energy sources, including electrical grid, wind, solar, geothermal sources, and store the energy for a period of time in rechargeable batteries, and then release it back to the grid to provide electricity to residential and commercial users. (Applicant's Brief, Exhibits 6-10)

10. PacifiCorp's 2025 Integrated Resource Plan (IRP) and siting requests indicated a need for BESS. The 2025 Oregon Siting RFP, which was approved by Oregon's Public Utilities Commission and is the means by which PacifiCorp must procure resources described in the IRP, specifically calls for energy storage resources, including at least 509 megawatts of new 4-hour lithium-ion battery storage resources needed in PacifiCorp's Oregon service territory by the end of 2029. Applicant states that the BESS Project is designed to respond to this need by providing 199 megawatts of 4-hour duration storage and by coming online before December 2029. (Applicant's Brief, Exhibits 12-17, Appendix A).
11. Applicant posits that BESS are necessary for the operation of the modern grid and essential to achieving the state's renewable energy targets. Applicant argues that state laws and policies demonstrate that BESS are utility facilities necessary for public service.

## **VI. Additional Findings of Fact and Conclusions of Law**

1. Applicants have the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests.

Applicant must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely Applicant have not met their burden, and the application must be denied. If the evidence for every criterion is in Applicant's favor, then the burden of proof is met.

2. Applicant argues that County Ordinance 1480 (the "Ordinance"), which bans BESS in all County zone designations, does not apply to the current application. Applicant argues that the Ordinance is void because it conflicts with the plain language set forth in ORS 215.283(1). Applicant also argues that the Ordinance was not in effect at the time the application was submitted and cannot be applied as a standard and criteria that were not in effect at the time the application was submitted.

3. Ordinance 1480 added MCC 16.01.050 which states: Notwithstanding any other provision in this code, a commercial battery energy storage system, which uses batteries to store electrical energy for use on the electrical grid, is not allowed in any zone. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale. MCC 16.01.050 prohibits BESS in Marion County.
4. Ordinance 1480 was adopted on July 9, 2025. Applicant's application was submitted on June 30, 2025. Because the application pre-dates the Ordinance, the Hearings Officer considers (1) whether a BESS is a utility facility under Marion County Code; (2) whether a BESS is a utility facility that is permissible in the Exclusive Farm Use zone under ORS 215.283(1)(c); and (3) whether the BESS meets the siting factors in ORS 215.275 and MCC 17.136.040(I).

MCC 17.110.584

5. MCC 17.110.584 defines "utility facility" as any water, gas, sanitary sewer, storm sewer, electricity, telephone and wire communication service, and CATV (cable television) service lines, mains, pumping stations, reservoirs, police underground transmission facilities, substations, and related physical facilities which do not include buildings regularly occupied by employees, parking areas, or vehicle, equipment and material storage areas, wireless communications facility or wireless communications facility attached.

MCC 17.110.584 defines a utility facility as physical infrastructure for an enumerated service, but does not expressly list Battery Energy Storage Systems (BESS). Therefore, to meet the definition, a BESS must fit by analogy or context as a "related physical facility" for electric service.

6. The proposed facility is a standalone Battery Energy Storage System (BESS) consisting of battery containers and associated equipment designed to store electrical energy and later discharge that energy to the electrical grid or market.

Remington BESS is a battery storage asset owned and developed by RWE, an energy company. The BESS Project is to provide energy storage services to the PacifiCorp electrical grid.

Applicant is a private company that is not a public utility, and does not provide electric service to the public. The code definition of "utility facility" presumes facilities that are part of a utility service system, such as electric transmission or distribution infrastructure operated by or on behalf of a utility serving the public. In this case, Applicant's Project is not owned or operated by an electric utility. Applicant is not subject to public utility regulation for retail electric service. The proposed BESS does not provide direct electric service to customers. Applicant participates in energy storage and market operations for renewable energy. The proposed BESS lacks the public service character inherent in the utilities enumerated in MCC 17.110.584.

7. While MCC 17.110.584 includes “related physical facilities,” this language must be interpreted in context with the enumerated examples, all of which involve utility service delivery infrastructure. A privately owned BESS that could operate independently of transmission or distribution facilities, is not required to be located at a specific site to serve utility customers, and exists primarily for energy management or market participation, is not sufficiently related to the listed utility facilities to fall within the definition of “related physical facilities.”
8. A BESS is not a utility facility necessary for public service as defined in MCC 17.110.584.

ORS 215.283(1)(c)

9. ORS 215.283(1)(c) provides that utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height, may be established in the Exclusive Farm Use (EFU) zone. A utility facility necessary for public service may be established as provided in ORS 215.275.
10. The proposed BESS project is a stand-alone battery energy storage system designed to store electrical energy and discharge the energy to the electric grid. The evidence indicates that the supply to the electric grid is as needed, or as selected by the operator.
11. Applicant argues that Oregon courts have interpreted “utility facility” broadly. However the Oregon cases involved facilities that actually performed the service at issue, including power generation, transmission lines, communications facilities, and broadcasting towers. See, e.g. *Save our Rural Oregon v. Energy Facility Citing Council*, 339 Or 353, 121 P3d 1141 (2005) and *McCaw Communications, Inc. v. Marion County*, 96 Or App, 773 P2d 779 (1989).

In *Cox v. Polk County*, 174 Or App 332, 25 P3d 970 (2001), the Court considered the term “utility facility” as used in ORS 215.283(1)(c) to mean equipment or apparatus, whether standing alone or as part of a structure, that functions to perform or provide, in whole or in part, a service such as the production, transmission, delivery or furnishing of electricity or natural gas, the purification of drinking water, or the treatment of solid or liquid waste. “The equipment comprising the facility need not be extensive or complex; in addition, the facility may include ancillary or off-site equipment such as transmission lines. *Id.* at 344. The Court specified that, at a minimum, the facility must include some equipment or apparatus that itself performs the relevant production, transmission or similar function or service.

12. Applicant’s characterizes the proposed BESS as supporting PacifiCorp’s system, and PacifiCorp’s need for additional storage resources. Applicant states that the specific Project objectives include providing enhanced grid reliability, resiliency, and stability. Applicant states that the BESS will “maximize” the existing system’s capability and

“improve” PacifiCorp’s ability to serve growing customer loads while reducing the risk of voltage collapse. (See Remington BESS, LLC Prehearing Brief, Page 7).

Applicant argues that the BESS project supports renewable integration, grid reliability, and commitment to clean energy targets. These benefits are supported by the evidence submitted by Applicant, and the potential benefits are acknowledged. However, benefit, even public benefit, is not the legal standard.

13. The proposed BESS does not transmit or distribute electricity. The proposed BESS does not deliver electric service to consumers. The proposed BESS functions as storage and is operated for system-support purposes. Interaction with the electric grid does not convert a storage facility into a utility service-delivery facility.
14. ORS 215.283(1)(c) requires a showing that the utility facility is required to provide the service, not merely beneficial, important, or supportive of public policy goals. PacifiCorp will continue to provide electric service regardless of whether the BESS is constructed. The proposed BESS does not qualify as a “utility facility” for purposes of 215.283(1)(c).

ORS 215.275 and MCC 17.136.040(I)

15. ORS 215.283(1)(c) states in relevant part that a utility facility necessary for public service may be established as provided in ORS 215.275. MCC 17.136.040(I) sets out the standards under which a facility is necessary if it must be situated in the EFU zone in order for the service to be provided.

The Hearings Officer finds that the proposed BESS does not qualify as a utility facility and is not necessary for public service under ORS 215.283(1)(c). However, even if the proposed BESS could be characterized as a “utility facility,” Applicant must also demonstrate that it is necessary for the BESS to be located on EFU land to provide the public service and meet the siting factors in ORS 215.275 and MCC 17.136.040(I).

MCC 17.136.040(I) requires the same showing of locational necessity and lack of reasonable alternatives as ORS 215.275. Local governments may apply this standard so long as they do not expand state criteria. *Brentmar v. Jackson County*, 58 Or LUBA 416, 426–27 (2009).

16. Applicant’s statements regarding the approval criteria for a utility facility necessary for public service are addressed below:

*MCC 17.137.040(I.) Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is “necessary” if it must be situated in the EFU zone in order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more of the following factors as found in OAR 660-033-0130(16):*

1. *Technical and engineering feasibility;*

Applicant did not provide any evidence to suggest that the proposed location is related to the technical or engineering feasibility of the proposal beyond being adjacent to a substation. Applicant emphasizes avoiding network upgrades, minimizing construction timelines, and meeting RFP deadlines.

These considerations reflect project efficiency and commercial feasibility, not technical infeasibility of non-EFU sites. The Applicant does not demonstrate that interconnection to the grid is technically impossible from non-EFU land, only that it may be more expensive or less desirable.

Applicant references options for varying design of the facility in other sections of this application that suggest the project has not been planned in detail. Without actual plans for construction of the BESS, there can be no conclusion about the technical and/or engineering feasibility of the proposal on any lands, let alone a proposed requirement to site the facility on high value farmland in the EFU zone.

As addressed below; Applicant addresses risk of fire but does not address in detail how that risk will be mitigated. The risk of fire itself carries a cascading list of associated environmental and health impacts. As a result of a lithium fire, there would be release of toxic chemicals into the air, soil and water, potential injury to first responders and citizens in the area such as respiratory issues, skin irritation, and long-term health issues. Beyond the safety issues are the environmental dangers posed by mass release of chemicals in the event of a failure of any of the batteries on site. Applicant does not address any of the technical details of these potential risks or how those risks could be mitigated. Applicant does not provide any evidence towards the feasibility of the proposed BESS to be engineered so as to mitigate the dangers inherent with BESSs.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

2. *The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*

A facility is locationally dependent only if it cannot reasonably operate unless it is located on EFU land.

Applicant argues that the BESS is locationally dependent because it must be located near a specific substation and within a particular transmission service area. Applicant suggests that other substations in the area would not meet the technical and engineering feasibility criterion because they would require upgrades to the networks, capacity, or new long transmission lines. Applicant states that other locations were

not suitable specifically due to requiring new overhead transmission line installation for compatibility.

Applicant did not provide any evidence to support the assertion that they examined other locations in the county for compatibility with the project. The location proposed poses dangers to surrounding farmland due to soil contamination, groundwater contamination, and chemical leakage. Applicant did not provide any information about potential emergency response at the proposed location. Applicant specifically proposes an intensive use on EFU land in a rural area instead of in an urban area adjacent to one of many substations within cities in Marion County where such a use would be potentially more appropriate from an environmental and emergency response standpoint.

Applicant suggests prolonging the life of the facility beyond the average 20-25 years for a BESS by frequent replacement of parts. Decommissioning requires collection of hazardous materials, and the Applicant does not explain how decommissioning of the facility could be performed.

Applicant's evidence demonstrates a preference for proximity, not a requirement that the facility occupy EFU land. Therefore, locational dependency under ORS 215.275 is not established.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

3. *Lack of available urban and nonresource lands;*

Applicant's alternative analysis narrows potential sites based upon a project-specific criteria, including parcel size, acquisition cost, network upgrade expense, and business objectives.

Applicant states that there are no other lands "in proximity to the Parrish Gap Substation". A BESS requires a substation, but not the Parrish Gap Substation specifically. The map of substations submitted by FOMC shows that there are many substations in Marion County on urban and nonresource lands. Applicant did not provide information to suggest that other potential siting locations on urban or nonresource lands were considered for the proposed BESS. Evidence on the record does not support the assertion that the proposed location is due to the lack of available urban and nonresource lands.

Applicant states that a core business objective of the Remington BESS Project is that the BESS be sited adjacent to a PacifiCorp substation to help address the utility needs of PacifiCorp. Applicant rejects FOMC's assertion that PGE substations or other substations are located outside of EFU zones and present alternative siting opportunities. Applicant contends that substations outside of PacifiCorp's system, or

outside the Parrish Gap Substation service area are not suitable due to operational and contractual considerations.

Applicant's position reflects a project preference and business strategy, not a showing of locational necessity as required under ORS 215.275 and MCC 17.136.040(I). The siting standard does not require the County to evaluate whether the proposed site is optimal or preferred for the Applicant's business model, but whether the facility must be located on EFU land in order for the public service to be provided.

The record demonstrates that a BESS requires a substation, but does not establish that it must be located adjacent to the Parrish Gap Substation specifically, nor that it must be located on EFU land to interconnect with the electric grid. Evidence submitted by FOMC includes mapping of multiple substations within Marion County, including substations located on urban and nonresource lands. Applicant did not provide evidence demonstrating that those substations were evaluated and rejected due to technical infeasibility, safety constraints, or regulatory barriers, as opposed to increased cost, longer timelines, or inconsistency with Applicant's preferred project configuration.

ORS 215.275 requires consideration of alternative locations, not alternatives that meet an applicant's preferred financial, contractual, or scheduling objectives. Evidence that alternative sites would require network upgrades, higher interconnection costs, or deviation from Applicant's business strategy does not establish that such sites are unavailable or infeasible for purposes of EFU siting.

Applicant's reliance on adjacency to a PacifiCorp substation demonstrates a preference for proximity, not a requirement that the facility be sited on EFU land. Applicant has therefore not demonstrated that the proposed location is necessary to provide the asserted public service, as required under ORS 215.275 and MCC 17.136.040(I).

ORS 215.275 requires consideration of alternative locations, not optimal or cost-effective alternatives. Evidence that non-EFU sites are more expensive or inconsistent with the Applicant's intended project and business plan does not establish that such sites are unavailable or unfeasible. Applicant's position is reasonable and justifiable, but it does not satisfy the requirements of ORS 215.275.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

4. *Availability of existing right-of-way;*

The proposal is for a facility that would not be appropriate to cite within a right-of-way. The proposed BESS is not a utility facility necessary for public service, but if it was, this criterion would not apply.

5. *Public health and safety; and*

Applicant states it will comply with all local building and fire codes and that the facility does not produce any emissions or discharges. Applicant also states that appropriate signage will be placed on the high voltage substation equipment. Applicant states that BESS staff will be trained in fire prevention and fire department notification policies, and that staff will be required to follow those policies. Applicant does not describe the number of staff present, what hours they will be present, or what their non-emergency responsibilities will be. The staff for the BESS after initial construction are generally only on site for routine inspections and maintenance, not around the clock supervision of the system.

Applicant has not provided significant evidence to suggest that their proposal will not impact public health or create a significant safety hazard within the county.

Applicant argues that ORS 215.275 does not require any showing regarding potential public health or safety risk and argues that those considerations are not relevant to the ORS 215.275 inquiry. However, ORS 215.275 explicitly includes public health and safety as one of the several factors that may be considered in whether EFU siting is necessary. ORS 215.275(2)(e).

ORS 215.275(2)(e) treats “public health and safety” as one of several considerations, and it is not a separate approval criteria. No single factor is dispositive, and the ultimate question is locational necessity.

Public safety may be considered to the extent it is a siting factor under ORS 215.275.

MCC 17.136.040(I) requires the same showing of locational necessity and lack of reasonable alternatives as ORS 215.275. Local governments may apply this standard so long as they do not expand state criteria. *Brentmar v. Jackson County*, 58 Or LUBA 416, 426–27 (2009).

Applicant had access to the public record of concerns discussed at the public hearing regarding BESS. These concerns include significant inherent risks and potential impacts that result from establishment of a BESS on EFU land.

The potential for thermal runaway resulting in lithium fires and explosions of the batteries themselves is a serious risk, and the risk for environmental hazards is significant. Chemicals for fire suppression could runoff into the surrounding soils, groundwater, and streams across the subject parcel. At this location, due to the intermittent and perennial streams that flow through the proposed facility, this

chemical leakage could directly pollute water bodies. Those streams flow into canals utilized by Santiam Water Control District to provide water to farms in the area.

Contamination of the groundwater and the streams on the subject parcel may result in a loss of water supply required by farmers in the area to successfully grow crops, and the groundwater supply depended upon for drinking water. The risks to the residents, farming operations, and environment in the immediate area are significant.

Public health and safety considerations are evaluated solely as a factor under ORS 215.275 to determine whether the proposed facility must be sited on EFU land, and are not relied upon as an independent approval criterion or separate basis for denial. However, Applicant did not address the potential adverse impacts to agriculture and the environment resulting from the BESS project.

The necessity for mitigation of the risks imposed by these facilities is one reason the county is prohibiting BESS through Ordinance 1480 until specific standards can be developed. This reference is for context only and is not relied upon as a basis for the decision, which is grounded exclusively in the statutes and code provisions in effect at the time the application was submitted.

Applicant did not provide any significant evidence that the proposed BESS will not create significant hazards to public health and safety or that public health or safety considerations require siting the facility on EFU land as opposed to non-EFU land.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

If public health and safety is not considered a “criterion” but rather one of several factors for consideration under ORS 215.275, fire risk supports denial. EFU land is not inherently safer for lithium battery fires than industrial or urban lands because EFU areas have limited fire response infrastructure, longer response times, the presence of agricultural operations may complicate fire suppression.

Public safety considerations do not independently justify denial as a criteria, however, battery fire risk is a legitimate public health and safety consideration, and does not demonstrate that the proposed BESS must be sited on EFU land. EFU land does not provide a safety advantage over non-EFU locations.

*6. Other requirements of state and federal agencies.*

- a. Costs associated with any of the factors listed above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.*

Applicant states that cost was only one of the factors analyzed when selecting this location. The applicant did not provide analysis of any other factors. The evidence on the record suggests that cost is the sole deciding factor when selecting this location. This location has existing overhead transmission lines. Applicant states that they analyzed other locations near substations in the surrounding area, but all those stations would require upgrades such as installation of overhead transmission lines. The upgrades to a location are costs associated with that location. The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

- b. *The owner of a utility facility approved under this section shall be responsible for restoring to its former condition as nearly as possible any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing upon a contractor the responsibility for restoration.*

Applicant states that it will comply with this section of code when the useful life of the facility is realized. Applicant did not provide any plan for decommissioning and restoration, and furthermore have not provided any evidence that it is possible to restore the project site to agricultural use after developing it with a BESS.

The proposed BESS is not a utility facility necessary for public service, but if it was, the proposal would not meet this criterion.

- c. *The applicant shall address the requirements of MCC 17.136.060(A)(1).*

MCC 17.136.060(A)(1) contains the criteria for the farm impacts test in the EFU zone. If the BESS is treated as a utility facility under ORS 215.283(1)(c), the farm impacts test does not apply, but the necessity and siting standards apply. Applicant argues that the farm impacts test does not apply because the Project qualifies under ORS 215.283(1)(c).

Because it is determined that the BESS is not a utility facility, the farm impacts test applies. The farm impacts test does not impose a new approval methodology, but

MCC 17.136.060(A)(1) governs non-farm uses in the AR/EFU context that are not utility facilities necessary for public service and expressly incorporates the standards of ORS 215.296. Where a proposed use does not qualify under ORS 215.283(1), MCC 17.136.060(A)(1) provides the only potential approval pathway, if any, and requires findings addressing impacts to accepted farm practices.

Local governments are required to apply ORS 215.296 where applicable and may not waive or ignore the farm-impacts test once a project falls outside ORS 215.283(1). *Friends of Yamhill County v. Yamhill County*, 255 Or App 636, 298 P3d 586 (2013).

Because the proposed BESS does not qualify under ORS 215.283(1)(c), the farm-impacts standards of ORS 215.296 and MCC 17.136.060(A)(1) must be considered.

The farm impacts test has been recently updated by the Department of Land Conservation and Development to accurately represent case law.

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.*

*For purposes of this section, a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:*

- A. *Identification and description of the surrounding lands, the farm and forest operations on those lands and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;*
- B. *An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices. This assessment applies practice by practice and farm by farm; and*
- C. *An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.*
- D. *For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.*
- E. *For purposes of this section, potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under this section.*
- F. *In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the*

*significant changes or significant increases in costs described in this section.*

Applicant disagrees that the farm impact test applies, but addressed the farm impacts test by stating that the project will not result in any discharges or emissions to the environment, and that they are committed to environmentally responsible development. Applicant acknowledges that if the county requires them to determine environmental monitoring and mitigation plans, then they would be willing to do so sometime in the future. The applicant provided no information about how the environmental monitoring could be conducted or what mitigation plans would entail. Applicant provided no detailed information about the environmental impacts of covering 15 acres with lithium batteries.

Applicant did not provide a detailed description of the surrounding lands or agricultural activities. Applicant did not provide any information about how the BESS might impact the surrounding agricultural activities. The limited evidence on the record, which is the result of Applicant's position that the farm impacts test does not apply, does not support the claim that the project will neither result in change in, or significantly increase the cost of, farm activities in the area.

Santiam Water Control District explicitly raised concerns that the Project will have an impact on surrounding lands, specifically an impact on water rights for farmers in the district. Applicant argues that it does not have water rights, and is not privy to the relationship between the landowner and water rights.

Applicant correctly stated at the hearing that it would be inappropriate to condition approval on a water rights analysis. However, because the farm impacts test applies, Applicant must address whether the Project will have an impact on surrounding lands.

Because the Project does not qualify as a utility facility necessary for public service under ORS 215.283(1)(c), it could be approved only, if at all, under MCC 17.136.060(A)(1). That section requires findings addressing impacts to accepted farm practices pursuant to ORS 215.296. Applicant did not seek approval under MCC 17.136.060(A)(1) and did not submit evidence sufficient to satisfy those criteria.

- d. In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.*
- e. The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.*
- f. If the criteria contained in this subsection (I) for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a*

*transmission line, the utility provider shall, after the route is approved by the siting authorities and before construction of the transmission line begins, consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult. The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process. For the purposes of this subsection:*

- i. "Consult" means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.*
- ii. "Transmission line" means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users.*

No sewer system is proposed. The proposed facility is not a natural gas pipeline or transmission line. The proposed BESS is not a utility facility necessary for public service, but if it was, the above criteria d, e, & f would not apply.

17. Applicant applied for approval of an administrative review to construct a battery energy storage system as a utility facility necessary for public service. A BESS is not utility facility necessary for public service. If a BESS could be approved as a utility facility necessary for public service, this proposal would be unable to satisfy the applicable criteria.

## **VII. Order**

It is hereby found that Applicant has not met its burden of proving the applicable standards and criteria for approval of an administrative review to construct a battery energy storage system as a utility facility necessary for public service on a 15-acre portion of a 133.77-acre parcel located in the 5200 block of Pearson Rd SE, Turner (T9S; R2W; Section 20D; Tax Lot 100 and T9S; R2W; Section 21C; Tax lots 100 & 200).

For the reasons stated herein, the Hearings Officer determines that the proposed use does not satisfy the applicable requirements of Marion County Code, including but not limited to MCC 136.040(I) and the standards for siting a utility facility necessary for public service, ORS 215.283(1)(c), ORS 215.275. The application is hereby DENIED.

### VIII. Appeal Rights

An appeal of this decision may; be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court Str. NE, Suite 2130, Salem, Oregon by 5:00 p.m. on the 5<sup>th</sup> day of February, 2026. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon this 21<sup>st</sup> day of January, 2026.



Jill F. Foster

Marion County Hearings Officer

## CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Linsey King  
4015 Filbert Avenue  
Keizer, OR 97303

Brent Stevenson  
284 E Water Street  
Stayton, OR 97383

Cristina Gispert  
101 W. Broadway Street  
Suite 1120  
San Diego, CA 92101

Nema Jain  
1999 Harrison Street  
Oakland, CA 94612

Alexander Thompson  
1999 Harrison Street #2720  
Oakland, CA 94612

Ethan Westcot  
7818 Rogers Avenue  
Wauwatosa, WI 53213

Justin Bieber  
2009 Lucky John  
Park City, UT 84060

Steve Pfeilter  
1120 NW Couch Street  
Portland, OR 97210

City of Turner (via email)  
manager@cityofturner.org  
7230 3<sup>rd</sup> St SE  
Turner, OR 97392

Area Advisory Committee: (via email)  
Arkaye2@gmail.com (Aileen)

Roger Kaye  
Friends of Marion County  
P.O. Box 3274  
Salem, OR 97302

1000 Friends of Oregon  
133 SW 2nd Ave  
Portland, OR 97204-2597

Pudding River Watershed Council (via email)  
anna@puddingriverwatershed.org  
cleanpuddingriver@gmail.com

### County Agencies Notified:

Assessor's Office (via email)  
assessor@co.marion.or.us

Tax Collector (via email)  
NMcVey@co.marion.or.us

Surveyor's Office (via email)  
KInman@co.marion.or.us

Fire District: (via email)  
denk@wvi.com

Planning Division (via email)  
breich@co.marion.or.us  
abarnes@co.marion.or.us  
jspeckman@co.marion.or.us  
ediaz@co.marion.or.us

Building Inspection (via email)  
[pwolterman@co.marion.or.us](mailto:pwolterman@co.marion.or.us)  
[Kaldrich@co.marion.or.us](mailto:Kaldrich@co.marion.or.us)  
[CTate@co.marion.or.us](mailto:CTate@co.marion.or.us)

Public Works LDEP Section (via email)  
[jrasmussen@co.marion.or.us](mailto:jrasmussen@co.marion.or.us)  
[mcldep@co.marion.or.us](mailto:mcldep@co.marion.or.us)  
[JShanahan@co.marion.or.us](mailto:JShanahan@co.marion.or.us)

School District:  
Cascade High School (via email)  
[charmon@cascade.k12.or.us](mailto:charmon@cascade.k12.or.us)

Code Enforcement (via email)  
[CGoffin@co.marion.or.us](mailto:CGoffin@co.marion.or.us)

**State Agencies Notified:**

Department of Environmental Quality  
4026 Fairview Industrial Drive SE  
Salem, OR 97302  
Oregon Department of State Lands  
4026 Fairview Industrial Drive SE  
Salem, OR 97302

Oregon Department of Fish and Wildlife  
4034 Fairview Industrial Drive SE Salem,  
OR 97302.

DLCD [hilary.foote@state.or.us](mailto:hilary.foote@state.or.us)

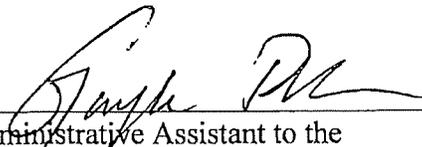
**Special Agencies Notified:**

Electricity - Pacific Corp (via email)  
[www.pacificcorp.com](http://www.pacificcorp.com)

Water District – Santiam  
284 E. Water St.  
Stayton, OR 97383

RWE Clean Energy  
Attn: AL Thompson  
1999 Harrison St. Suite 2720  
Oakland, CA 94612

By mailing to them, copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 21st day of Month, 2026 and that the postage thereon was prepaid.

  
\_\_\_\_\_  
Administrative Assistant to the  
Hearings Officer