



March 17, 2022

Board of County Commissioners  
Clackamas County

**Approval of a contract with Lyngsoe Systems, Inc. for Library Automated Material Handling Equipment and Maintenance services. Total value is \$226,630. Funding through BCS – LINCC Library Services and Cities of Oregon City and Lake Oswego. BCS - LINCC Library Services’ general fund portion is \$88,538 over four years.**

<b>Purpose/Outcome</b>	Approval of contract to purchase Library Automated Material Handling Equipment and Maintenance.
<b>Dollar Amount and Fiscal Impact</b>	\$226,630.00
<b>Funding Source</b>	The total cost of this contract is \$226,630.00 over four years with \$138,092 to be paid by Oregon City and Lake Oswego once billed. BCS - LINCC Library Services’ general fund portion is \$88,538 over four years.
<b>Duration</b>	Through June 30, 2026
<b>Previous Board Action/Review</b>	None.
<b>Strategic Plan Alignment</b>	1. This contract aligns with BCS- LINCC Library Services’ purpose to provide operational support and ongoing collaboration services to libraries in Clackamas County (LINCC). 2. Ensure Safe, Healthy and Secure Communities & Building a Strong Infrastructure.
<b>Counsel Review</b>	Date of Counsel review: 2/7/2022 Name of County Counsel performing review: Andrew Naylor
<b>Procurement Review</b>	(Please check yes or no for procurement review. If the answer is “no,” please provide an explanation.) 1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/>
<b>Contact Person</b>	Kathryn Kohl, LINCC Library Services Manager, 971-201-2979
<b>Contract No.</b>	5036

**BACKGROUND:** In 2017, BCS - LINCC Library Services, along with the cities of Lake Oswego and Oregon City, purchased automated materials handling (AMH) machines from Lyngsoe Systems Inc. to sort library materials safely and efficiently at three locations within Clackamas County. This purchase was part of a larger “RFID Implementation” contract approved by the BCC. BCS - LINCC Library Services use the AMH to centrally sort nearly two million library items each year reducing the physical and financial impact of sorting materials in the 13 libraries within LINCC (Libraries in Clackamas County). Oregon City and Lake Oswego public libraries use their AMH machines to efficiently process returned library materials in a safe manner.

Our initial purchase in 2017 included a five-year service and maintenance contract for the AMH machines which expires in June of 2022. To ensure proper working order and responsible use of taxpayer funds, we request the approval of a new four-year service and maintenance contract and pricing agreement with Lyngsoe Systems Inc. The service and maintenance contract will allow for all parties to fully utilize the existing machines, avoid unnecessary downtime, receive upgrades and routine preventative maintenance, and extend their useful life.

The total cost of this contract is \$226,630.00 over four years with \$138,092 to be paid by Oregon City and Lake Oswego once billed. BCS - Library Support Service's general fund portion is \$88,538 over four years.

**PROCUREMENT PROCESS:**

Approval of the purchase is being requested under the Local Contact Review Board Rule C-047-0275, Sole Source Procurements. A notice was published December 15, 2021 and received no protests.

**RECOMMENDATION:** Business and Community Services respectfully requests that the Board of County Commissioners approves this contract with Lyngsoe Systems, Inc. for Library Automated Material Handling Equipment and Maintenance services.

Respectfully submitted,

A handwritten signature in blue ink that reads "Sarah Eckman". The signature is written in a cursive, flowing style.

Sarah Eckman  
Interim Director, Business & Community Services



**CLACKAMAS COUNTY  
GOODS AND SERVICES CONTRACT  
Contract #5036**

This Goods and Services Contract (this “Contract”) is entered into between **Lyngsoe Systems, Inc.** (“Contractor”), and Clackamas County, a political subdivisions of the State of Oregon (“County”) on behalf of Business and Community Services, for the purposes of providing Automated Library Systems and Maintenance.

**I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **June 30, 2026**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

**II. SCOPE OF WORK**

Contractor will provide County the extended service plan for Lyngsoe systems, which includes support, maintenance, service, and hotline services, as described in the Lyngsoe Systems, Inc. proposal attached and hereby incorporated by reference as Exhibit “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, and Exhibit “A”. Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County’s Representative for this contract is: Liz Lawson-Weber.

**III. COMPENSATION**

1. **PAYMENT.** The County agrees to compensate the Contractor on a flat fee basis for providing the extended service plan to three County-owned locations, as set forth in Exhibit A and summarized in the tables below:

**Central Sorter**

<b>Year</b>	<b>Annual flat fee for extended service plan</b>
<b>2022-2023</b>	<b>\$20,850</b>
<b>2023-2024</b>	<b>\$21,684</b>
<b>2024-2025</b>	<b>\$22,551</b>
<b>2025-2026</b>	<b>\$23,453</b>

**Oregon City**

<b>Year</b>	<b>Annual flat fee for extended service plan</b>
<b>2022-2023</b>	<b>\$10,750</b>
<b>2023-2024</b>	<b>\$11,180</b>
<b>2024-2025</b>	<b>\$11,627</b>
<b>2025-2026</b>	<b>\$12,092</b>

**Lake Oswego**

Year	Annual flat fee for extended service plan
2022-2023	\$21,770
2023-2024	\$22,640
2024-2025	\$23,546
2025-2026	\$24,487

The maximum annual compensation authorized under this Contract shall not exceed **the annual amounts per service location per year**, as set forth in the tables above and in Exhibit A. The total Contract compensation shall not exceed **Two Hundred Twenty-Six Thousand Six Hundred Thirty Dollars (\$226,630.00)**.

The County may, upon written amendment to this Contract, request that Contractor provide Lyngsoe system services in addition to those services included in the extended service plan. Compensation for additional services will be on a time and material basis at the hourly rates set forth in Exhibit A and summarized in the table below:

Hourly Rates	Normal Hours	Overtime Hours	Travel Hours	Holiday Hours
Service Engineer	165.00	247.50	165.00	330.00
Software Engineer	171.00	256.50	171.00	342.00

Contractor may not increase the hourly rates set forth above for additional services during the term of this Contract.

2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
 If travel expense reimbursement is authorized in this Contract, and notwithstanding any language contained in Exhibit A, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
  
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be on an annual basis(unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: [deckerson@lincc.org](mailto:deckerson@lincc.org)

**4. CONTRACTOR AND COUNTY CONTACTS.**

Contractor	County
Administrator: Laura Corbin Phone: 240-674-8482 Email: <a href="mailto:lsu@lyngsoesystems.com">lsu@lyngsoesystems.com</a>	Administrator: Josh Wolfe Phone: 603-729-2839 Email: <a href="mailto:JWolfe@clackamas.us">JWolfe@clackamas.us</a>

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#### IV. CONTRACT PROVISIONS

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for

the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.
10. **INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:
  - A. **COMMERCIAL GENERAL LIABILITY**  
The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.
  - B. **AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract 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.

**12. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article II, Section 4. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us). Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours

after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

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 by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract,



except for the rights and obligations set forth in Article IV, Sections 1, 6, 8, 11, 13, 14, 15, 16, 18, 21, 22, 23, 27, 31 and all other terms and conditions which by their context are intended to survive termination of this Contract.

- 16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 26 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** 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. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in 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: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) 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 performance. 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.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) 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; (C) 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 (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

- 20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract

effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

- 21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.
- 22. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 23. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 24. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.
- 25. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

- 26. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 27. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 28. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
- 29. DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.
- 30. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.



**EXHIBIT A**  
**CONTRACTOR SERVICE AGREEMENT**



## SERVICE

### EXTENDED SERVICE PLANS

Recommended Service plan for a system this size would consist of the following:

Hotline-	Access to the Lyngsoe Toll Free Hotline Engineers 24 hours a day, 365 days a year
Preventative Maintenance Visits-	A Lyngsoe Technician will travel to site for two (2) system audits of 6-8 hours per visit and perform preventative maintenance tasks. This work certifies the availability of parts warranty
Training	During acceptance of the system and during Preventative Maintenance visits, we will train staff assuring proper operation and maintenance procedures
On-Site Spare Parts Kit	Included with your system is a collection of spare parts and tool kit to assure the system can be brought back to operation quickly after a failure
Extended Parts Warranty	Non-Wear Part failures by normal use (vandalism excluded) will be replaced at no cost



Service Pricing

Central Sorter

**Hotline  
Preventative Maintenance  
Extended Parts Warranty**

<b>2022-2023</b>	\$20,850
<b>2023-2024</b>	\$21,684
<b>2024-2025</b>	\$22,551
<b>2025-2026</b>	\$23,453

Oregon City

**Hotline  
Preventative Maintenance  
Extended Parts Warranty**

<b>2022-2023</b>	\$10,750
<b>2023-2024</b>	\$11,180
<b>2024-2025</b>	\$11,627
<b>2025-2026</b>	\$12,092

Lake Oswego

**Hotline  
Preventative Maintenance  
Extended Parts Warranty**

<b>2022-2023</b>	\$21,770
<b>2023-2024</b>	\$22,640
<b>2024-2025</b>	\$23,546
<b>2025-2026</b>	\$24,487



## HOTLINE SERVICE

The hotline can be used when assistance from an experienced Lyngsoe Systems engineer is required. If the hotline is contacted, a hotline report of this call is sent to the Customer after the issue is resolved.

### Hotline

If a Customer is unable to remedy a problem that renders the system not functional, the Lyngsoe Systems Hotline can be contacted 24 hours a day.

Within 15 minutes of receiving the call, hotline engineers will start troubleshooting the system and supporting the Customer. This will be done by telephone and VPN connection. Establishing a VPN connection to the Customer will be done prior to initial equipment installation but according to Lyngsoe Systems specifications outlined in the project phase.

Hotline is not available on 24th, 25th and 31st December and 1st January unless other arrangements are made.

### Part-to-Site

In the case where a system part, which is not in the spare parts kit, is needed and the customer is covered by Lyngsoe Systems extended parts warranty the process is outlined below.

In the case where a part is needed, and the customer does not have extended part warranty Lyngsoe Systems will need a purchase order to proceed with issuing the part.

### Man-On-Site (MOS)

In the case where problems cannot be solved remotely Lyngsoe Systems will send a technician to site within the shortest possible reasonable response time, subject to the restrictions outlined below.

If the Customer, for other reasons, requests a technician to come on site, Lyngsoe Systems will send a technician to site within the shortest possible reasonable response time, subject to the restrictions outlined below. The Customer must supply a purchase order when ordering Man-On-Site and costs are invoiced according to the rates in Appendix 1.

For a Man-On-Site visit the system must be made fully available for the technician.

### Dispatching a Technician

If a Man-On-Site is required and the decision to do this is made within Lyngsoe Systems normal opening hours (8.00am - 4.30pm Monday through Friday EST), the technician will commence their journey immediately. Outside of normal opening hours a technician will commence their journey before 12 noon the following weekday.





## MAINTENANCE

Planned service visits to the Site(s) are part of good preventive maintenance practice.

### Service Visits

Service visits are carried out by Lyngsoe Systems technicians and include the following main points:

- Inspection and health check
- Adjustment of parts
- Replacement of wearing parts
- System optimization
- Check of controls system
- Review of the spare parts inventory

The number of agreed annual service visits and the number of hours per visit are itemized in the price sheet. The date of visits and time of arrival on site will be agreed upon individually with the Customer.

The Customer is requested to make 1 member of staff available during the entire service visit for knowledge transfer and education. In order for us to carry out the most effective service visits, we require that the Customer maintain spare parts on site.

If the service visit is extended, this will be invoiced separately.

All service visits are concluded with a service visit report sent to the Customer. The Customer should provide an email address for this to be sent to.

### Spare Parts Service

To ensure maximum uptime on the system it is important that spare parts are available on site.

### Spare Parts Stock

A spare parts stock is insurance and will include parts that are critical to the operation of the system. Lyngsoe Systems recommends that the Customer invest in a spare parts starter kit for each product they purchase. While we have a typical standard package the contents of the starter kit can also be tailored to the Customer and the Customer budget. Contents of a standard spare parts starter kit are itemized in Appendix 2.

Consumption of spare parts is not included in this agreement and will be invoiced separately.

## EXTENDED PARTS WARRANTY

Lyngsoe Systems will provide the annual price for extending the initial parts warranty covered in the original Lyngsoe Systems Terms and Conditions.



If at any time during the initial or extended warranty period, a part should fail under the conditions of the original Lyngsoe Systems Terms and Conditions and it is not part of the supplied spare parts package Lyngsoe Systems will ship a part to site as soon as possible. This will be done on mutual agreement that the failed part will be shipped back to Lyngsoe Systems as soon as the new one is installed with a completed Returned Goods Form (Appendix 3). Failure to ship back the failed part will result in Lyngsoe Systems invoicing the customer for the new part.

Exception to this will be when Lyngsoe Systems requests that the failed part not be shipped back. No charges will be incurred by the Customer under this scenario.

If a part is no longer available a suitable replacement will be provided along with clear directions on how to replace the parts. If guidance is needed onsite it will be provided.

## Repair Service

Lyngsoe Systems may coordinate the repair of defective parts and components.

The Customer must send defective parts to Lyngsoe Systems with a completed Returned Goods Form (Appendix 3) and the repair work will start when Lyngsoe Systems receives the returned goods. While the duration of the repair work will vary, but we aim to ship repaired goods to the Customer within 30 days of receiving them with standard shipping.

## TRAINING

Lyngsoe Systems offers packages will ensure all Customer operators and maintenance personnel have the skills needed to efficiently keep the system in running order. Lyngsoe Systems recommends that maintenance and operators training is scheduled each year to help with any ongoing questions the customer has.



## RATES & EXPENSES

### Service Hourly Rates

Valid from January 1, 2020 to December 31, 2022

Hourly Rates (USD)	Normal Hours	Overtime Hours	Travel Hours	Holiday Hours
Service Engineer	165.00	247.50	165.00	330.00
Software Engineer	171.00	256.50	171.00	342.00

### Normal Hours / Overtime

Normal hours are from 08.00 am to 4.30 pm Local Time

Overtime is after 4.30 pm on weekdays, Saturdays/Sundays and holidays according to USA calendar.

### Travel Expenses

Car expenses are charged according to invoice

Other expenses are charged according to invoice

### Hotel and Meal Allowances

Hotel expenses are charged according to invoice

Allowances are charged according to current per diem rates

Subsistence allowances are charged where work including transportation time is terminated after 6 hours is charged at 45% of the tariff in force.

### NOTE:

- All prices exclusive of hotel and subsistence allowances.
- All prices exclude transport costs and travel time.