



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

September 19, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for a Fiber Lease Agreement with
Cascade Access LLC for a connection to Barton Park

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval to lease a pair (2 fibers) of dark fibers from Cascade Access LLC for a new connection to Barton Park.
Dollar Amount and Fiscal Impact	CBX will pay Cascade Access LLC an annual fee of \$3,600.00 for the use of the dark fibers to Barton Park.
Funding Source	CBX will pay the monthly lease fee for the dark fiber connection and then be reimbursed by the County Roads Department.
Duration	Effective upon signature by the board the SLA is effective for three (3) years and then moving to a month to month lease.
Previous Board Action	Board has previously approved a similar SLA with Clear Creek Communications.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

CBX is requesting a new Fiber Lease Agreement with Cascade Access LLC for the lease of a pair of dark fiber to Barton Park. This agreement will allow Clackamas County to save considerable finances over building their own fiber assets and at the same time allowing CBX to provide enhanced services to the Barton Park location.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this new agreement with Cascade Access LLC. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

This Service Level Agreement has been reviewed and approved by County Counsel.

Sincerely,

Dave Cummings
CIO Technology Services

FIBER AGREEMENT

This Agreement made effective as of October 1, 2019, by and between Cascade Access, LLC, Cascade Utilities, Inc. d.b.a. Reliance Connects, 287 SW 3rd Ave, Estacada, OR 97023 ("Cascade") and Clackamas County Technology Services 121 Library Court, Oregon City, OR 97045, ("Clackamas County").

In consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Fiber.** Cascade hereby grants to Clackamas County:
 - a. The exclusive use of one pair (2) dark fibers on the route more particularly described in Exhibit "A" attached hereto and hereby incorporated herein (the "Fiber").
2. **Term.** The term of this Agreement shall commence on the date first set forth above and continue for three (3) years. Thereafter, the Agreement shall continue month to month unless terminated by either party upon written notice to the other party not less than one hundred twenty (120) days but not to exceed a maximum of 10 years from date signed.
3. **Consideration.** Clackamas County shall pay to Cascade the sum of \$300.00 per month. The first payment shall be due and payable on March 15, 2019, and each subsequent payment shall be due and payable on the same day of each month thereafter. The monthly payment will continue until the termination of this contract.
4. **Use.**
 - a. **Permitted Use.** The parties agree that Clackamas County shall use the Fibers to provide ethernet transport for Barton Park services only and shall not use the Fiber or the Terminal to provide competitive Broadband or Local Exchange Telecommunications Service, as that term is defined in ORS 759.005(3), as certified by the Oregon Public Utility Commission.
 - b. **Restrictions on Use.**
 - i. Clackamas County shall ensure that its use of the Fiber shall not interfere with Cascade's operations, facilities or equipment.
 - ii. Clackamas County shall not substitute, remove, add, alter, amend or expand the Fiber or any part thereof without first obtaining Cascade's written consent.
 - iii. Clackamas County shall notify Cascade in writing at least ten (10) calendar days prior to the initiation of any construction affecting the Fiber. Clackamas County shall use its best efforts to coordinate its construction activities with Cascade so as to cause the least disruption to Licensor.
 - iv. Clackamas County shall comply with all applicable government codes, ordinances, laws, rules and regulations and all reasonable requests, demands or requirements communicated by Cascade as to safety and the use of the Fiber.
 - v. Clackamas County shall not resell the Fiber or any part thereof or allow other carriers to interconnect with the Fiber.
5. **Cascade's Maintenance Obligations.**
 - a. Cascade shall maintain and repair the Fiber at its expense. Cascade shall use its best efforts to provide Clackamas County with 48 hours advance notice prior to any routine or scheduled maintenance and repair. The Fiber shall be maintained in accordance with all applicable building, construction and safety codes as well as any other applicable federal, state or local laws, codes, ordinances, statutes and regulations.
 - b. At Clackamas County's request, Cascade shall splice the Fiber with other fiber or connect the Fiber to other facilities at Clackamas County's expense.
 - c. In the event of a disruption of service due to a defect, fault, failure or other problem of the Fiber or facilities located within Cascade's exchange boundary, Cascade shall cause service to be restored as quickly as reasonably practicable, taking such reasonable

- measures as are necessary for restoration.
- d. Clackamas County shall notify Cascade immediately when it becomes aware of a defect, fault, failure or other problem with the Fiber.
6. **Utilities.** Cascade shall, at its expense, provide all electricity at its premises (Estacada Central Office and Eagle Creek Central Office) as may be reasonably necessary for Clackamas County to operate, monitor, maintain and repair the Fiber and associated equipment.
7. **Liability and Indemnification.**
- a. **Release from Liability.** Each party releases the other party and their directors, officers, employees, affiliates and agents from any liability for loss or damage arising out of errors, interruptions, defects, failures, delays, or malfunctions of the Fiber, the Terminal or any associated equipment, not caused by a party's negligent or willful misconduct. Any losses or damages for which either party is held liable under this Agreement shall in no event exceed the amount of the charges for the Fiber during the period beginning at the time notice of the error, interruption, defect, failure, or malfunction is received, to the time Fiber is restored.
- b. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF REVENUE OR PROFIT FOR ANY LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT OR OUT OF THE USE OF THE FIBER PROVIDED UNDER THIS AGREEMENT THAT IS SUFFERED BY THE OTHER PARTY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE AND WHETHER OR NOT INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.
- c. **Third Parties.** Each party agrees to release, defend, indemnify, and hold harmless the other party and its directors, officers, employees, affiliates and agents from and against any and all losses, damages, or other liability, including reasonable attorneys' fees, that it may incur as a result of claims, demands, wrongful death actions, or other suits brought by third parties, arising directly or indirectly out of this Agreement and resulting from the negligence of, or willful misconduct by, the indemnifying party, its employees, agents, or contractors in the performance or failure of performance of this Agreement. Provided, however, that any obligation of the County to indemnify, hold harmless and defend Cascade shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300).
- d. **Infringement.** Each party agrees to release, defend, indemnify, and hold harmless the other party and its directors, officers, employees, affiliates and agents from and against any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person(s), caused or claimed to be caused, directly or indirectly, by the indemnifying party's employees or equipment licensed under this Agreement. Provided, however, that any obligation of the County to indemnify, hold harmless and defend Cascade shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300).
- e. **No Warranties.** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PGE NOR CASCADE MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER OR TO ANY THIRD PARTY CONCERNING THE SPECIFIC QUALITY OF THE FIBER PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT, THAT THE FIBER PROVIDED UNDER THIS AGREEMENT WILL BE ERROR FREE OR THAT THE FIBER WILL OPERATE WITHOUT INTERRUPTION. PGE AND CASCADE DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR FROM USAGES OF TRADE.

Insurance. Clackamas County is self-insured. Cascade hereby agrees that Clackamas County's self-insurance is sufficient to satisfy its obligations under this Agreement.

8. **Force Majeure.**

- a. If any party is unable to carry out its obligations under this Agreement as a result of an event, cause, or condition of Force Majeure, the party claiming Force Majeure shall give notice and full particulars of such Force Majeure in writing to the other Parties within five (5) calendar days of the beginning of the occurrence of the Force Majeure event, cause, or condition. Any obligations that such party is unable to perform due to an event, cause, or condition of Force Majeure shall be suspended during the continuance of such event of Force Majeure. The party claiming Force Majeure shall use reasonable efforts to remedy and minimize the effects of such event of Force Majeure with all reasonable dispatch.
- b. As used in this Agreement, the term "Force Majeure" means acts of God (including but not limited to, earthquakes, fires, floods, windstorms, landslides, and ice storms); strikes, lockouts, or other labor disputes; acts of public enemies; acts of vandalism, wars, riots, and insurrection; epidemics; civil disturbances; explosions; train derailments; breakdown or failure of the Fiber or equipment; accidents to the Fiber or equipment, and delay in delivery of equipment to the extent such occurrences are beyond the reasonable control of the Parties; electrical disturbance originating in or transmitted through such party's electrical system or equipment or any electrical system with which such party's system or equipment is interconnected; and any other event, cause, or condition beyond the party's reasonable control, which, even with the exercise of reasonable diligence, prevents the party claiming Force Majeure from performing its obligations under this Agreement.
- c. No party shall be liable under this Agreement for, or be considered to be in material breach or default under, this Agreement on account of any delay in or failure of performance due to Force Majeure unless specifically stated in this Agreement.
- d. If Cascade is the party claiming Force Majeure and such event of Force Majeure prevents restoration by Cascade or Clackamas County within six (6) months from the event of such Force Majeure, then Clackamas County shall have the option to terminate this Agreement. If Force Majeure prevents beneficial use of the Fiber for a continuous period of one (1) month or more, Clackamas County's payment obligation shall be suspended for such period.

9. **Default.**

- a. **Events of Default.** If any party is in breach or default ("Defaulting Party"), under this Agreement, the other party or Parties ("Nondefaulting Party") may notify in writing the Defaulting Party that it is in breach or default, such notice to be effective upon its receipt by the Defaulting Party. The following events shall constitute breach or default under this Agreement:
 - i. Failure to make any payment when due hereunder, with the exception of payments that become payable to a party during the period of any Force Majeure event, when the event of Force Majeure results in a party's physical inability to make such payment. During these periods, the party experiencing Force Majeure shall immediately notify the other party to make alternative arrangements that are agreeable to both Parties.
 - ii. Failure to perform in any material respect any obligations required to be observed or performed hereunder;
 - iii. Any representation or warranty made by one party to another herein proving incorrect in any material respect as of the date of the making thereof;
 - iv. Either party files a voluntary petition in bankruptcy, or a petition in bankruptcy is filed against a party and not dismissed within sixty (60) days, or one party is adjudicated as bankrupt or insolvent, or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Federal, State, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors, or seeks or consents to or acquiesces in the appointment of any trustee, receiver,

- custodian, liquidator, or makes any general assignment for the benefit of creditors;
 - v. Willful and material interference by one party with another party's operations; or
 - vi. Failure to make full restitution for any damage to one party's real property or equipment caused as a result of the sole negligent or willful actions by the other party within a reasonable period of a demand for such restitution.
- b. **Remedies.**
- i. **Defaulting Party's Right to Cure.** The Defaulting Party shall have the right to cure any breach or default under this Agreement within thirty (30) calendar days after the receipt by the Defaulting Party of notification of such breach or default. In the event that any breach or default is of a nature such that it may not reasonably be cured within thirty (30) calendar days, the Defaulting Party shall have the right to provide the Nondefaulting Party with a plan for the appropriate actions to cure such breach or default. Within the thirty (30) calendar day period, the Defaulting Party must commence diligently pursuing appropriate action under the plan to cure the breach or default, in which event the Defaulting Party shall have a longer period of time to cure the breach or default, except where circumstances or other obligations will not allow the non-defaulting party such an opportunity, so long as the Defaulting Party shall continue to be diligently pursuing appropriate action during such period; provided, however, that in no event shall such time period exceed 120 days from the date of receipt of notification of the breach or default.
 - ii. **Nondefaulting Party's Remedies.** After the time allowed the Defaulting Party to cure any breach or default has expired, then the Nondefaulting Party shall have the right to: (A) terminate this Agreement with respect to the Defaulting Party; (B) cure any breach or default of the Defaulting Party to preserve the Nondefaulting Party's rights that may be prejudiced as a result of such breach or default; and (C) exercise and pursue all other rights and remedies available to it under applicable law. The right of Termination set forth in this subsection shall include the right of partial termination, such that, in the event that the default can be cured or removed or otherwise reduced in effect by an action of the Nondefaulting Party to end or remove a portion of this Agreement, and such an action will not necessarily cause the complete termination of this Agreement, the Nondefaulting Party shall have the right to make a unilateral modification of this Agreement, such action becoming effective upon notice to the Defaulting Party. Such modification shall NOT be grounds for the Defaulting Party to declare a Default as might otherwise be permitted under this Section.
- c. **Rights and Remedies Cumulative.** Except as otherwise provided in this Agreement, any right or remedy afforded to and party under any provision of this Agreement on account of breach or default by the other is in addition to, and not in lieu of, all rights or remedies afforded the parties under any other provision of this Agreement, by law or otherwise on account of the breach or default.
10. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
11. **Termination.** This Agreement may be terminated for the following reasons: (A) This Agreement may be terminated at any time by mutual consent of the parties, or by Clackamas County for convenience after the initial three (3) year term and upon thirty (30) days' written notice to Cascade; (B) Clackamas County may terminate this Agreement effective upon delivery of notice to Cascade, or at such later date as may be established by Clackamas County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that performance under

this Agreement is prohibited or Clackamas County is prohibited from paying from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by Cascade to provide the services required by this Agreement is for any reason denied, revoked, or not renewed; (C) This Agreement may also be immediately terminated for Default under Section 9 of this Agreement; or (D) If sufficient funds are not provided in future approved budgets of the Clackamas County (or from applicable federal, state, or other sources) to permit Clackamas County in the exercise of its reasonable administrative discretion to continue this Agreement, or if the program for which this Agreement was executed is abolished, Clackamas County may terminate this Agreement without further liability by giving Cascade not less than thirty (30) days' notice.

12. **Arbitration/Mediation.** Any dispute or claim that arises out of or that relates to this agreement, or to the interpretation or breach thereof, or to the existence, scope, or validity of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The parties acknowledge that mediation helps parties settle their dispute and any party may propose mediation whenever appropriate through Arbitration Service of Portland or any mediator selected by the parties.
13. **No Attorney Fees.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. .
14. **Third Party Rights.** This Agreement shall not provide any person not a party to this Agreement with any remedy, claim, liability, reimbursement, and claim of action or other right in excess of those existing without reference to this Agreement.
15. **Amendment and Waiver.** This Agreement may be modified or amended only by written agreement signed by or on behalf of both parties.
16. **Notices.** Except as otherwise provided under this Agreement, all notices, demands or requests which may be given by any party to the other party shall be in writing and shall be deemed to have been duly given on the date delivered in person, or on the date of the third business day after deposit, postage prepaid, in the United States mail via certified mail, return receipt requested and addressed to the address set forth below. If personal delivery is selected as the method of giving notice under this Section, a receipt of such delivery shall be obtained.

Cascade Utilities, Inc
C/o CLEC Manager
PO Box 189
Estacada, OR 97023

17. **Assignment.** Any assignment by either party of this Agreement or any right, obligation or duty, in whole or in part, or of any other interest hereunder, without the written consent of the other party

shall be void.

18. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as otherwise expressly provided herein, nothing in this Agreement is intended to confer upon any other person or entity any rights or remedies hereunder.
19. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court or regulatory body of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated unless removal of that provision results in a material change to the Agreement. In such a case, the parties will negotiate in good faith for replacement language. If unsuccessful in this, either party may terminate the Agreement.
20. **Entire Agreement.** This Agreement, including all exhibits as referenced constitute the entire Agreement between the parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposal, and undertakings with respect to the Service.
21. **Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Oregon.

DATED: September 1, 2019.

Clackamas County

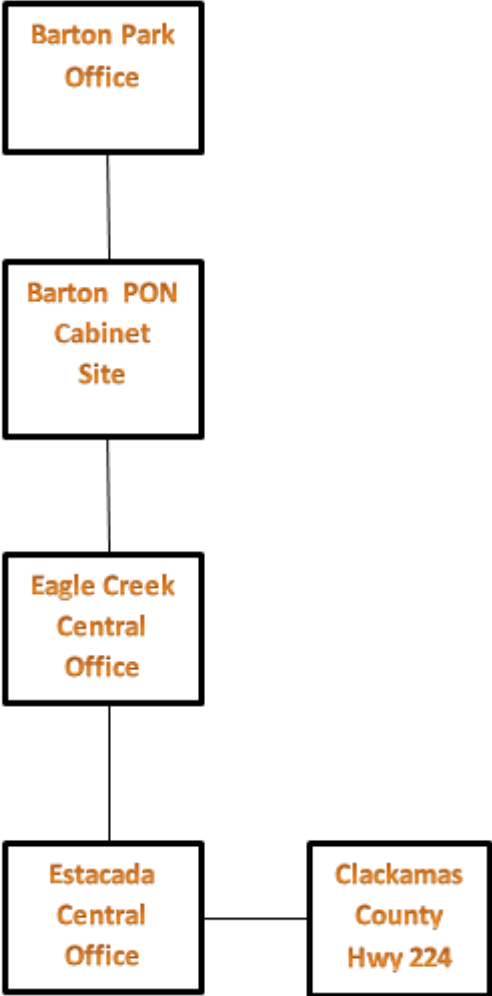
Cascade Utilities, Inc.

By _____

By _____
Name: Brenda Crosby
Title: President

Attach:
Exhibit "A" – Description of Route

EXHIBIT "A"
DESCRIPTION OF ROUTE





Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

September 19, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for an Intergovernmental Agreement between
Clackamas Broadband eXchange and The City of Sandy

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval to enter into an Intergovernmental Agreement (IGA) with the City of Sandy for the placement of conduit along Kelso Rd in Boring.
Dollar Amount and Fiscal Impact	CBX will pay a fee of \$10.00 per foot of conduit placed but not to exceed \$30,000.00 dollars.
Funding Source	CBX will provide the funding for the placement of the conduit along Kelso Rd and then be reimbursed the cost of construction by the Oregon Department of Transportation.
Duration	Effective upon signature by the board the contract is good until the project is complete.
Previous Board Action	Board previously approved CBX to partner with government agencies to complete similar projects.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

CBX is proposing an IGA to partner with the City of Sandy for the placement of conduit along Kelso Rd in Boring Oregon. This new conduit will allow CBX to provide a new dark fiber connection for the Oregon Department of Transportation to their maintenance yard and reader board placed along Highway 26.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this Intergovernmental Agreement with the City of Sandy. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

This Intergovernmental Agreement has been reviewed and approved by County Counsel.

Sincerely,

Dave Cummings
CIO Technology Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND THE CITY OF SANDY**

THIS AGREEMENT (“Agreement”) is entered into and by and between Clackamas County (“County”), a political subdivision of the State of Oregon, and the City of Sandy (“City”), a political subdivision of the State of Oregon, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the “Parties” and each a “Party.”

RECITALS

WHEREAS, authority is conferred under ORS Chapter 190 to local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform; and

WHEREAS, Clackamas County desires the City to place an underground 1 ¼” conduit and hand-holes along Kelso Rd in Boring, Oregon: and

WHEREAS, The City has the equipment and expertise to complete the placement of 1 ¼” conduit and hand-holes: and

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective upon execution by both Parties, and shall continue until the work is completed or the Agreement is terminated.
2. **Rights and Obligations of the City.**
 - A. City shall construct and install, in a good and workmanlike manner, the placement of 1 ¼” conduit infrastructure and hand-holes along Kelso Road in Boring Oregon from the intersection of SE Kelso Rd and SE Orient Rd west to the intersection of SE Kelso Rd and US Highway 26 (“Conduit Project”), as detailed in Appendix A, attached hereto and incorporated by this reference herein.
 - B. Prior to City performing the Conduit Project the City will consult with the County to ensure that the specifications of the infrastructure are compatible with County’s system. Prior to the City performing the Conduit Project the City shall ensure the following construction and installation requirements are satisfied along Kelso Road:
 - a. The City has secured all licenses, authorizations, permits or other agreements to allow City to otherwise perform the Conduit Project.
 - b. The City is obligated to install the 1 ¼” underground conduit infrastructure and hand-holes along Kelso Road. The City will not install any mule tape or locate wire as part of the Conduit Project.
 - c. The City shall provide as-built drawings of the newly installed underground conduit to the County.
3. **Rights and Obligations of County.**

- A. The County hereby agrees to pay to the City a fee of \$10.00 per foot of installed 1 ¼” conduit infrastructure and hand-holes. Provided, however, that in no event will the total compensation provided to the City by the County under this Agreement exceed \$30,000.00.
- B. The County shall reimburse the City for invoices submitted by the City for costs incurred by the City in performing the Conduit Project. The County shall issue payment to the City for approved costs within 30 days of receipt of invoices.
- C. The County will coordinate with the City in the design, permitting, engineering and construction associated with the Conduit Project, as necessary.
- D. County will secure the Clackamas County Utility Permit for this construction.
- E. County will provide the hand holes and conduit infrastructure to be installed by the City as part of the Conduit Project.
- F. Following the City’s installation of the conduit infrastructure and hand-holes as part of the Conduit Project, the County will perform a final inspection. If the County reasonably determines that the conduit infrastructure and hand-holes were not properly installed, or there is any defect in construction of the Conduit Project, then the City will immediately take all necessary and reasonable steps to complete the installation at no additional cost to the County.
- G. County is and will remain the owner of 1 ¼” conduit infrastructure and hand-holes. County shall maintain and repair, as necessary and as determined by County in its sole administrative discretion, the infrastructure throughout the life of the conduit.

4. Work Plan and Project Schedule.

- A. It is the desire of both Parties to complete the Conduit Project as soon as practicable, if possible prior to November 1, 2019. The City will diligently pursue completion of the Conduit Project prior to November 1, 2019.
- B. In the event any part of the Conduit Project is unable to be completed by November 1, 2019, the Parties may mutually agree in writing to adjust the Project timeline and this Agreement as necessary. In the event of alterations to the Conduit Project, other terms of this Agreement shall remain in effect except for mutually agreed upon changes.

5. Representations and Warranties.

- A. *City representations and warranties:* City represents and warrants to County that City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of City enforceable in accordance with its terms. The City further represents and warrants that it shall at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work, and that the Work under this Contract shall be performed in the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions. The County’s approval of the Conduit Project following final inspection shall not relieve the City from responsibility for defective work. The City shall correct all defects that appear in the Conduit Project within one year from the date of final inspection, except for latent defects which will be remedied by City at any time they become apparent. If the City fails to complete the warranty work within such period as reasonably determined by the County, the County may perform such work and the City shall reimburse County for all costs incurred within ten (10) days after demand.

- B. *County Representations and Warranties*: County represents and warrants to City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. **Termination.**

- A. The County and City, by mutual written agreement, may terminate this Agreement at any time. Either Party may terminate for convenience upon providing thirty (30) days' written notice to the other Party.
- B. Either the County or City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, or other time as may be agreed between the parties in writing, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either Party may terminate this Agreement in the event the Party fails to receive expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited or a Party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. **Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, City agrees to indemnify, save harmless and defend the County, its

officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which City has a right to control.

8. **Insurance.** The Parties agree to maintain insurance levels sufficient to cover the obligations agreed to in this Agreement.

9. **Party Contacts**

- A. Duke Dexter or his designee will act as liaison for the County.

Contact Information:

Duke Dexter
121 Library Court
Oregon City, Oregon 97045
ddexter@clackamas.us
Fax: 503-655-8255

Greg Brewster or his designee will act as liaison for City.

Contact Information:

Greg Brewster
39250 SE Pioneer Blvd
Sandy, Oregon 97055
gbrewster@ci.sandy.or.us
503-489-0937

- B. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

10. **General Provisions**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim between County and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to

be part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.

- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Parties shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. The Parties shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period each Party shall permit the other Parties’ authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties regarding its subject matter. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of

principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- J. **No Third-Party Beneficiary.** City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Assignment.** Neither Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in that Party's sole and absolute discretion. One Party's consent to any assignment shall not relieve the other Party of any of its duties or obligations under this Agreement.
- L. **Counterparts.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- M. **Survival.** All provisions in Sections 5, 6, 7, and 10 (A), (B), (C), (E), (G), (H), (I), (J), (Q), and (R) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- O. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- P. **Force Majeure.** Neither City nor County shall be held responsible for delay or default caused by events outside of City's or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war.
- Q. **Confidentiality.** The Parties and their employees or agents may, in the course of this Agreement, be exposed to or acquire material identified as confidential information. Such information shall be deemed confidential information of the Party identifying it as such ("Confidential Information"). The Parties agree to hold Confidential Information in strict confidence, using at least the same degree of care that each Party uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- R. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

City of Sandy

Chair, Board of County Commissioners

By:
Its:

Date

Date

Recording Secretary



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

Board of County Commissioners
 Clackamas County

Members of the Board:

Amendment No. 11 to the Agreement between Clackamas County and Workforce Software LLC
for Timekeeping Software Maintenance and Support

Purpose/Outcomes	Clackamas County has standardized on Workforce Software as the solution for the County's time entry and management system. The original contract was established in 2007. This request is to extend the current contract for up to an additional 5 years of support and maintenance until fiscal year end 2023-2024 as well as ratify and approve previous amendments and expenditures.
Dollar Amount and Fiscal Impact	This proposal combines both ongoing maintenance, upgrades and support. The total for the additional 5 years is capped at \$370,668.77. Total Contract value not to exceed \$1,699,894.67.
Funding Source	Budgeted on annual basis in the Enterprise Business System Budget as 747-0228-437231
Duration	An additional 5 years through fiscal year 2023/2024.
Previous Board Action	Approval of original Contract 4-19-2007 and approval of Amendment #3 11-20-2008.
Strategic Plan Alignment	Build a strong infrastructure and build public trust through good government.
County Counsel Review	September 4, 2019
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

Clackamas County first purchased Workforce time keeping solutions provided by Workforce Software, LLC in 2007 as the County standard time keeping management system. The initial purchase was for \$345,870.00. Since then, there has been one major upgrade to the system and annual maintenance for continued support since installation.

Technology Services is also requesting the board to ratify and approve previous time extensions and annual expenditures that were not processed through contract amendments. The retroactive approval request includes the time period of July 1, 2011 through July 1, 2019. Amendments 9 and 10 were processed with a purchase order, but no formal renewal process was used. There was \$458,782.39 spent during the noted time period that was not processed through any purchase order or contract amendment. Including the current amendment request, the total contract compensation shall not exceed \$1,699,894.67.

While the County is currently reviewing options for the future of the PeopleSoft Enterprise Resource Planning System (ERP) and/or other solutions to manage the County Financial and Human Resource requirements, an ongoing independent time keeping system will continue to be required for the foreseeable future. The County has committed to maintaining and using the

Workforce Timekeeping System. This requires ongoing maintenance and support with the vendor as managed by Technology Services.

RECOMMENDATION:

Staff respectfully recommends approval of the contract amendment to approve past activity and extend maintenance and support by Workforce Software, LLC for the Workforce Timekeeping System for up to an additional 5 years.

Requesting approval for the Department Director to sign the annual Schedule of Services document. It in no way changes or amends the Contract, but acknowledges services for that service year.

Sincerely,

Dave Cummings
CIO Technology Services

Placed on the _____ agenda by Procurement.

AMENDMENT #11

TO THE CONTRACT DOCUMENTS WITH WORKFORCE SOFTWARE, LLC FOR TIMEKEEPING SOFTWARE MAINTENANCE AND SUPPORT

This Amendment #11 is entered into between Workforce Software, LLC (“Contractor”) and Clackamas County on behalf of its Technology Services Department (“County”) and it shall become part of the Contract documents entered into between both parties on April 19, 2007 (“Contract”).

The Purpose of the Amendment #11 is to make the following changes to the Contract:

1. **Term of Agreement:** The Contract expiration date is hereby changed from December 31, 2016 to **June 30, 2024**. County and Contractor acknowledge that services have been performed after the termination date and hereby ratify and affirm such work pursuant to this Amendment #11.
2. **Compensation:** The Contract is amended to add an additional \$350.00 per year software escrow fee. This fee was not previously identified in the annual Maintenance and Support fees of the original Contract.

The Contract is further amended to allow for an annual increase for Maintenance and Support Fees for the extended term of this Contract by no more than five percent (5%) per year. The estimated total for the next five (5) years is **\$370,668.77** as outlined on **Exhibit A**, attached and hereby incorporated by reference. County is also authorizing retroactively all renewals and annual Maintenance and Support fees previously paid for a total of **\$458,782.39**. County and Contractor hereby reaffirm all prior approvals and actions relating to this Contract, including all Compensation and Renewals. The maximum compensation authorized under this Contract shall not exceed \$1,699,894.67.

Original Contract Amount	\$ 345,870.00
Amendment #1	Update Professional Service Rates
Amendment #2	Time Extension
Amendment #3	\$ 333,249.00 Update to Scope of Work
Amendment #4	\$ 8,525.00 Update to Scope of Work
Amendment #5	\$ 19,847.51 Additional Training
Amendment #6	\$ 32,876.00 Update to Scope of Work
Amendment #7	Time Extension to 6/30/2010
Amendment #8	Time Extension to 6/30/2011
Amendment #9	\$ 64,375.00 FY 17/18
Amendment #10	\$ 65,701.00 FY 18/19
Retroactive Approval	\$ 458,782.39
Amendment #11	\$ 370,668.77 + Time Extension
Total Amended Contract	\$ 1,699,894.67

3. **Additional terms.** The Contract is amended to add the following:

PARAGRAPH, Item E. Compliance:

Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. This includes, but is not limited to: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The

Age Discrimination in Employment Act of 1967; (vi) the Health Insurance Portability and Accountability Act of 1996; the Age Discrimination Acts of 1967 and 1975; (vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (viii) ORS Chapter 659; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; (xi) all regulations and administrative rules established pursuant to the foregoing laws; and (xii) County Local Contract Review Board Rules, containing language required to be in all public contracts, which is specifically incorporated by reference as if set forth herein.

PARAGRAPH, Item F. Tax Compliance:

Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and 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 or applicable law.

PARAGRAPH, Item G. Counterparts:

This Addendum and any Amendments may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #11, effective upon the date of the last signature below.

Workforce Software, LLC
37805 Seven Mile Road, Ste. 300
Livonia, MI 48152

Clackamas County Board of County
Commissioners

Authorized Signature

Chair

Name/Title (Printed)

Recording Secretary

Date

Date

998654-96 FLLC / Delaware
Oregon Business Registry #

Approved as to Form

County Counsel

Date

**EXHIBIT A
ANNUAL FEES FOR THE NEXT FIVE YEARS**

WORKFORCE 5 YEAR MAINTENANCE & SUPPORT

	YEAR	AMOUNT	Annual Increase	Software Escrow Fee	TOTAL
1	FY19-20	\$66,765.00		\$350.00	\$67,115.00
2	FY20-21	\$70,103.25	Max 5%	\$350.00	\$70,453.25
3	FY21-22	\$73,608.41	Max 5%	\$350.00	\$73,958.41
4	FY22-23	\$77,288.83	Max 5%	\$350.00	\$77,638.83
5	FY23-24	\$81,153.27	Max 5%	\$350.00	\$81,503.27
	TOTAL	<u>\$368,918.77</u>		<u>\$1,750.00</u>	<u>\$370,668.77</u>

Maximum 5% increase over previous year



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Brand Standardization for Atos / Unify Equipment and Software for the Enterprise Telecommunications Network

Purpose/ Outcomes	To establish a brand standardization for servers and software that support an Enterprise Network solution used in all Clackamas County buildings and offices. The Procurement Office anticipates publishing formal Procurement processes for sellers or resellers who are able to upgrade the Atos/Unify voice server software and related equipment upon Board approval of the brand standardization.
Dollar Amount and Fiscal Impact	N/A
Funding Source	746-1223-485400
Duration	This brand specification applies any solicitations as described above for up to 10 years.
Previous Board Action	The Atos / Unify Enterprise Network system was originally purchased through an RFP in the 1990s. On 12-20-2018, the board approved a Master Agreement with Atos to cover ongoing maintenance and support of the existing system.
Strategic Plan Alignment	This project will allow Technology Services to continue to provide the County with a state of the art, best in class hybrid approach for communications.
Contact Person	Dave Devore, 503.723.4996 / Ron Sandner, 503.655.8828
Counsel Review	N/A

Background:

Currently, Technology Services (TS) utilizes communication servers and software from Unify Communications (Atos) to support an Enterprise Network solution that is used in all County buildings and offices. The Enterprise Telecommunications Network utilizes Unify (Atos) servers that provide a state of the art, best in class hybrid approach for communications in the County. TS is able to deploy TDM, IP or SIP technology that best suits a particular situation or business need, saving taxpayer dollars while providing an integrated, seamless user experience. The software updates to existing platforms are far less costly than replacing the entire Enterprise Telecommunications Network and fall within budget parameters. Moreover, TS personnel are manufacturer trained and

certified on all Unify (Atos) equipment and software. This saves County users and Departments time and money, which in turn saves Taxpayer dollars, as TS is able to respond immediately to requests with expert level service. There is no budget to re-train County service personnel on a new communications platform. For these reasons and others, TS is requesting this brand specification to support the upcoming RFP to upgrade these Voice Servers as needed to keep them operating and comply with obligations under the maintenance and support agreement. Technology Services will regularly monitor the County's business needs, technology solutions, budgetary priorities, and other factors to determine whether it shall solicit other brands / solutions for voice services sooner than the expected duration of this Brand Specification. Although annual support and maintenance is currently purchased directly from Atos, the equipment, software, and services needed for the planned upgrades may be available through multiple vendors, allowing for adequate competition in the marketplace.

Procurement Process:

The Procurement Office advertised the Notification of Brand Name Standardization (Attachment A) according to ORS 279B.215 on August 13, 2019. The Notification specified the County's intent to purchase Atos / Unify equipment and software needed to upgrade the Atos/ Unify voice servers. The Notification was published for fourteen (14) days and received no protests. Upon Board approval of the Brand Name Specification, the Procurement Office anticipates publishing a formal procurement package specifying the Atos / Unify brand. Additional procurement processes may also be conducted under this brand specification. The Technology Services Department has identified that multiple vendors meet the brand name specification qualification for the upcoming RFP and does not foresee vendor favoritism with this solicitation.

Recommendation:

Staff respectfully recommends the Board approve the request for a Brand Standardization for Atos / Unify brand voice server equipment and software for up to the next ten (10) years.

Respectfully,

David Cummings
Chief Information Officer / Director
Clackamas County Technology Services

Placed on the Agenda of _____ by the Procurement Division

Board Approval: _____

NOTIFICATION OF BRAND NAME SPECIFICATIONS

8/13/2019

Brand name: Atos / Unify

Project Description: Voice Server Upgrades

Description of Goods: Atos / Unify Voice Server Equipment, Software

Notice is hereby given by Clackamas County through its Procurement Division and on behalf of its Technology Services Department (“TS”), is seeking brand name specifications for its Atos Voice Server Upgrades.

1. Currently, Technology Services (TS) utilizes communication servers and software from Unify Communications (Atos) to support an Enterprise Network solution that is used in all County buildings and offices. The Enterprise Telecommunications Network utilizes Unify (Atos) servers that provide a state of the art, best in class hybrid approach for communications in the County. TS is able to deploy TDM, IP or SIP technology that best suits a particular situation or business need, saving taxpayer dollars while providing an integrated, seamless user experience. The software updates to existing platforms are far less costly than replacing the entire Enterprise Telecommunications Network and fall within budget parameters. Moreover, TS personnel are manufacturer trained and certified on all Unify (Atos) equipment and software. This saves County users and Departments time and money, which in turn saves Taxpayer dollars, as TS is able to respond immediately to requests with expert level service. There is no budget to re-train County service personnel on a new communications platform. For these reasons and others, TS is requesting this brand specification to support the upcoming RFP to upgrade these Voice Servers as needed to keep them operating efficiently and comply with obligations necessary to qualify for ongoing maintenance and support.
2. According to ORS 279B.215, the County has determined that only the identified brand name specification listed above will meet the needs of the County based on one or more of the following written determinations:
 - That use of a brand name specification is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;
 - That use of a brand name specification would result in substantial cost savings to the County;
 - That there is only one manufacturer or seller of the product or the quality, performance or functionality required; or
 - That efficient utilization of existing goods requires the acquisition of compatible goods or services.
3. This Standardization is for a: Single Solicitation or Class of Solicitations

4. In accordance with Local Contract Review Board Rules C-047-0700, a vendor may submit protests regarding this notice to the Procurement Division Director, George Marlton, 2051 Kaen Road, Oregon City, Oregon, 97045. Written comments must be received by 5:00PM, within fourteen (14) calendar days from the date of issuance of this Notice.