



Dave Cummings
Chief Information Officer

Technology Services

December 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of ORMAP Intergovernmental Agreement Contract # 3739-18
with the Oregon Department of Revenue for
Digital GIS Tax Lot Conversion

Purpose/Outcomes	This IGA will provide funding to continue the conversion of paper survey documents and Assessment maps to a digital GIS database as required under ORS 306.135.
Dollar Amount and Fiscal Impact	This semi-annual IGA Contract is \$42,000 for this funding period. Amount varies with each ORMAP grant request due to funding availability. The County matches \$35,000 annually, typically 35% of the amount the State provides.
Funding Source	State of Oregon, Department of Revenue
Duration	Terminates December 31, 2019
Previous Board Action/Review	The County has participated in this program since 1999 with the BCC approval of IGA Contracts with the Dept. of Revenue twice a year in varying amounts.
Strategic Plan Alignment	1. Creation of a publicly available internet based data and document portal including all legally available data 2. Building public trust through good government
Contact Person	Eric Bohard, Tech. Services Mgr. – Technology Services 503-723-4814

BACKGROUND:

This program, legislated in 1999 as ORS 306.135, provides for the funding from the State Department of Revenue for GIS digital tax lot capture and the creation of digital Assessor's tax lot maps. The ORMAP program collects \$1.00 for each recorded land related document from all Oregon Counties. These funds go into a pool administered by the Oregon State Department of Revenue. Funds are distributed to Counties based on competitive grant applications twice a year. This contract represents our Fall 2018 award of our grant request for continuing work on the capture of tax lot lines and annotation from survey documents and converting that information to a digital GIS database as spelled out by Oregon Department of Revenue standards.

The product created by funds from this IGA contract benefits the County, the State, and most importantly, the public. Having an accurate ownership GIS layer allows uses of the data to make more informed decisions and provides a more accurate base map for other GIS map data.

This project is a collaborative effort between the Clackamas County's Assessor's Office and the GIS Division of the Technology Services Department. Also assisting in this effort is the County's Surveyor. County Counsel has reviewed these on-going ORMAP contracts and has approved as to form.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approves Intergovernmental Agreement Contract # 3739-18 with the State of Oregon Department of Revenue for the continued conversion of paper survey documents and Assessment maps to a digital GIS database.

Respectfully submitted,

David Cummings
Chief Information Officer

**DEPARTMENT OF REVENUE
ORMAP INTERGOVERNMENTAL AGREEMENT
CONTRACT #3739-18**

This Agreement is entered into by and between the State of Oregon, acting by and through the Department of Revenue (“Department”) and Clackamas County (“County”).

WHEREAS, under ORS 306.135 the Department is charged with developing a base map system to facilitate and improve the administration of the ad valorem property tax system;

WHEREAS, pursuant to ORS 190.110, the Department may cooperate, by agreement or otherwise, with a unit of local government in performing the duties imposed upon it by ORS 306.135.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Department and the County agree to the following:

I. EFFECTIVE DATE OF AGREEMENT; AWARD; PROJECT COMPLETION

- A. Effective Date of Agreement. This Agreement shall become effective on the date this Agreement has been signed by every party and all required approvals have been obtained.
- B. Award. The Department shall provide funds in the amount of **\$42,000.00** (the “Award”) to the County to fund all or part of the activities set forth in Exhibit A (“Proposal”) which is attached hereto and by this reference made a part hereof. The part of the activities set forth in the Proposal which is funded by the Award shall be called the “Project”. All of the activities set forth in the Proposal, whether funded by the Department or by other sources, shall be referred to as the “Total Project”. (If there are no other funders beside the Department for the activities described in the Proposal, the Total Project is the same as the Project.) The Department shall not be obligated to provide to the County, and the County shall not use the Award other than for costs for the Project.
- C. Project Completion. County agrees to complete the Total Project in accordance with the terms and specifications of the Proposal by **December 31, 2019** (“Project Completion Date”). Final billing for the Project shall be submitted to the Department on or before **January 31, 2020**.

II. DISBURSEMENTS.

- A. Disbursement of Funds by the Department. Subject to Section IV, upon receipt of the County’s request for disbursement, the Department shall disburse the

Award to the County on a cost reimbursement basis. The Department may, in its sole discretion, impose a minimum or maximum dollar amount for each disbursement request or limit the frequency of disbursement requests.

- B. Overpayment. In the event that the aggregate amount of the Department's disbursements hereunder exceeds the costs of the County for the Project, the County agrees to refund to the Department the amount paid in excess of such costs within thirty (30) days of final billing by the County or the Project Completion Date, whichever is earlier.
- C. Disallowed Costs. The County agrees that payment(s) under this Agreement shall be subject to offset or reduction for amounts previously paid hereunder which are found by the Department not to constitute allowable costs under this Agreement. If such disallowed amount exceeds the payment(s); the County shall immediately upon demand pay the Department the amount of such excess.
- D. Cost Savings. Any cost savings realized on the Total Project shall be prorated between the funding sources based on the percentage of their respective cash contributions as set forth in the Proposal. In no event shall the Department pay for more than its pro rata share of the County's actual out-of-pocket cost of the Total Project.
- E. No Duplicate Payment. The County shall not be compensated for, or receive any other duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party.

III. REPRESENTATIONS AND WARRANTIES

County represents and warrants to the Department that (1) it has the power and authority to enter into and perform this Agreement, (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms, (3) the Total Project shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, (4) those persons performing work on the Total Project shall, at all times during the term of this Agreement, be qualified, professionally competent and duly licensed to perform work on the Total Project, and (5) Exhibit A presents a good faith estimate of the costs of the Total Project and the Project and accurately states the amount of other funds, whether in cash or through binding commitment(s), available for payment of the costs of the Total Project.

IV. CONDITIONS TO DISBURSEMENT

- A. Conditions Precedent to Disbursement. The Department shall not be obligated to disburse any funds hereunder for Project costs unless (1) there exists no event of default or default which with notice or lapse of time or both will become an event of default hereunder, and (2) the Department has received from the County (i) a request for disbursement signed by a duly authorized representative of the County (which shall, among other things, state that the County has or will have sufficient funds to complete the Total Project by the Project Completion Date), (ii) an itemized invoice and (iii) such other documentation as the Department may require, all in form and substance satisfactory to the Department; further, the Department shall only be obligated to disburse Award funds to the extent that the portion of the Award represented by the aggregate amount of all disbursements made through the date of the disbursement request (including the amount of the disbursement request) does not exceed the percentage of the Project completed through the date of the disbursement request, as determined by the Department.
- B. Conditions Precedent to Final Disbursement. The Department shall not be obligated to make final disbursement hereunder until a final payment request and such documentation as may be required by the Department, all in form and substance satisfactory to the Department, shall be submitted by the County to the Department. Final payment will be made to the County within forty-five (45) days of approval by the Department.

V. COVENANTS

- A. Assignment. If the County hires a contractor(s) to do all or part of the Project, the County shall remain liable for compliance with the terms and conditions of this Agreement and shall not in any way be relieved of any of its obligations under this Agreement. The County shall be responsible for all cost overruns.
- B. Payments. To the extent required by state and federal law, the County agrees to:
1. Make payment promptly as due to all contractors, subcontractors, vendors and other persons supplying labor and/or materials for the Project; and
 2. All employers, including County, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). County shall require and ensure that each of its subcontractors complies with these requirements.

- C. Liabilities. County shall perform its obligations under this Agreement as an independent contractor. Each party shall be responsible exclusively with respect to its employees, for providing for employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and contributions to the Public Employees Retirement System.

Each party shall be responsible, to the extent required by law (including the Oregon Tort Claims Act, ORS 30.260-30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

- D. Compliance with Applicable Law. The County shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement. The Department's performance under this Agreement is conditioned upon the County's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230 and 279B.270, as amended from time to time, which are incorporated by reference herein. The parties shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg))
- E. Records Maintenance. The County shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles and the Oregon Local Budget Law, ORS 294.305 to 294.565.. In addition, the County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the County's performance. The County's accounting procedures shall provide for an accurate and timely recording of receipt of funds by source, of expenditures made from such funds, and of unexpended balances. Controls shall be established which are adequate to ensure that all expenditures reimbursed under this Agreement are for allowable purposes and that documentation is readily available to verify that such charges are accurate.
- F. Access. The County acknowledges and agrees that the Department and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of the County that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts. The County shall retain and keep accessible all such fiscal records, books, documents, papers, plans and writings for a minimum of five (5) years, or such longer period as may be required by applicable law, following final payment under this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

- G. Project Ownership. The Department acknowledges and agrees that the Project is the exclusive property of the County. The County acknowledges and agrees that the Department is not responsible or liable in any manner for the completion or maintenance of the Project or Total Project.

VI. TERMINATION; REMEDIES

- A. Termination for Convenience. Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other party; provided, however, that the County shall, within thirty (30) days of such termination, reimburse the Department for all funds disbursed by the Department hereunder to the extent that the amount of funds disbursed exceeds the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department; provided further that until the County has fully reimbursed the Department for such funds, the County shall comply with the terms of this Agreement.

B. Termination Because of Non-Appropriation or Project Ineligibility.

1. The Department, at any time upon prior written notice to the County, may terminate this Agreement if the Department fails to receive funding or appropriations, limitations, or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to pay for the allowable costs of the Project to be funded hereunder or any state law, regulation or guideline is modified, changed or interpreted in such a way that the Total Project, or any portion of the Total Project, is no longer eligible for Award funds.
2. In the event insufficient funds are appropriated by the County for its share of the costs of the Total Project and the County has no other lawfully available funds, then the County may terminate this Agreement at the end of its current fiscal year, with no further liability to the Department. The County shall deliver to the Department written notice of such termination within thirty (30) days of its determination of such shortfall.

C. Termination for Default. The Department may, at any time upon thirty (30) days prior written notice to the County, terminate this Agreement if:

1. The design and implementation of the Total Project is not pursued with due diligence; or
2. The cadastral portions of the Total Project do not conform to the Department of Revenue Oregon Cadastral Map System; or

3. The County fails to receive funding for portions of the Total Project from outside sources as described in its Proposal; or
 4. The County, without the prior written approval of the Department, uses the funds provided by the Department hereunder in a way other than the Project described in the Proposal.
 5. The County violates any other provision of this Agreement.
- D. Rights and Remedies. The County shall, within thirty (30) days of its receipt of the notice described in Section VI.C above, reimburse the Department for all funds disbursed hereunder to the extent that the funds disbursed exceed the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department as of the date of County's receipt of the notice described in Section VI.C above. Further, the Department shall have any and all rights and remedies available at law or in equity.

VII. GENERAL PROVISIONS

- A. Force Majeure. Neither the Department nor the County shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, strike, public carrier, act of God, act of a public enemy or a public authority or a cause which cannot be reasonably foreseen or provided against.
- B. Persons Not to Benefit. No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Oregon Legislative Assembly, elected official of the State of Oregon, or official, agent, or employee of the State of Oregon, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the State of Oregon shall derive any unfair knowledge or financial benefit from this Agreement that is not offered to others in a competitive process.
- C. No Third Party Beneficiaries. The Department 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.
- D. Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Department and County and their respective successors and assigns; provided however that the County may not

assign this Agreement or any interest therein without the prior written consent of the Department, which consent may be withheld for any reason.

- E. Severability. The Department and the County agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.
- F. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the Department or the County at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- G. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.
- H. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the Department and/or other agency or department of the State of Oregon and the County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is 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. COUNTY, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- I. Merger Clause; Amendment; Waiver. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE DEPARTMENT AND THE COUNTY ON THE SUBJECT MATTER HEREOF. NO MODIFICATION OR

CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH THE DEPARTMENT AND THE COUNTY, AND NO CONSENT OR WAIVER SHALL BE EFFECTIVE UNLESS IN WRITING AND SIGNED BY THE PARTY AGAINST WHOM SUCH CONSENT OR WAIVER IS BEING ENFORCED. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE DELAY OR FAILURE OF THE DEPARTMENT TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY THE DEPARTMENT OF THAT PROVISION OR ANY OTHER PROVISION. THE COUNTY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS.

DEPARTMENT:

State of Oregon, acting by and through its
Department of Revenue
Authorized Agency Signature

By: _____

Joshua Hardage, Contracts & Procurement Manager

Date: _____

COUNTY:

Clackamas County

By: _____

Title: _____

Date: _____

Telephone: _____

Fax No: _____

EXHIBIT A

AWARD LETTER
COUNTY GRANT PROPOSAL



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 Telecommunication Services with Atos IT Solutions and Services, Inc.

Purpose/ Outcomes	Contract renewal for Telecommunication Services with ATOS IT Solutions, Inc.
Dollar Amount and Fiscal Impact	Total Contract Value: \$1,350,000.00
Funding Source	Fund 746 ORG 1223 (budgeted in the FY 18/19 Technology Services budget)
Duration	5 Years – 12/2023
Strategic Plan Alignment	-Build Public Trust Through Good Government -Build a Strong Infrastructure
Contact Person	Dave Devore 503.723.4996 / Ron Sandner 503.655.8828

BACKGROUND:

The Clackamas County Technology Services Department (TS) is tasked with providing high quality, feature rich and cost effective voice communication services to the County Departments and staff. This service is provided via the Telecommunications Division of TS. These voice communication services include management of high-performance communication servers and network to provide local and long distance telephone service as well as many other related features such as unified communications, integrated centralized Private Network E911, integrated centralized voice mail, integrated centralized conference calling, integrated centralized automated attendant, four digit dialing to any County Agency and other services in a cost effective manner to the County. TS utilizes communication servers from Atos IT Services Inc., a world leader in high performance, high reliability communications.

Renewing the contract will allow continued support and updates of the voice communications network and servers. TS will be able to maintain interoperability, compatibility, seamless integration and resiliency across the Enterprise Voice Communications Infrastructure in continued support of all County Departments.

Approval of this contract is being requested under the Local Contract Review Board Rule C-047-0288 (15); where the efficient use of an existing equipment of supplies

requires compatible products or services of a particular product or service without obtaining competitive bids or proposals.

Procurement Authority: This is a legacy software maintenance and support contract renewal. This software has been utilized by the County for more than twenty years. It is the intent of the County to continue to utilize this vendor for the above referenced services and will be brought for Board of County Commissioners approval every five years for review or until the system is replaced.

County Counsel has reviewed Atos' Agreement for Products and Services and attached the Clackamas County Government Addendum to the agreement.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners approve the attached Contract for renewal of Telecommunication Services.

Respectfully submitted,



Dave Cummings
Chief Information Officer / Director
Clackamas County Technology Services

Placed on the Agenda of _____ by the Procurement Division

OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County (“County”), Atos IT Solutions and Services, Inc. (“Contractor”). As used below, "Contract" or “Contract Documents” or similar term shall include this Addendum and Atos Agreement for Products and Services. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A.** All employers, including Contractor, which employ workers who work under this Contract in the State of Oregon shall comply with Oregon Revised Statutes ("ORS") Chapter 656.017 and provide required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contractors shall maintain employer’s liability insurance with limits of \$500,000 each accident, \$500,000 per disease for each employee, and \$500,000 minimum policy limit.
- B.** The Contract Documents are 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. The following terms and conditions are made a part of this Contract:
- 1.** Contractor shall:
 - a)** Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract Documents.
 - b)** Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract Documents.
 - c)** Not permit any lien or claim to be filed or prosecuted against Clackamas County on account of any labor or material furnished.
 - d)** Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - 2.** If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract Documents as such claim becomes due, the proper officer representing Clackamas 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 Contractor by reason of the Contract Documents.
 - 3.** The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.
 - 4.** Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of Contractor, of all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
 - 5.** Payment and late fees shall only be in accordance with ORS 293.462. If Contractor fails to present invoices in proper form within one hundred twenty (120) 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.
- C.** The insurance described in this section shall provide thirty days (30) days written notice to the County in the event of a cancellation or material change. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.
- 1.** The Contractor agrees to furnish the County evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the County, its officers, commissioners, 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 the Contract Documents. The general aggregate shall apply separately to this project / location.

2. If any other required liability insurance is arranged on a “claims made” basis, “tail” coverage will be required at the completion of the Contract Documents for a duration of thirty-six (36) months or the maximum time period the Contractor’s, whichever is greater, insurer will provide “tail” coverage as subscribed, 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 the coverage’s retroactive date is on or before the effective date of the Contract Documents.
 3. The insurance, other than the Workers’ Compensation, Professional liability,. 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.. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it,
 4. The Contractor will provide written notice to the County within thirty days (30) days after any reduction in the general aggregate limit.
 5. Any obligation that County agree to a waiver of subrogation is hereby stricken.
- D.** The laws of the State of Oregon shall govern as to the interpretation, validity, and effect of this Contract without giving effect to conflict of law provisions thereof.
- E.** This Contract may be terminated by either party upon at least ninety (90) days written notice to the other.
- F.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. 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:
1. Termination of this Contract, in whole or in part;
 2. 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
 3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief.
- 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.
- G.** 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:
1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
 2. 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;
 3. 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
 4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

- H.** 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.
- I.** Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law (ORS 192.410-505).
- J.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein. The Contractor agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein.

Atos IT Solutions and Services, Inc.

Clackamas County

 Authorized Signature Date

 Authorized Signature Date

 Name/Title (Printed)

 Name/Title (Printed)

Approved As To Form:

 Clackamas County Counsel Date

Agreement for Products and Services

Customer Name and Address:

Clackamas County

168 Warner Milne Rd
Oregon City, OR 97045

Supplier Office Address:

2650 North Military Trail
Boca Raton, FL 33431

Agreement No.:

CLA-0917-01A

Atos IT Solutions and Services, Inc. (Supplier) is pleased to offer our Customer (you) this Agreement for Products and Services (Agreement). After you have signed this Agreement, Supplier will accept it by signing below and will return it to you. Subject to Supplier's acceptance of your individual orders, you may order: (1) Products and (2) Services.

1. DEFINITIONS

"Cutover Date" means the date Supplier: (a) installs the original Product(s) as further described in an Ordering Document; or (b) provides original Product(s) to you for installation

"Enterprise" means a corporation (or other legal entity) and the subsidiaries that it owns by more than 50% that are located in the United States or Puerto Rico. Such entities may order under this Agreement, provided they agree to the terms of this Agreement.

"Exhibit" means supplemental terms and conditions specific to particular Products or Services under the Agreement and which are referenced on an Ordering Document.

"Implementation Date" means the date Supplier implements certain Services as further described in an Ordering Document.

"Installation Date" means: (a) the date Supplier installs a MAC Product or, if not installed by Supplier, ships it to you; or (b) for other MAC Services, the date on which performance is completed.

"MAC" means Products and/or Services that you order after your initial order for Products and Services is installed.

"Ordering Document" means a Schedule A, Installation Change Order (Change Order), Supplement, or other Supplier ordering document that incorporates additional terms for specified Products or Services.

"Part" is a replacement part.

"Premises" means your installation or service location as referenced on an Ordering Document.

"Product" means equipment and/or Software.

"Purchase Order" means your form of ordering document. Any Purchase Order submitted by you to Supplier for Products, Software and/or Services is issued under the terms of this Agreement. Notwithstanding any terms to the contrary in a Purchase Order, the terms and conditions in any Ordering Document, the Agreement, and its referenced Exhibit(s) are incorporated into any Purchase Order by reference and shall govern the provision and performance of the Products, Software and Services under the Purchase Order.

"Purchase Price" means charges for Product(s), including any Software license charge(s), or Services, and any applicable transportation charges.

"Services" means professional services including implementation, installation and integration; warranty support; maintenance support, managed services or other services provided to you.

"Software" means software, including all copies and documentation, provided to you.

2. PURCHASE PRICE, PAYMENT TERMS AND TAXES

The Purchase Price and payment terms for Products and Services you order will be specified on an Ordering Document or, if your Purchase Order does not require a signature, a Supplier invoice.

You agree to pay to Supplier applicable taxes and governmental fees resulting from this Agreement, exclusive of taxes based on Supplier's net income. Taxes will be specified on Supplier's invoice to you.

3. TITLE, SECURITY INTEREST AND RISK OF LOSS

Title to each Product, except for Software, passes to you on its shipment date.

Supplier reserves a purchase money security interest (PMSI) in each Product. You agree to sign appropriate documents to permit Supplier to perfect its PMSI. The PMSI will be released upon payment in full.

Supplier bears the risk of loss for each Product through its Cutover Date or Installation Date (except for loss caused by your negligence), after which you will be responsible for all risk of loss.

4. SOFTWARE LICENSE

An Exhibit(s) referenced in an Ordering Document describes the Software license applicable to a Product(s).

5. WARRANTY

An Exhibit(s) referenced in an Ordering Document describes the warranty terms applicable to a Product(s).

6. INDEMNIFICATION

Supplier agrees to indemnify, defend and save you harmless from a claim resulting in a final judgment against you by a court of competent jurisdiction for a direct damage arising from or in connection with a material breach of the Agreement in the following situation:

- willful or negligent misconduct of Supplier
- fraud and/or fraudulent misrepresentation of Supplier
- bodily injury, including death, to the extent such injury is caused by Supplier's negligence or intentional misconduct in the performance of this Agreement and provided you:
 - (a) give Supplier prompt written notice of any such claim promptly after you first receive notification of the claim;
 - (b) allow Supplier sole control of the defense and all related settlement negotiations; and
 - (c) fully cooperate with Supplier. Notwithstanding the requirement of 6(b) above, the Customer at its sole expense may assume its own defense in its sole determination.

7. LIMITATION OF LIABILITY

This Agreement sets out the entire liability of and exclusion and limitation thereof by the Supplier and Customer under and/or in connection with this Agreement. The total liability of Supplier, its suppliers and subcontractors is for actual damages

only, and will not exceed the amount paid to Supplier for Products and Services provided under this Agreement, at the Premises where the damage occurred, for the 12-month period preceding the date the damage occurred. This limitation does not apply to the Supplier's obligations under Section 6, Indemnification, and, if applicable, the Patents and Copyright Section in an Exhibit incorporated by reference into an Ordering Document.

UNDER NO CIRCUMSTANCES WILL SUPPLIER BE LIABLE FOR DAMAGES RESULTING FROM:

- (A) LOSS OF STORED, TRANSMITTED OR RECORDED DATA;**
- (B) HACKING, UNLAWFUL INTRUSION, ISSUES WITH NETWORK SECURITY, OR LONG DISTANCE OR NETWORKING CHARGES;**
- (C) INDIRECT DAMAGES, CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF SUPPLIER IS INFORMED OF THEIR POSSIBILITY;**
- (D) USE OF PRODUCTS OUTSIDE THE UNITED STATES AND PUERTO RICO;**
- (E) LOSS OF CONTRACTS;**
- (F) LOSS OF REVENUE;**
- (G) LOSS OF GOODWILL;**
- (H) LOSS OF BUSINESS;**
- (I) LOSS OF THE USE OF THE PRODUCT;**
- (J) LOSS OF OR CORRUPTION OF DATA OR SOFTWARE PROGRAMS;**
- (K) FINANCING EXPENSES;**
- (L) LOSSES ARISING FROM INTERRUPTION IN THE USE OR AVAILABILITY OF DATA;**
- (M) LOSSES ARISING FROM STOPPAGE OF OTHER WORK; OR**
- (N) ANY LOSS OR DAMAGE ARISING OUT OF ANY FAILURE BY YOU TO KEEP FULL AND UP-TO-DATE SECURITY COPIES OF ANY SOFTWARE AND DATA HELD OR USED BY YOU OR ON YOUR BEHALF.**

THE LIMITATIONS IN THIS SECTION APPLY REGARDLESS OF LEGAL THEORY UPON WHICH THE CLAIM IS BASED, EVEN IF THE REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

Notwithstanding the above, Supplier does not limit or exclude its liability (if any) to the Customer:

- for personal injury or death resulting from Supplier's negligence;
- for willful or negligent misconduct of Supplier;
- for fraud or fraudulent misrepresentation of Supplier; or
- for any matter for which it would be illegal for Supplier to exclude or limit or to attempt to exclude or limit its liability.

8. TERM AND TERMINATION

The term of this Agreement is three (3) years. Upon issuance of a quote by Supplier not later than 90 days prior to the then current expiration date, and acceptance by Customer through issuance of a new purchase order, this Agreement may be renewed for successive one-year periods.

If either party is not substantially complying with the terms of this Agreement, the other party will have the right to give prompt written notice of such failure to perform. The non-complying party will have forty-two (42) days after receiving such notice to correct its performance or commence a continuous good faith effort to correct its performance within a reasonable period of time. In the event the non-conforming party is not able to correct its performance or commence a good faith effort to correct its performance in a reasonable

period of time within such forty-two (42) day period, the other party may, at its option, and in addition to any other remedies under the Agreement, choose to terminate the Agreement.

Either party will have the right to terminate the Agreement immediately upon written notice in the event that the other Party: (a) becomes insolvent; (b) files for any form of bankruptcy; (c) makes any assignment for the benefit of creditors or commences voluntary proceedings under any bankruptcy, insolvency, or debtor's relief law; (d) has a receiver, administrative receiver or officer appointed over the whole or a substantial part of its assets; (e) ceases to conduct business; or (f) fails to pay its debts as they become due. Any assignment to a third party as a result of the filing of a petition for bankruptcy by you shall be conditioned upon such assignee (i) affirmatively assuming all of your obligations under the Agreement and (ii) meeting net worth or capital requirements as may be specified by Supplier in its sole discretion, to ensure that the obligations can be fulfilled by such assignee. Failure by Supplier to assert its rights to retain its benefits to the intellectual property (encompassed by the Products, including the Software and applications), pursuant to Sec. 365(n)(1)(B) of the Bankruptcy Code, 11 U.S.C. under an executory contract rejected by the trustee in bankruptcy, shall not be construed as a termination of the contract by Supplier under Sec. 365(n)(1)(A) of the Bankruptcy Code.

If sufficient funds are not provided in future approved budgets of the Customer (or from applicable federal, state, or other sources) to permit the Customer in the exercise of its reasonable administrative discretion to continue this Agreement, or if the program for which this Agreement was executed is abolished, Customer may terminate this Agreement without further liability by giving Supplier not less than thirty (30) days' notice subject to full payment of all fees for Services rendered through the termination effective date and any agreed upon termination fees.

9. FORCE MAJEURE

Neither party shall be responsible for any failure or delay in performance of its obligations under this Agreement (other than the obligation to make payments of money) due to any force majeure event including Act of God, riots, adverse weather conditions, volcanic eruption, earthquake or other natural disaster, refusal of license (other than as a result of any act or omission of the Supplier), or other Government act or order or restriction, war, threat of war, fire, explosion, embargo, customs and trade regulations, sanctions, breaking off of diplomatic relations, terrorism, civil disturbance, accident, epidemics, pandemics, lightning damage, interruption or failure of utility services, electromagnetic interference, radio interference, strikes, industrial dispute, failure of third-party Hardware or Software, or any other cause beyond its reasonable control and, in the case of the Supplier, the occurrence of any of the aforementioned force majeure events to its subcontractors or suppliers which result in their delay or failure to perform. For the avoidance of doubt, breach of contract by the End User Customer shall not be force majeure unless such party is itself subject to an event of force majeure which directly causes the breach.

10. EXPORT COMPLIANCE

Any export of the Products or Services must be made in compliance with the laws and regulation of the U.S. and of the EU or EU member states, where applicable.

You shall introduce and/or take effective measures to assess your end users' requirements for the Products within the country and abroad to ensure compliance with the

aforementioned export provisions and upon request advise the Supplier of such measures. In particular, but without limitation, such measures shall include your checking and guaranteeing that: (a) the Products are not intended for use in connection with armaments, nuclear technology or weapons; (b) no companies and persons on the U.S. Denied Persons List (DPL) are supplied with goods, software or technology subject to the U.S. Export Administration Regulations (EAR); (c) no companies and persons on the U.S. Entity List or U.S. Specially Designated Nationals List are supplied with goods, software or technology subject to the U.S. EAR without a license; and (d) no companies and persons, on the Specially Designated Terrorists List, Foreign Terrorist Organizations List, Specially Designated Global Terrorists List or on the Sanctions List of the EU are supplied.

TO THE EXTENT PERMITTED BY ARTICLE XI, SECTION 10 OF THE OREGON CONSTITUTION AND THE OREGON TORT CLAIMS ACT (ORS 30.260 THROUGH 30.300) YOU AGREE TO INDEMNIFY AND HOLD SUPPLIER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO YOUR NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

Supplier will not be obligated to perform any obligations under this Agreement, and will not incur any liability or consequence as a result of such non-performance, to the extent that performance would constitute a violation of, or would result in, the imposition of any sanctions under any law, regulation or other applicable national or international foreign trade and customs requirements or embargos.

11. CONFIDENTIALITY

The confidentiality of information exchanged by the parties under the Agreement shall be governed by a non-disclosure agreement executed by the parties. In the absence of an executed non-disclosure agreement between the parties, the following terms will apply.

"Confidential Information" means any information supplied by or obtained from one party ("the Disclosing Party") to or by the other ("the Receiving Party") that is marked confidential if in tangible form, or, if orally disclosed, is reduced to writing and identified as confidential within thirty (30) days of such disclosure. Confidential Information does not include information that: (a) at the time of receipt by the Receiving Party was already published or was otherwise generally available to the public; (b) subsequent to receipt by the Receiving Party is published or becomes generally available to the public otherwise than through the Receiving Party's default hereunder; (c) the Receiving Party can demonstrate was rightfully in its possession prior to the time of receipt from the Disclosing Party; (d) becomes known independently to the Receiving Party from any third party who did not acquire it under pledge of secrecy; or, (e) is independently developed by the Receiving Party.

The Receiving Party shall: (a) treat all such Confidential Information as strictly confidential; (b) not disclose any Confidential Information in any way to any third party without the consent of the Disclosing Party nor to any employee of the Receiving Party except as is necessary in the performance of obligation under this Agreement; (c) ensure that all those of its officers or employees to whom the Confidential Information is disclosed are made aware of the confidentiality of the same and bound in writing to adhere to the provisions in this Section 11; (d) require any third party to whom Confidential Information is disclosed to enter into a written confidentiality and non-disclosure agreement no less restrictive than this Agreement; (e) not use any Confidential Information in any way except in

fulfillment of obligations under this Agreement and in particular (without limiting the generality of the foregoing) shall not use any Confidential Information for any purpose competitive with the Disclosing Party or in such a way as to obtain any commercial advantage over the Disclosing Party.

If a Receiving Party is required by law, regulation, or judicial order to disclose Confidential Information of the Disclosing Party, the Receiving Party shall (except when not legally permitted to do so) promptly notify the Disclosing Party and reasonably cooperate with Disclosing Party to minimize such disclosure and to otherwise protect the confidentiality of such Confidential Information under the relevant circumstances.

The nondisclosure obligations described herein shall, except with respect to trade secrets, survive termination or expiration of this Agreement for a period of three years. To the extent that Confidential Information constitutes trade secrets, the recipient's obligations under this paragraph shall remain in effect perpetually.

Notwithstanding anything contained in this Section 11, the Customer's obligation to maintain any Confidential Information confidential is only to the extent permitted by the Oregon Public Records Law.

12. END-USER CERTIFICATION

You agree you are acquiring each Product to use within your Enterprise and not for reselling, leasing or transferring to a third party except for lease-back financing of the Product.

13. SUBCONTRACTING AND ASSIGNMENT

Either party may delegate any or all of its duties to subcontractors, subsidiaries or parent or affiliated companies, provided that each party remains liable for their respective duties. You may not assign this Agreement without the prior written consent of the Supplier. Any attempt to do so is void.

14. MARKETING

Supplier may only use Customer's name for marketing and publicity materials in a manner that only references the Customer as a customer. No marketing or publicity materials may reference that the Customer endorses any particular vendor, good, or service.

15. DISPUTE RESOLUTION

Each party agrees to attempt to resolve all disputes related to the Agreement, at the request of either party, through negotiation by the business personnel of each party. If the dispute cannot be resolved at an account management or line level of management, the dispute will be escalated to executives of each party to attempt to settle the matter.

If, after a good faith effort to settle a dispute through negotiation within sixty (60) days, a dispute remains unresolved, either party may request, in writing to the other party, that the parties enter into non-binding alternative dispute resolution (ADR), such as mediation, to attempt to settle the matter. The selection of an independent third-party, with no prior affiliation with any of the parties or their contractors or subcontractors hereto or any of their respective parents or affiliates, to participate in the ADR shall be by mutual agreement, but, in the absence of such agreement, each party shall select a temporary participant and those participants shall jointly select a permanent participant. The parties agree to select an independent third-party within thirty (30) days of delivery of a party's written request to proceed to ADR.

Each party shall bear its own costs of any dispute procedures hereunder.

During the period when a dispute is being resolved, except for the matter being disputed, the parties shall in all other respects continue their performance under this Agreement, unless performance of the Agreement is otherwise suspended or terminated by a party in accordance with the terms of this Agreement.

17. GOVERNING LAW

This Agreement is governed by the laws of the State of Oregon without regard to its conflicts of laws rules.

18. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties, oral or written. Any modifications or changes to the Agreement will only be valid when made by written amendment, signed by each party.

19. ORDER OF PRECEDENCE

The following order of precedence, from highest to lowest priority, shall prevail upon the applicable documents under the Agreement: (a) Custom Exhibit or Amendment, the highest precedent to the most recent document in time; (b) End-User License Agreement for Supplier Products and Software; (c) Change Order Ordering Document; (d) Schedule A and/or Supplement Ordering Document; (e) Services Plan; (f) Supplemental Terms Exhibit; (g) Statement of Work; and (h) the Agreement. Any inconsistent terms on a Purchase Order are void unless specifically agreed to in writing by Supplier in the form of an amendment to this Agreement.

20. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP

All intellectual property rights, including the right to patent, copyright, trademarks, mask works and design rights in the Product and documents provided to you in the performance of this Agreement and/or arising and created under and in connection with this Agreement shall remain vested in and/or automatically and immediately upon creation vest in Supplier and/or its licensors as the case may be.

21. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable to any extent: (a) such invalidity shall not affect the validity of all other terms in this Agreement which can be given effect without the invalid provision or application; (b) this Agreement shall be construed and both Parties shall amend this Agreement, so as to give effect as nearly as possible to the intent of the invalid Clause or application; and (c) to this end, the invalid and/or unenforceable provisions hereof are declared to be severable.

22. WAIVER

Failure by either party to enforce or exercise any right under this Agreement shall not amount to a waiver or bar to enforcement of that right.

23. HEADINGS

Section headings shall not affect the legal interpretation of this Agreement.

24. NOTICES

Notices shall be in writing and sent to the addresses set out herein, or such other address notified in writing.

Accepted By:

Clackamas County

By: _____

Authorized Signature

Name (Type or Print)

Date

Accepted By:

Atos Solutions and Services, Inc.

By: _____

Authorized Signature

Name (Type or Print)

Date