CITY HALL
411 SW 9th STREET
REDMOND, OR 97756
541.923.7710
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info@redmondoregon.gov
redmondoregon.gov

CITY OF REDMOND

REVISED

CITY COUNCIL

April 9, 2024
Council Chambers • 411 SW 9th Street

COUNCIL MEMBERS

Ed Fitch
Mayor

Cat Zwicker
Council President

Tobias Colvin
Councilor

Clifford Evelyn
Councilor

John Nielsen
Councilor

Kathryn Osborne
Councilor

Shannon Wedding
Councilor

APRIL 9, 2024	EXECUTIVE SESSION AGENDA	5:30 PM

I. EXECUTIVE SESSION

Oregon Law permits public bodies to meet in executive session to discuss specific matters which are not open to the public. Final actions or decisions on these matters will be made during regular session.

A. Litigation – ORS 192.660(2)(h) authorizing executive sessions "to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed."

Under the provisions of the Oregon Public Meetings Law, the proceedings of this executive session are for background information only for media attending and not for publication or broadcast.

APRIL 9, 2024	REGULAR MEETING AGENDA	6:00 PM

I. CALL TO ORDER / ESTABLISH A QUORUM

II. BLESSING - Pastor Thomas Benge, Redmond Community Church

III. PLEDGE OF ALLEGIANCE

IV. CITY ANNOUNCEMENTS

A. Legislative Briefing Senate Bill 1537 (Housing) by Ariel Nelson from the League of Oregon Cities

V. COMMENTS FROM CITIZENS AT THE MEETING

Citizen comments are limited to three (3) minutes per person and will be accepted for a period of 30 minutes. Comments should be focused on City of Redmond business. Attendees are asked to refrain from interrupting, calling-out, or cheering during citizen comments.

VI. CONSENT AGENDA

A. Fair Housing Month Proclamation

VII. BID AWARDS / BID REJECTIONS

A. ADA Transition Plan Project Bid Award to Keeton King Contracting, LLC, Project #TR2301: $1,369,001.86

VIII. CONTRACT REVIEW BOARD

A. Aclara One Cloud Migration Contract and Sole Source Letter: $191,798.84

IX. ORDINANCES

In accordance with the City of Redmond Charter, an ordinance takes effect 30 days after its enactment except when a later effective date is specified in the ordinance; when the ordinance contains an emergency clause, it takes effective immediately.

A. Ordinance #2024-04: An ordinance amending Redmond City Code Chapter 2, Section 2.120, pertaining to the nomination of candidates for election to the position of Mayor and City Councilor.

  i. Resolution #2024-11: A resolution setting fees and charges imposed by the City of Redmond. **Public comment will be taken per ORS 294.160.**

B. Ordinance #2024-05 - An ordinance amending Chapter 5 of the Redmond City Code, Sections 5.601 through 5.606: Related to False Alarms and Police services.

C. Ordinance #2024-06: An ordinance repealing Ordinance #2017-07 and granting a non-exclusive franchise agreement to PacifiCorp, an Oregon corporation doing business as Pacific Power.

D. Ordinance #2024-07: An ordinance granting a non-exclusive telecommunication franchise to Ziply Fiber Pacific, LLC d/b/a Ziply Fiber.

E. Ordinance #2024-08: An Ordinance granting a non-exclusive telecommunications franchise to Lightspeed Networks, Inc. d/b/a LS Networks.

X. ACTION ITEMS

A. South Redmond Tract Large Lot Industrial Infrastructure Master Plan and Financing Plan Contract Award to DOWL: $249,580

XI. ADDITIONAL COMMENTS FROM CITIZENS AT THE MEETING

XII. CITY MANAGER COMMENTS

XIII. COUNCIL COMMENTS

XIV. MAYOR'S COMMENTS

A. Juniper Golf Committee - Appointment of Nate Kitt, term expiring December 31, 2024.

XV. ADJOURN

League of Oregon Cities

SB 1537 (2023) Governor Kotek's Housing Production Package

Sections 1 – 7: Housing Accountability and Production Office (HAPO)

Effective January 1, 2025 (Operative date of office)

Establishes a new Housing Accountability and Production Office intended to ensure local land use codes and decisions meet state law that includes:

- $5 million in technical assistance funds for local governments
- Voluntary services such as mediation, model codes, and ready build plans
- Coordination of state agencies involved in housing production
- Avenue for resolving disputes prior to a more formal LCDC or LUBA process
- Voluntarily compliance mechanisms
- If needed, mandatory compliance mechanisms

Sections 8-9: Opting into Amended Housing Regulations

Effective June 6, 2024

Clarifies when a developer may opt in to new housing laws that take effect mid-development application.

- Housing developers can stay with old standards or opt into all new standards
- Decision must occur prior to public notice and review process
- Housing developer does not need a new application submission
- Cities and counties can require additional information, if needed
- Housing developer does not have to pay duplicative fees
- Cities and counties can charge fees for additional work or cost

The LOC negotiated significant technical improvements to this concept to ensure cites could implement and charge fees as needed to cover costs. Note: this concept also passed in HB 4063.

Section 10-11: Attorney Fees

Effective January 1, 2025, for appeals filed after effective date

Provides attorney fees when LUBA affirms approval of housing to discourage frivolous appeals.

- Extends attorney fee eligibility for affordable housing and public housing
- Applies only to housing approved by local government
- Applies only when LUBA affirms local government approval

Contact: Ariel Nelson, LOC Lobbyist – anelson@orcities.org

Infrastructure Supporting Housing Production (Sections 12 – 16)

Effective June 6, 2024; Sunsets January 2, 2030

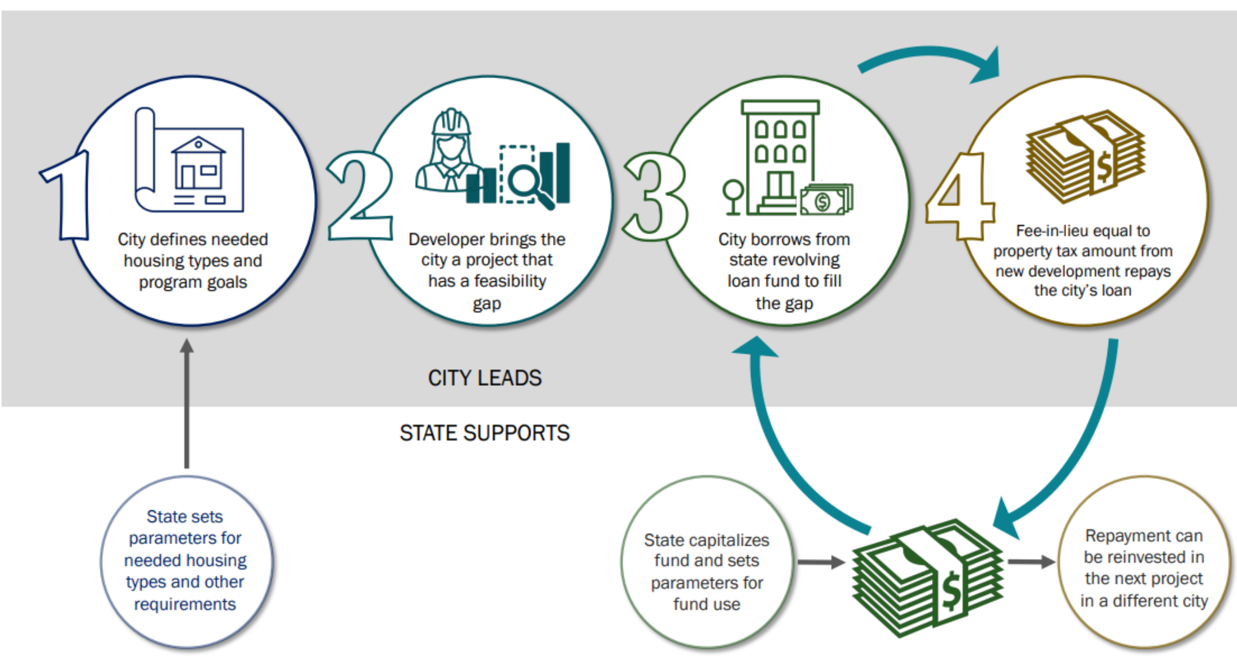
Establishes and allocates $3 million to the Housing Infrastructure Support Fund (HISF) at Business Oregon to help small and rural governments with the planning and financing of infrastructure for water, sewers and sanitation, stormwater, and transportation to support new housing development.

- Directs DLCD, in consultation with other agencies, to develop a list of key considerations and metrics the Legislature could use to evaluate, screen and prioritize proposed local infrastructure projects that facilitate and support housing within an urban growth boundary
- Directs DLCD to report to the Legislature by December 31, 2024.
- Note: Sections 17-23 were removed by amendment and subsequent sections were not renumbered. These sections proposed $200 million for infrastructure programs focused on infrastructure investments in water, sewer, storm water and transportation projects to support new homes. The funding was available for site-specific infrastructure projects affecting one development at a time as well as infrastructure needs supporting large expansion areas or greenfield developments.

Housing Project Revolving Loans (Sections 24 – 36)

Effective June 30, 2025

Establishes and funds a new state revolving loan fund at Oregon Housing and Community Services, with $75 million for local governments to administer loans for moderate-income housing development.



Additional program details include:

- Subsidy per Unit: $15,000-$35,000 (est. and adjustable for each city program)
- Project Control: Local jurisdictions with state (OHCS) support
- Eligible Housing: Single and multi-family; rental or ownership
- Fully funds fire districts
- Eligible Expenses are dependent on project needs, but include infrastructure, systems development charges, land costs, construction financing, or other project gaps.

Housing Land Use Adjustments (Sections 37 – 43)

Effective January 1, 2025; Sunsets January 2, 2032.

Requires cities to grant up to 10 administrative adjustments to local siting and design standards for housing development:

- Specific to new housing units in new construction projects
- Only applies to select land use requirements for housing development
- Projects must meet minimum density requirements, focusing on small and moderate size homes that are more affordable
- Does not apply to natural resource or environmental land use regulations
- No more than 10 adjustment requests allowed
- Two-track exemption process for local governments that provide flexibility
- Allows DLCD to establish conditions requiring a city to continue demonstrating it meets the qualification criteria for an exemption and allows DLCD to revoke the exemption if the city fails to comply with conditions of approval.
- DLCD must provide a report to the legislature on the residential development produced through this section on or before September 15th of each even-numbered year.
- Specifically directs the legislature to consider feedback on the report from the League of Oregon Cities

Limited Land Use Decisions (Sections 44 – 47)

Effective January 1, 2025; Sunsets January 2, 2032.

Temporarily ensures administrative decisions are via administrative processes, specifically:

- Directs cities to process housing development applications requesting partitions and other property boundary changes; site plan review; nonconforming use cases; or adjustments to land use regulations, as limited land use decisions; and
- Provides an exemption process if cost prohibitive to local governments.

<u>One-Time Site Additions to Urban Growth Boundaries (Sections 48 – 60)</u>

Effective June 6, 2024; Sunsets January 2, 2033

Temporarily allows cities to use a one-time UGB expansion tool to add 150 or 75 acres of land for housing development

- Cities must meet land and affordability need metric for eligibility
- Land added can only be urban reserve, non-resource land, or exception land – no high-value farm or forest land outside of urban reserves already designated for future urban development
- Cap of 150 or 75 acres, depending on city size
- Cumulative cap of 600 acres for cities within Metro UGB
- 30% of housing must be legally restricted as affordable

Requires binding complete communities concept plan that includes:

- Mandatory affordability
- Minimum density
- Integrated mixed-use residential areas for complete communities
- Transportation network planning
- Open space, scenic, historic, and natural resource goal protections
- Natural hazard protections
- Binding agreements for all necessary urban services

Alternative lower impact options instead of main option:

- Simplified land exchange for roughly the same acreage
- Small scale 15-acre option without complete communities requirements
- Mandatory 30% affordability still applies

Requires cities to report development progress of these sites to DLCD every two years until January 2, 2033, or until the development is complete.

Oregon
Tina Kotek, Governor

Department of Land Conservation and Development
Director's Office
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: 503-373-0050
Fax: 503-378-5518
www.oregon.gov/LCD

To: Senator Kayse Jama, SD-24
Chair of the Senate Committee on Housing and Development
Senator Dick Anderson, SD-5
Vice-Chair of the Senate Committee on Housing and Development
Members of the Senate Committee on Housing and Development

From: Brenda Bateman, Director
Palmer Mason, Senior Policy Advisor
Ethan Stuckmayer, Housing Division Manager

Date: February 16, 2024

Subject: **SB 1537 Implementation - Housing Accountability & Production Office**

The purpose of this memorandum is to establish, in writing, the commitments by the Department of Land Conservation and Development (DLCD) in the establishment and operation of the Housing Accountability and Production Office proposed in SB 1537. The department is committed to establishing and implementing this office in a manner that provides opportunities for local governments, Tribal nations, developers and property owners, community partners, and other interested parties to share input into how the office meets its statutory responsibilities – increasing housing production and the correct implementation of housing production laws.

Per SB 1537, DLCD, in conjunction with the Department of Consumer and Business Services (DCBS), has been tasked with establishing a Housing Production and Accountability Office (HAPO) to support local governments in facilitating and increasing housing development to meet the needs of Oregon communities. Consistent with this mission, DLCD offers the following commitments to assure local governments, Tribal nations, developers and property owners, community members, and other interested parties of our intention to ground implementation of HAPO on the tenets of collaboration, transparency, and engagement:

"Collaboration first, enforcement last" approach: As specified in SB 1537, DLCD commits to implementing HAPO so that financial and technical support and assistance to cities and developers is emphasized as the preferred approach to compliance with state housing law. HAPO intends to serve as a technical resource for cities and developers, engaging with them to overcome barriers to housing production and affordability in a way that recognizes local challenges and constraints, whether in planning, engagement, technical, or financial support. DLCD's commitment is to prioritize partnership and engagement with local jurisdictions, and that this principle will form the framework from which HAPO operates. Only once opportunities for assistance, education, funding, and mediation have been considered will HAPO contemplate pursuing an enforcement action for a specific complaint or for a continued pattern and practice of noncompliance with state housing law.

Development and implementation of HAPO: In coordination with the DCBS, DLCD commits to creating regular opportunities for taking comments from local governments, Tribal nations, developers and property owners, community partners, and other interested parties on the standup and implementation of HAPO. DLCD understands that this input is critical to the ultimate success and efficacy of the office. Specifically, DLCD intends to hold pre-implementation meetings with local governments and other interested parties to inform the creation and rollout of HAPO. It should be noted however that DLCD and DCBS have only had preliminary conversations about how this coordination and additional engagement opportunities might take place. The agencies do not yet have a specific engagement plan as those conversations will start in earnest if the bill is adopted. In addition, once HAPO is operational, DLCD will periodically consider changes to the program based on the needs of local governments, Tribal nations, developers and property owners, community partners, and other interested parties – feedback and changes will be assessed through the framework and objective of the office, increasing housing production and the correct implementation of housing production laws. To that end, DLCD will hold at least two meetings per year for the explicit purpose of providing updates on implementation and to provide a forum for questions and input about the work of the office.

Duplicative enforcement: To address concerns about the exercise of enforcement authority in instances of overlapping authority, DLCD commits that the department will not simultaneously pursue an appeal to the Land Conservation and Development Commission (LCDC) and an enforcement action by HAPO to address the same instance of a violation to state housing laws. However, this commitment does not preclude HAPO or any other program at DLCD from commenting on or engaging in the matter, offering technical assistance, or advising parties on how to comply with state housing law. Furthermore, in cases involving non-housing issues that may affect compliance with state housing law such as natural hazard or resource land concerns, any DLCD program may pursue any enforcement actions deemed necessary to ensure consistency with applicable statutes and rules.

Sharing data and information about best practices to facilitate housing production: DLCD intends for HAPO to be both a generator and repository of information about how to address both state and local actions or decision-making that may create barriers to housing production. This work will include, but is not limited to, what barriers or issues should be prioritized for educational efforts and technical assistance, including funding, as well as recommendations on better alignment between state agency programs, local capacity and constraints, and Tribal governments' capacity and constraints. The overall goal would be to use collected data and information to inform regular conversations about creative and strategic solutions to the barriers and challenges of facilitating housing production.

City of Redmond
PROCLAMATION

A proclamation designating April 2024, as

FAIR HOUSING MONTH

WHEREAS, the Fair Housing Act, enacted on April 11, 1968, enshrined into federal law the goal of eliminating racial segregation and ending housing discrimination in the United States; and

WHEREAS, the Fair Housing Act prohibits discrimination in housing based on race, color, religion, sex, familial status, national origin, and disability, and commits recipients of federal funding to affirmatively further fair housing in their communities; and

WHEREAS, the City of Redmond is committed to the mission and intent of Congress to provide fair and equal housing opportunities for all; and

WHEREAS, our social fabric, the economy, health, and environment are strengthened in diverse, inclusive communities; and

WHEREAS, more than fifty years after the passage of the Fair Housing Act, discrimination persists, and many communities remain segregated; and

WHEREAS, acts of housing discrimination and barriers to equal housing opportunity are repugnant to a common sense of decency and fairness.

NOW, THEREFORE BE IT RESOLVED THAT the City Council of the City of Redmond does hereby declare April 2024 as **FAIR HOUSING MONTH** in the City of Redmond, as an inclusive community committed to fair housing, and to promoting appropriate activities by private and public entities to provide and advocate for equal housing opportunities for all residents and prospective residents of the City of Redmond.

APPROVED by the City Council and **SIGNED** by the Mayor this 9th day of April 2024.

The City of Redmond, Oregon

____
Ed Fitch, Mayor

ATTEST:

____
Kelly Morse, City Recorder

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CITY OF REDMOND

STAFF REPORT

DATE: April 9, 2024
TO: Redmond City Council
THROUGH: Keith Witcosky, City Manager
Jason Neff, Deputy City Manager/Chief Financial Officer
FROM: Jessica MacClanahan, Public Works Director/City Engineer
Jake Sherman, Principal Engineer
SUBJECT: ADA Transition Plan Project Bid Award to Keeton King Contracting, LLC, Project #TR2301: $1,369,001.86

Report in Brief:
This item requests City Council award a $1,369,001.86 contract to Keeton King Contracting, LLC to construct the Americans with Disabilities Act (ADA) Transition Plan Project.

Background:
The City's ADA Transition Plan identifies areas for capital improvements related to accessibility throughout the City. Each year, resources are set aside to perform Capital Improvement Projects consistent with the goals of this Plan. The Fiscal Year (FY) 2023/24 and FY 2024/25 budgets allocated $1.768M towards an ADA Sidewalks Improvements project.

The City prioritized three project areas for sidewalk improvements along 12th Street near two elementary schools and along 4th Street in the Downtown Urban Renewal area. The scope of the work includes new sidewalks, ADA curb ramps, updates to private driveways, curb extensions at key intersections, installation of downtown street trees, necessary updates to stormwater facilities, and a new rapid flashing beacon at SW 4th Street/SW Evergreen Avenue for safer pedestrian crossings in this emerging commercial district.

Design was completed in early 2024, an Invitation to Bid was publicly posted on February 16, 2024, and bids were opened on March 20, 2024.

Discussion:
The City publicly procured construction services per the Oregon Revised Statutes Section 279C and the State of Oregon Model Rules.

Five bids were received and publicly opened on March 20, 2024:

Contractor	Bid Amount
Keeton King Contracting, LLC	$1,369.001.86
Eastern Oregon Contracting, LLC	$1,443,624.74
Cascade Civil Corp	$1,512,616.00
Brown Contracting, Inc.	$1,682,649.00
K&E Excavating, Inc.	$1,784,604.00

The bids were reviewed and the lowest bid from Keeton King Contracting, LLC in the amount of $1,369,001.86 was deemed responsible. The Engineer's estimate was $1,500,000 and the low bid received was within the reasonable expectation of costs.

Fiscal Impact:
The City was successful in receiving $1 million in grants for the ADA Transition Plan Project through the Coronavirus State & Local Fiscal Recovery Fund (SLFRF) grant, which is being applied to the Transportation Capital Project sub-fund. An additional $500,000 was contributed from the Downtown Urban Renewal Agency and $268,000 was budgeted from the Stormwater Infrastructure Maintenance sub-fund. The cost breakdown for each sub-fund is provided

below:

Fund	5-Year CIP Estimate	Design	Construction	Variance
Transportation Capital Projects	$1,000,000	$125,000	$806,712.61	($68,387.39)
Urban Renewal	$500,000		$392,639.25	($107,360.75)
Stormwater Infrastructure Maint.	$268,000		$169,650.00	($98,350.00)
TOTAL	**$1,768,000**	**$125,000**	**$1,369,001.86**	**($273,998.14)**

Alternative Courses of Action:

1. Award a construction contract with Keeton King Contracting, LLC.
2. Do not award the contract.
3. Request additional information.

Recommendation / Suggested Motion:
"I move to award the ADA Transition Plan Project to Keeton King Contracting, LLC in the amount of $1,369,001.86 and authorize the City Manager to sign the contract."

ADA TRANSITION PLAN PROJECT (TR2301)

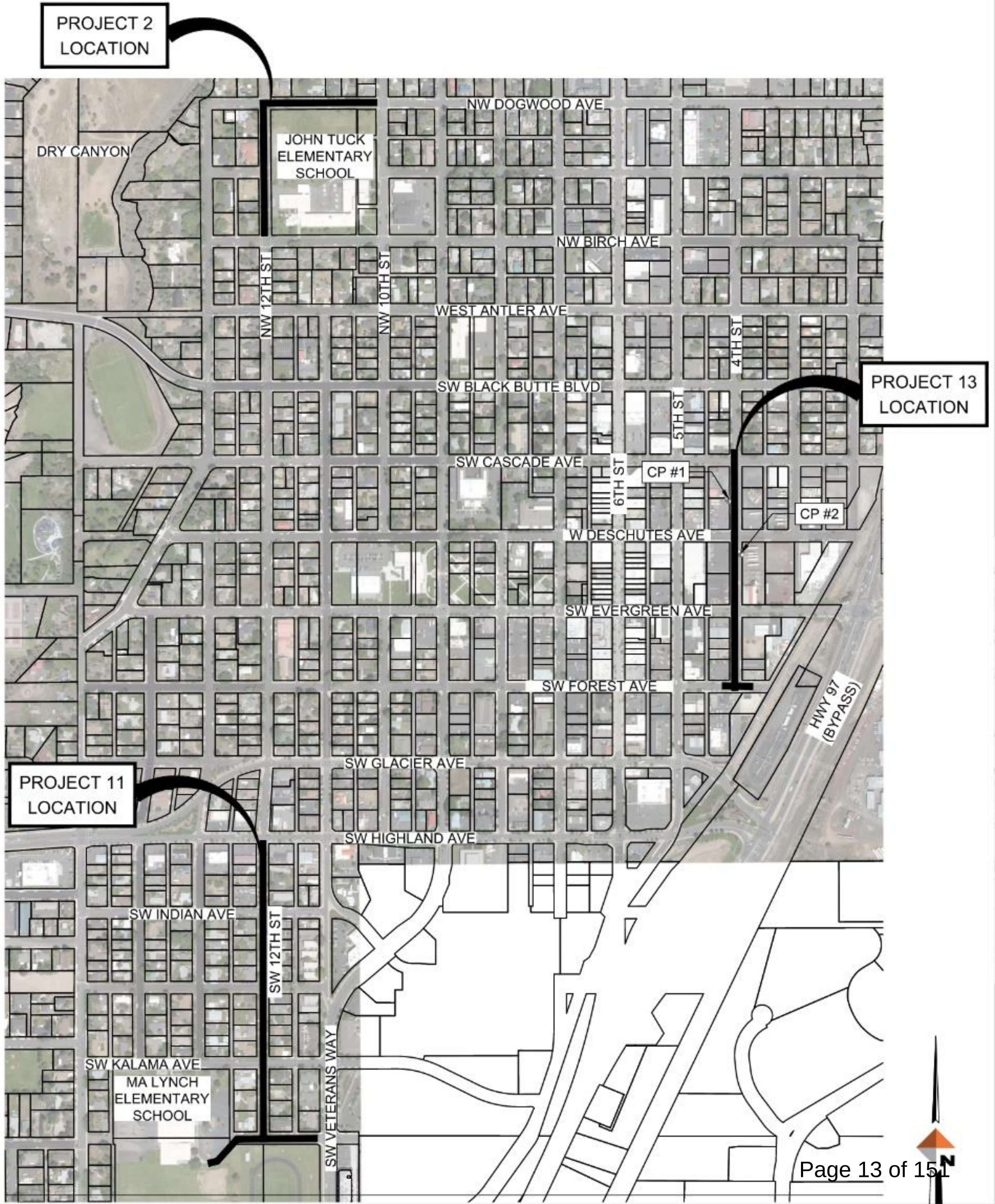
CONSTRUCTION CONTRACT AWARD: $1,369,001.86

REDMOND CITY COUNCIL

APRIL 9, 2024

PROJECT SCOPE

- New sidewalks on and around two elementary schools along 12th Street
- 3 blocks of downtown sidewalks with street trees along 4th Street
- Curb extensions at two downtown intersections with new stormwater facilities
- New Flashing Beacons across SW Evergreen Avenue
- 55 new ADA compliant curb ramps



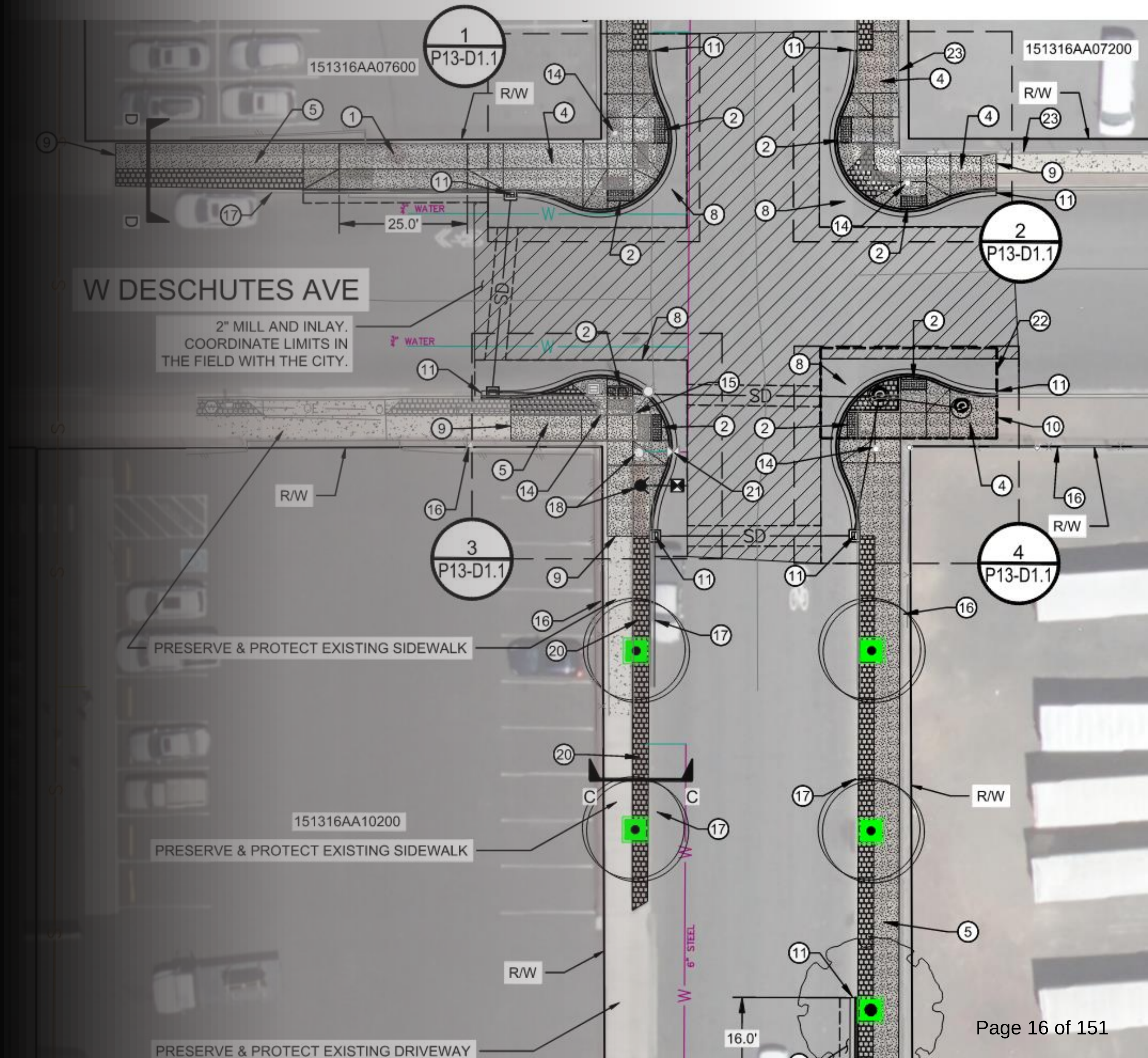
ADA TRANSITION PLAN PROJECT – PROJECT SCHEDULE

ADA TRANSITION PLAN PROJECT – PROJECT BIDS

Bidder	Amount
Keeton King Contracting	**$1,369,002**
Eastern Oregon Contracting	$1,443,625
Cascade Civil Corp	$1,512,616
Brown Contracting	$1,682,649
K & E Excavating, Inc.	$1,784,604

- **ENGINEER'S ESTIMATE:** $1,500,000
- **FUNDING SOURCES:** The Coronavirus State and Local Fiscal Recovery Funds (as part of the American Rescue Plan), Downtown Urban Renewal Agency, & Stormwater Infrastructure Maintenance

QUESTIONS



W DESCHUTES AVE
2" MILL AND INLAY. COORDINATE LIMITS IN THE FIELD WITH THE CITY.
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151316AA07200
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P13-D1.1
R/W
WATER
25.0'
16.0'
PRESERVE & PROTECT EXISTING SIDEWALK
PRESERVE & PROTECT EXISTING SIDEWALK
PRESERVE & PROTECT EXISTING DRIVEWAY

CITY OF REDMOND

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STAFF REPORT

DATE: April 9, 2024
TO: Redmond City Council
THROUGH: Keith Witcosky, City Manager
Jason Neff, Deputy City Manager/Chief Financial Officer
Jessica MacClanahan, Public Works Director/City Engineer
Joshua Wedding, Public Works Operations Manager
FROM: Travis Robbins, Water Division Manager
SUBJECT: Aclara One Cloud Migration Contract and Sole Source Letter: $191,798.84

Report in Brief:
This item requests City Council approve a sole source selection for Aclara One- Unified HE- SaaS Implementation and five-year software-as-a-service (SaaS) agreement for $191,798.84.

Background:
Since 2007, Aclara Technologies, has been providing Automated Meter Infrastructure (AMI) services to the City of Redmond with on-premises data storage. Through this partnership, Aclara monitors, upgrades, and provides technical support services that support flawless operation and communication within the AMI systems.

The Water Division operates and maintains the citywide water distribution system consisting of approximately 190 miles of water mains, 8 water wells, 7 storage reservoirs, multiple capital assets throughout the city, and 13,212 service connections. All the service connections are read through Aclara's AMI.

Discussion:
The City of Redmond IT Department has made the recommendation to move from on-premises data storage to the cloud-based data storage for enhanced security measures. Staff's research has determined that moving to the cloud-based data storage over the course of the five-year agreement will result in cost savings when compared to obtaining additional on-premises servers and evaluating additional security measures. As this software is currently utilized by the City, it is being proposed as a sole source selection pursuant to ORS 279B.075 and Redmond City Code 2.410.

Fiscal Impact:
The attached proposal is for $191,798.84. The Fiscal Year (FY) 2023/24 Water budget includes $70,000 for the Aclara One upgrade in the Water Operations sub-fund. The Aclara One- Unified HE- SaaS Implementation is $33,600 and Year One of Aclara One- MDM- Saas ASP is $28,630, for a total of $62,230. The remaining $129,568.84 of the contract will be expensed over four years as software subscription fees (SaaS) from the Water Operations sub-fund. Future contract renewals will occur automatically for 1-year terms, unless a 60-day notice is provided by either party.

Alternative Courses of Action:

1. Adopt sole source findings and authorize the contract with Aclara.
2. Do not authorize the contract.
3. Take no action and request additional information.

Recommendation / Suggested Motion:
"I move to adopt sole source findings and authorize the City Manager to sign the Aclara One- Unified HE- SaaS Implementation and five-year software subscription (SaaS) agreement for $191,798.84".

CITY OF REDMOND
CONTRACT REVIEW BOARD

FINDINGS AND DECISION OF THE CITY OF REDMOND CONTRACT REVIEW BOARD REGARDING THE SOLE SOURCE SELECTION OF ACLARA TECHNOLOGIES LLC, A LIMITED LIABILITY COMPANY OF THE STATE OF OHIO WITH OFFICES AT 77 WESTPORT PLAZA, SUITE 500, ST. LOUIS MISSOURI 63146. AS THE SOLE SOURCE CONTRACTOR FOR IMPLEMENTATION OF SOFTWARE AS A SERVICE, COMPONENTS, AND PROFESSIONAL SERVICES FOR THE CITY OF REDMOND WATER DEPARTMENT.

The City of Redmond Contract Review Board, having reviewed in documents provided by City Staff and heard their reports, makes the following findings of fact in support of the Sole Source award of the contract for $191,798.84 pursuant to ORS 279B.075 and Redmond City Code 2.410.

THE CITY OF REDMOND CONTRACT REVIEW BOARD FINDS AS FOLLOWS:

1. Aclara Technologies, LLC, a company with US headquarters located in the State of Ohio, with offices at 77 Westport Plaza, Suite 500, St. louis, Missouri 63146. Originally programmed, designed, built, and installed all automated components associated with the Automated Meter Infrastructure for the City of Redmond.

2. Aclara Technologies, LLC currently maintains and provides responsive technical support for hardware/software, Automated Meter Infrastructure components, and databases. Other than Aclara Technologies, LLC, no other company has in depth knowledge of the Automated Meter Infrastructure and its components.

3. The City of Redmond Water Department requires the ability to continue to properly maintain its Automated Meter Infrastructure. The constant need for monitoring, upgrades, and technical support services from Aclara Technologies, LLC is extremely important to provide continuous flawless operation and continued communication within the Automated Meter Infrastructure.

4. The alternative to sole source service procurement would be to contract with another company specializing in control system design and support, through a competitive process and compensate such company to learn, understand, and replace the current equipment that is in place for this system. Such undertaking can be accomplished at a significantly greater cost but Aclara Technologies, LLC, would still need to provide parallel services for up to five years until the city could fully transition it’s in field infrastructure to another vendor.

5. The contracting agency has negotiated with the sole source to obtain contract terms that are the most advantageous to the contracting agency.

ADOPTED by the City of Redmond Contract Review Board this 9th day of April 2024.

____
Keith Witcosky, City Manager

ATTEST:

____
Kelly Morse, City Recorder

AGREEMENT FOR SOFTWARE DELIVERABLES AND SERVICES

This Agreement for Software Deliverables and Services ("Agreement") is made this ________ day of ______, 20____, ("**Effective Date**") by and between **Aclara Technologies LLC**, **a limited liability company** of the State of Ohio with offices at 77 Westport Plaza, Suite 500, St. Louis, Missouri 63146 ("Provider"), and **City of Redmond**, with offices located at 411 SW 9th St., Redmond, OR 97756 ("**Customer**"). Individually, Aclara® and Customer may be referred to as "Party" and collectively as "Parties".

WHEREAS, Provider provides certain software-as-a-service offerings, professional services and deliverables to its customers**;**

WHEREAS, Customer desires to access certain software-as-a-service offerings, professional services and/or deliverables described herein, and Provider desires to provide Customer access to such offerings, subject to the terms and conditions set forth in this Agreement**.**

IN CONSIDERATION OF the following terms and conditions, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Provider agrees to perform the Services and provide the Deliverables for Customer pursuant to the terms of this Agreement.

ARTICLE 1. DEFINITIONS

Certain terms used in this Agreement are defined in this Article 1. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. Unless otherwise specifically defined, those terms, acronyms and phrases in this Agreement that are utilized in the IT services industry or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context. The word "and" shall mean "and" as well as "or," unless otherwise specified.

1.1 "Acceptance Criteria" shall mean, with respect to a Deliverable, a mutually agreed upon statement defining the criteria for acceptance of that Deliverable. With respect to Services, Acceptance Criteria shall mean a statement defining the criteria for acceptance of that Service.

1.2 "Access Credentials" means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

1.3 "Aclara Materials" means the Services, Specifications, Documentation, and Aclara Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Aclara or any subcontractor in connection with the Services or otherwise comprise or relate to the Services or Aclara Systems. For the avoidance of doubt, Aclara Materials include Resultant Data and any information, data, algorithms or other content derived from Aclara's monitoring of Customer's access to or use of the Services.

1.4 "Aclara Systems" means the information technology infrastructure used by or on behalf of Aclara in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Aclara or through the use of third-party services

1.5 "Affiliate(s)" means, with respect to any entity, any other entity that owns, directly (or indirectly through one or more intermediaries) controls or is controlled by, or is under common control with, such entity.

1.6 "Agreement" shall consist of this document (including attachments, schedules and addendums to the Agreement) and any SOW and Purchase Order issued under the Agreement**.**

1.7 "**Authorized User**" means Customer's employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

1.8 "Claims" means any claim, action, cause of action, demand, lawsuit, whether at law, in equity, or otherwise brought by a third party.

1.9 "Cloud Services" shall mean software services comprised of a software licensing model in which access to the software and its updates/maintenance are provided on a subscription basis.

1.10 "Confidential Information" includes, without limitation, (a) non-public information and/or private business information developed, collected or created by Party (b) a Party's Proprietary Information and (c) trade secret information including technical or non-technical data, formulae, patterns, compilations, client lists, business plans, programs, devices, methods, techniques, drawings, diagrams or processes, data, databases, software, specifications, in any form or format that (i) are not generally known in the trade or business of a Party, (ii) have direct or indirect, tangible or intangible, actual or potential value, (iii) are not readily ascertainable from publicly available information, and (iv) are the subject of reasonable protection measures taken by Party.

1.11"Customer Data" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer by or through the Services.

1.12 "Customer Systems" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services, other than Aclara provided services.

1.13 "Deliverable" shall mean the Software Deliverable, hardware, products, and other tangible goods and materials, including data, delivered to Customer under this Agreement or any SOW.

1.14 "Designated Equipment" shall mean the computer equipment of Customer in which Aclara loads the Software or the Customer's back-up computer equipment and such additional equipment as Customer may from time to time designate in writing, which such back-up equipment and such additional equipment shall meet Aclara's applicable specifications **.**

1.15 "Disaster Recovery Plan" means the establishment of the processes necessary to enable the recovery of vital data, software, systems, and networks following a natural or human-induced disaster or equipment failure.

1.16 “Documentation” means the user manuals and supporting documentation in electronic form containing copyrighted material and other Proprietary Information of Aclara provided with the Deliverable or Services under this Agreement.

1.17 “Fix” shall mean changes intended to correct feature/function deficiencies and/or system vulnerabilities.

1.18 “Harmful Code” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Software Services or Aclara Systems as intended by this Agreement. Harmful Code does not include any Aclara disabling device.

1.19 “Hosting Services” shall mean any Software Services (whether performed by Aclara or through a third party) that involve hosting data, software, or services external to Customer.

1.20 “Intellectual Property Right” shall mean, on a worldwide basis, any and all: (a) rights associated with works of authorship, including copyrights, moral rights and mask-works; (b) trademarks, service marks, trade names, trade dress, symbols, logos, designs, and other source identifiers; (c) trade secret rights; (d) patents, designs, algorithms and other industrial property rights; (e) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (f) registrations, initial applications, renewals, extensions, continuations, divisions or re-issues thereof, now or hereafter in force (including any rights in any of the foregoing.

1.21 “Issue” means a problem with the Software Services, identified by the Customer, which requires a response by Aclara to resolve.

1.22 “Licensing Parameters” means Central Processing Units (CPUs), Processors (including Sockets and/or Cores), Seats, Interfaces and End Points connected to the system (Meters, LCTs, CSTs, DSIs, etc.) and Utilities as set forth on Attachment A

1.23 “Losses” shall mean all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).

1.24 “Object Code” means the instructions or statements comprising the Software expressed in machine-readable language, being the machine level representations that actually cause the computer to execute instructions and operations.

1.25 “Patch” shall mean a version of the Software that provides an Error Correction to address an urgent need that is outside the schedule of regularly released Software Revisions or Software Versions.

1.26 “Personal Identifying Information” or “PII” shall mean Customer Data which contains any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any (1) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number; (2) unique biometric data, such as fingerprint, voice print, retina, iris image, or other unique physical representation; (3) unique electronic identification number, address, or routing code;

1.27 “Private Label Site” the private label versions of the Software the Provider hosts and maintains**.**

1.28 “Project” shall mean the Services and/or Deliverables as set forth in an individual SOW.

1.29 "Proprietary Information” shall mean any data, documentation, methods, processes, materials, and all other information that is owned by either Party or an Affiliate thereof.

1.30 “Purchase Order” shall mean the document issued on behalf of Customer authorizing the commencement of Services or the delivery of Deliverables.

1.31 “Representatives” means, with respect to a party, that party's and its Affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors, and legal advisors.

1.32“Resultant Data” means data and information related to Customer's use of the Services that is used by Aclara in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

1.33 “Security Incident” means one or more unwanted or unexpected information security events that could possibly compromise the security of information and weaken or impair business operations.

1.34 “Severity Level” means a designation of the effect of an Issue on the Customer’s use of the System as set forth in Exhibit C, Maintenance and Support Services.

1.35 “Services” shall mean any software implementation and testing, software maintenance and support, Cloud Services or Hosting Services, and other information technology services provided to Customer under this Agreement, and any SOW or Purchase Order referencing this Agreement.

1.36 “Software” means the software described on Attachment A as “Aclara Software”.

1.37 “**Software Deliverable**” shall mean Software loaded on the Designated Equipment and delivered to Customer under this Agreement or any SOW.

1.38 “Software Services” shall mean either Hosting Services or Cloud Services.

1.39 “Statement of Work (“SOW”)” shall mean an attachment to this Agreement, substantially in the form of Exhibit A hereof, that states, with respect to each Project: A detailed description of the Services and Deliverables; work schedule (including the due dates related to the applicable Deliverables and Services, and any milestone dates); specifications, performance standards and functional requirements; documentation, and; fees and payment schedule. In the event of a conflict between an SOW and the provisions of this Agreement, the Agreement shall take precedence.

1.40 “**Supplemental Services**” shall mean the services set forth on Exhibit C-3 hereto, and offered at the prices set forth on Exhibit C-3 hereto.

1.41 “System Incident” a Security Incident with the potential of causing irreparable or significant damage, corruption or loss (compromise) of Confidential Information.

1.42 “Third Party Deliverable” means the Deliverable described on the Attachment A as “Third Party Software—Included in this Agreement.

1.43 “**Third-Party Materials**" means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Aclara

1.44 "Vulnerability" shall mean a weakness in a product that could allow an attacker to compromise the integrity, availability, or confidentiality of that product.

ARTICLE 2. THE SERVICES AND DELIVERABLES

2.1 Services and Deliverables Description.
The Services and Deliverables to be provided hereunder shall be set forth in individual SOWs which shall incorporate the terms and conditions of this Agreement. Each such SOW shall detail the nature of the Services and Deliverables, which may be further defined by attachments. Aclara will provide the Services and Deliverables which are designated in the SOW, within the timeframe set forth therein.

2.2 Software Deliverables.
For Software Deliverables furnished by Aclara to Customer, the following provisions shall apply:

(a) Grant of License

(i) Aclara hereby grants to the Customer a non-exclusive, royalty-free, worldwide, non-transferable license and perpetual (subject to termination as set forth herein) Object Code license to use the Software Deliverable on the Designated Equipment solely in connection with Customer's use of the System and only for the purposes set forth in Section 2.2 (a)(ii) copy the Software.

(ii) Notwithstanding any other provision in this Agreement to the contrary, and for no additional or incremental license fees and only for internal business purposes, the Customer may: (a) make a reasonable number of copies of the software Deliverable for back-up or archival purposes or (b) operate the Software Deliverable on the Designated Equipment for testing the Software Deliverable.

(iii) Third Party Deliverables are sublicensed by Aclara to Customer pursuant to sublicensing agreements with the respective third parties identified on Attachment A.

(b) Restrictions on Use

(i) Parameters. Customer use of the Software Deliverable is restricted to the Licensing Parameters. Use of the Software Deliverable outside the Licensing Parameters is subject to the express written consent of Aclara and the payment of all required additional Fees.

(ii) Alterations. Customer's use of the Software Deliverable is limited in that Customer is prohibited from altering, attempting to reverse engineer, attempting to decompile, or creating or attempting to create a derivative work from the Software Deliverable.

(iii) Compliance with Laws. Customer's use of the Software Deliverable is limited in that it must use the Software Deliverable and the Documentation in accordance with all applicable laws and regulations of the United States and the States, Country and localities in which the Software Deliverable and Documentation is used.

(iv) Use on Designated Equipment. Customer's use of the Software Deliverable is restricted to use on the Designated Equipment. Should Customer desire to transfer the operation of the Software Deliverable to a computer other than the Designated Equipment, Customer shall notify Aclara upon such transfer. Such computer must meet the specifications of the Designated Equipment. Upon such notification, such computer shall become the Designated Equipment. Under no circumstances may the Licensed Software be used for production purposes on other than the Designated Equipment.

(v) Temporary Use. Without notice to Aclara, Customer may temporarily transfer the operation of the Software Deliverable to a backup computer if the Designated Equipment is inoperative due to malfunction, or during the performance of preventive maintenance, engineering changes or changes in features or model until the Designated Equipment is restored to operative status and processing of the data already entered into the back-up computer is completed.

2.3 Software Services.

(a) Access and Use.

(i) Hosting Services. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, Aclara hereby grants Customer a non-exclusive, non-transferable right to access and use the Hosting Services during the Term, solely for its own internal business purposes in accordance with the terms and conditions herein. Aclara shall provide to Customer the Access Credentials within a reasonable time following the Effective Date.

(ii) Cloud Services. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, Aclara will provide functionality on Aclara Systems to enable Customer to access the Cloud Services and triggers that provide access to the Software used to collect Customer Data. Aclara hereby grants Customer a non-exclusive, non-transferable right to access and use the Cloud Services during the Term, solely for its own internal business purposes in accordance with the terms and conditions herein. Aclara shall provide to Customer the Access Credentials within a reasonable time following the Effective Date.

(b) Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

(i) Aclara has and will retain sole control over the operation, provision, maintenance, and management of the Aclara Materials; and

(ii) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Aclara Materials by any Person by or through the Customer Systems or any other means controlled by Customer, including any: (i) information, instructions, or materials provided by any of them to the Services or Aclara; (ii) results obtained from any use of the Services or Aclara Materials; and (iii) conclusions, decisions, or actions based on such use.

(c) Use Restrictions. Customer shall not, and shall not permit any other person to, access or use the Services or Aclara Materials except as expressly permitted by this Agreement and, in the case of Third-Party Deliverables, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

(i) copy, modify, or create derivative works or improvements of the Software Services or Aclara Materials;

(ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Software Services or Aclara Materials to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

(iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software Services or Aclara Materials, in whole or in part;

(iv) bypass or breach any security device or protection used by the Software Services or Aclara Materials or access or use the Software Services or Aclara Materials other than by valid Access Credentials;

(v) input, upload, transmit, or otherwise provide to or through the Software Services or Aclara Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

(vi) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Software Services, Aclara Systems, or Aclara's provision of services to any third party, in whole or in part;

(vii) remove, delete, alter, or obscure any trademarks, Specifications, Documentation, EULA, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Software Services or Aclara Materials, including any copy thereof;

(viii) access or use the Software Services or Aclara Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Aclara customer), or that violates any applicable Law;

(ix) access or use the Software Services or Aclara Materials for purposes of competitive analysis of the Software Services or Aclara Materials, the development, provision, or use of a competing software service or product or any other purpose that is to Aclara's detriment or commercial disadvantage; or

(x) otherwise access or use the Software Services or Aclara Materials beyond the scope of the authorization granted under this Section 2.3.

(d) Customer Obligations.

(i) Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Software Services are accessed or used; (b) provide Aclara Personnel with such access to Customer's premises and Customer Systems as is necessary for Aclara to perform the Software Services in accordance with the Availability Requirement and Specifications; and (c) provide all cooperation and assistance as Aclara may reasonably request to enable Aclara to exercise its rights and perform its obligations under and in connection with this Agreement.

(ii) Effect of Customer Failure or Delay. Aclara is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

(iii) Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 2.3(c) Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Software Services and Aclara Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Aclara of any such actual or threatened activity.

(iv) (**Applicable for Profield® Software Solution**) Prior to commissioning the Software Services, Customer shall supply a list of the names of all users who are authorized to use the Software Services. Customer shall keep the list current at all times and promptly inform Aclara of any change in Customer End Users. Customer will strictly enforce each Customer End User's user identification and password controls, to ensure that Customer End User's identity is not used to access the Software Services by any other person.

2.4 Documentation.

Subject to the terms and conditions set forth herein, Aclara hereby grants to Customer, and Customer accepts, a fully paid, non-exclusive, non-transferable, license to use the Documentation during the Term of this Agreement and solely in connection with its use of the Software Deliverable or Software Services.

2.5 Maintenance and Support Services.

For Hosting and Cloud Services furnished by Aclara to Customer, Aclara shall provide service level standards, as set forth in Exhibit C-1, Software Services Schedule. For Software Deliverable furnished by Aclara to Customer, Aclara shall provide maintenance and support services as set forth in Exhibit C-2. For Supplemental Services furnished by Aclara to Customer, Aclara shall provide such services in accordance with Exhibit C-3.

2.6 Changes.

(a) Aclara reserves the right, in its sole discretion, to make any changes to the Services and Aclara Materials that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Aclara's services to its customers; (ii) the competitive strength of or market for Aclara's services; (iii) the Services' cost efficiency or performance; or (iv) to comply with applicable Law.

(b) Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes in accordance with the change procedure set forth in the SOW. In the event of a change, the Parties will use commercially reasonable efforts to negotiate and execute a "Change Order" to the Statement of Work setting forth all necessary updates. Each Change Order shall include, as applicable, changes to the Services, Deliverables, Work Schedule, fees or other material terms of the Statement of Work, and, upon execution thereof, Aclara waives any claim resulting from the Change for additional compensation or change to the Work Schedule except as set forth in the Change Order, including, without limitation, claims related to lost productivity and lost efficiency. No claim for additional compensation or an adjustment to the Work Schedule shall be allowed unless the same was authorized by a written Change Order executed by an authorized representative of both parties in advance of the performance of the applicable Services or Deliverables.

2.7 Reservation of Rights.

Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Aclara Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Aclara Materials, and the Third-Party Materials are and will remain with Aclara and the respective rights holders in the Third-Party Materials.

ARTICLE 3. TERM

3.1 Initial Term.

The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect for a period of five (5) years from such date (the "Initial Term").

3.2 Renewal Term.

This Agreement will automatically renew for successive twelve 12 month periods unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least 60 days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").

ARTICLE 4. PAYMENT

4.1 Billing Rate.

4.1.1. The Fees for the Deliverables and Services provided hereunder shall be set forth in Exhibit B, Fees. Aclara will invoice Customer for the Deliverables and Services as follows: (a) for Software Deliverables, Aclara will invoice Customer upon contract execution; (b) for implementation Services, Aclara will invoice Customer as set forth in the SOW; and (c) for Cloud Services/Hosting Services, Aclara will invoice Customer the Annual Service Provider (ASP) Fees annually in advanced and shall not be subject to adjustment during the Initial Term. Thereafter, during any subsequent Renewal Term, upon receipt of a 30 day notice, the ASP Fee shall be subject to adjustment not to exceed five percent (5%) at the commencement of each Renewal Term.

4.1.2. Support Fees for Software Deliverables. The charge for the service level selected by the Customer shall be at the annual Fee as identified in Exhibit C-2 during the Initial Term of this Agreement. The annual Fee shall not be subject to adjustment during the Initial Term. Thereafter, during any subsequent Renewal Term, upon receipt of a 30 day notice, the Fee shall be subject to adjustment not to exceed five percent (5%) at the commencement of each Renewal Term.

4.1.3. Partial Services. Aclara reserves the right to invoice the Customer for any partial month services which may result from the Effective Date or date of termination of this Agreement, at a prorated charge.

4.1.4. Reinstatement Fee. In the event that Customer terminates or elects not to renew this Agreement and subsequently wishes to reinstate it, in addition to paying Aclara's then current fees and charges, Customer shall also pay Aclara, a reinstatement charge. The reinstatement charge shall include a lump sum equal to the total fees and charges which would have been paid for the period of lapse had the lapse not occurred: provided, however that if the lapse period is three (3) years or longer, Aclara shall have the option at its sole discretion to refuse to reinstate said Agreement.

4.2 Due Dates for Payment.

Payments for all invoices shall be due and payable thirty (30) days from the date of receipt . Any amounts not paid when due shall bear interest at the lesser of one and one half percent (1 ½%) per month or the highest permitted by law until paid. In the event that annually Fees remain unpaid for more than thirty(30) days after becoming due for payment, Aclara shall be entitled to withdraw the Maintenance or Software Services.

4.3 Taxes.
Aclara shall be responsible for all corporate taxes measured by net income due to performance of, provision of or payment for Services or Deliverables under this Agreement ("Aclara Taxes"). Customer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Customer or Aclara or its subcontractors) in relation to the Agreement or the performance of , provision of or payment for Services or Deliverables under the Agreement other than Aclara Taxes ("Customer Taxes"). The price does not include the amount of any Customer Taxes. If Customer deducts or withholds Customer Taxes, Customer shall pay additional amounts so that Aclara receives the full Price without reduction for Customer Taxes. Customer shall provide to Aclara, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

ARTICLE 5. TIME FOR PERFORMANCE

5.1 Delivery.
(a) Aclara shall use commercially reasonable efforts to deliver the Deliverables and provide the Services within the times set forth on Exhibit A. Purchaser understands and agrees that the ability of Aclara to make such deliveries and provide such Service within such times is dependent upon the timely issuance of Purchase Orders (if required) and timely performance of Customer's Obligations. Customer agrees that it will use commercially reasonable efforts to cause Customer's personnel to perform their respective obligations in a timely fashion and to cooperate with Aclara in scheduling their respective Services.

(b) Except as specified in an SOW or Purchase Order, Deliverables shall be FCA Aclara's facility, and pursuant to the delivery schedule, if any, set out in said SOW or Purchase Order.

5.2 Project Schedule.
The schedule for the Deliverables and Services (the "Project Schedule") shall be determined on a project by project basis as more particularly described in the applicable SOWs. The Project Schedule shall begin and end as specified on such SOWs, which shall list the Deliverables and Services involved, the schedule for delivery and performance, any milestone dates, and the deadline for the completion of all such activities.

5.3 Acceptance.
Acceptance of the Deliverables and Services shall be in accordance with Acceptance Criteria set forth in the SOW.

ARTICLE 6. SECURITY

6.1 Secure Environment.
For hosting services and cloud services Aclara will implement and maintain secure systems and environment according to the following terms: (a) utilize only datacenters that are certified as SSAE 18 SOC 2 compliant, with actively-managed multi-layered security and redundant power systems; (b) maintain

firewall protection; (c) maintain antivirus software with automated monitoring; (d) encrypt all PII data at rest and in transit; (e) perform monthly vulnerability scanning; and (f) perform annual security penetration testing.

6.2. Disaster Recovery.
Aclara shall maintain appropriate backups of all Customer data. Aclara shall maintain Disaster Recovery plans and exercise Disaster Recovery plans on an annual basis for the cloud services provided. For hosting services, Aclara shall, at Customer's request and expense, offer Disaster Recovery services and exercise Disaster Recovery plans on an annual basis for Customer.

6.3. Incident Response.
In the event of an Aclara, or subcontractor, System Incident, Aclara shall: (a) promptly, but in no event more than 48 hours of becoming aware of the incident, notify Customer; (b) then provide Customer with a written report within the subsequent 48 hours detailing the scope of the incident and the measures taken to by Aclara to respond to the incident; and (c) use best efforts to remedy the incident and prevent any further or recurrent incidents at Aclara's expense in accordance with applicable privacy laws, regulations, and standards.

6.4. Vulnerability Remediation.
Aclara shall take full responsibility for the comprehensive remediation of security vulnerabilities found in Aclara's hosting services and cloud services that could reasonably result in a System Incident.

6.5 Customer Control and Responsibility.
Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Aclara Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

6.6 Access and Security.
Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for processing by the Services.

6.7 Harmful Code.
Aclara represents, warrants and covenants that: (a) Aclara will use its best efforts to ensure that no Harmful Code is introduced into the software, Customer Data or other Deliverables, or any systems used to perform the Services, and Aclara will not insert into any software any code which would have the effect of disabling or otherwise shutting down all or a portion of such software or damaging any Customer Data, systems or functionality.

ARTICLE 7. TERMINATION

7.1 Termination.

(a) Aclara may terminate this Agreement at any time upon delivery thirty (30) days prior written notice to Customer.

(b) either party may terminate this Agreement, effective upon delivery of at least ten (10) days prior written notice to the other party, (i) if the other party materially breaches this Agreement, and (ii) further fails within thirty (30) days (or within such longer period as may be otherwise mutually agreed) after the non-breaching party provides the breaching Party with written notice of such breach; and

(c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.2 Effects of Termination

Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(b) Aclara shall cease all use of any Customer Data or Customer's Confidential Information and at the request of the Customer within a commercially reasonable time (i) return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Aclara directly or indirectly controls, provided however, Aclara that may retain copies of such information that is stored in Aclara's archive or back-up systems or as required by applicable law or Aclara's document retention policy;

(c) Customer shall immediately cease all use of any Services or Aclara Materials and (i) promptly return to Aclara, or at Aclara's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Aclara Materials or Aclara's Confidential Information and (ii) permanently erase all Aclara Materials and Aclara's Confidential Information from all systems Customer directly or indirectly controls; provided that Customer may retain copies of such information that is stored in Customer's archive or back-up systems or as required by applicable law or Customer's document retention policy ; and (iii) certify to Aclara in a signed written instrument that it has complied with the requirements of this Section 8.2(c);

(d) Aclara may disable all Customer and Authorized User access to the Aclara Materials;

(e) if either Party terminates this Agreement pursuant to Section 7.1(b), Aclara shall be paid all Fees related to Deliverables provided and Services performed prior to the effective date of termination.

ARTICLE 8. CONFIDENTIALITY

8.1 Confidentiality.

From time to time during the Term of this Agreement, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party"), Confidential Information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within thirty (30) days thereafter, is summarized in writing and confirmed as Confidential Information. The Parties shall hold all Confidential Information of the other Party confidential, and shall not use or disclose it to others (except as is necessary to perform its obligations under the Contract and with the prior written consent of the disclosing Party). The Receiving Party shall maintain security measures designed to: (i) protect the security and confidentiality of the Confidential Information of the Disclosing Party; (ii) protect against any anticipated threats or hazards to the security or integrity of such Confidential Information; and (iii) protect against unauthorized access to or use of such Confidential Information; provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 8.

8.2 Exclusions.
Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that to the Receiving Party's reasonable knowledge was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

8.3 Compelled Disclosure.
If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 8.1; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 8.3, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

8.4. In the event of a breach of this Section 8, the breaching party shall indemnify the non-breaching party for any Losses associated with the breach of this Section 8.

ARTICLE 9. INDEMNITY

For the purpose of this **Section 9** only, “Customer Parties” shall mean Customer, its directors, officers, agents and employees, contractors and subcontractors (other than Seller), assignees, subsidiaries and affiliates, and each of them; “Aclara Parties” shall mean Aclara, its directors, officers, agents and employees, contractors and subcontractors at any tier, and the subcontractor’s directors, officers, agents and employees, and each of them. The Parties obligations under this **Section 9** shall not be limited to their respective insurance coverage.

9.1 General Indemnity for Deliverables and Services.
(a) Aclara shall indemnify Customer Parties for Losses arising from Claims, whether based on statute or regulation or on theories of contract, tort, strict liability, or otherwise, which are brought against one or more Customer Parties involving injuries or damages to persons or property arising from: (a) the negligent acts or omissions of Aclara Parties in connection with the delivery of Deliverables or

performance of Services; or (b) Losses resulting from any incident involving the supply, access or maintenance of data or the networks and systems that store, process or transmit such data under this Agreement provided that: (i) Customer promptly notifies Aclara in writing of such Claims; (ii) Customer fully cooperates with Aclara in assisting in the defense or settlement of such Claims; and (iii) Aclara has the sole right to conduct the defense of such Claims or to settle such Claims. Aclara shall defend at its own expense, with counsel of its choosing, but reasonably acceptable to Customer, any suit or action brought against Customer Parties based upon such Claims. Further, provided that Customer promptly notifies Aclara in writing of any alleged violations described below, Aclara shall also indemnify Customer Parties for any and all loss or liability for fines, fees or penalties for violations of any statutes, regulations, rules, ordinances, codes or standards applicable to the work arising from or relating to acts or omissions of Aclara Parties. Aclara's obligations under this **Section 9.1 (a)** shall be reduced to the extent of the negligence, gross negligence or willful misconduct of Customer Parties.

(b) Customer shall indemnify Aclara Parties for Losses from Claims for injuries or damages to persons or property arising from or in any manner relating to acts or omissions of Customer Parties under this Agreement provided that: (i) Aclara promptly notifies Customer in writing of such Claims; (ii) Aclara fully cooperates with Customer in assisting in the defense or settlement of such Claims; and (iii) Customer has the sole right to conduct the defense of such Claims or to settle such Claims. Customer shall defend at its own expense, with counsel of its choosing, but reasonably acceptable to Aclara, any suit or action brought against Aclara Parties based upon such Claims. Further, provided that Aclara promptly notifies Customer in writing of any alleged violations described below, Customer shall also indemnify Aclara Parties for any and all loss or liability for fines, fees or penalties for violations of any statutes, regulations, rules, ordinances, codes or standards applicable to the work arising from or relating to acts or omissions of Customer Parties. Customer's obligations under this **Section 9.1 (b)** shall be reduced to the extent of the negligence, gross negligence or willful misconduct of Aclara Parties.

9.2 <u>Intellectual Property Indemnity</u>

(a) Aclara shall defend and indemnify Customer against any Claims alleging that Deliverables or Services furnished under this Agreement infringe a patent in effect in the U.S., an EU member state or the country of the site (provided there is a corresponding patent issued by the U.S. or an EU member state), or any copyright or trademark registered in the country of in which the premises where Deliverables are used or Services are performed, not including Aclara's premises from which it performs Services provided that (i) in the case of software Deliverables, it is the latest released version of the software; (ii) Customer promptly, and in any event, within ten (10) days of becoming aware of the Claims, notifies Aclara in writing of such Claims; (iii) Customer makes no admission of liability and does not take any position adverse to Aclara; (iv) Customer provides Aclara with full disclosure and fully cooperates with Aclara in assisting in the defense or settlement of such Claims and (v) Aclara has the sole right to conduct the defense of such Claims or to settle such Claims .

(b) Notwithstanding the foregoing, if any software or other Deliverable provided by Aclara under the terms of this Agreement becomes, or in Aclara's reasonable opinion is likely to become, the subject of any infringement or misappropriation claim or proceeding, then Aclara shall, at its sole option and expense shall either: (i) obtain for Customer the right and license to continue to use the software or other Deliverable in the manner permitted under this Agreement; or (ii) replace or modify the same with an equivalent non-infringing product with functionality substantially similar to the product it is replacing; or (iii) failing (i) or (ii), take back infringing Deliverable or Services and refund the price received by Aclara attributable to the infringing Deliverable or Services. Notwithstanding the foregoing, Aclara shall not be liable for any Claims based upon (1) the combination or use of Deliverables or Services with any other equipment or software not supplied or authorized by Aclara, or (2) Customer's possession or use of any altered version of the Deliverable or Services unless such alteration has been performed or expressly authorized by Aclara, or (3) failure of Customer to implement any update provided by Aclara that would have prevented the Claims, or (4) Deliverables or Services made or performed to Customer's specifications.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES

10.1 <u>Mutual Representations and Warranties</u>. Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement;

(c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

(d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

10.2 <u>Additional Aclara Representations, Warranties, and Covenants</u>. Aclara represents, warrants, and covenants to Customer that Aclara will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

10.3. **THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE**.

ARTICLE 11. INSURANCE

11.1 <u>Minimum Insurance Coverages</u>.
In the event that Aclara's obligations hereunder require or contemplate performance of Services by Aclara's employees, or persons under contract to Aclara, to be done on Customer's property, or property of the Customer's customers, Aclara agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Customer. Further, in such event, Aclara shall maintain:

(a) General Liability insurance on a one million dollar ($1,000,000), per occurrence basis; and

(b) Statutory workers compensation insurance.

(c) <u>Cyber Risk Liability and Technology Errors and Omissions Insurance</u>. Aclara shall maintain cyber risk liability and technology errors and omissions insurance with a combined aggregate limit of not less than $5,000,000.00. Such insurance shall cover errors, omissions or negligent acts in the delivery of Services under this Agreement. Such cyber risk liability insurance shall include coverage of claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and infringement, such as copyrights, trademarks, and service marks.

(d)Customer shall be provided for as an additional insured or loss payee as its interest may appear on the policy referred to in **Section 11.1(a)** above.

ARTICLE 12. LIMITATION OF LIABILITY

12.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT, REVENUE, OR DATA OF THE OTHER PARTY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED UPON CONTRACT, TORT, BREACH OF WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 Each Party's total liability to the other Party in connection with this Agreement, whether in contract or in tort, shall be limited to the aggregate sum of payments made by Customer to Aclara under an applicable SOW or Purchase Order.

ARTICLE 13. FORCE MAJEURE

It is understood that, at times, unavoidable delays result from causes which may reasonably be presumed to be beyond the control of Aclara, or Customer such as: Acts of providence, floods, fortuitous events, unavoidable accidents, riots, strikes, and lock outs. Should the progress of the Services or Deliverables be or seem to be delayed at any time for such causes, the party claiming force majeure shall notify the counterparty in writing of the occurrence, in order that a record of same may be made. For force majeure events declared by Aclara, a corresponding extension of time for the completion of the Services or Deliverables shall be allowed by Customer. Aclara and Customer shall in good faith use such effort as is reasonable under all the circumstances known to it at the time to remove or remedy the cause(s) and mitigate the damage associated with a force majeure event.

ARTICLE 14. AUDIT RIGHTS

14.1 <u>Audit Rights General</u>.
Customer and its representatives shall have the right to audit activities which are performed under this Agreement on a time and material basis. Aclara will provide access to Aclara personnel, and to data and records, for the purpose of performing audits and inspections to verify the accuracy of Aclara's charges and invoices for Services provided on a time and material basis. Aclara will provide to such auditors and representatives such assistance, as they reasonably require. Aclara will cooperate fully with Customer or Customer's designees in connection with audit functions. If Customer performs such audits via an independent audit firm, Customer will take reasonable steps to ensure that the audit firm will protect the confidentiality of Aclara's Proprietary Information.

(a) If an audit uncovers any overcharge, Aclara shall immediately refund such overcharge (net of any undercharges uncovered by the audit).

(b) Aclara shall maintain and provide access upon request to records, documents and other information required to meet Customer's audit rights under this Agreement until the later of: (i) 3 years after expiration or termination of this Agreement; or (ii) all pending matters relating to this Agreement (e.g., disputes) are closed.

(c) In addition, Aclara shall use commercially reasonably efforts to assist Customer with respect to ensuring that all subcontractors and vendors adhere to and comply with the same requirements herein.

14.2. Aclara shall provide within thirty (30) days of receipt and at no additional cost to Customer, a copy of a SSAE 18 SOC 2 – Type II report of Aclara's measures with respect to electronic data for

Hosting and Cloud Services which has been audited by an independent CPA or similarly qualified third party.

ARTICLE 15. GENERAL CLAUSES

15.1 Relationship of the Parties.
Aclara is performing under the Agreement as an independent contractor. Aclara has the sole right and obligation to supervise, control, manage, and direct all work associated with the Deliverables and Services to be performed by all individuals and entities it assigns to perform work under this Agreement, which includes, but is not limited to, its employees, its contractors, and its subcontractors' employees, and Aclara agrees that none of these persons or entities are employees or should be considered employees of Customer. As to these persons or entities Aclara assigns to perform work under this Agreement, Aclara will be solely responsible for: (a) the acts and omissions of all such persons and entities, (b) payment of compensation to such persons and entities, and (c) any injury to such persons in the course of their employment.

15.2 Publicity.
Neither Party may announce or release any information regarding this Agreement or its relationship with the other Party without the other Party's express prior written approval (which may be withheld in the other party's sole discretion). Neither Party shall use any trade name, trademark, service mark or any other information which identifies the other Party or any of the other Party's Affiliates in such Party's sales, marketing and publicity activities, including postings to the Internet, interviews with representatives of any written publication, television station or network, or radio station or network without the other Party's express prior written approval. Notwithstanding the foregoing, nothing in this Agreement shall prevent either Party from making such public disclosures as it, in its sole judgment, may deem appropriate to satisfy such Party's (or such Party's Parent's) disclosure obligations under any applicable law or requirement of any stock exchange.

15.3 Non-Solicitation/No-Hire.
Neither party shall solicit or hire, in any capacity whatsoever, any of the other party's employees involved in this SOW during the term of this SOW and for a period of six (6) months from the expiration/termination hereof, without the express written consent of the other party; provided, however, that nothing shall prevent general solicitations by either party not specifically directed at the other party's employees and any hiring as result of such general solicitations.

15.4 Assignment.
Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, provided however, that Aclara may assign this Agreement to an Affiliate, or to an entity acquiring all or substantially all of the assets of Aclara if the acquiring entity is an Affiliate, or, by operation of law, to an entity into which Aclara is merged if the surviving entity is an Affiliate, in each such case without prior approval of the other Party. In any such event, Aclara shall provide the other Party with prompt written notice of such assignment. As used herein, "Affiliate" means a company which either owns or controls Aclara or which Aclara owns or controls directly or indirectly, or is under common control directly or indirectly with Aclara through a common parent company.

ARTICLE 16. GOVERNING LAW AND DISPUTE RESOLUTION

16.1 Governing Law.
This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, USA.

16.2 Dispute Resolution.
All disputes arising in connection with this Agreement, including any question regarding its existence or validity shall be resolved in accordance with this **Section 16**. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may commence arbitration or court proceedings. In the event that the parties choose arbitration, the decision of the arbitrator(s) shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.

16.3 Notwithstanding the foregoing, each party shall have the right at any time, at its option and where legally available, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Agreement, to seek a restraining order, injunction, or similar order to enforce the confidentiality provisions set forth in **Article 8**. Monetary damages shall only be available in accordance with **Article 12**.

ARTICLE 17. NOTICES

All notices, requests and demands, other than routine communications under this Agreement, will be in writing and will be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile (with a copy provided by another means specified in this **Article 17**), or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days after the day of mailing, when mailed by U.S. mail, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

In the case of Aclara:

Aclara Technologies LLC
Attn: Legal
77 Westport Plaza Drive
Suite 500
St. Louis, MO 63146

With a copy (which shall not constitute Notice) to:

Hubbell Incorporated
Attn: General Counsel
40 Waterview Drive
Shelton, CT 06484

In the case of Customer:

City of Redmond, OR
411 SW 9th Street
Redmond, OR 97756

Either Party may from time to time change the individual(s) to receive notices under this paragraph and its address for notification purposes by giving the other prior written notice of the new individual(s) and address and the date upon which the change will become effective.

ARTICLE 18. COMPLIANCE WITH LAWS, CODES, AND STANDARDS

18.1 Aclara shall comply with laws applicable to the manufacture of Deliverable and its performance of Services. Customer shall comply with laws applicable to the application, operation, use and disposal of the Deliverables and Services.

18.2 Aclara's obligations are conditioned upon Customer's compliance with all U.S. and other applicable trade control laws and regulations. Customer shall not trans-ship, re-export, divert or direct products other than in and to the ultimate country of destination declared by Customer and specified as the country of ultimate destination on Aclara's invoice.

18.3 Notwithstanding any other provision, Customer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Customer's site or fulfillment of Customer's obligations, except that Aclara shall obtain any license or registration necessary for Aclara to generally conduct business and visas or work permits, if any, necessary for Aclara's personnel. Customer shall provide reasonable assistance to Aclara in obtaining such visas and work permits.

ARTICLE 19. HEADINGS

The headings used in this Agreement are intended for convenience only. They are not a part of the written understanding between the Parties, and they shall not affect the construction and interpretation of this Agreement.

ARTICLE 20. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be considered an original hereof but all of which together shall constitute one agreement.

ARTICLE 21. SEVERABILITY

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

ARTICLE 22. RESERVATION OF RIGHTS

A delay or failure in enforcing any right or remedy afforded hereunder shall not prejudice or operate to waive that right or remedy or any other right or remedy, whether of a similar or different character.

ARTICLE 23. AMENDMENT AND MODIFICATION;WAIVER

No amendment to or modification of this Agreement is effective unless it is in writing identified as an amendment to this Agreement and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

ARTICLE 24. SURVIVAL

The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 2.2(b) Section 2.3(c), Section 7.2, Article 8, Article 9, Article 10, Article 12, Article 15 and Article 24.

ARTICLE 25. ENTIRE AGREEMENT

The Agreement contains the entire agreement and all representations between the parties relating to the subject matter hereof, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

Aclara Technologies LLC		**City of Redmond, OR**
Signed:	____________________________	Signed: ____________________________
Name:	____________________________	Name: ____________________________
Title:	____________________________	Title: ____________________________

ATTACHMENT A-
SOFTWARE

I. ACLARAONE® SOFTWARE

IA. Base Software

Vendor-Supplier	Software Description	Computer Equipment Model Type	Qty	Licensing Parameters	Qty
Aclara	AclaraONE® Unified HE SaaS	SW-3010H	1	Maximum Endpoints[1]	11,498
				Maximum Utilities	1[2]
Aclara	STAR Programmer Software	Handheld Device/Laptop	10[3]	Handheld Device and/or Laptop[4]	1

II. THIRD PARTY SOFTWARE - NOT INCLUDED IN THIS SOFTWARE LICENSE AGREEMENT

Vendor-Supplier	Software Description	Model Type	Qty	Licensing Parameters: Parameter	Licensing Parameters: Qty
Microsoft	Windows Operating System	INTEL	2	Not specified by Aclara	NA
Microsoft	SQL Server	Standard	1	Not specified by Aclara	NA

Licensing of the software shall be directly with the identified vendor/supplier under the terms and conditions of the vendor's/supplier's applicable software license agreement.

[1] Maximum Endpoints count the aggregate sum of all Aclara electric and/or water hardware devices controlled (e.g. meters + DRUs +CSTs +IHDs).
[2] This software is licensed to Licensee for use in Licensee's own utility business. Use of the Software to provide AMI-related services to other utilities/entities (i.e. "Multi-Utility") is strictly prohibited unless otherwise noted and provided for herein.
[3] Ten (10) copies of STAR Programmer Software have been licensed under Tier 1.
[4] Each licensed software copy is delivered for use on one Handheld Programmer or Laptop.

III. THIRD PARTY SOFTWARE - - INCLUDED IN THIS SOFTWARE LICENSE AGREEMENT

Vendor-Supplier	Software Description	Computer Equipment Model Type	Qty	Licensing Parameters Parameter	Licensing Parameters Qty	Product Owner
N/A						

IV. COMPONENTS INCLUDED IN THIS LICENSE AND ASSOCIATED FEES:

		ONE TIME FEES
IV.A	AclaraONE® Unified HE-SaaS Implementation	$33,600.00
IV.B	STAR Programmer Software (Tier 1, 1-10 units)	$ 2,500.00[5]

V. PER-METER INCREMENTAL LICENSE FEE:

V.A	AclaraONE MDM SaaS Asp Price Per Endpoint see section VI. Below.	
V.B	STAR Programmer Software (for Handheld Units or Laptops)	$ Dependent on Tier[6]

VI. ANNUAL MAINTENANCE SERVICES FEES:

Item No.	Level of Services Fees - SaaS	
VI.A	AclaraONE MDM SaaS ASP Fee Year 1 - $2.49 per endpoint	$ 28,630.00
VI.B	AclaraONE MDM SaaS ASP Fee Year 2 - $2.62 per endpoint	$ 30,061.50
VI.C	AclaraONE MDM SaaS ASP Fee Year 3 - $2.75 per endpoint	$ 31,564.58
VI.D	AclaraONE MDM SaaS ASP Fee Year 4 - $2.89 per endpoint	$ 33,142.81
VI.E	AclaraONE MDM SaaS ASP Fee Year 5 - $3.03 per endpoint	$ 34,799.95

SaaS services are provided for an initial term of five years and are automatically renewable for 12 month Renewal Periods. Please see Aclara Agreement for Software Deliverables and Services for complete pricing, terms and conditions and details and description of services.

[5] Amount is not being charged at this time. The STAR Programmer Software was purchased and paid for in 2014.
[6] Handheld Programmer Software License Fee is based on Tier Quantities: Tier 1 (1-10 units) $3,250; Tier 2 (11-25 units) $6,250; Tier 3 (26+) As Quoted

EXHIBIT A

Statement of Work

Project Name: City of Redmond (OR), (“System Owner”) AclaraONE Software Upgrade Implementation (“Project”).

This Statement of Work (“SOW”) and the terms and conditions of the Agreement for Software Deliverables and Services (hereinafter “Agreement”) describes the Services to be provided to the System Owner in support of the Project as authorized by System Owner signing this Statement of Work. This SOW is governed by the Agreement. By signing this SOW, System Owner represents and affirms that it has reviewed and agrees to the terms and conditions as set forth in the Agreement, its Attachments and Exhibits. Additional terms contained on any purchase order are hereby rejected unless specifically agreed to in writing by the System Owner and Aclara.

Scope of Work

The project scope for the AclaraONE Upgrade Implementation includes professional services (project management, coordination, AclaraONE software solution, product training and software acceptance).

The new solution will support various uses of the components and applications defined in Attachment 1. More detailed requirements will be developed during the requirements task of the project but will remain consistent with Attachment 1 unless mutually agreed by the System Owner and Aclara.

This Statement of Work addresses the implementation services required by the Project. It is mutually understood that business requirements, resources and dates may change subject to the applicable terms of this SOW and that any such material change requested by the System Owner or as a result of the System Owner’s inability to provide agreed upon resources and perform its other responsibilities set forth herein or the result of System Owner errors or omissions may result in a Change Order.

It is understood by Aclara and the System Owner that any material changes to scope will be addressed through a formal change order process. Material changes are those which specifically will impact budget, scope, timeline and/or resources.

1.0 Project Approach

The Aclara Services Team (“Aclara Team”) assigned to this project will complete the Aclara tasks described herein and will perform work for the System Owner for the duration of the Project from remote locations.

The scope of the services engagement for this SOW is set forth in the attached Attachments 1 here to. Attachment 1 also includes certain Responsibilities and Assumptions that are the responsibility of the System Owner. In addition to the tasks specified in Attachments 1 here to, the System Owner will provide appropriate Project resources, including but not limited to data, information, and appropriate and cooperative personnel, to facilitate the performance of the Services. The System Owner shall designate a Project Manager to work with the Aclara Team to facilitate the provision of the Services. Once this SOW is executed, Aclara and the System Owner will assign resources to the

Project. The Aclara Team will work on th e
Project and provide support as specified by the SOW.

2.0 Assumptions and Responsibilities

Project Assumptions and Responsibilities are set forth in Attachments 1. Should the System Owner fail to fulfill those that are applicable to the System Owner, the estimated level of effort, timeline and scope may be subject to change which may result in a Change Order.

3.0 Scope Estimates

Aclara will support the System Owner by providing a team to complete the scope of work defined in Attachment 1.

Aclara’s estimate of the level of effort is based on the following:

- Information provided by the System Owner to Aclara
- Aclara’s understanding of the project scope, based on System Owner information

Should the information provided by the System Owner be inaccurate or should Aclara gain additional information during the Project, the work required may be out of scope and the pricing and schedule may be impacted. If so, the additional work will be addressed as a change to the SOW (change order).

4.0 Software Licenses

The AclaraONE software components are licensed in accordance with the Aclara Agreement for Software Deliverables and Services (“Licenses”) executed between Aclara and the System Owner. The Licenses cover the integration with the System Owner’s single production environment and within the System Owner’s current service territory.

5.0 Changes

Any change to this SOW shall be subject to mutual written agreement of the parties. Aclara shall not commence work on any such change unless and until the change has been agreed to in writing by both parties.

IN WITNESS WHEREOF, the parties have so agreed as of the last date signed below.

Accepted By:	Accepted By:
Aclara Technologies LLC **(Aclara)**	**City of Redmond (OR)** **(System Owner)**
By: ______________________________	**By:** ______________________________
Print Name: ________________________	**Print Name:** ________________________
Title: ____________________________	**Title:** ____________________________
Date: ____________________________	**Date:** ____________________________

Attachment 1 = AclaraONE Software Upgrade Implementation SOW
Attachment 2 = Milestone Schedule
Attachment 3 = Change Order Procedure

Attachment 1
To
Statement of Work

<u>Project Definition - AclaraONE Software Upgrade Implementation Project</u>

1.0 Project Scope

Included in the purchase of an AclaraONE Software Upgrade Implementation are the Professional Services efforts required to upgrade System Owner's software applications to the latest versions of Aclara's software platform (AclaraONE) as well as migration of up to 25 months of NCC headend metadata and read data to a new AclaraONE Headend environment, and rolling 25 months into the new hosted AclaraONE MDM as defined in Section 1 and Section 2. The purpose of this document is to outline the tasks and deliverables of the Aclara Team and provide the System Owner an overview of the responsibilities and time commitment that will be required of their staff.

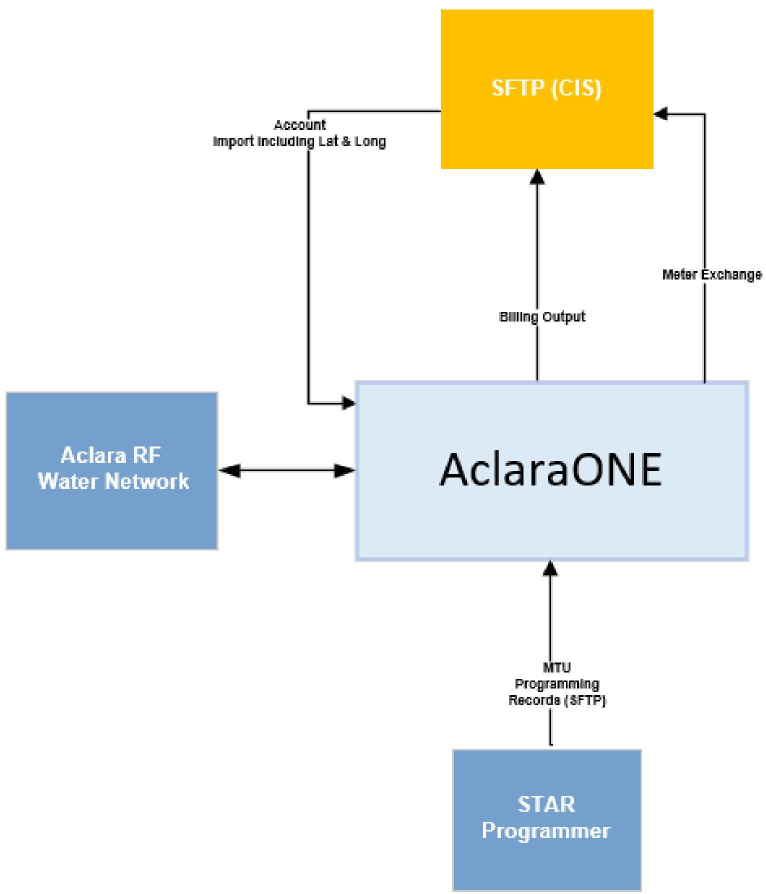

Figure 1: Solution Schematic

1.1 Software Modules Covered

The Software Modules checked below are those that are included in the Project Scope. If System Owner chooses to delay implementation of some of the Modules or Integrations, there may be a Change Order.

Module Name	**Commodities***	
	Gas	**Water**
AclaraONE Unified Headend		
Equipment Menu: DCUs, MTUs, RDDs, Installations		X
Administration Menu: Audit Log		X
Communication Menu: Firmware Status, DCU Firmware Management, MTU Firmware Management, Communications Status, Communications Management		X
ZoneScan (Optional)** Administration Menu: ZoneScan Global Settings, ZoneScan Readings Status, ZoneScan.net		
AclaraONE MDM		
Account Search Menu		X
Total Consumption Menu		X
Events Menu: Event List, Event Trends		X
Report Management		X
Event Summary Dashboard		X
Administration		
Report Group Management		X
Resource Security		X
User Defined Fields Management		X
Event Management		X
Users		X

*Legacy Electric MTU data is not supported in AclaraONE and will not be included in the data migration from NCC to AclaraONE.

**ZoneScan menu option becomes available only when ZoneScan is in scope.

1.2 Project Services

The implementation shall cover the current service territory for System Owner. Aclara shall provide the Services and perform the Deliverables as identified in the sections below. In the event that System Owner requires Services on any out of scope areas or requests any changes to the core product code, Aclara could provide such Services as additional Services through a separate SOW or Change Order.

1.3 Technical Requirements

Technical requirements will be further defined as part of requirements gathering phase and will be specific to the data integrations referenced in Section 2.0 below. Additionally, the following should be noted:

1.3.1 All AclaraONE Elements

- System Owner shall be responsible for providing users the URL for AclaraONE.
- Aclara will provide access to utility administrator login with training for user creation and administration as outlined in Section 2.0 below.
- System Owner shall be responsible for Microsoft Azure AD user management.

1.3.2 Data Integration

- Aclara will configure and test the AclaraONE side of the interfaces on the new environment. Aclara shall provide integration specifications for the integration points specified in Section 2.0.
- System Owner will develop data integrations specified in Section 2.0 based on Aclara specifications.
- Lat/Long data is required to be provided if not currently included to enhance the visual mapping within AclaraONE. The data can be provided in the existing System Owner Account Import integration below or in a separate file which will be determined during requirements phase.
- If a separate file is required for Lat/Long, Aclara will configure, test and implement the AclaraONE side of the interface, while the System Owner's CIS system is responsible for making the necessary changes in the System Owner's systems to provide and/or accept data in Aclara standard formats and cover any third-party cost associated Aclara will help facilitate integration with third party systems and work with all third-party vendors with permission from System Owner.
- If Lat/Long cannot be provided, and address information is available, Aclara can provide a one-time Geo Coding. The request will be scoped out with a change order.
- System Owner will be responsible for any data cleansing for data cleanup with assistance from Aclara in order to meet Aclara's data specifications and ensure data parameters are consistent between all sets of data.
- Historical data to be included in the initial database migration from NCC to AclaraONE.
    - AclaraONE Headend maintains a retention policy for rolling 25 months of historical data.
    - AclaraONE MDM maintains a retention policy for rolling 25 months of historical data.

2.0 Implementation Approach

The Aclara implementation approach involves the following phases:

2.1 Phase 01 Project Planning and Kick-Off

The Aclara project team will begin work upon contract execution and notice to proceed. The Aclara project team will begin the internal preparations for the official launch of the project. The Aclara project manager will coordinate and schedule the System Owner kick-off meeting with the System Owner. During this kick-off phase, Aclara will define the project team organization and introduce the teams, review the project scope and proposed timeline, review the utility's goals and business objectives and develop the communication plan with the System Owner. Aclara will introduce a project manager and other leaders assigned to oversee and coordinate the day-to-day activities of all parties involved. Entry criteria for this phase to begin are defined as the signature of the contract, the assignment of an Aclara project manager and setting an agreed upon project kick-off start date. This phase will be complete once the project teams have been defined, the kick-off meeting has occurred, and the project plan has been reviewed.

2.2 Phase 02 Requirements

At the beginning of the implementation process, Aclara meets with the key stakeholders to confirm the detailed functional and integration requirements for the system. Aclara will finalize all software requirements. Aclara will hold software interface requirements sessions and create requirement documents and overall solution architecture specifications.

This phase is complete once the System Owner performs review of requirements.

2.3 Phase 03 Installation and Configuration

In this phase, Aclara will install, configure, and test the software components listed below. Aclara will achieve entry criteria by reviewing the signed off requirements. This phase is complete once Aclara and supporting resources install the software solutions, configures interfaces, and completes integration testing.

Software Installation

AclaraONE Headend

- Setup new hosted environment.
- Bring new servers to base installation for OS and SQL Server.
- Install and configure headend application and database.
- Perform database migration for 25 months historical data from NCC solution to AclaraONE Headend.

AclaraONE MDM

- Pre-requisite System Owner Task: Grant access to Microsoft Azure Active Directory for new application per provided hosted specifications.
- Install and configure MDM cloud-based environment.
- Perform ingestion of up to 25 months historical data to AclaraONE MDM.
- Setup administrator user.
- System Owner agrees to allow AclaraSupport user admin access to AclaraONE with two-factor authentication deactivated.

Interface Configuration

- Aclara will configure and test the AclaraONE side of the interfaces on the new environment.
    - Input Integration

Integration Name	Type	Functions
System Owner Account Import Interface	Flat File	Import meter inventory and System Owner account /location data from Aclara SFTP server to AclaraONE (data supplied from System Owner's CIS)
GIS Interface	Flat File	Import Lat/Long data from Aclara to AclaraONE for enhanced visual mapping (data supplied from System Owner)

-
    - Output Integration

Integration Name	Type	Functions
Billing Output Interface	Flat File	Export Billing Read values from AclaraONE to Aclara SFTP server (for System Owner's CIS consumption)
Meter Exchange – (Aquahawk)	Flat File	(ASCII) Export MTU/Meter exchange data from AclaraONE to Aclara SFTP server (for System Owner's CIS consumption)

2.4 Phase 04 Integration Testing

This phase extends the interface testing from the previous stage to internally validate the Software end to end functionality – from the meter reading in the AclaraONE Headend through visualizations in the AclaraONE MDM as well as production and validation of a billing interface extract. Exit criteria from this phase is all internal test cases have been executed and no severity 1 or severity 2 issues are present.

2.5 Phase 05 User Training

Training for AclaraONE software solution is completed in this phase. Aclara will provide training covering changes in the user interface of the AclaraONE software applications.

Training will be conducted via remote webinar sessions.

Please reference table below for training session information. The below details a recommended training approach that is subject to change as part of the project and agreed upon by both Aclara and System Owner prior to the scheduled training. Additional training or onsite training can be added to scope via a change order with cost.

Session Name	Onsite (Y/N)	Proposed # of Sessions	Duration	Agenda	Recommended Attendance
AclaraONE Basic/CSR Training	N	1-2	2-3 hours total	- Welcome / Introductions - Objectives - General Navigation - Consumption Tracking - Hands-on Exercises - Aclara University	3rd Party Call Center, CSR's, Dispatch, Billing, Collections, Leaders, Conservation and Field Technicians
AclaraONE Admin Training	N	1	1 hour total	Review administrative functions in AclaraONE including user administration.	Admins

2.6 Phase 06 Production Cutover and Software Acceptance

After training and interface testing is complete, Aclara supports the System Owner for cutover of the software solutions so data begins flowing between the Aclara applications and the production environment.

Aclara will provide support for Software Acceptance by hosting a webinar walkthrough of the Software Acceptance Document in Exhibit 1 of the SOW within 5 business days post cutover.

Aclara's responsibility is to support issue resolution, as required.

Exit criteria includes:

- Software Acceptance has been executed.
- All Severity 1 and Severity 2 issues have been resolved or a workaround identified.

Severity levels are defined below and apply to issue prioritization throughout the engagement.

Severity Level	Description
1	Requires immediate attention - Service is lost or degraded for all users* preventing operation of business
2	Requires priority attention - Service is lost or degraded for single or small number of users, affecting significant business functionality

3	Requires attention - Users can continue business operations, but a problem or issue has been identified that affects operation of business
4	There is a problem or issue that does not affect operation of business

**For the purposes of this table, "users" is defined as all Aclara Utility users of AclaraONE*

The Software Acceptance concludes when System Owner completes walkthrough of Software Acceptance. Any remaining issues are categorized into severity level 3 or 4.

2.7 Phase 07 Transition to Support

Once Software Acceptance is complete, Aclara will compile all open issues and review the status of these issues with Aclara's Technical Support team and the System Owner's project team.
Additionally, by this time the System Owner will be introduced to Aclara's Technical Support operations. All support operations will begin to be managed by this team. The System Owner will be trained on Aclara's Support processes which includes opening support tickets, managing and obtaining status of these tickets. The System Owner will be introduced to the AclaraConnect System Owner portal.

The review of any open issues and training on the Aclara Support process will take place during the Transition to Support meeting conducted by Aclara. The meeting will occur within 5 business days of the completion of Software Acceptance. Attendance from the System Owner and Aclara Support is mandatory in this meeting.

Exit criteria includes:

- Software Acceptance has been executed.
- Review of any open issues.
- Training on the Aclara Support process.
- All Severity 1 and Severity 2 issues have been resolved or a workaround identified.

Severity levels are defined below and apply to issue prioritization throughout the engagement.

Severity Level	**Description**
1	Requires immediate attention - Service is lost or degraded for all users* preventing operation of business
2	Requires priority attention - Service is lost or degraded for single or small number of users, affecting significant business functionality
3	Requires attention - Users can continue business operations, but a problem or issue has been identified that affects operation of business
4	There is a problem or issue that does not affect operation of business

**For the purposes of this table, "users" is defined as all Aclara Utility users of AclaraONE*

The Transition to Support concludes when the Transition to Support meeting has been completed.

3.0 Deliverables and Milestones by Step

The table below details the milestone deliverables for this project. Delivery dates for each milestone will be communicated at project launch.

Milestone	Deliverables	Payment Milestone Descriptions
1	Contract Execution	Contract Execution Complete. This milestone is complete after the contract documents are fully executed by both parties.
2	Project Kickoff	Project Kickoff Complete. This milestone is complete after the Project Kickoff meeting. Aclara will support this kickoff meeting to walkthrough the project schedule, introduce team members and roles, review System Owner responsibility and upcoming tasks. Additionally, during this meeting, the project governance will be established. This includes communications plan, team meetings, status reporting, and issues management.
3	Installation and Configuration of AclaraONE Software	AclaraONE Software Installed. This milestone is complete after the installation of the software in the System Owner's environment.
4	Deliver Training and Training Materials	Training Complete. This milestone is complete after Aclara provides webinar training for Aclara RF network system administrators, field personnel and System Owner service representatives.

4.0 Preliminary Project Schedule

Upon execution of this SOW, Aclara will work with System Owner to schedule the efforts listed above. The following draft schedule will be refined as part of the project kickoff phase and will be dependent on System Owner's ability to complete its deliverables within the required timeline.

	Duration (in Business Days)	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8
Project Initiation & Kickoff	10 days								
Requirements Gathering & Design	10 days								
Software Installation & Configuration	20 days								
Integration Testing	10 days								
Training	1 day								
Production Cutover	1 day								
Software Acceptance	1 day								
Transition to Support	5 days								
Total # of Days	**40 days**								

*Start Date is typically 2 months from contract execution date.

Assumptions:

- CIS and Billing vendor resources are available to support the integration requirements discussions and any work on the CIS side to enable the interfaces. If support is delayed and causing impact to ability to continue implementation tasks, it may result in a change order.
- System Owner's CIS vendor to validate files sent to them for accuracy and operability.
- No custom reports or headend software customizations are included in this scope.
- System Owner and Aclara will have project resources available to kick off the project within two-months of contract execution.
- Cutover to occur during business hours Monday – Friday. Other times can be supported with an approved change order.

5.0 Project Governance

System Owner agrees to provide appropriate Project resources including but not limited to, data, information, workspace and appropriate and cooperative personnel, all as necessary to facilitate Aclara's performance of the Services and the System Owner integration.

System Owner will allocate the following described personnel to the Project to provide appropriate knowledge of the indicated area and the skills to perform the System Owner tasks, and any additional personnel, including vendor resources, that may be necessary for System Owner to perform its obligations under the implementation work plan.

- Project Manager - Main point of contact for the Project. Is responsible for scheduling System Owner resources, managing the scope and the System Owner tasks of the Project schedule, facilitating document approvals, and escalating and resolving issues as required by the Aclara.

Aclara will allocate the following described personnel to the Project to provide appropriate knowledge of the indicated area and the skills to perform the Aclara tasks, and any additional personnel that may be necessary for Aclara to perform its obligations under the implementation work plan.

- Project Manager - Coordinates scheduling and work assignments, assists in requirements and detailed design, resolves issues and serves as daily interface with the System Owner Project Manager
- Subject Matter Experts in relevant areas of the application
- Technical resource(s) to complete the integration
- Business Analyst(s) familiar with AclaraONE product and integrations
- Quality Assurance Testing resource(s)
- Escalation resource(s)
- Training resource(s)

6.0 Key Scoping Parameters and Assumptions

The scope detailed in the previous section is the basis for Aclara project costs and delivery schedule. Any deviation from these parameters and assumptions may impact project costs and milestone dates. The following assumptions apply to this engagement:

- The Premise ID remains static (the same) even if there is a meter change out, an MTU change out, a Move-in/Move-out, or any combination of these events or any other events.
- System Owner will provide remote access for at least 2 connections into their on-premise environments for Aclara to provide the services described in this SOW. Remote access methodology (e. g. LogMeIn) should not interfere with normal Aclara networking functionality while connected to System Owner's server.
- Travel to System Owner facilities is not anticipated for this engagement and remote access based joint access will be available for issue resolution purposes. If travel is required, the direct costs of travel will be passed on to System Owner.
- Aclara assumes data in System Owner's systems do not require any data cleanup. Any data cleanup will be System Owner's responsibility. Aclara will notify System Owner of bad data when Aclara experiences data issues. If data clean up causes a delay in the project, it may result in a change order with cost.
- Webinar based 3-hour session for training included. If additional training is required, the request will be scoped out with a change order.
-

Exhibit A – Software Acceptance Document (Example)

AclaraONE *Version X*

Software Acceptance Document

Prepared for: System Owner

Month DD, YYYY

OVERVIEW

Software Acceptance will allow the System Owner to verify delivery of the AclaraONE software. Execution of the functionality described in this document is in support of Acceptance of the software. Aclara will provide support for System Owner Software Acceptance by hosting a one-hour webinar walkthrough of this document.

Pre-requisites to beginning System Acceptance Testing are as follows:

1. AclaraONE in Production with DCU backhaul pointed to AclaraONE
2. AclaraONE Training Complete

ACLARAONE

APPLICATION LOGIN

Description	Activity	Expected Results
Application Login	Launch the AclaraONE site https://portal.aclara.one Login with your AclaraONE credentials	Event Summary Dashboard is displayed by default.

MENUS AND NAVIGATION

Description	Activity	Expected Results
Applications menu	The Applications menu will be expanded by default upon login in.	The following options are displayed. • MDM • Administration • Billing Management (optional, included only when VEE is in scope) • Reporting • Aclara RF™ water
MDM submenu	From the Applications menu tab click on MDM.	The following menu items are displayed. • Account Search • Total Consumption • Events – Event List – Event Trends • Event Summary Dashboard

Administration submenu	From the Applications menu tab Click on Administration.	The following sub-menu items are available. • Report Group Management • Resource Security • Event Management • Users
Billing Management submenu (optional, included only when VEE is in scope)	From the Applications menu tab Click on Billing Management	The following sub-menu items are available. • Validate, Estimate, and Edit Reads • VEE Manual Editing
Reporting submenu	From the Applications menu tab Click on Reporting	The following sub-menu items are available. • Usage History Report • Meter Issues Report

Aclara RF™ water submenu	From the Applications menu tab click on Water RF.	The following sub-menu items are available.
		• Equipment
		  ○ DCUs
		  ○ MTUs
		  ○ RDDs (present whether or not RDDs included in scope)
		  ○ Installations
		• Administration
		  ○ Audit Log
		  ○ ZoneScan Global Settings (optional, included only when ZoneScan is in scope)
		  ○ ZoneScan Readings Status (optional, included only when ZoneScan is in scope)
		  ○ ZoneScan.net (optional, included only when ZoneScan is in scope)
		• Communication
		  ○ Firmware Status
		  ○ DCU Firmware Management
		  ○ MTU Firmware Management
		  ○ Communication Status
		  ○ Communication Management

Help Menu	Click the Help link on the upper right corner of the screen.	View Help and/or Ask on AclaraConnect options available.

Attachment 2
To
Statement of Work

Implementation Payment Milestone Schedule

AclaraONE Implementation Fees (One-Time)
Project Milestones - Total AclaraONE -Unified HE -Host Implementation fees - $33,600.00

	Milestone	Item #	Milestone %	Payment $
2	Project Kickoff Meeting Complete	NS-MSSW-W-RF	50%	$16,800.00
4	Conduct Project Training	NS-MSSW-W-RF	50%	$16,800.00
	TOTAL		**100%**	**$33,600.00**

Attachment 3
To
Statement of Work

Change Order Procedure

Any change to a Statement of Work must be agreed upon in writing by both parties. The following procedure (whether requested by the System Owner or Aclara) will be used to control all changes. All Requests for Change ("RFC") to the applicable Statement of Work must be made in writing and shall be submitted by the appropriate Project Manager. Each request should contain the following information:

- The requested change
- The impact, if any, on the existing work product
- Estimated impact, if any, on Project schedule
- Estimated change, if any, in Services fee

The Project Manager shall review and accept or reject the RFC. If rejected, the RFC shall be returned to the submitting party with written reasons for rejection and, as appropriate, any alternatives. All approved RFC's will be incorporated into the Change Order to this Statement of Work. Aclara will not perform any Services outside of the Statement of Work until the RFC has been signed by both parties.

1. Describe the requested change:
   ____
2. Define the impact, if any, on existing work product:
   ____
3. Define additional work product required as a result of the requested change, if any:
   ____
4. Define the impact, if any, to the existing Project Schedule. Provide an updated Project Schedule, if appropriate:
   ____
5. Provide an updated work product and payment schedule, if appropriate:
   ____

Accepted By:

Aclara Technologies LLC (Aclara)

By: __SAMPLE__________________________
Print Name: _SAMPLE____________________
Title: _SAMPLE_________________________
Date: _SAMPLE__________________________

Accepted By:

System Owner (System Owner)

By: __SAMPLE ___________________________
Print Name: _SAMPLE______________________
Title: _SAMPLE___________________________
Date: _SAMPLE___________________________

EXHIBIT B

FEES

LEVEL OF MAINTENANCE SERVICES SELECTED

Customer: City of Redmond, OR ____________________

Address: 411 SW 9th Street, Redmond, OR 67756 ____________________

1. **Billing frequency is annually in advance.**
2. ☐ **If a Purchase Order number is required on Aclara invoices, please check here.**

   A. Selected Maintenance Level (check one) (Annual First Term Price shown):

   ☐ Base $____________

   ☐ Premier $____________

   B. ☒ AclaraONE MDM SaaS ASP: AclaraONE MDM SaaS ASP Fee Year 1 $ 28,630.00
   AclaraONE MDM SaaS ASP Fee Year 2 - $ 30,061.50
   AclaraONE MDM SaaS ASP Fee Year 3 - $ 31,564.58
   AclaraONE MDM SaaS ASP Fee Year 4 - $ 33,142.81
   AclaraONE MDM SaaS ASP Fee Year 5 - $ 34,799.95

3. **Customer Designated Contact Information:**

Designated Renewal Contact Information

Name ____________________

Title____________________

Address____________________

Address____________________

Telephone____________________

Fax____________________

Cellular Phone____________________

Email Address____________________

Designated Contact Information

Name ____________________

Title____________________

Address____________________

Address____________________

Telephone____________________

Fax____________________

Cellular Phone____________________

Email Address____________________

Designated Contact Information

Name ____________________

Title____________________

Address____________________

Address____________________

Telephone____________________

Fax____________________

Cellular Phone____________________

Email Address____________________

Designated Contact Information

Name ____________________

Title____________________

Address____________________

Address____________________

Telephone____________________

Fax____________________

Cellular Phone____________________

Email Address____________________

EXHIBIT C-1
Software Services Schedule
(Not Applicable to Profield® Software Solution)

1. Definitions. For the purpose of this Exhibit, the following definitions shall apply:

A. **"Aclara Holidays"** means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve.

B. **"Additional Services"** means services offered by Aclara for improvements and/or enhancements to the Customer's System that are not covered by this Agreement, but may be offered and provided at the rates set forth on Schedule 2 hereto.

C. **"Classroom Training"** means training offered by Aclara at its facility.

D. **"Customer Portal"** means an electronic gateway to a secure entry point via Aclara's website at www.Aclara.com that allows Aclara customers to log in to an area where they can view and download information or request assistance regarding Issues with the System.

E. **"Customer Site Training"** means Aclara providing its training at the Customer's facility at the then current terms and pricing published on the Aclara Customer Portal. The training may be customized to meet the Customer's needs.

F. **"E-Learning"** means on-line training offered by Aclara via the Internet.

G. **"Issue"** means a problem with the System identified by the Customer, which requires a response by Aclara to resolve.

H. **"Maintenance Services"** means activities to investigate, resolve Issues and correct product bugs arising from the use of the Software in a manner consistent with the published specifications and functional requirements defined during implementation.

I. **"Patch"** means a version of the Software that provides an Error Correction to address an urgent need that is outside the schedule of regularly released Software Revisions or Software Versions.

J. **"Renewal Term"** means each of one or more consecutive twelve (12) month periods following the Initial twelve (12) month Term of this Agreement.

K. **"Severity Level"** means a designation of the effect of an Issue on the Customer's use of the System. The Severity of an Issue is initially defined by the Customer and confirmed by Aclara. Until the Issue has been resolved, the Severity Level may be raised or lowered based on Aclara analysis of impact to business. The four Severity Levels are:

Severity Level	Description
1	**Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the system. Causes a major business**

Severity Level	Description
	impact where service is lost or degraded and no workaround is available, therefore preventing operation of the business.
2	**Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available, however the business can continue to operate in a limited fashion.**
3	**Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.**
4	**There is a problem or issue with no loss of service and no business impact.**

L. **"Software Revision"** means an update to the released version of the Software code which consists of minor enhancements to existing features and code corrections. Software Revisions are provided and included as a part of this Agreement.

M. **"Target Response"** refers to the period of time between a Customer's initial contact with Aclara to report an issue (by phone, email or through the Customer Portal, thereby creating a ticket which has been assigned a number for tracking purposes) and Aclara's initial contact back to Customer to begin investigation of the reported Issue.

N. **"Training Services"** means all training provided by Aclara to the Customer, including but not limited to Classroom Training, E-Learning Training and Customer-Site Training.

2. Scope

A. **Maintenance Services Provided.** Aclara shall provide Maintenance Services at the Premier level as designated in Schedule 1, Level of Maintenance Services Selected. The following are included as part of this Agreement:
   1. **Aclara Software Revisions and Patches.** Aclara shall provide Software Revisions and Patches to the Customer as they become available. In support of such Software Revisions and Patches, Aclara shall provide updated user technical documentation reflecting the Software Revisions and Patches as soon as reasonably practicable after the Software Revisions and Patches have been released. Updated user technical documentation that corrects Errors or other minor discrepancies will be provided to Customers when available.

B. Response to Issues. Aclara will provide verbal or written responses to Issues identified by the Customer in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times as defined in Schedule 1, Level of Maintenance Services.

C. **Service Limitations.** The following limitations apply to Maintenance Services under this Agreement.

   1. During Renewal Term, certain follow-up training is provided as outlined in Schedule 1, Levels of Maintenance Services. Additional training is available and may be purchased.

Please contact Aclara Customer Support at 1-800-892-9008 for training requirements and fees.

2. Maintenance Services do not include any problem arising from the use of components manufactured or authorized by anyone other than Aclara as an interface or peripheral to the Software.

3. Maintenance Services do not include changes in workflow, practices, procedures, or processes that differ from the Software approved specifications.

3. Hosting

A. Aclara will host the ACLARA RF Server Sites in a secure, 24/7 environment according to the terms established below and the terms of the Maintenance Agreement to which this Exhibit D is attached.

B. Aclara will use commercially reasonable efforts to provide a high level of site uptime. It is our goal to provide at least 98% uptime. This means a total of no more than approximately 15 hours of unscheduled down time within a month. This goal excludes scheduled maintenance and upgrades, failure caused by the Internet or Licensee software, events of force majeure, or downtime caused by any other factor beyond Aclara's reasonable control.

C. Aclara will refund up to a percentage (see table below) of the total Hosting Fee for the month if up time performance, with the exclusions noted above, is not met based upon the following table. This table applies to the prime time period only. Downtime is defined as the site being unavailable for customer or staff use.

Average Uptime for the Month	Refund of monthly fee
97% or better	0%
95% – 96.99%	5%
Below 95%	10 %

D. Aclara will use commercially reasonable efforts to prevent more than 1 hour of continuous down time during prime time (defined as 8AM to 12 AM EST) every day; and to prevent more than 6 hours of continuous down time during non-prime time (defined as the hours between 12:01 AM to 7:59 AM (EST), with the same exclusions as noted above.

E. Generally, Aclara performs all scheduled system maintenance and upgrades during non-prime time or off-peak hours. Aclara will provide Licensee with as much advanced notice of scheduled downtime as reasonably possible.

F. During any period of downtime of the Private Label Site(s) or any components of more than 30 minutes in duration, Aclara will provide notice to users by posting a web page that indicates that the site is temporarily unavailable due to routine maintenance and to please come back later.

G. Aclara will provide e-mail notice to appropriate Licensee staff if there will be more than thirty (30) minutes down time of the Private Label Site(s) or any components. Notice will include at least a brief description of the reason for the down time and an estimate of the time when Licensee can expect the site to be up and available.

H. Aclara will provide Licensee access to a client portal that will be used to report issues and review maintenance and upgrade schedule. Licensee agrees to make good faith efforts to notify Aclara in advance whenever unusually heavy traffic is expected because of promotions or other factors.

I. Aclara will use commercially reasonable efforts to respond within thirty (30) minutes during prime time hours or within six (6) hours during non-prime time hours to any issue categorized as Severity 1 (as defined herein) that is posted by Licensee through the reporting tool.

J. Aclara will store customer data on mirrored drives and arrange for daily backup daily all customer data, with backup tapes moved to offsite storage regularly.

K. Aclara will use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the applications are deployed are attached to backup power systems sufficient to maintain the site's availability for so long as any power outage could reasonably be expected to occur, based on the experience of Aclara at its deployment location.

L. Aclara agrees to maintain firewall protection and redundant, high speed Internet connections for the Private Label Site(s).

2. Maintenance and Support

A. Standard Maintenance Services

Maintenance includes all new versions, error corrections, enhancements and improvements to the Program functionality licensed to Licensee, as the same are released to Aclara's Licensees generally. Aclara will provide updates to the application in accordance with the standard release cycle and will provide release notes to Licensees in advance of the release. At Licensee's request, Aclara will provide technical assistance in identifying and resolving issues with the Program's failure to conform to its specifications.

B. Ongoing Support Services

1) In the event that the Licensee sends invalid data to Aclara in the data integration, Aclara will notify the Licensee and the Licensee will adjust their data transfer process to correct the issue.

2)Ongoing Release Testing

a. Aclara Service Level Agreement (SLA) applies to the production environment only. SLA on the test environment can be provided at an additional cost.

LEVELS OF MAINTENANCE SERVICES

Technical Support: *Technical Support is available during the hours of 6:30am- 6:00pm Monday-Friday US Central Time, excluding Aclara Holidays and weekends, toll-free at 800-892-9008.*	
24x7 Technical Support: *Technical Support is available between the business hours of 6:30am to 6pm US Central Time by accessing the Aclara Customer Portal (or Toll-free at 800-892-9008, if access to the Customer Portal is not readily available to Customer). On-call technical support is available after 6pm and before 6:30am Central Time 24-hours a day/7 days a week/365 days a year, including Aclara Holidays and weekends. Such after hours support is provided for Severity 1 and 2 issues only. Non Severity 1 or 2 items will be addressed during the standard business hours of 6:30am-6:00pm US Central Time.*	**X**
Target Response Time – Severity 1: *Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the system. Causes a major business impact where service is lost or degraded and no workaround is available, therefore preventing operation of the business.*	**<2 hours**
Target Response Time – Severity 2: *Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available, however the business can continue to operate in a limited fashion.*	**<4 hours**
Target Response Time – Severity 3: *Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.*	**<6 hours**
Target Response Time – Severity 4: *There is a problem or issue with no loss of service and no business impact.*	**<1 business day**
Access to Aclara Customer Portal (www.aclara.com): *Customer will receive individual user names/passwords to the Aclara Customer Portal, as well as have access to Issue Management Reports for each case generated by Customer.*	**X**
Follow-up Aclara Classroom Training. *Training is available at Aclara's facilities as listed on the Aclara Customer Portal. The maximum number of Customer's employees attending any Classroom Training session is three (3).*	**No Maximum Number of Classes**
Aclara Web based E-Learning classes. *Certain E-Learning classes are available as listed on the Aclara Customer Portal to an unlimited number of Customer employees per course at the prices listed on the Aclara Customer Portal.*	**No Cost**

Exhibit C-2

Software Deliverable Support Services Schedule

1. **Definitions.** For the purposes of this Exhibit, the following definitions shall apply:

   A. **"Aclara Holidays"** means New Year's Day, Dr. Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve.

   B. **"Aclara Technology System" (or "System")** means the system comprised of, in part 1) the Hardware purchased from Aclara by Customer, and 2) the Software licensed by Aclara to Customer under the terms of the Software License Agreement.

   C. **"Additional Services"** means services offered by Aclara for improvements and/or enhancements to the Customer's System that are not covered by this Agreement, but may be offered and provided at the rates set forth on Schedule 2 hereto.

   D. **"Classroom Training"** means training offered by Aclara at its facility.

   E. **"Customer Portal"** means an electronic gateway to a secure entry point via Aclara's website at www.Aclara.com that allows Aclara customers to log in to an area where they can view and download information or request assistance regarding Issues with the System.

   F. **"On-Site Maintenance Services"** means Aclara providing Maintenance Services at the Customer's facility at the then current rates stated in Schedule 2, Time and Material Rates, attached hereto.

   G. **"Custom Enhancement"** means any improvement, modification or addition that, when made or added to the Software or Third Party Licensed Software, changes its utility, efficiency, functional capability or application. Custom Enhancements are not included as part of this Agreement.

   H. **"Customer Site Training"** means Aclara providing its training at the Customer's facility at the then current terms and pricing published on the Aclara Customer Portal. The training may be customized to meet the Customer's needs.

   I. **"Delivery"** means, in the case of Software provided hereunder (and as applicable), (i) the remote installation of the Software by Aclara on the Customer-provided Designated Equipment; or (ii) delivery of the Designated Equipment provided by Aclara on which the Software is installed; or (iii) the loading of the software to an FTP site for Customer's availability to download. "Delivery" means, in the case of Services provided hereunder, the periodic performance of such Services as described herein.

   J. **"Error"** means any failure of Software to conform in all material respects to the requirements of this Agreement or Aclara's published specifications. Any nonconformity resulting from Customer's misuse, improper use, alteration or damage of the Software, the combination of the Software with any hardware or software not supplied by or authorized by Aclara, or any other condition beyond the control of Aclara, shall not be considered an Error.

   K. **"Error Correction"** means either a modification or addition that, when made or added to the Software, brings the Software into material conformity with the published specifications, or a procedure or routine that, when observed in the regular operation of the Software, avoids the practical adverse effect of such nonconformity.

L. "**E-Learning**" means on-line training offered by Aclara via the Internet.

M. "**Hardware**" means the equipment supplied by Aclara which may include the Substation Communication Equipment (SCE), Remote Communications Equipment (RCE), Test Equipment, Meter Transmission Unit (MTU), Data Collection Unit (DCU) and MTU programmer.

N. "**Issue**" means a problem with the System identified by the Customer, which requires a response by Aclara to resolve.

O. "**Maintenance Services**" means activities to investigate, resolve Issues and correct product bugs arising from the use of the Software in a manner consistent with the published specifications and functional requirements defined during implementation.

P. "**Patch**" means a version of the Software that provides an Error Correction to address an urgent need that is outside the schedule of regularly released Software Revisions or Software Versions.

Q. "**Renewal Term**" means each of one or more consecutive twelve (12) month periods following the Initial twelve (12) month Term of this Agreement.

R. "**Severity Level**" means a designation of the effect of an Issue on the Customer's use of the System. The Severity of an Issue is initially defined by the Customer and confirmed by Aclara. Until the Issue has been resolved, the Severity Level may be raised or lowered based on Aclara analysis of impact to business. The four Severity Levels are:

Severity Level	Description
1	**Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the system. Causes a major business impact where service is lost or degraded and no workaround is available, therefore preventing operation of the business.**
2	**Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available, however the business can continue to operate in a limited fashion.**
3	**Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.**
4	**There is a problem or issue with no loss of service and no business impact.**

S. "**Software Version**" means the base or core version of the Software that contains significant new features and significant fixes and is available to the Customer. Software Versions may occur as the Software architecture changes or as new technologies are developed. Software Versions are not provided or included as part of this Agreement.

T. "**Software Revision**" means an update to the released version of the Software code which consists of minor enhancements to existing features and code corrections. Software Revisions are provided and included as a part of this Agreement.

U. **"<u>Target Response</u>"** refers to the period of time between a Customer's initial contact with Aclara to report an issue (by phone, email or through the Customer Portal, thereby creating a ticket which has been assigned a number for tracking purposes) and Aclara's initial contact back to Customer to begin investigation of the reported Issue.

V. **"<u>Third Party Licensed Software</u>"** shall have the meaning as it is defined in Attachment A.

W. **"<u>Training Services</u>"** means all training provided by Aclara to the Customer, including but not limited to Classroom Training, E-Learning Training and Customer-Site Training.

2. <u>Scope</u>

A. **<u>Software Maintenance</u>.** The Software maintained under this Schedule shall be the Software set forth in Attachment A as a Software Deliverable. Any additional Software Deliverables for which a license is obtained by the Customer from Aclara shall be governed by this Schedule and the pricing for Maintenance Services adjusted accordingly.

B. **<u>Levels of Maintenance Services</u>.** Two (2) Levels of Maintenance are available to Customer under this Agreement. Each level is identified and described in Schedule 1, Levels of Maintenance Services attached hereto and made a part hereof. Customer may, at its option, change the Level of Maintenance for any subsequent Renewal Term, provided Customer gives Aclara written notice of the requested change no less than thirty (30) days prior to the end of the Initial Term or then current Renewal Term**.**

C. **<u>Maintenance Services Provided</u>.** Aclara shall provide Maintenance Services at the level selected by the Customer as designated in Schedule 1, Level of Maintenance Services Selected. The following are included as part of this Agreement:

1. **<u>Aclara Software Revisions and Patches</u>.** Aclara shall provide Software Revisions and Patches to the Customer as they become available. In support of such Software Revisions and Patches, Aclara shall provide updated user technical documentation reflecting the Software Revisions and Patches as soon as reasonably practicable after the Software Revisions and Patches have been released. Updated user technical documentation that corrects Errors or other minor discrepancies will be provided to Customers when available.
2. **<u>Third Party Software Revisions</u>.** At the option of Aclara, periodic Software Revisions of the Third Party Licensed Software will be provided by Aclara without further charge provided the following conditions are met: (i) the Software Revision corrects a malfunction in the Third Party Software that affects the operation of the Software; and (ii) the Software Revision has, in the opinion of Aclara, corrected malfunctions identified in the Aclara Technology System and has not created any additional malfunctions; and (iii) the Software Revision is available to Aclara. Customer is responsible for obtaining and installing the Software Revision if the Third Party Software was not licensed to Customer by or through Aclara. Software Revisions to Third Party Licensed Software provided by Aclara are specifically limited to the Third Party Software identified and set forth in the Software License Agreement. Any associated Hardware or Hardware modifications required to support revisions of Third Party Software are not included under the terms of this Agreement.

D. **<u>Response to Issues</u>.** Aclara will provide verbal or written responses to Issues identified by the Customer in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times as defined in Schedule 1, Level of Maintenance Services.

E. **<u>Service Limitations</u>.** The following limitations apply to Maintenance Services under this Agreement.

1. New Software Versions are not included as a part of this Agreement. Such Software Versions will be offered to Customer for additional fees and costs.

2. Services requested by Customer for assistance with installation or implementation of Software Revisions and Patches are not included in this Agreement, but are offered to the Customer on a time and materials basis at the rates stated in Schedule 2 hereto.

3. System administration, database maintenance and recovery, server malfunctions, database backup processes, management and training services, master station computer equipment repair are not included as part of this Agreement.

4. Maintenance services shall be limited to the latest Software Revision within the last two (2) years in accordance with Section 3.E below. All code changes, Enhancements or fixes will be incorporated into the latest Software Revision or a future Software Revision. Aclara has no obligation to make code changes, Enhancements or fixes to previous Software Revisions.

5. Maintenance Services do not include costs incurred by Aclara while investigating problems that are the result of Customer's negligence, misuse, or unauthorized application, alteration, or modification of the Software, Hardware, or interfaces to the equipment configuration, which shall be invoiced to Customer on a time-and-material basis at Aclara's then current published rates. The current rates are set forth on Schedule B hereto.

6. Services offered outside of Maintenance Services as noted in Schedule C-3, Supplemental Services attached hereto are not included in this Agreement. Such additional services are available and may be provided upon Customer's request at the fixed price established on Schedule C, and if no fixed price is established, in accordance with the terms and rates provided in Schedule B hereto.

7. During Renewal Term, certain follow-up training is provided as outlined in Schedule 1, Levels of Maintenance Services. Additional training is available and may be purchased. Please contact Aclara Customer Support at 1-800-892-9008 for training requirements and fees.

8. Aclara shall consider and evaluate the development of Custom Enhancements for the specific use of Customer and shall respond to Customer's requests for Custom Enhancements or other additional services pertaining to the Software. Such Custom Enhancements or additional services shall be subject to a separate charge in accordance with Aclara's then in effect rates. The current rates are listed on Schedule 2 hereto.

9. Maintenance Services do not include any problem arising from the use of components manufactured or authorized by anyone other than Aclara as an interface or peripheral to the Software.

10. Maintenance Services do not include any problem resulting from the combination of the Software with such other programming or equipment unless such combination has been approved by Aclara.

11. Maintenance Services do not include any problem caused by changes to other software (including releases and patches), interfaces or systems connected to the Software

including but not limited to changes of operating systems database servers, web servers, and communications software.

12. Maintenance Services do not include changes in workflow, practices, procedures, or processes that differ from the Software approved specifications.

13. Customer specific testing and reimplementation of Custom Enhancements are not part of this Agreement.

Customer will be responsible to pay Aclara for time or other resources provided by Aclara to diagnose or attempt to correct any of the items set forth above in this Section 2.F., at Aclara's then current time and material rates. If Aclara incurs expense in servicing claims which are later shown to result from any of the above activities, Customer shall pay Aclara the costs associated with the performance of such service. Aclara's time and material rates are attached hereto as Schedule 2. Aclara, in its sole discretion, may change these rates from time to time with thirty (30) days advance notice to Customer.

3. <u>Customer Responsibilities</u>

A. <u>Backups</u>. Customer shall maintain a current backup copy of all Software and databases. Customer shall perform regular daily backups of its data, and weekly backups of its entire system maintained under this Agreement.

B. <u>Notification of Issues</u>

During the hours between 6:30 a.m. and 6:00 p.m. Central Time on Monday through Friday, excluding Aclara Holidays:

1. Customer shall provide Aclara with timely notification of any new System issues by one of three methods:

   b. By entering the problem on the Aclara Customer Portal (See Note 1 below);

   c. Contacting Aclara Customer Support at **1-800-892-9008;** or

   d. Emailing the problem to **support@aclara.com**

   Note 1: Customer's utilization of the Aclara Customer Portal is the preferred method for Issue notifications.

2. <u>Premier Level</u>. Selection of the Premier level of services provides technical support for Severity 1 and 2 issues, 24 hours per day; seven (7) days per week; 365 days per year. All Severity 1 and 2 notifications submitted between the hours of 6:00 p.m. and 6:30 a.m. Central Time (Monday through Friday, Weekends and Aclara Holidays) must be submitted through the Aclara Customer Portal. If Customer cannot readily access the Aclara Customer Portal, Customer may contact Aclara at the "800" number listed above. Premier Level Customers will receive priority treatment over Base Level Customer when resources are allocated to competing, same-priority issues.

3. <u>Base Level</u>. Selection of the Base level of services ensures tickets will be processed on the next business day within the normal business hours (6:00 p.m. and 6:30 a.m. Central Time) noted on Schedule 1, Levels of Maintenance Service. If an emergency arises, Aclara does offer support for

Issues arising during other than normal business hours at the Time and Material Rates set forth in Schedule B hereto.

C. Technical Staff. Customer shall be responsible for maintaining sufficient suitably trained technical staff to operate and maintain the System on a day-to-day basis, including backing up the Software and report handling. Aclara training for designated contacts shall be made available to Customer.

D. Support for Problem Investigation. Customer shall support all reasonable requests by Aclara as may be required in problem investigation and resolution. For troubleshooting purposes, Aclara may need remote system access to Customer's system.

E. Maintain Current Software Revision. Customer shall install new revisions of defined Software in the production environment within two (2) years of receipt of the Software Revision. Customer shall maintain the required version of the Third Party Licensed Software, if applicable, specified by Aclara for each released Software Revision provided. Aclara Error Corrections will be provided on Aclara's latest release of the Software Revision.

F. Additional Requirements. Customer is responsible for procuring, installing and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and obtain Maintenance Services from Aclara.

G. Designation of Point of Contact. Customer shall assign an individual or individuals to serve as the designated contact(s) for all communication with Aclara during Issue investigation and resolution.

H. Discovery of Errors. Upon discovery of an Error, Customer agrees, if requested by Aclara, to submit to Aclara a listing of output and any other data that Aclara may require in order to reproduce the Error and the operating conditions under which the Error occurred or was discovered.

I. Test Environment. If Customer elects to purchase a test environment, Customer should maintain a test copy of the Program and a separate test data base (other than Customer's production database) and shall test all new Software Revisions, Patches, Custom Enhancements, hotfixes and Error Corrections before integrating them into system productions.

J. Technical Infrastructure Management. Customer shall manage hardware, software, network, storage, database, and peripheral devices for optimal operating performance and availability as required by end users.

K. Proactive Monitoring. Unless Customer elects to purchase the Supplemental Service "AMI Advanced System Monitoring Service" set forth in Exhibit C-3, Customer shall regularly monitor the hardware, software and infrastructure that support the Software application. Customer shall define system (OS/Oracle) level event logging, notification and escalation procedures, and detect and react to events. Customer shall regularly monitor event logs, server logs, and other debug information generated by the application to proactively identify problems.

L. Acceptance. On or before ten (10) business days after Aclara's release of a new Custom Enhancement, hotfix or Error Correction that Aclara issues in response to an Error Report, Customer shall test and notify Aclara if there are any problems that need further resolution, or if Customer accepts the solution, Customer shall send such notification to Aclara's e-mail support address. If Aclara receives neither a request for further assistance nor an acceptance of the solution, the solution will be deemed accepted by Customer, and Aclara will have no further obligation to maintain the Software in its earlier form or version. Problems arising from the aforementioned items requiring further resolution will be included as part of this Agreement.

M. Routine System Management. Customer shall monitor the system logs and database and perform routine system and database management to ensure proper system operation.

SCHEDULE 1
LEVELS OF MAINTENANCE SERVICES

	Base	*Premier*
Technical Support: *Technical Support is available during the hours of 6:30am- 6:00pm Monday-Friday US Central Time, excluding Aclara Holidays and weekends, toll-free at 800-892-9008.*	**X**	
24x7 Technical Support: *Technical Support is available between the business hours of 6:30am to 6pm US Central Time by accessing the Aclara Customer Portal (or Toll-free at 800-892-9008, if access to the Customer Portal is not readily available to Customer). On-call technical support is available after 6pm and before 6:30am Central Time 24-hours a day/7 days a week/365 days a year, including Aclara Holidays and weekends. Such after hours support is provided for Severity 1 and 2 issues only. Non Severity 1 or 2 items will be addressed during the standard business hours of 6:30am-6:00pm US Central Time.*		**X**
Target Response Time – Severity 1: *Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the system. Causes a major business impact where service is lost or degraded and no workaround is available, therefore preventing operation of the business.*	**<4 hours**	**<2 hours**
Target Response Time – Severity 2: *Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available, however the business can continue to operate in a limited fashion.*	**<1 day**	**<4 hours**
Target Response Time – Severity 3: *Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.*	**<2 days**	**<6 hours**
Target Response Time – Severity 4: *There is a problem or issue with no loss of service and no business impact.*	**<3 business days**	**<1 business day**
Access to Aclara Customer Portal (www.aclara.com): *Customer will receive individual usernames/passwords to the Aclara Customer Portal, as well as have access to Issue Management Reports for each case generated by Customer.*	**X**	**X**
Follow-up Aclara Classroom Training. *Training is available at Aclara's facilities as listed on the Aclara Customer Portal. The maximum number of Customer's employees attending any Classroom Training session is three (3).*	**Aclara List Price**	**No Maximum Number of Classes**
Aclara Web based E-Learning classes. *Certain E-Learning classes are available as listed on the Aclara Customer Portal to an unlimited number of Customer employees per course at the prices listed on the Aclara Customer Portal.*	**Aclara List Price**	**No Cost**

SCHEDULE 2

TIME AND MATERIAL RATES

Additional Services may be provided at the Customer's request in accordance with the following Time and Material Rates (hereinafter referred to as "Rates"[7]).

Rates:

1. The following Rate categories have been defined for Aclara technical staff:

Professional Services Staff	Hourly Rate	Off-hours hourly rate
Sr. Technical Advisor	$250	$375
Program Manager	$300	$450
Product Manager	$300	$450
Project Manager	$250	$375
Field Supervisor	$180	$270
Sr. Systems Engineer/Sr. QA	$250	$375
Sr. Business Analyst	$250	$300
DBA/Application Consultant	$200	$300
Systems Engineer/QA/UI	$200	$300

2. Rate Adjustments.

   The above hourly rates are in U.S. Dollars and are subject to annual adjustment up to five percent (5%).

3. Service Charges.

   A. Services will be charged at the applicable Rates as follows:

      1) Standard Hourly Rates will apply to all service hours expended that do not exceed eight (8) consecutive hours during Aclara's normal business hours of 6:30 a.m. - 6:00 p.m. Central Time, Monday through Friday, excluding Aclara Holidays.

      2) Off-Hours Hourly Rates will apply to all service-hours expended beyond eight (8) consecutive hours during Aclara's normal business hours of 6:30 a.m. – 6:00 p.m. Central Time, Monday through Friday excluding Aclara Holidays.

   B. If Aclara is requested to travel to the Customer's site to provide Services, the costs and expenses associated with such travel will be borne by Customer and invoiced as set forth below.

      1) Travel Expenses: Unless otherwise mutually agreed, Aclara's travel expenses for On-Site Services shall include, but are not limited to airfare, lodging, meals,

[7]Rates exclude any applicable taxes and the like.

automobile rental, fuel, parking and associated administration fees, and will be charged to Customer on an actual basis.

2) Portal to Portal Invoices: Travel time for On-Site Maintenance Services will be invoiced to Customer on a portal-to-portal basis at Aclara's On-Call Hourly Rates.

4. Pre-Purchased Support Hours

A. Pre-purchased software support hours are a block of hours intended to cover Software issues that are not covered under this Agreement, thereby allowing the Customer added flexibility to utilize Aclara's services without generating a Change Order. Should Customer request services which are not included in this Agreement and desire to utilize the pre-purchased hours, Aclara shall provide the Customer with an estimated number of hours required to resolve such request. The Customer may then advise Aclara either to stop working, sign and fund a Change Order, or use the pre-purchased support hours to resolve the request. Aclara reserves the right to decline the Customer's request, depending on the nature of the request.

B. Pre-purchased support hours may be purchased at any time during the term of this Agreement. Pre-purchased support hours expire upon termination of this Agreement or within one year after purchase (regardless of use), whichever occurs first.

C. Pre-purchased software support hours are offered in the following increments and volume discounts:

40 hours	Hourly Rates listed in Section 1 above.
80 hours	5% discount
120 hours	10% discount

Exhibit C-3

Supplemental Services

1. **AMI System Monitoring Service**

A. **Tiered Annual Fees:**

Tier 1 (Less than 1,000 endpoints) $ 2,000.00
Tier 2 (1,001 to 10,000 endpoints) $ 4,000.00 + $.22 per endpoint over 1,001
Tier 3 (10,001 to 25,000 endpoints) $ 6,000.00 + $.13 per endpoint over 10,001
Tier 4 (25,001 to 50,000 endpoints) $ 8,000.00 + $.08 per endpoint over 25,001
Tier 5 (50,001 to 100,000 endpoints) $10,000.00 + $.05 per endpoint over 50,001
Tier 6 (Greater than100,000 endpoints) Please contact Aclara for pricing

B. Aclara's AMI System Monitoring service is designed to monitor end to end data transfer from meter/MTU's to and from DCU's to the head-end software, and provide health status of your AMI system to minimize system downtime. Aclara will deliver a weekly diagnostic report that will identify issues which could affect the successful operation of your Aclara AMI system. The major components of the system that will be analyzed include:

- Head-end software
- Data Collector Units (DCU)
- Meter Transmitting Units (MTU)
- Field programmers

C. Aclara's proactive approach is to look for any condition out of the ordinary and will result in an immediate issue of a troubleshooting ticket and/or field work order based on the nature and severity of the condition. Example diagnostics include:

- Battery voltage loss
- Reading reception loss
- File processing errors

D. Customers will be notified about the issues found, the recommended steps to solve the problem, and the path for any required escalation. Aclara will provide:

- A snapshot of the AMI system's health
- Generation of incident tickets, investigation and if needed, scheduling of work orders
- Notification that the issue has been resolved and confirmation that the STAR system is operating within established normal parameters

E. The AMI System Monitoring Service requires that Aclara be allowed the following access and functionality:

- Install the required tracking scripts on Customer's head-end system
- Necessary data must be allowed to be passed from Customer's head-end system to Aclara for analysis
- Aclara must have reliable remote connectivity to Customer's System

2. AMI Advanced System Monitoring Service

A. **Annual Fee:**

- Pricing available upon request

B. Aclara's AMI Advanced System Monitoring service is a near real-time interactive tool designed to monitor end to end data transfer from meter/MTU's to and from DCU's to the head-end software, and provide health status of your AMI system to minimize system downtime. Aclara will enable an interactive dashboard you can access at any time both for viewing summary reports and drilling down into specific details, and also deliver a weekly summary report. Additionally, Aclara will schedule and execute a monthly review call with designated Customer resources to review the state and performance of the network since the last review.

C. The major components of the system that will be analyzed include:
- Head-end software
- Data Collector Units
- Meter Transmitting Units
- Field programmers

D. Not only will the interactive tool and access be made available, but Aclara will proactively monitor your network looking for any condition out of the ordinary. Such conditions will result in an immediate issue of a troubleshooting ticket and/or field work order based on the nature and severity of the condition. Example diagnostics include:
- Battery voltage loss
- Reading reception loss
- File processing errors

E. Customers will be notified about the issues found, recommended steps to solve the problem, and the path for any required escalation. Aclara will provide:
- A snapshot of the AMI system's health
- Generation of incident tickets, investigation and if needed, scheduling of work orders
- Notification that the issue has been resolved and confirmation that the STAR system is operating within established normal parameters

F. The AMI Advanced System Monitoring Service requires that Aclara be allowed the following access and functionality:
- Install the required tracking scripts on Customer's head-end system
- Necessary data must be allowed to be passed from Customer's head-end system to Aclara for analysis
- Aclara must have reliable remote connectivity to Customer's System
- Identified Customer resources and regularly scheduled monthly review session

3. AMI DCU Maintenance Service

A. Tiered Annual Fees:

Tier	DCU (Low End)	DCU (High End)	Price / DCU
Tier 1	1	15	$ 550.00
Tier 2	16	30	$ 500.00
Tier 3	31	50	$ 450.00
Tier 4	50	1000	Call for Pricing

In addition to the above unit prices, Customer shall also be responsible for any associated rental equipment and delivery costs to access the DCU.

B. Aclara's AMI DCU Maintenance service is designed to provide for the on-site repair of any DCU that fails under normal operation after expiration of the standard DCU Warranty. The Service covers all electronics including the Aclara provided WAN module and solar cell, but excludes the mounting frame, mounting hardware, and battery.

C. The Service does not include maintenance or repairs attributable to the unauthorized attempt by Customer or any unauthorized person other than an authorized Aclara representative to repair or maintain a DCU. Maintenance or repairs resulting from casualty, catastrophe, extreme weather conditions or natural disaster (including lightening damage), accident, vandalism, civil unrest, war, misuse, neglect or negligence of Customer, or causes external to the DCU such as, but not limited to, failed or faulty electrical power, communication failure resulting from cell or other WAN network service interruption or any causes other than ordinary use. Maintenance or repairs to attachments or to any other devices not originally a part of the DCU and added without the prior written approval of Aclara. Repairs resulting from unauthorized changes, modifications or alterations of or to the DCU are not covered under this Agreement.

D. Upon notification from Customer of DCU failure, Aclara will diagnose the DCU. If a failure occurs to a DCU covered under the Agreement, the unit will be repaired or replaced, at Aclara's option, at no additional cost to Customer. If the Customer has entered into a System Monitoring agreement with Aclara, Aclara will normally identify the problem as part of its System Monitoring and will take the necessary steps to resolve the problem. The Customer is responsible for arranging access to DCU sites before Aclara can take action.

E. Customer's electing the Aclara AMI DCU Maintenance Service must purchase the service for all DCUs in the AMI network; Aclara AMI DCU Maintenance Service may not be purchased on an individual, case-by-case basis.

4. AMI DCU Preventative Maintenance Service

A. **Tiered Annual Fees:**

- Tier 1 (Less than 15 DCUs) $ 800.00 per DCU per year
- Tier 2 (16 to 30 DCUs) $ 750.00 per DCU per year
- Tier 3 (31 to 50 DCUs) $ 700.00 per DCU per year
- Tier 4 (Greater than 50 DCUs) Please contact Aclara for pricing

In addition to the above unit prices, Customer shall also be responsible for any associated rental equipment and delivery costs to access the DCU either during a covered repair or a preventative visit.

B. Aclara's AMI DCU Preventative Maintenance service is designed to provide for the on-site repair of any DCU that fails under normal operation after expiration of the standard DCU Warranty, as well as provide periodic on-site maintenance and inspection of all DCUs in a covered deployment (at 5 year intervals from installation).

C. The service covers all electronics including the Aclara provided WAN module and solar cell, but excludes the mounting frame, mounting hardware and battery – excepting the periodic preventative inspection as listed below.

D. Beyond break/fix as above, this Service encompasses the following preventative maintenance service:

1. At year 5 after installation (and again at year 10 if the coverage is maintained uninterrupted) Aclara will visit all DCUs and perform the following service at each DCU:

   - Document and confirm each DCU's configuration
   - Replace the DCU backup battery
   - Inspect and replace where needed: antennas, antenna cables, and solar panels
   - Inspect mounting hardware: replace as needed (hardware costs are not covered, will be charged on a time and materials basis)
   - Clean and adjust chassis and solar panel
   - Install all outstanding DCU firmware updates and patches
   - Confirm proper DCU functionality after maintenance is completed

   Issues beyond the above maintenance items will be escalated to the Utility and Aclara Support for proper resolution

E. The Service does not include maintenance or repairs attributable to the unauthorized attempt by Customer or any unauthorized person other than an authorized Aclara representative to repair or maintain a DCU. Maintenance or repairs resulting from casualty, catastrophe, extreme weather conditions or natural disaster (including lightening damage), accident, vandalism, civil unrest, war, misuse, neglect or negligence of Customer, or causes external to the DCU such as, but not limited to, failed or faulty electrical power, communication failure resulting from cell or other WAN network service interruption or any causes other than ordinary use. Maintenance or repairs to attachments or to any other devices not originally a part of the DCU and added without the prior written approval of Aclara. Repairs resulting from unauthorized changes, modifications or alterations of or to the DCU are not covered under this Agreement.

F. Customer's electing the Aclara AMI DCU Preventative Maintenance Service must purchase the service for all DCUs purchased by Customer; Aclara AMI DCU Preventative Maintenance Service may not be purchased on an individual, case-by-case basis and must be maintained uninterrupted from year 2 after DCU installation to be eligible for the 5 year and 10 year inspections.

5. Additional Data Retention Service - RESERVED

Quotation

Quote #:	Q-28407-1
Created Date:	5/16/2023 10:06 AM
Expiration Date:	4/30/2024

Aclara
77 West Port Plaza, Suite 500
St. Louis, MO 63146
US
Phone: (800) 297-2728

Bill To
Josh Wedding
Redmond, City of (OR)
716 SW Evergreen Ave
Redmond, OR 97756
US
(541) 504-2022
(841) 548-0253
joshuaw@ci.redmond.or.us

End Customer
Redmond, City of (OR)

Prepared By	Phone	EMAIL	PAYMENT METHOD
J.D. McQuiston		jmcquiston@hubbell.com	Net 30

AclaraONE Setup/Integrations

Product Description	Part No.	Qty	Net Unit Price	Extended Price
AclaraONE -Unified HE -SaaS Implementation	SW-3010H	11,498	USD 21,000.00	USD 21,000.00
AclaraONE - MDM Additional Interfaces-SaaS Implementation	SW-3020H	11,498	USD 12,600.00	USD 12,600.00

Year 1

Product Description	Part No.	Qty	Price per Endpoint	Extended Price
AclaraONE -MDM -SaaS ASP	SW-3020A	11,498	USD 2.49	USD 28,630.00

Year 2

Product Description	Part No.	Qty	Price per Endpoint	Extended Price
AclaraONE -MDM -SaaS ASP	SW-3020A	11,498	USD 2.62	USD 30,061.50

Year 3

Product Description	Part No.	Qty	Price per Endpoint	Extended Price
AclaraONE -MDM -SaaS ASP	SW-3020A	11,498	USD 2.75	USD 31,564.58

Year 4

Product Description	Part No.	Qty	Price per Endpoint	Extended Price
AclaraONE -MDM -SaaS ASP	SW-3020A	11,498	USD 2.89	USD 33,142.81

Year 5

Product Description	Part No.	Qty	Price per Endpoint	Extended Price
AclaraONE -MDM -SaaS ASP	SW-3020A	11,498	USD 3.03	USD 34,799.95

Sub-Total	**USD 191,798.84**

Total	**USD 191,798.84**

Notes

TERMS & CONDITIONS
General Note:
This Proposal/Quotation is based upon the terms and conditions set forth in the Aclara Standard Terms and Conditions of Sales for Equipment and certain services that are available on Aclara's website at:
http://www.aclara.com/terms-and-conditions/

1. **ADDITIONAL TERMS:**
   Each Line Item will be shipped within the number of weeks staged after receipt of an acceptable order.
2. This quotation is based upon receipt and acceptance of an order by the earlier of the Expiration Date in the upper right or 60-days after the Proposal Date contained herein.
3. Seller shall deliver Equipment to Buyer FCA Seller's Facility or warehouse (Incoterms 2010.) Seller will arrange freight on Buyer's behalf.
4. Buyer shall pay Seller's standard Material Handling charges.
5. Sales tax will be charged unless the customer provides/has provided a valid Sales Tax Exemption or Reseller certificate.
6. Total Extended price shown excludes any applicable Sales Tax.
7. Software subject to 5% annual escalation starting year 2
8. AclaraONE configuration based on total system size as shown above. Final AclaraONE configuration will be determined by working in conjunction with IT staff at the beginning of each contract year and pricing adjusted accordingly for that year. If optional software is selected, a Software License Agreement amendment will be required.
9. IF BUYER ACCEPTS THIS QUOTE AND WILL ISSUE ACLARA A SEPARATE PURCHASE ORDER BASED THEREON, DO NOT RETURN A SIGNED COPY OF THIS QUOTE.
   RETURNING BOTH A SIGNED QUOTE AND SEPARATE PURCHASE ORDER WILL RESULT IN THE BUYER BEING BILLED FOR TWO ORDERS.

To place an order, please send a signed copy of your Purchase Order referencing this quotation to
AclaraOrders@hubbell.com
or simply reply to your sales rep via email with the fully executed PO attached.

If there is no Purchase Order, enter N/A in PO Number, your signature, and your Ship To Street Address (P.O. Box not allowed) to acknowledge that this quote form will be used in lieu of PO.

Signature: ______________________ **Effective Date:** ______/______/______

Name (Print): ______________________ **Title:** ______________________

PO Number *: ______________________

*** Ship To:**

Street: ______________________

City, State Zip: ______________________

***** If there is no purchase order, Ship To address must be entered.

Aclara Confidential / Proprietary Information

Seller's above quote is expressly made conditional on the Buyer's assent to all of the terms and conditions located at http://www.aclara.com/terms-and-conditions *. By issuing a Purchase Order or Order to Seller based on this Quote, Buyer hereby represents and affirms that it has reviewed and assents to these terms and conditions. ADDITIONAL TERMS CONTAINED ON ANY PURCHASE ORDER ARE HEREBY REJECTED UNLESS SPECIFICALLY AGREED TO IN WRITING BY ACLARA (SELLER) and BUYER.*

CITY OF REDMOND

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STAFF REPORT

DATE: April 9, 2024
TO: Redmond City Council
THROUGH: Keith Witcosky, City Manager
FROM: Kelly Morse, City Recorder
SUBJECT: Ordinance #2024-04: An ordinance amending Redmond City Code Chapter 2, Section 2.120, pertaining to the nomination of candidates for election to the position of Mayor and City Councilor.

Report in Brief:
This item requests City Council amend the election nomination process for Mayor and City Councilor by establishing a fixed number of required elector signatures.

Background:
Oregon Revised Statute 249.072(2) outlines the signature requirements for local nonpartisan election petitions. Section 27 of the Redmond City Charter, states, "Nomination of a candidate for an elective City office shall be by petition in a manner prescribed by ordinance."

On July 9, 1996, the City Council passed Ordinance #96-24 which adopted language requiring the number of petition signatures be equal to 1% of the votes cast for Governor during the last election within the district. On May 19, 2020, the City Council passed Ordinance #2020-10 which temporarily suspended the collection of signatures due to COVID and allowed for the filing of a nominating petition for the 2020 General Election for a fee of $35.

Discussion:
Under Ordinance #96-24, the number of required signatures can fluctuate every four years. Redmond continues to be one of the fastest growing cities, resulting in a continual increase in the number of required signatures. Redmond's current requirement for 2024 General Election petitions is 161 signatures.

For those cities that require the same number of signatures for both Mayor and City Councilor positions and offer no option to file by fee, Redmond had the third-highest number of signatures in the State (there are 241 cities in Oregon) and second highest in Central Oregon for the 2022 General Election. Only Portland and Bend ranked higher with 500 signatures and 150 signatures respectively. For the 2024 General Election, based on the calculation method prescribed in Ordinance #96-24, Redmond will surpass Bend and move into the 2nd position statewide and 1st in Central Oregon despite Bend having a population of nearly three times that of Redmond's.

2022 General Election Signature Requirements by Population:

City	Population	Signatures
Portland	635,067	500
Eugene	177,923	25
Gresham	114,361	20
Hillsboro	105,154	20
Bend	100,922	150
Medford	85,556	25
Springfield	62,352	25

City	Population	Signatures
Albany	57,199	100
Tigard	55,854	20
Lake Oswego	40,801	20
Grants Pass	39,475	50
Keizer	39,458	120
Oregon City	37,737	50
Redmond	36,122	127

To make running for Mayor or City Councilor a more attainable goal for all interested electors and to make the signature requirement more consistent and understandable, Ordinance #2024-04 would establish a set number of signatures for the City Councilor and Mayor petitions and create a fee in lieu of collecting signatures. Signatures would be set at 50 for City Councilors and 100 for Mayor. The fee is lieu is proposed at $50 for Councilors and $100 for Mayor.

Fiscal Impact:
While the fee in lieu of collecting signatures is an option for prospective candidates and is in no way a requirement to be nominated, any fees collected would go towards cost recovery of staff time spent facilitating the election process. Funds would go towards the General Fund.

Alternative Courses of Action:

1. Approve Ordinance #2024-04.
2. Do not approve Ordinance #2024-04.
3. Take no action and request more information.

As required by City Charter, notices regarding this ordinance coming before the Council were posted in three public places on April 2, 2024, and three copies of the Ordinance were available for review at City Hall.

Recommendation / Suggested Motion:
"I move to have a first and second reading of Ordinance #2024-04, by title only." (Voice vote)

(City Attorney will read the Ordinance by title only, twice)

"I move to approve Ordinance #2024-04." (Roll call vote)

CITY OF REDMOND
ORDINANCE NO. 2024-04

AN ORDINANCE AMENDING REDMOND CITY CODE CHAPTER 2, SECTION 2.120, PERTAINING TO THE NOMINATION OF CANDIDATES FOR ELECTION TO THE POSITION OF MAYOR OR CITY COUNCILOR.

WHEREAS, Oregon Revised Statues (ORS) Chapter 249 governs the manner of nominating and electing candidates for City offices; and

WHEREAS, unless otherwise prescribed by Charter, ORS 249.072(2) requires that the number of signatures required for nonpartisan petitions be equal to 500 signatures from electors in the electoral district, or a number of signatures equal to at least one percent of the vote cast in the electoral district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term, whichever is less; and

WHEREAS, the Redmond City Charter, Section 27 requires the City prescribe the manner in which a candidate for an elective city office shall be nominated for elective office by ordinance.

WHEREAS, City of Redmond Ordinance No. 96-24, passed on July 9, 1996, amended Section 2.120 of the Redmond City Code by adopting the language requiring that the number of petition signatures be equal to one percent of the vote cast by registered voters in the electoral district for all candidates for Governor at the last general election at which a candidate for Governor was elected to a full term; and

WHEREAS, because Redmond is one of the fastest growing cities in Oregon, the required number of signatures continues to increase significantly every four years; and

WHEREAS, the required number of petition signatures grew from 127 for the 2022 General Election to 161 for the 2024 General Election; and

WHEREAS, Redmond’s required number of petition signatures for the 2024 General Election is higher than several cities with populations that are nearly three to five times that of Redmond’s population; and

WHEREAS, the City of Redmond does not currently provide candidates an option to file a petition by fee in lieu of collecting signatures; and

WHEREAS, the City, by Charter, is allowed to set a specified number of required petition signatures, and to offer a fee in lieu of signatures.

NOW, THEREFORE, THE CITY OF REDMOND ORDAINS AS FOLLOWS:

SECTION ONE: The City of Redmond hereby amends the Redmond City Code as shown in Exhibit A.

SECTION TWO: SEVERABILITY. The provisions of this Ordinance are severable. The invalidity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given without such invalid part or parts.

PASSED by the City Council and **APPROVED** by the Mayor this 9th day of April 2024.

____
Ed Fitch, Mayor

ATTEST:

____
Kelly Morse, City Recorder

Exhibit A:
Proposed Redmond City Code Text Amendments

New proposed text identified in **red**; deleted text ~~strikethrough~~.

Chapter 2 – Government and Administration

ELECTIONS

2.120 Nominations.

1. Any qualified elector may be nominated to be a candidate for election to the position of either Mayor or City Councilor. An elector may not be a candidate for both offices. ~~Except as the second paragraph of this section provides to the contrary, the~~ The nomination shall be by petition, as prescribed by state law, and must be signed by no fewer than 50 qualified electors for City Councilor or 100 qualified electors for Mayor. Such qualified electors shall be duly registered voters under the laws of Oregon and shall be currently eligible to vote at any regular or special election of the City of Redmond. In lieu of obtaining the required number of signatures from qualified electors, an elector may pay a fee set forth in the City of Redmond's Fee Schedule. The name of such ~~an elector~~ a candidate shall be printed upon the ballot whenever a completed nominating petition, which conforms substantially to the form required by the City Recorder, has been filed with the City Recorder. ~~The number of signatures on a petition requisite to its being duly prepared shall be equal to one percent of the vote cast by registered voters in the electoral district for all candidates for Governor at the last general election at which a candidate for Governor was elected to a full term.~~

~~2. Declarations of candidacy for either Mayor or City Councilor required for November 3, 2020 Election. Candidates for either Mayor or City Councilor may be nominated for that office on the November 3, 2020 election ballot only by filing a declaration of candidacy, as provided by state law, and by paying to the City a filing fee of $25 or by requesting a waiver of the applicable filing fee.~~

~~3~~2. The form, content and the filing date for nominating petitions~~, or as provided in paragraph two of declaration and filing fee,~~ shall be as prescribed by State law.

(***)

// End //

CITY OF REDMOND

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info@redmondoregon.gov
redmondoregon.gov

STAFF REPORT

DATE: April 9, 2024
TO: Redmond City Council
THROUGH: Keith Witcosky, City Manager
FROM: Kelly Morse, City Recorder
SUBJECT: Resolution #2024-11: A resolution setting fees and charges imposed by the City of Redmond. **Public comment will be taken per ORS 294.160.**

Report in Brief:
This item requests the City Council approve the Fee Schedule containing fees associated with Mayor and City Council elections. The effective date of the Fee Schedule is May 9, 2024. Per Oregon Revised Statutes (ORS) 294.160 public comment must be taken.

Background:
Currently, any prospective candidate for Redmond Mayor or City Council must collect a minimum number of verified elector signatures in order to have their name placed upon a General Election ballot. Because the required number of signatures continues to increase to levels higher than nearly all other cities in Oregon, staff presented the Council with Ordinance #2024-04 which sets the number of signatures at 50 for City Council and 100 for Mayor, and allows for a fee in lieu of collecting signatures.

On May 19, 2020, the City Council passed Ordinance #2020-10 which temporarily suspended the collection of signatures due to COVID and allowed for a nominating petition filing fee of $35 for the 2020 General Election. Once the election was completed, the $35 fee reverted to signatures and the City has not offered any sort of fee in lieu of collecting signatures since then.

Discussion:
Presuming the Council approves Ordinance #2024-04, potential candidates will have two options available for filing a local non-partisan nominating petition. Offering more options allows for a broader range of potential candidates. The proposed fee, in lieu of collecting signatures, is $50 for City Council positions or $100 for the Mayor position (see Exhibit A). Candidates will not be permitted to do both options (i.e. pay half of the fee in conjunction with collecting only half of the number of required signatures). In Exhibit A, words redlined are added and ~~strikethroughs~~ reflect deletions. If adopted, the Fee Schedule would be effective May 9, 2024, to coincide with the effective date of Ordinance #2024-04.

Public comment must be taken per ORS 294.160

Fiscal Impact:
While the fee in lieu of collecting signatures is simply an option for candidates, the amount of revenue generated by the fee is difficult to determine, but will likely be negligible in relation to the City's annual budget. Any fees collected would go towards cost recovery of staff time spent facilitating the election process. The revenue would go to the General Fund.

Alternative Courses of Action:

1. Accept public comment and adopt Resolution #2024-11.
2. Accept public comment and do not adopt Resolution #2024-11.
3. Take no action and request more information.

Recommendation / Suggested Motion:
"I move to adopt Resolution #2024-11."

CITY OF REDMOND
RESOLUTION NO. 2024-11

A RESOLUTION SETTING FEES AND CHARGES IMPOSED BY THE CITY OF REDMOND.

WHEREAS, it is necessary to review fees and charges imposed the by City of Redmond to ensure that revenues are comparable with costs of services provided; and

WHEREAS, staff has identified the need to amend the City's fee schedule; and

WHEREAS, it should be understood that these charges are an important part of the resources for the operation of the City.

NOW, THEREFORE, THE REDMOND CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The fees and charges on the attached Fee Schedule excerpt "Exhibit A" are hereby established effective May 9, 2024.

Section 2. The fees are adopted until next review is presented to Council.

ADOPTED by the Redmond City Council and **SIGNED** by the Mayor this 9th day of April 2024.

____
Ed Fitch, Mayor

ATTEST:

____
Kelly Morse, City Recorder

	CITY OF REDMOND			
	EXHIBIT A			
	FEE SCHEDULE			
	Effective ~~March 1, 2024~~ May 9, 2024			
		Effective March 1, 2024	**Proposed Effective May 9, 2024**	
Item #	**Department / Item Description**	**Fee**	**Fee**	**Unit**
5	**MISCELLANEOUS**			
5.04	Other Fees			
5.04.13	Elections - Fee in Lieu of Signature Collection			
5.04.13.1	Mayor		**$ 100.00**	**each election**
5.04.13.2	Councilor		**$ 50.00**	**each election**

CITY OF REDMOND

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STAFF REPORT

DATE: April 9, 2024
TO: Redmond City Council
THROUGH: Keith Witcosky, City Manager
FROM: Devin Lewis, Police Chief
SUBJECT: Ordinance #2024-05 - An ordinance amending Chapter 5 of the Redmond City Code, Sections 5.601 through 5.606: Related to False Alarms and Police services.

Report in Brief:
This item proposes modifications, by ordinance, to how the Redmond Police Department (PD) responds to false alarms, notifications of service fees, and service fee appeal process.

Background:
In 2018, the Council modified the alarm systems ordinance, primarily focused on updating the fee schedule associated with alarm responses. In August, 2022 Council authorized the RPD to contract with a third-party vendor, CryWolf (TM), for alarm permit management and service fee notification and collection.

Discussion:
Since August 2022, the PD has identified minor differences between the existing and actual alarm service fee appeals processes. The proposed ordinance adjusts the service fee appeal process to align with the new processes which have been implemented since 2022 with Crywolf.

The City has received six (6) appeals since the implementation of Crywolf, and only 1 of those 6 went through a second appeal to the City Manager.

The proposed changes authorize the Chief of Police to designate a PD employee to conduct a review when a service fee appeal is received from CryWolf (TM) and render that appeal decision to the applicant through CryWolf (TM). The proposed changes identify the Chief of Police as the person who can hear an appeal of the designee's decision relating to the initial appeal received. The existing ordinance required the Chief of Police (or designee) to conduct the initial appeal and the City Manager to hear the second/final appeal - if received.

Additionally, there are some minor grammatical edits to the ordinance.

This proposed ordinance change is also intended to allow for alarm systems service fee vendor change(s), if necessary, in the future without updating the ordinance.

Words in Red represents additions and ~~Strikethrough~~ represents removal from the ordinance.

Fiscal Impact:
There are no identified or known fiscal impacts to the City.

Alternative Courses of Action:

1. Approve Ordinance #2024-05.
2. Do not approve Ordinance #2024-05.
3. Take no action and request more information

As required by City Charter, notices regarding this ordinance coming before the Council were posted in three public places on April 2, 2024, and three copies of the Ordinance were available for review at City Hall.

Recommendation / Suggested Motion:
"I move to have a first and second reading of Ordinance #2024-05, by title only." (Voice vote)

(City Attorney will read the Ordinance by title only, twice)

"I move to approve Ordinance #2024-05." (Roll call vote)

CITY OF REDMOND
ORDINANCE NO. 2024-05

AN ORDINANCE AMENDING CHAPTER 5 OF THE REDMOND CITY CODE, SECTIONS 5.601 THROUGH 5.606.

WHEREAS, the City of Redmond operates a police department, which is responsible for emergency response, criminal and noncriminal matters, and response to business and residential alarms; and

WHEREAS, the Redmond City Code Sections 5.601 through 5.606 provides administrative rules for business and residential alarm systems; and

WHEREAS, the City of Redmond's police department responds to over 23,000 calls for service every year, with business and residential alarm calls making up approximately 500-600 of those calls, each requiring two officers to respond, and with nearly all the alarm calls being false; and

WHEREAS, current contact information about property owners are needed to ensure a responsible person can respond to a business or residence after an alarm is received, to encourage compliance with city code and proper maintenance of alarm systems, and to reduce the number of false alarm calls the police department responds to; and

WHEREAS, the current sections of Redmond City Code are not consistent with current practice involving a third-party vender to manage alarm system management, and those sections contain identified processes that are no longer utilized to appeal alarm response service fees; and

WHEREAS, there are updates needed in the Redmond City Code Sections 5.601 through 5.606 that will clarify the intent and meaning of the code; and

WHEREAS, the Redmond City Council would like to revise Sections 5.601 through 5.606 of the Redmond City Code for ease and clarity of administration of this program.

NOW, THEREFORE, THE CITY OF REDMOND ORDAINS AS FOLLOWS:

SECTION ONE: The City of Redmond hereby amends the Redmond City Code Chapter 5, Sections 5.601 through 5.606, attached hereto as "Exhibit A" and effective June 1, 2024.

SECTION TWO: SEVERABILITY. The provisions of this Ordinance are severable. The invalidity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given without such invalid part or parts.

PASSED by the City Council and **APPROVED** by the Mayor this 9th day of April 2024.

____
Ed Fitch, Mayor

ATTEST:

____
Kelly Morse, City Recorder

Exhibit A:

Proposed Redmond City Code Amendments

Chapter 5 – Public Protection

Regarding Chapter 5, new proposed text is Identified in **Red**. Proposed deleted text **~~strikethrough~~**.

ALARM SYSTEMS

Sec. 5.601. Purpose.

The purpose of this chapter is to encourage commercial and residential alarm users and alarm businesses to assume increased responsibility for maintaining the mechanical reliability and the proper use of alarm systems, to prevent unnecessary police emergency response to false alarms, and thereby to protect the emergency response capability of the City from misuse.

(Ord. No. 2003-07, 2-11-2003; Ord. No. 2018-06, 5-22-2018)

Sec. 5.602. Permit Required.

1. An "alarm user" is the person or business in possession of the property the alarm system is designated to protect. Every alarm user shall obtain an alarm user's permit for each system from the Chief of Police **or designee** within 30 days of the time when the system becomes operational. The permit shall be issued to the person in possession of the property the alarm system is designed to protect. The permit shall remain valid for the earlier of three years or until the alarm user is no longer in possession of the property.
2. An application for an alarm system permits shall be filed with the Chief of Police **or designee** on such forms as may be prescribed. The applications shall contain: 1) the name, address and telephone number of at least three persons, so that at least one person will be available to respond to an alarm or render service or repairs to the alarm system during any hour of the day or night, and 2) such additional information as the Chief of Police **or designee** shall reasonably deem necessary for the evaluation and proper processing of the permit application. At the time the alarm permit is issued the alarm user shall receive a copy of this ordinance and the service fee schedule for false alarms.
3. A fee shall be established by the City Council by resolution for the permit required under this section, for the transfer of the permit, for the failure to obtain the required permit, permit renewal, and for false alarms.
4. Any alarm user who fails to obtain a permit for an operational alarm system as required by this chapter, shall be subject to a service fee as determined by the City of Redmond Fee Schedule per police response, regardless of whether the alarm is false or an actual emergency exists.
5. All alarm users shall renew their permit every three years. **~~An~~** **The** alarm permit application must be filled out and cont~~r~~act information updated. A service fee as determined in the City of Redmond Fee Schedule is charged at the time the application is turned into the police department **or designee** for renewal. Alarm user permits issued prior to the adoption of this chapter will be allowed to continue their existing permit until December 31, 2021. Those permits will expire at midnight on that date.

(Ord. No. 2003-07, 2-11-2003; Ord. No. 2018-06, 5-22-2018)

Sec. 5.603. Transferability of Permit.

An alarm system permit issued in accordance with the provisions of this chapter shall be valid only for the permittee named on the permit and only for the particular alarm system or systems specified on the permit. No alarm system permit shall be transferred or assigned without the written consent of the Chief of Police **or designee**. A request to transfer an alarm system permit shall be made on the form the Chief of Police **or designee** prescribes and shall be accompanied by a nonrefundable fee which is set by resolution. False alarms previously charged to the transferor shall not be charged to the transferee. However, the Chief of Police **or designee** may deny a request to transfer an alarm system permit if, after reasonable investigation, it appears that the transfer is requested for the purpose of allowing the transfer to evade responsibility for prior false alarm.

(Ord. No. 2003-07, 2-11-2003; Ord. No. 2018-06, 5-22-2018)

Sec. 5.604. Regulations, Requirements and Duties.

1. No person shall install, connect or have in operation an alarm system that emits the sound of a siren.
2. *Audible Alarm System Requirements.* An alarm system that, when activated, generates an audible sound on the premises, shall have as part of the system an automatic shut-off that will deactivate the audible portion of the system within 15 minutes after it is first activated.
3. *Display of Alarm System Permit.* An alarm system permit shall be kept on the premises where the alarm system is located.
4. *Automatic Dialing Device Regulations.*
    A. No automatic dialing device shall be interconnected to a primary trunkline of the communications center or police department.
    B. Persons owning or leasing an automatic dialing device may have the device interconnected to a telephone line, cellular, or other internet connected device transmitting directly to:
        1. A central station;
        2. A modified central station; or
        3. An answering service.
    C. The relaying of messages to the communications center by a modified central station or an answering service shall be over a special trunkline if available. The relaying of messages by a central station may be over a direct line, cellular, or other internet connected device.
    D. No automatic dialing device may be interconnected to the telephone company operator.
5. *Response Required.* When an alarm system has been activated, the alarm business or the permittee shall have an alarm agent or other person in responsible control present at the location within 20 minutes after being requested to do so by a representative of the communications center or the police department.

6. *Power Supply.* An alarm system shall be equipped with an uninterruptible power supply in such a manner that the failure or interruption of normal electrical utility power shall not activate the alarm system. This power supply must be capable of at least four hours of operation.

7. *Notice of Name of Services or Occupant.* Every audible alarm system shall have a sign or notice posted on or near the audible device with the name and telephone number of the person or company responsible for the maintenance of the system.

(Ord. No. 2003-07, 2-11-2003; Ord. No. 2018-06, 5-22-2018)

Sec. 5.605. False Alarms.

1. *Service Fees.* Service fees will be assessed against alarm users for more than one false alarm during a calendar year. For the purpose of this chapter, medical **and fire** emergency alarms are excluded as a source of a false alarm. The service fees will be set by City Council Resolution. Service fees not paid within 30 days will double and will accrue interest at 18 percent. If the service fee is not paid within an additional 30 days the Alarm User will also be responsible for all collection costs including all attorney fees.

2. *Notice.* The Chief of Police **or designee** will send a notification of false alarm by regular **or electronic** mail ~~**of hand delivery**~~ to notify the alarm user of a false alarm resulting in a warning. The Chief of Police **or designee** will send a notification by ~~**certified**~~ **regular or electronic** mail ~~**or hand delivery**~~ to notify the user of false alarm(s) resulting in a service fee. The notification will include the incident number, date, and time of the alarm, the service fee amount, and that the service fee must be paid within 30 days. The notification will also include the consequences of the failure to pay the service fee and inform the alarm users of their right to appeal the validity of the false alarm.

3. *Additional Information.* In the event of a false alarm the alarm user shall provide to the Chief of Police **or designee** any information concerning the alarm system that is requested. Such information shall be provided within ten days. Following a second or subsequent false alarm, the Chief of Police **or designee** may require the alarm user, at the alarm user's expense, to have the alarm system inspected and a written report of the inspection provided to the Chief of Police **or designee**.

4. *Appeal.* The appeal to challenge the validity of the false alarm shall be in writing and shall be **submitted by a process identified in the service fee notification.** ~~**hand delivered to the lobby of the Police Department during normal business hours and signed for by staff or sent via certified mail to the Chief of Police.**~~ The appeal must be received **before the due date of the service fee.** ~~**by 5:00 p.m. on the 10th calendar day after the date of the notification to the Alarm User.**~~ The **review** ~~**hearing**~~ will be held within 30 days of the date the appeal is received. The Chief of Police will **designate a designee to** conduct **a review of all known circumstances relating to the alarm response and render a decision.** ~~**the hearing at a location and time set by the Chief of Police. In the absence or unavailability of the Chief of Police, the designee of a rank of Lieutenant or higher can fill the Chief of Police roll in the hearing. The hearing is limited in scope to determining if the alarm(s) was false or not.**~~ Information obtained during any inspection of the alarm system as defined in Section 5.605(3.), can be considered as mitigating factors. The service fee amount for each false alarm which is sustained is outside the scope of the **review** ~~**hearing**~~.

The decision of the ~~**Chief of Police**~~ **assigned designee** may be appealed to the **Chief of Police** ~~**City Manager**~~. That appeal shall be in writing and **hand-**delivered **or sent** by certified mail. It must be received at Redmond **Police Department** ~~**City Hall**~~, attention the **Chief of Police** ~~**City Manager**~~, by 5:00 p.m. on the 10th **business** ~~**calendar**~~ day after the decision of the **designee** ~~**Chief of Police**~~ is issued. The decision of the **Chief of Police** ~~**City Manager**~~ is final. No new information is to be allowed in the **appeal heard** ~~**hearing**~~ by the **Chief of Police** ~~**City Manager**~~. If affirmed, the service fee amount is due on the 10th **business** ~~**calendar**~~ day after the appeal~~**, or the next business day thereafter**~~.

(Ord. No. 2003-07, 2-11-2003; Ord. No. 2018-06, 5-22-2018)

Sec. 5.606. Confidentiality.

The information furnished or obtained pursuant to this chapter is an exempt public record pursuant to ORS 192.345 and 192.355 and shall be confidential in character. These records shall not be subject to public inspection, and shall be kept so that the contents are not known except to persons charged with the administration of this chapter. It is declared that the public interest served by not making the information subject to public inspection clearly outweighs the public interest served by disclosure of the information.

(Ord. No. 2003-07, 2-11-2003; Ord. No. 2018-06, 5-22-2018)

2024 ALARM SYSTEMS ORDINANCE CHANGE

Redmond City Council: April 9, 2024

CITY CODE 5.601 – ALARM SYSTEMS

2018

COUNCIL APPROVED

- Changed alarm service fee schedule
- Separate fee schedule for registered / unregistered alarm systems
- Purpose: Encourage compliance with City code

2022

COUNCIL APPROVED

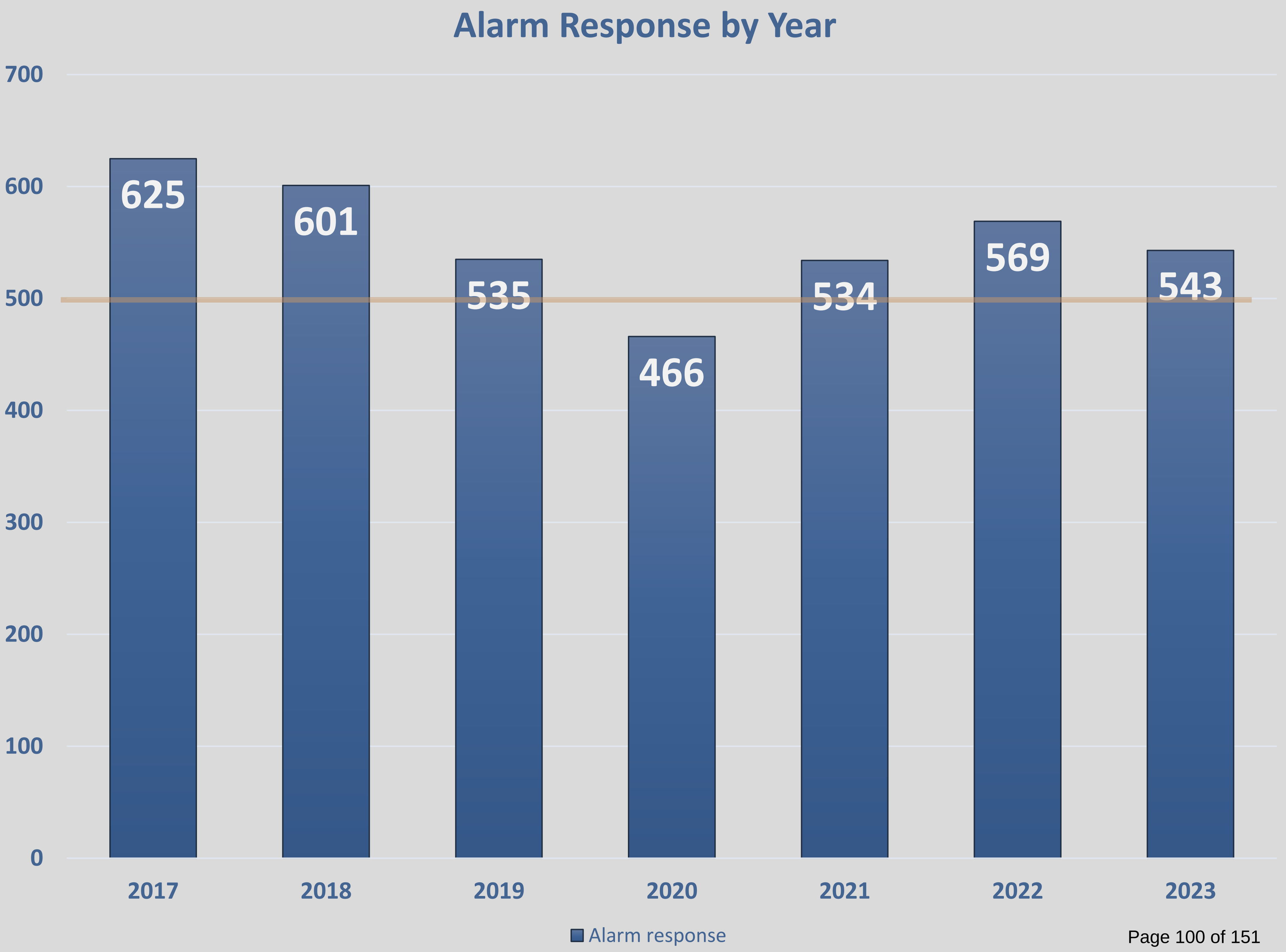
- Authorized Redmond Police Department to contract with Crywolf to provide 3rd party alarm management services

2024

REQUESTING ORDINANCE UPDATE

- Proposed changes to remove in person appeals and update the ordinance to better reflect current processes.

FALSE ALARMS 2017-2023



SLIDE / 3

RESULTS TO DATE

REGISTERED USERS ARE MORE AWARE & FALSE ALARMS ARE REDUCED THROUGH EDUCATION

Number of registered users continues to increase along with the city population growth

Alarm response calls are remaining relatively flat even with continued growth

Registered alarm users are more aware of City code & take steps to avoid unnecessary police response

The police department has a goal to keep alarm response to under 500

FALSE ALARM REDUCTION STRATEGY

WORKING TO REDUCE OFFICER RESPONSE TO FALSE ALARMS

CRYWOLF

- Integrated with PD Records, reduces staff time manually entering data
- All alarm services management handled by CryWolf, increasing staff time to other projects
- All mailings/notices handled by CryWolf
- Great communication with CryWolf
- Timely notifications of false alarms; even faster when email address provided by registered user

FIRST-TIME ALARM RESPONSE

- RPD encourages resident/businesses to register. When we respond to a first-time unregistered false alarm, owners are given an avenue to compliance WITHOUT A FEE by obtaining a permit.
- City of Redmond alarm permit cost is $40 for 3 years

SLIDE / 5

PROPOSED ORDINANCE CHANGES

OUTCOMES OF PROPOSED CHANGES TO CITY CODE 5.601 ALARM SYSTEMS

- Removes the requirement of an in-person appeal hearing; replaced by a review of facts by designated review staff
- Proposed changes better reflect current processes, while maintaining an opportunity for users to appeal, and to have their appeal reviewed by pd staff
- Maintains a 2nd appeal option to be conducted by the police chief
- Since CryWolf Implementation (2022) we have only received 6 Appeals

QUESTIONS

CITY OF REDMOND

CITY HALL
411 SW 9th STREET
REDMOND, OR 97756
541.923.7710
FAX: 541.548.0706
info@redmondoregon.gov
redmondoregon.gov

STAFF REPORT

DATE: April 9, 2024
TO: Redmond City Council
THROUGH: Keith Witcosky, City Manager
Jason Neff, Deputy City Manager/Chief Financial Officer
James Wood, Finance Director
FROM: Valerie Taylor, Billing and Collections Manager
SUBJECT: Ordinance #2024-06: An ordinance repealing Ordinance #2017-07 and granting a non-exclusive franchise agreement to PacifiCorp, an Oregon corporation doing business as Pacific Power.

Report in Brief:
This item requests City Council approve a non-exclusive telecommunications franchise agreement with PacifiCorp for up to ten years.

Background:
PacifiCorp, doing business as Pacific Power, is a regulated public utility that provides electrical power and energy to the residents of the City of Redmond and other surrounding areas. The existing PacifiCorp agreement expired in 2022, and a mutual agreement was made to operate under the existing agreement until a new agreement has been finalized. This new franchise agreement is ready for approval and will have a new expiration date in 2034.

Discussion:
This ordinance is a total ten-year non-exclusive franchise agreement granting PacifiCorp the authority to operate in the City's rights-of-way to provide supply and transmit electrical power and energy to the inhabitants of the City while maintaining the City's development standards. The agreement is set to automatically renew for two successive terms of five years each unless terminated. The proposed franchise agreement is substantially similar in terms to the existing agreement and continues with the City's existing seven percent franchise fee on gross revenue.

Fiscal Impact:
This franchise agreement would preserve the long-standing source of revenue to the City provided by franchise fees. PacifiCorp will continue to pay a seven percent monthly franchise fee to the City based off of the gross revenues received from customers within City limits. The revenue that the City receives from this Franchisee equates to approximately $2 million per year.

Alternative Courses of Action:

1. Approve Ordinance #2024-06.
2. Do not approve Ordinance #2024-06.
3. Request more information.

As required by City Charter, notices regarding this ordinance coming before the Council were posted in three public places on April 2, 2024, and three copies of the Ordinance were available for review at City Hall.

Recommendation / Suggested Motion:
"I move to have a first and second reading of Ord. #2024-06, by title only" (Voice vote)

(City Attorney will read the ordinance by title only.)

"I move to approve Ord. #2024-06." (Roll call vote)

REDMOND ORDINANCE
ORDINANCE NO. 2024-06

AN ORDINANCE REPEALING ORDINANCE NO. 2017-07 AND GRANTING A NON-EXCLUSIVE FRANCHISE AGREEMENT TO PACIFICORP, AN OREGON CORPORATION DOING BUSINESS AS PACIFIC POWER.

WHEREAS, PacifiCorp, doing business as Pacific Power, is a regulated public utility that provides electrical power and energy to the residents of the City of Redmond (the “City”) and other surrounding areas; and

WHEREAS, providing electrical power and energy distribution services requires the installation, operation and maintenance of facilities within the public rights-of-way within the City of Redmond; and

WHEREAS, the City of Redmond desires to set forth the terms and conditions by which PacifiCorp shall use the public rights-of-way within the City of Redmond; and

WHEREAS, On July 28, 2017 the City of Redmond and PacifiCorp entered into a five (5) year franchise agreement; and

WHEREAS, the City of Redmond and PacifiCorp desire to enter into a new franchise agreement and have reached agreement on the terms of that franchise agreement.

NOW, THEREFORE, THE CITY OF REDMOND, OREGON, ORDAINS AS FOLLOWS:

This agreement (“Franchise Agreement”) is between the City of Redmond, an Oregon Municipal Corporation (“City”) and PacifiCorp, an Oregon corporation registered to do business in Oregon as Pacific Power (“Franchisee”).

Section 1. Termination of Franchise

Ordinance 2017-07, granting Franchisee a nonexclusive franchise and right, privilege, and authority to construct, operate, maintain, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines in, under, along, over and across the present and future streets, alleys, public ways and public places within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof, is hereby repealed, effective as of the date the Franchise Agreement takes effect as provided in Section 4.

Section 2. Definitions

Any term defined in the Redmond Code and not in this Franchise Agreement shall have the meaning provided by the Redmond Code definition.

"Electrical Facilities" means Franchisee's electrical transmission, distribution, and communication facilities, including lines, cables, conduit, poles, towers, wires, guys and anchors, vaults and boxes, transformers, fixtures, electric vehicle charging stations and other physical components of Franchisee's electric power distribution system located within any Rights-of-Way within the City.

"Gross Revenues" means the revenue collected from Franchisee's retail sale and use of electric power and energy within the City limits. For the avoidance of doubt, Gross Revenues shall not include:

a. sales, ad valorem, or other types of "add on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid or collected for federal, state, or local government (including the right-of-way use fee paid to the City as provided herein);
b. retail discounts or other promotions;
c. non-collectable amounts due the Franchisee from its customers;
d. refunds or rebates;
e. non-operating revenues such as interest income or gain from the sale of an asset; or
f. payments received by Franchisee for the construction of network facilities.

"Right(s)-of-Way" means present and future streets, alleys, public ways, and public places within the City, and any other property to which the City maintains ownership or access rights.

Section 3. Grant of Authority

City grants to Franchisee the right to construct, install, maintain, repair, operate, upgrade, restore, replace, relocate, and operate Electrical Facilities over, in, on, under and across present and future Right-of-Way for the purpose of supplying and transmitting electric power and energy on the terms stated in this Franchise Agreement and subject to applicable law. Franchisee shall obtain applicable permits and construct improvements per City of Redmond Standards and Specifications and Development Code requirements.

This Franchise Agreement is not exclusive, and City reserves the right to grant a similar franchise to any other person or entity at any time during the period of this Franchise Agreement. This Franchise Agreement is subject to all prior rights, interests, agreements, permits easements or licenses granted by the City, and to the City's right to use and administer Rights-of-Way for any purpose.

This Franchise Agreement does not apply to Electrical Facilities located in a Right-of-Way within any private easement held by Franchisee and which encumbers the City's real property rights in such Right-of-Way.

Section 4. Term

Subject to extension as provided below, this Franchise Agreement is granted for a term of ten (10) years beginning on the date on which the ordinance authorizing this Franchise Agreement is effective.

The Franchisee shall, within sixty (60) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this Franchise Agreement, and if the Franchisee fails to do so, this ordinance shall be void. This Franchise Agreement shall be effective the later of the date that occurs thirty (30) days after passage by the City Council and the date of Franchisee's acceptance.

The Franchise Agreement shall automatically be extended for successive terms of five (5) years each (each a "Renewal Term") if neither party provides written notice of termination or non-renewal to the other party at least six (6) months prior to the expiration of the initial term or any Renewal Term. If notice of termination is provided, the parties may elect to negotiate a new franchise agreement in lieu of termination. In the event the City adopts code provisions, regulations or standards and specifications applicable to this Franchise Agreement or if state or federal legislation or regulation affects any provision of this Franchise, the Parties, at the request of either Party, may request renegotiation of the Franchise Agreement to reflect the changes in law or regulation.

Section 5. Compliance with Laws, Rules and Regulations

Franchisee shall comply with all federal, state, and City laws, rules and regulations, including but not limited to the City Code, Redmond Development Code, and City Standards and Specifications, as amended and other ordinances. The locations and methods of installation and maintenance of all Franchisee's Electrical Facilities shall be subject at all times to regulation by the City (including City's ordinances, standards and specifications, and regulations on street cuts and use of Rights-of-Way or public easements). All Electrical Facilities shall be constructed and maintained as to minimize interference with traffic and other use of Rights-of-Way. All applicable permits must be obtained prior to installation or construction of Electrical Facilities.

In the event of an emergency, Franchisee may undertake work immediately to repair a break or restore service without a permit but must inform the City and, submit documentation and/or a permit application in such form as is reasonably satisfactory to City describing the emergency work so performed, in each case, as soon as practical after the work is commenced. All Electrical Facilities shall be installed and at all times maintained by Franchisee in accordance with electric utility industry standards. The precise location of Electrical Facilities shall be determined through the permitting process. As-builts shall be furnished to the City at the City's request.

Section 6. Franchisee Liability, Indemnification of City, and Insurance

A. Conduct. Franchisee shall conduct its operations under this Franchise, including installation, construction, and maintenance of its Electrical Facilities, in a safe and workmanlike manner, and in compliance with governing laws, ordinances and regulations.

B. Liability and Indemnification. Franchisee shall defend, indemnify, and hold the City, its officers, agents, employees and volunteers harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively known as ‘claims’) that may be based on, or arise out of damage or injury (including death) to persons or property caused by or resulting from any wrongful or negligent act or omission of Franchisee, its agents or employees in exercising its rights and obligations under this Franchise Agreement or based upon violation of any statute, ordinance or regulation by Franchisee. This indemnification required shall not apply to claims to the extent caused by the negligence or willful misconduct of the City, its officers, agents, employees, and volunteers. Franchisee agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

C. Insurance. Franchisee shall purchase and maintain at Franchisee’s expense, Commercial General Liability and Commercial Automobile insurance covering bodily injury and property damage in an amount of $5 million per occurrence and $10 million in aggregate. The insurance policies obtained by Franchisee shall be primary and non-contributory. Franchisee shall remain fully responsible for any claims resulting from negligence or intentional misconduct of Franchisee or its subcontractors and their officials, agents, and employees in performance of this Franchise Agreement, even if not covered by, or in excess of insurance limits. This insurance requirement may be met by self-insurance.

Commercial General Liability coverage shall name, the City, its officers, agents, employees, and volunteers as additional insureds with respect to Franchisee’s work or services conducted under this Franchise Agreement. Franchisee will give the City 30 days’ written notice of any cancellation of or reduction in insurance coverage except if such cancellation is due to failure to pay premiums in which case 10 days’ prior written notice of cancellation shall be given to City. Any failure to comply with this provision will not affect the insurance coverage.

Franchisee shall obtain and maintain Workers’ Compensation insurance required by ORS chapter 656. Franchisee shall ensure that each of its contractors obtains and maintains workers’ compensation insurance and obtains proof of the coverage before performing work.

Coverages provided by Franchisee must be underwritten by an insurance company authorized to do business in the state of Oregon and with a Best’s rating of A-VII or higher.

As evidence of the insurance coverage required by this Franchise Agreement, Franchisee shall provide proof of coverage required by acceptable Certificate of

Insurance and Endorsement from the carrier(s). The Certificate and Endorsement shall also state the deductible or self-insured retention level. This Franchise Agreement shall not be in effect until the required certificates and signed endorsements have been received and approved by City, except as required by an emergency declaration. Renewal certificates and endorsements will be sent to City prior to coverage expiration. The City may terminate the Franchise Agreement for failure to maintain the required insurance.

D. Waiver of Subrogation. Franchisee grants Waiver of Subrogation to the City, its officers, agents, employees, and volunteers for any claims arising out of Franchisee’s work or service. Further, Franchisee agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery shall be solely with its insurance carrier, and also grants to City, on behalf of any insurer providing coverage to either Franchisee or City with respect to the work or services of Franchisee, a waiver of any right to subrogation which any insurer or subcontractor may acquire against City by virtue of the payment of any loss under the insurance coverage.

Section 7. Construction and Conditions on Right-of-Way Occupancy

A. Permits. Except in the case of emergency work described in Section 5 above, Franchisee will obtain a permit for all work requiring a permit prior to any work being started, which permit may not be unreasonably withheld, conditioned, or delayed, and will require a traffic plan that is fully compliant with the City of Redmond Design Standards and Specifications.

B. Excavation. Franchisee shall have the right to excavate the Rights-of-Way subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, Franchisee shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of Franchisee to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with Franchisee's Electrical Facilities or delay project completion.

C. Maps. Franchisee shall at all times keep maps and records showing the locations and components of all Electrical Facilities constructed by it or owned by it within the City Limits. Spatial data for Electrical Facilities located in the Rights-of-Way shall be available to the officials of the City on annual basis, if requested, by using the Franchisee’s standard data request form. Spatial data provided will be limited to distribution circuits and facility points (poles and pads). Data can be provided in a ESRI compatible geodatabase with associated metadata or other mutually agreed upon format. With respect to any information, including but not limited to the special data which Franchisee furnishes or otherwise discloses to the City under this section, Franchisee does not make any representations or warranties as to the accuracy, completeness, or fitness for a particular purpose thereof. It is further understood and agreed that Franchisee or its representatives shall not have any liability or responsibility to the City or another party or to any other person or entity resulting from the use of any information or data so furnished or otherwise provided. Maps/Data are for general location purposes only and may not accurately identify the exact location of facilities or current construction. No attempt has been made to verify the records to reflect current site conditions and Franchisee is not responsible or liable for any injury, death or damage that may result from differing site conditions. The information furnished by Franchisee under this section is provided with the understanding that the City will treat the information as confidential to the extent possible under the Oregon Public Records Act. If a public records request is made for the information, the City will provide Franchisee with notice of the request and sufficient time to seek a protective order prior to providing the documentation to any third party.

D. **Restoration.** In case of any disturbance of pavement, sidewalk, driveway, landscaping or other surfacing and structures, including, but not limited to, walls or fences by Franchisee, Franchisee shall, at its own cost and expense and in compliance with the City's standards and specifications, promptly replace and restore all paving, sidewalk, driveway, landscaping, or surface of any Rights-of-Way disturbed, reasonable wear and tear accepted. Franchisee warrants all restoration work for a period of one (1) year from completion of the work. If Franchisee fails to make restoration as required by this section within 45days (or such longer period as may be necessary based on the nature or scope of work or extent of third party coordination as may approved by City, which approval may not be reasonably withhold, conditioned or delayed) following written notice from City to Franchisee, or if the restoration fails within the one (1) year warranty period, City may, if Franchisee fails to make the warranty repair within 45 days (or such longer period as may be necessary based on the nature or scope of work or extent of third party coordination as may approved by City, which approval may not be reasonably withhold, conditioned or delayed) following written notice from City to Franchisee, cause the repairs to be made at the expense of Franchisee. If Franchisee fails to reimburse the City for any costs incurred under this section within forty-five (45) days of demand for reimbursement and such failure is not a result of a good faith dispute between City and Franchisee, City may refuse to issue additional permits.

E. **Notification.** Franchisee shall comply with the requirements of Oregon Utility Notification Law and implementing rules and regulations.

F. **Relocation.** City may require Franchisee to relocate its Electrical Facilities. If the removal or relocation of Electrical Facilities is caused directly by identifiable development of private property or other third-party project and the removal or relocation of Electrical Facilities occurs within the area to be developed, or is made for the convenience of a third-party, Franchisee may charge the expense of removal or relocation to the developer or other third-party, including the cost of acquiring private rights, permits and other associated costs that result from the relocation. Franchisee shall be solely responsible for enforcing collection from the developer or other third-party, but Franchisee shall not be required to remove or relocate Electrical Facilities for the benefit of third-parties until it receives payment for the removal or relocation. For the purpose of this paragraph, the removal or relocation of Electrical Facilities shall be considered “caused directly” by a private development or third-party project if, for example, the removal or relocation is necessary to enable the developer or third party to make any improvements or otherwise satisfy any conditions required under any permit, rule, regulation or other requirement applicable to the project.

If the removal or relocation of Electrical Facilities is requested by City for a City-funded project that serves a public purpose (e.g., a street widening or utility project undertaken independently of a project described in the paragraph above), Franchisee will remove or relocate its Electrical Facilities at Franchisee’s expense within sixty (60) days (or such longer period as may be necessary based on the nature or scope of work or extent of third party coordination as may approved by City, which approval may not be reasonably withhold, conditioned or delayed) after its receipt of written notification by City. To the extent Franchisee’s unexcused failure to relocate within the allowable timeframe caused the City to incur additional costs, City may pass on such additional costs to Franchisee.

The Franchisee must verify project design assumptions including utility depth and location. The Franchisee may be required to pothole or complete other exploratory work to verify assumptions. If conditions encountered during construction differ with design assumptions, it will be the utility's responsibility to relocate if required. Notwithstanding the foregoing, if the City requires the subsequent relocation of the same Electrical Facilities within five (5) years of the date of the last relocation, City shall bear the expense of the subsequent relocation. In addition, the removal and/or relocation of Electrical Facilities that are used to serve City as a customer of Franchisee shall be subject to terms of Franchisee’s tariffs instead of this Franchise. City will make a reasonable effort to provide Franchisee with an alternate location for its Electrical Facilities within the Right-of-Way or Public Places. The City will make every effort to coordinate with the Franchisee during project development to reduce or eliminate conflicts with existing facilities, including coordinating and communication with Franchisee, and interested parties regarding the relocation project.

G. Rights-of-Way Vacation; **Transfer of Property in Rights-of-Way or Public Place; Relocations into Rights-of-Way**.

City shall retain public utility easements if it vacates any Right-of-Way where Franchisee has Electrical Facilities. If Franchisee’s Electrical Facilities must be relocated from a vacated Right-of-Way, the petitioner of the vacation will bear the expense of moving the Electrical Facilities and obtaining alternate rights, permits or easements.

In the event City otherwise conveys, assigns, or transfers title to any property within any Rights-of-Way in which Franchisee has Electrical Facilities, as part of said conveyance, City shall make reasonable efforts to secure from such transferee an easement or other rights allowing for such Electrical Facilities to remain in place.

H. **Placement of Facilities.** Franchisee will consult with City Engineer prior to placement of Electrical Facilities and will comply with all City ordinances, policies, rules and regulations in connection with its placement of Electrical Facilities. Franchisee will require third party attachers to its Electrical Facilities to warrant to Franchisee that they have obtained all requisite rights and permissions to locate their attachments in the Right(s)-of-Way. In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City Code or ordinance.

I. **Temporary Rearrangement of Facilities.** Franchisee must, consistent with City policies, ordinances, rules, and regulations, arrange to temporarily raise, lower, or otherwise move its Electrical Facilities to permit the moving of buildings or other objects if the person or entity wishing to move the building or other object makes advance payment to Franchisee for its expenses in rearranging its Electrical Facilities. Nothing in this section precludes City from requiring Franchisee to move its Electrical Facilities at Franchisee's expense as provided under Section 7(F).

J. **City Use of Electrical Facilities**. The City shall have the right without cost to use all distribution poles owned by Franchisee within Rights-of-Way for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses shall not include the provision of CATV, internet, or similar services to the public.

Franchisee shall assume no liability, nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles by the City shall be in such a manner as to prevent safety hazards or interferences with Franchisee's use of same. Nothing herein shall be construed to require Franchisee to increase pole size or alter the manner in which Franchisee attaches its equipment to poles or alter the manner in which it operates and maintains its Electrical Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of Franchisee and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by Franchisee.

K. **City Work in Right-of-Way**. Before commencing, or permitting the commencement of, any street improvements or other work within a Right-of-Way that may affect Franchisee's Electrical Facilities, the City shall give, or shall require its permittee to give, written notice to Franchisee, sufficiently in advance of the contemplated work to enable Franchisee to take such measures as may be necessary to protect it Electrical Facilities. No structures, buildings or signs shall be erected below Franchisee's Electrical Facilities or in a location that prevents Franchisee from accessing or maintaining its Electrical Facilities.

L. **Underground Conversion**. Franchisee shall remove and replace overhead Electrical Facilities with underground Electrical Facilities at the request of the City. Cost responsibility shall be allocated in accordance with all applicable Oregon Administrative Rules and a schedule agreed upon by the City and Franchisee. City shall require that each customer served from the existing overhead Electrical Facilities shall make all facility changes to the customer’s premises in accordance with Franchisee’s policies and standards necessary to receive service from the underground facilities as soon as they become available.

Section 8. Annexation

A. **Extension of City Limits.** Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by Franchisee located within any Rights-of-Way of the annexed territory shall thereafter be considered located within the City’s Rights-of-Way, subject to all of the terms hereof.

B. **Annexation Notification**. When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to Franchisee: (a) a map of the annexed territory, (b) each site address to be annexed as recorded on county assessment and tax rolls; (c) a legal description of the proposed boundary change; and (d) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

Pacific Power Customer Contact Center
P.O. Box 400
Portland, Oregon 97202-0400

With a copy to:
PacifiCorp
Attn: Office of the General Counsel
825 N.E. Multnomah, Suite 2000
Portland, Oregon 97232

Additional or increased fees or taxes, other than ad valorem taxes, imposed on Franchisee as a result of an annexation of territory to the City shall become effective on the effective date of the annexation provided notice is given to Franchisee in accordance with ORS 222.005, as amended from time to time.

Section 9. Subdivision Plat Notification

The City shall provide written notice of the following land use application types: partitions, subdivisions, site and design, Master Development Plans, and annexations. The City shall mail notification of such approval and a copy of the plat to Franchisee:

Pacific Power
Attn: Estimating Department
328 NW Webster
Bend, OR 97701

With a copy to:
Pacific Power
Real Property and Right of Way Department
825 N.E. Multnomah, Suite 1700
Portland, Oregon 97232

Franchisee will have an opportunity to comment on the portion(s) of the plan which impact Franchisee's facilities and/or easement rights. Further, City agrees that any public utility easements included on each final plat will be at least five feet in width. City also will include a restrictive covenant or easement as part of the final plat limiting development on individual lots within Franchisee's easement corridors upon a timely request from Franchisee that is consistent with the restrictions set forth in the applicable easements held by Franchisee and that indicates that consent to install any permanent structures (including fences), retaining walls, buildings (including porches and roof eaves or components and appurtenances thereof), or any other horizontal or vertical encroachment, obstruction, excavation or alteration (such as swales, ponds or other hardscaping features) of the PUE within the easement area must be obtained from Franchisee. With respect to new public utility easement areas, City will include a restrictive covenant or easement as part of the final plat prescribing that no permanent structures (including fences), retaining walls, buildings (including porches and roof eaves or components and appurtenances thereof), or any other horizontal or vertical encroachment, obstruction, excavation or alteration (such as swales, ponds or other hardscaping features) may installed or maintained in the public utility easement area.

Section 10. Vegetation Management

Franchisee or its contractor shall prune all trees and vegetation which overhang the Rights-of-Way, whether such trees or vegetation originate within or outside the City Rights-of-Way, to prevent the branches or limbs or other part of such trees or vegetation from interfering with Franchisee's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in the Section shall prevent Franchisee, when necessary, from cutting down and removing any trees which overhang streets so long as Franchisee has the legal authority do so or otherwise obtains the written approval of the owner of the property on which they may be located.

Section 11. Transfer of Franchise

Franchisee shall not sell, assign, dispose of, lease or transfer in any manner whatsoever any interest in this Franchise Agreement or all or substantially all of the Electrical Facilities authorized by this Franchise Agreement, without providing at least thirty (30) days prior written notice to the City; provided that Franchisee may mortgage this franchise, together with its Electrical Facilities and properties within the City, in order to secure any legal bond issue or other indebtedness of Franchisee, with no requirement for notifying City or that the trustees acknowledge in writing and agree to be bound by the terms of this Franchise.

Section 12. City Rights in Franchise

A. **City Supervision and Inspection**. City shall have the right to inspect all construction and installation of Franchisee's Electrical Facilities to ensure compliance with governing laws, ordinances, rules, and regulations.

B. **Abandonment or Removal of Facilities.** Upon any termination of this Franchise, so long as City and Franchisee are not engaged in efforts to enter into a replacement franchise agreement, all Electrical Facilities installed or used by Franchisee shall be deenergized and abandoned in place, provided that City shall have right to request and require Franchisee to remove certain Electrical Facilities so long as City has a reasonable basis for removal and makes a written request to Franchisee identifying the specific Electrical Facilities to be removed.

Section 13. Franchise Fee

Franchisee shall pay monthly to City seven percent (7%) of Franchisee's Gross Revenues received from customers within the city limits of the City. City may elect to increase the franchise fee rate to an amount not to exceed the maximum permissible allowed by state law by providing Franchisee with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after the City has provided such written notice to Franchisee.

The fee required by this section shall be due and payable within 30 days after the end of each calendar month. With respect to any amount or portion thereof due hereunder that is not disputed in good faith by Franchisee, City shall have the right to charge interest at the rate of 5% per annum.

With each payment, Franchisee shall furnish City with a written statement in the format as provided in Exhibit A verifying the amount of Gross Revenues of Franchisee within City for the monthly period covered by payment. The monthly period begins on the first of each month.

City's acceptance of any payments due under this section shall not be considered a waiver by City of any breach of this Franchise Agreement.

Section 14. Franchisee Records and Reports

Franchisee shall keep accurate books of financial accounts throughout the term of this Franchise Agreement and for six years after the expiration or termination of this Franchise Agreement. Franchisee shall produce all books and records directly concerning its Gross Revenues and other financial information deemed necessary by City for purposes of calculation of the franchise fee for inspection by City, upon 30 days' written notice, during normal working hours; provided that only records that support payments which occurred during a period of three (3) years prior to the date the City notifies Franchisee of its intent to conduct an inspection shall be subject to review.

Franchisee shall produce an annual report within 90 days of the end of Franchisee's fiscal year to include City of Redmond gross revenues and the revenues excluded from such gross revenue calculation as defined in Section 2. In addition, Franchisee shall provide the City with a report of all new services created within City boundaries on an annual basis during the term of this Franchise. The City shall provide written confirmation of the accuracy of the report and/or any corrections thereto to Franchisee within a reasonable time following receipt of the report. City may require additional periodic reports from Franchisee relating to its operation within City.

City shall have the right during the term of this Franchise Agreement (but not more than once per year) or within 180 days after expiration or termination of this Franchise Agreement to audit Franchisee's records for the period of three years prior to the audit. If the audit reveals underpayment of 5% or more, City may expand the audit to cover up to 6 years. The audits shall be undertaken by qualified City staff or entity selected by City.

The cost of the audit shall be borne by City, unless the results of the audit reveal an underpayment of more than 5% of the franchise fee for the period audited. In the case of underpayment of 5% or more, the full cost of the audit shall be paid by Franchisee. Franchisee shall pay the amount of any underpayment as determined by the audit not subject of a good faith dispute to City together with 9% annual interest, compounded monthly, from the date the payment should have been made to the date the payment is actually made within 30 days of notice provided to Franchisee by the City. In the case of overpayment of more than 5%, the full cost of the audit shall be paid by the City and the City will return excess overpayment exceeding audit costs to Franchisee.

Any audit information obtained by City under these provisions shall be kept confidential to the maximum extent allowed by Oregon law, except that this obligation shall not prevent the City from introducing audit results in any forum where enforcement of the provisions of this Franchise Agreement is at issue.

Section 15. Permit and Inspection Fees

Nothing in this Franchise Agreement shall be construed to limit the right of City to require Franchisee to pay permit fees or reasonable costs incurred by City in connection with the issuance of a permit, making an inspection, or performing any other service for or in connection with Franchisee or its Electrical Facilities, whether pursuant to this Franchise Agreement or any ordinance or regulation, subject to any limitation imposed by Federal or state law.

Section 16 . Enforcement and Termination of Franchise for Violation

A. Default. Time of payment and performance are of the essence in the Franchise. The following shall be events of default:

1. Default in Payments. The failure of Franchisee to pay City when due any amounts required by this Franchise Agreement and the failure continues for 30 days after written notice from the City.

2. Default in Other Provisions. Franchisee's failure to cure a default of any other provision of this Franchise Agreement within 90 days after notice from City of the default. If the default is curable but cannot reasonably be cured within 90 days, the City shall refrain from termination while Franchisee is diligently attempting to cure the default.

B. Termination for Defaults Not Cured. The City may terminate this Franchise Agreement for defaults that are not cured within the time allowed by Subsection A of this section by providing a notice of termination to Franchisee. Franchisee may challenge the notice of termination by providing a written protest to the City Manager within 10 business days of the date of the notice of termination. The City Manager, on receipt of the protest, shall either grant the protest, in which case the Franchise Agreement will remain in place, or refer the matter to the City Council for a decision. The termination will not become final until after a decision is made by the City Manager or, in the case of a protest referred to the City Council, the City Council. Because of the potential public health and safety risks that could arise as a result of cessation of electrical power and energy delivery within the City, if the City decides to terminate the Franchise, it shall set a termination date that allows for implementation of a plan to assure continued electrical power and energy delivery service.

Section 17. Remedies not Exclusive; Waiver

All remedies granted the City under this Franchise Agreement are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this Franchise Agreement are not exclusive, and City reserves the right to enforce penal provisions of any ordinance and also use any remedy available to City at law or in equity. Failure to enforce any provision of this Franchise Agreement shall not be construed as a waiver of a breach of any other term, condition or obligation of this Franchise Agreement.

Section 18. Non-Contestability – Breach of Contract

Neither the City nor Franchisee will take any action for the purpose of securing modification of this Franchise Agreement before either the Oregon Public Utility Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise Agreement nor shall Franchisee be precluded from seeking relief from the Courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise Agreement illegal.

In the event Franchisee or the City fails to fulfill any of their respective obligations under this Franchise, the City, or Franchisee, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise Agreement shall become effective without such action which would be necessary to formally amend the Franchise.

Section 19. Amendment

At any time during the term of this Franchise Agreement, the City, through its City Council, or Franchisee may propose amendments to this Franchise Agreement by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise Agreement shall be effective until mutually agreed upon by the City and Franchisee and formally adopted as an ordinance amendment.

In the event of any conflict between the terms of this Franchise and future City ordinance setting forth terms and conditions of general applicability to franchises, the terms and conditions of this Franchise Agreement shall govern.

Section 20. Interpretation/Jurisdiction

Interpretation of the Franchise Agreement shall be governed by laws of the State of Oregon and any legal action relating to this Franchise Agreement shall be brought in Deschutes County Circuit Court.

Section 21. Waiver of Jury Trial.

To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Franchise Agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

Section 22. Severability

If any section, subsection, sentence, clause, or portion of this Franchise Agreement is for any reason held invalid or rendered unconstitutional by any Court of competent jurisdiction, that portion shall be deemed a separate, distinct, independent and severable provision and the holding shall not affect the validity or constitutionality of the remaining portion of this Franchise Agreement. If for any reason, the franchise fee is invalidated by any court or governmental agency, then the highest permissible franchise fee allowed shall be the franchise fee.

Section 23. Notices

Any notice required or permitted under this Franchise Agreement shall be deemed given when received or when deposited with postage prepaid in the United States Mail as registered or certified mail addressed as follows:

TO CITY:
City Manager
City of Redmond
411 NW 9th St
Redmond, OR 97756

TO FRANCHISEE:
PacifiCorp
Attn: Office of the General Counsel
825 N.E. Multnomah, Suite 2000
Portland, Oregon 97232

or to other address specified by either party in writing.

The primary contact regarding administration of this Franchise Agreement for the City is:

Position:	Billing & Collection Manager
Name:	Valerie Taylor
Email:	valerie.taylor@redmondoregon.gov
Phone:	541.923.7732

and for Franchisee is:

Position:	Regional Business Manager
Name:	Matthew Chancellor
Email:	Matthew.Chancellor@pacificorp.com
Phone:	541.633.2483

The primary contacts may be changed by either party in writing.

Section 24. Emergency Declaration

The City Council finds that this ordinance is necessary to maintain electrical power and energy distribution services and is necessary for the immediate preservation of the peace, health, and safety of the City of Redmond. The City Council also finds that it is in the best interest of the City of Redmond to have this ordinance take effect immediately upon adoption and signature. Therefore, the City Council hereby declares an emergency. This ordinance, therefore, shall become effective on the date of passage.

CITY OF REDMOND	FRANCHISEE PacifiCorp
_________________________ Ed Fitch, Mayor	By: _________________________ Joelle Steward, Senior Vice President
Date: _____________________	Date: _____________________
ATTEST:	ATTEST:
_________________________ Kelly Morse, City Recorder	By: _________________________

EXHIBIT A

City of Redmond
Franchise Fee Percentage Reporting Form

Company: ________________________________

Reporting Period: ________________________________

Description	**Revenue and Fee Calculation**
Gross Revenues (as defined in the Franchise Agreement)	$
Less: Revenues Exempt from Franchise Fees	$
Other Adjustments to Gross Revenues	$
Net Revenues Subject to Franchise Fees	**$**
Franchise Fee	7%
Franchise Fee Remitted to City of Redmond	**$**

Prepared by:

______________________________ ______________________
Signed Date

______________________________ ______________________
Name, Title Phone & Email Address

Certification by Officer or Authorized Representative:

I declare that the information provided herein is true, complete, and accurate to the best of my knowledge and belief.

______________________________ ______________________
Signed Date

____
Name, Title

Please remit payment to:
City of Redmond
411 SW 9th Street
Redmond, OR 97756

For questions, please contact City of Redmond Finance Department at 541.504.3066.

CITY OF REDMOND

CITY HALL
411 SW 9th STREET
REDMOND, OR 97756
541.923.7710
FAX: 541.548.0706
info@redmondoregon.gov
redmondoregon.gov

STAFF REPORT

DATE: April 9, 2024
TO: Redmond City Council
THROUGH: Keith Witcosky, City Manager
Jason Neff, Deputy City Manager/Chief Financial Officer
James Wood, Finance Director
FROM: Valerie Taylor, Billing and Collections Manager
SUBJECT: Ordinance #2024-07: An ordinance granting a non-exclusive telecommunication franchise to Ziply Fiber Pacific, LLC d/b/a Ziply Fiber.

Report in Brief:
This item requests City Council approve a five-year non-exclusive telecommunications franchise agreement with Ziply Fiber Pacific, LLC.

Background:
The City of Redmond was approached by Ziply Fiber Pacific, LLC to enter into a franchise agreement with the City of Redmond. Ziply Fiber provides high-speed internet, voice, and data services to residential and business customers.

Discussion:
This ordinance is a five-year non-exclusive telecommunications franchise agreement granting Ziply Fiber Pacific, LLC the authority to operate in the City's rights of way to provide telecommunication services while maintaining the City's development standards. The agreement is set to automatically renew for two successive terms of five years each unless terminated.

Fiscal Impact:
The actual revenue to be received from this franchise is unknown at this point as it will depend on the roll-out of services by Ziply Fiber Pacific, LLC. The tentative timeline for the roll-out is early 2025.

Alternative Courses of Action:

1. Approve Ordinance #2024-07.
2. Do not approve Ordinance #2024-07.
3. Request more information.

As required by City Charter, notices regarding this ordinance coming before the Council were posted in three public places on April 2, 2024, and three copies of the Ordinance were available for review at City Hall.

Recommendation / Suggested Motion:
"I move to have a first and second reading of Ord. #2024-07, by title only" (Voice vote)

(City Attorney will read the ordinance by title only.)

"I move to approve Ord. #2024-07." (Roll call vote)

REDMOND ORDINANCE
ORDINANCE NO. 2024-07

AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATION FRANCHISE TO ZIPLY FIBER PACIFIC, LLC D/B/A ZIPLY FIBER.

WHEREAS, Ziply Fiber is a telecommunications provider seeking to provide telecommunication services in the City of Redmond; and

WHEREAS, providing telecommunication services requires the installation, operation and maintenance of facilities within the public rights of ways within the City of Redmond; and

WHEREAS, the City of Redmond desires to set forth the terms and conditions by which Ziply Fiber shall use the public rights of way within the City of Redmond; and

WHEREAS, the City of Redmond and Ziply Fiber desire to enter into a franchise agreement and have reached agreement on the terms of that franchise agreement.

NOW, THEREFORE, THE CITY OF REDMOND, OREGON, ORDAINS AS FOLLOWS:

This Telecommunications Franchise Agreement (“Agreement”) is between the City of Redmond, an Oregon municipal corporation ("City") and Ziply Fiber ("Franchisee").

Section 1. Definitions.

Any terms defined in the Redmond Code and not in this Agreement have the meaning provided by the Redmond Code.

“Effective Date” means thirty days from council approval, or the date on which each party has signed this Agreement, whichever is later.

"Facilities" means the conduits, cables, optic fibers, poles, wires, vaults, fixtures, aboveground and underground lines, antennas, support mast and mounts, amplifiers, receivers, equipment cabinets, through bolts, washers, nuts, power supply cabinets, power meters, grounding or bond wires, enclosures, cabinets, battery back-up units, and other physical components and related equipment of Franchisee's Telecommunication System that are in compliance with applicable laws, rules and regulations as required by Section 3.

“Fiscal Year” means the 12-month reporting period that begins on July 1st and ends on June 30th.

"Gross revenue" shall have the same meaning as ORS 221.515.

"Telecommunications System" means all Facilities owned, operated or used by Franchisee to provide telecommunication services, including voice, data and audio and video transmission services, and located in rights-of-way administered by the City.

Section 2. Grant of Authority.

City grants to Franchisee the right to construct, install, maintain, restore, replace, and operate Facilities over, in, on, and under present and future City rights-of-way for the purpose of providing telecommunication services on the terms stated in this Agreement and subject to applicable law.

This Franchise is not exclusive. The City reserves the right to grant a similar franchise to any other person or entity at any time during the period of this Agreement. This Agreement is subject to all prior rights, interests, agreements, permits, easements, or licenses granted by the City, and to the City's right to use and administer rights-of-way for any purpose.

Section 3. Compliance with Laws, Rules and Regulations.

Franchisee shall comply with all applicable federal, state and City laws, rules and regulations, including but not limited to the Redmond Development Code, other provisions or revisions of the Redmond Code, and City ordinances. The locations and methods of installation and maintenance of all Franchisee's Facilities shall be subject at all times to regulation by the City (including City's ordinances, standards and specifications, and regulations on street cuts and use of rights-of-way or public easements).

Franchisee must obtain all applicable permits prior to any work in the right of way or construction of Facilities. Franchisee must develop, site, construct, install, and at all times maintain and operate all Facilities in accordance with telecommunications industry standards and City standards and specifications, including but not limited to Redmond Development Code and as directed by the City Engineer in accordance with the Redmond Code.

Section 4. Franchisee Liability, Indemnification of City, and Insurance.

A. Liability and Indemnification. Franchisee will defend, indemnify , and hold the City, its officers, agents, employees and volunteers harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively known as "claims") that may be based on, or arise out of damage or injury, including death, to persons or property caused by or resulting from any act or omission sustained in connection with the performance of this Agreement or by conditions created thereby or based upon violation of any statute, ordinance or regulation. This indemnification does not apply to claims caused by the negligence or willful misconduct of the City, its officers, agents, employees and volunteers. Franchisee agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

B. Insurance. Franchisee must maintain, at Franchisee's expense during the term of this Agreement, commercial general liability covering bodily injury and property damage in an amount of $2 million per occurrence and $4 million general aggregate; commercial automobile insurance $2 million combined single limit per accident which limits may be met by any combination of primary and excess or umbrella insurance. The insurance policies obtained by Franchisee shall be primary and non-contributory. Franchisee shall defend, indemnify, and hold City, its officers, employees, and volunteers harmless for any claims resulting from negligence or intentional misconduct of Franchisee and its employees in performance of this Agreement, even if not covered by, or in excess of insurance limits.

Commercial general liability coverage must include by blanket additional insured endorsement, the City, its officers, employees, and volunteers as additional insureds as their interest may appear under this Agreement with respect to Franchisee's work or services conducted under this Agreement. Upon receipt of notice from its insurers, Franchisee will give the City 30 days' written notice of any cancellation of any required coverage. Any failure to comply with this provision will not affect the insurance coverage provided to City.

Franchisee must maintain workers' compensation insurance as required by ORS Chapter 656 and meeting the statutory requirements therein.

Franchisee must ensure that each contractor and subcontractor obtains and maintains substantially the same insurance as required of Franchisee before performing work.

Coverages provided by Franchisee must be underwritten by an insurance company authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

As evidence of the insurance coverage required by this Agreement, Franchisee must provide a certificate of insurance and blanket additional insured endorsement from the carrier(s). This Agreement will not be in effect until the required certificate and blanket additional insured endorsement have been received and approved by City, which reasonable approval may not be withheld or delayed. Renewal certificates and blanket additional insured endorsements will be provided to City upon receipt by Franchisee. The City may terminate this Agreement for failure to maintain the required insurance.

C. Waiver of Subrogation. Franchisee grants a waiver of subrogation to the City, its officers, employees and volunteers for any claims arising out of Franchisee's work or service. Further, Franchisee agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery will be solely with its insurance carrier, and also grants to City, on behalf of any insurer providing coverage to either Franchisee or City with respect to the work or services of Franchisee, a waiver of any right to subrogation which any insurer or subcontractor may acquire against City by virtue of the payment of any loss under such insurance coverage.

Section 5. Performance Bond.

Before commencing any work in any right-of-way administered by the City, Franchisee must provide a performance bond in the amount of $100,000 until construction is complete. The bond will then be reduced to $50,000 for the remainder of the agreement, or a lesser amount as agreed to in writing by the City as being sufficient to assure proper restoration of any street, sidewalk or other surface disturbed by Franchisee. Franchisee must keep the bond in full force and effect during any activities that disturb the surface of any rights-of-way and for a period of at least one year after restoration of rights-of-way. The bond may be withdrawn one year after restoration of rights-of-way but must be restored prior to any further action that would disturb any street, sidewalk, or other surface. The bond must be issued by surety authorized to do business in the state of Oregon and with a Best's rating of A- VII or higher.

City may, in the event of any construction which is likely to be substantially greater than $100,000, or in the event the City's cost to complete or repair the construction upon Franchisee's failure to perform the same would be greater than $100,000, as reasonably determined by the City, require the amount of the performance bond to be increased. The performance bond is subject to increase each time Franchisee applies for permits to perform work within the city of Redmond. Franchisee must provide to City all necessary documentation demonstrating Franchisee's cost estimation in a format reasonably acceptable to City.

Section 6. Construction and Conditions on Right-of-Way Occupancy.

A. Use. Franchisee must conduct its operations under this Franchise, including installation, construction, operations, and maintenance of its Facilities, in compliance with all lawful governmental regulations and in a safe, competent, and skillful manner so as not to present a danger to the public or City. Franchisee must construct, install, maintain and operate its Facilities in designated City rights- of-way consistent with industry standards and in City's commercially reasonable satisfaction, in compliance with all City ordinances, rules, standards and specifications, policies and regulations, in a manner so as to interfere as little as practicable with traffic and other use of rights of way, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the rights of way, including existing and future City services. All work in City right-of-way requires a permit and a traffic plan that is fully compliant with the City of Redmond Design Standards and Specifications, prior to the start of any work.

B. Construction. Prior to beginning construction, Franchisee must obtain all necessary land use approvals and permits. When construction is complete, Franchisee must provide the City Engineer as-built drawings with a map showing the location of installed Facilities in City rights-of-way as required by City codes, standards and specifications, and building requirements. The City Engineer may require additional information on the as-built drawings.

C. Restoration. In case of any disturbance of pavement, sidewalk, driveway, or other surface by Franchisee, Franchisee must, at its own cost and expense and in compliance with the City's standards and specifications, promptly replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, reasonable wear and tear excepted. Franchisee warrants all restoration work for a period of one year from completion of the work. If Franchisee fails to make restoration as required by this section within a reasonable timeframe following written notice from City to Franchisee, or if the restoration fails within the one-year warranty period, City may cause the repairs to be made at the expense of Franchisee. If Franchisee fails to reimburse the City for any costs incurred under this section within 45 days of demand for reimbursement and such failure is not a result of a good faith dispute between City and Franchisee, City may refuse to issue additional permits.

D. Notification. Franchisee must comply with the requirements of Oregon Utility Notification Law and implementing rules and regulations.

E. Relocation. City may require Franchisee to relocate its Facilities. If the removal or relocation of Facilities is caused directly by an identifiable development of property or other third-party project and the removal or relocation of Facilities is expected to occur within the area to be developed, or is made for the convenience of other third-party, Franchisee may charge the expense of removal or relocation to the developer or other third-party. Franchisee will be solely responsible for enforcing collection from the developer or other third-party.

If the removal or relocation of Facilities results from City's need to provide public facilities, a City-funded project, or is otherwise requested by City or is made for the purpose of improving a street to City standards or other improvement for the benefit of the public, Franchisee will remove or relocate its Facilities at Franchisee's expense within one hundred twenty (120) days after notification by City. For any relocation required under this section, City will make a reasonable effort to provide Franchisee with a mutually agreeable alternate location for its Facilities within City rights-of-way, or allow Franchisee to temporarily remove or relocate its Facilities for the duration of the City Project and allow Franchisee the opportunity to replace its Facilities in the same or similar location after completion of the City project, consistent with City approval for Franchisee’s location of the Facility.

In cases of capital improvement projects undertaken by City where overhead utilities are converted to underground installations, Franchisee must convert above-ground Facilities to underground, at Franchisee's expense, if requested to do so by City, except to the extent Franchisee’s Facilities must remain above-ground to operate. City agrees to comply with provisions of applicable law when requiring such conversion and to do so in a non-discriminatory manner.

F. Placement of Facilities. Franchisee will not knowingly place its Facilities where they will interfere with any existing or future City utility, gas, electric, or telephone fixture or power, sanitary sewer, storm sewer, or water facility. Franchisee must consult with City Engineer prior to placement of Facilities, and will comply with all City ordinances, policies, rules, and regulations in connection with its placement of Facilities. Whenever all existing electric utilities, cable facilities and telecommunications facilities are located underground within a public right-of-way in the City, Franchisee must also locate or relocate its Facilities underground to the extent possible.

G. Temporary Rearrangement of Facilities. Franchisee must, consistent with City policies, ordinances, rules, and regulations, arrange to temporarily raise, lower, or otherwise move its Facilities to permit the moving of buildings or other objects if the person or entity wishing to move the building or other object makes a reasonable arrangement to reimburse Franchisee for its expenses in rearranging its Facilities. Nothing in this section precludes City from requiring Franchisee to move its Facilities at Franchisee's expense when public convenience requires the move.

H. Maps and Records. Franchisee shall at all times keep maps and records showing the locations and components of all facilities constructed by it or owned by it within the City right of way. Spatial data for facilities located in the rights-of-way shall be available to the City as needed. Franchisee shall keep as-builts on file and available for City use upon request.

Section 7. Transfer of Franchise.

Franchisee may not sell, assign, dispose of, or transfer in any manner whatsoever any interest in this Franchise or in the Facilities authorized by this Agreement, or any part of the Facilities, without prior written approval of City, which approval will not be unreasonably withheld. The City may impose reasonable conditions on any such approval, including but not limited to the requirement that the transferee acknowledge in writing and agree to be bound by the terms of this Agreement. City has the right to collect from Franchisee City's actual administrative costs associated with processing a transfer request, including the cost of ascertaining the financial responsibility of the proposed transferee. Use of Franchisee's Facilities by third parties shall not constitute an assignment or transfer of privileges for purposes of this Agreement. Notwithstanding the foregoing, no City approval is required but notice shall be provided for any assignment, disposal, or transfer of this Franchise or the Facilities to an affiliate of Franchisee or its parent company. In the event such a transfer, assignment, or disposal of franchisee's ownership is approved by the Oregon Public Utilities Commission ("OPUC"), the City will be deemed to have consented to such transfer. Grantee will provide City with a copy of any such approval.

Section 8. City Rights in Franchise.

A. City Supervision and Inspection. City has the right to supervise all construction or installation of Franchisee's Facilities subject to the provisions of this Agreement and make such inspections as it finds necessary to ensure compliance with governing laws, ordinances, rules, and regulations.

B. Termination or Abandonment of Agreement. Upon any termination of this Agreement, all Facilities installed or used by Franchisee must be removed by Franchisee at Franchisee's expense within one hundred twenty (120) days after such termination, and the property upon which the Facilities were used restored by Franchisee to the condition it was in before installation.

C. Co-location. Franchisee must offer the City the opportunity to co-locate City conduit and lines in trenches dug by Franchisee in City rights-of-way and may charge City only any incremental additional costs incurred in making the trenches available for City use.

Section 9. Franchise Fee.

A. Franchisee shall pay monthly to City a Franchise fee equal to 7% of Company's gross revenues received from ultimate consumers of the facilities who do not re-sell their use of the facilities to third parties within the corporate limits of City. Company also may at its option deduct uncollectible accounts of customers within the corporate limits of City from these gross revenues.

The intention of the parties in charging different fees for telecommunications service providers and ultimate consumers is to prevent any end user from paying a permit or franchise fee to City more than once for the same use of the facilities, while at the same time charging a fair amount for the use of City's rights of way.

B. The Franchise Fee required by this section is due and payable within 60 days after the end of each applicable calendar month. Any payment not made when due will bear interest at the rate of 9% per annum, compounded monthly, from the date due until paid. Together with each payment of the Franchise Fee, Franchisee will submit a Telecommunications Franchise Fee Percentage Reporting Form in the form of Exhibit A.

C. City's acceptance of any payments due under this section shall not be considered a waiver by City of any breach of this franchise agreement.

D. Except to the extent prohibited by Federal or State law, the Franchise Fee is in addition to any permit fee required to comply with Section 3.

Section 10. Franchisee Records and Reports.

A. Franchisee shall keep accurate books of financial accounts throughout the term of this Franchise Agreement and for six years after the expiration or termination of this Agreement. Franchisee shall produce all books and records directly concerning its Gross Revenues and other financial information deemed necessary by City for purposes of calculation of the franchise fee for inspection by City, upon 30 days' written notice, during normal working hours. City may require periodic reports from Franchisee relating to its operation within City.

B. City shall have the right during the term of this Franchise Agreement or within 180 days after expiration or termination of the franchise to audit Franchisee's records for the period of three years prior to the audit. If the audit reveals underpayment of 3% or more, the City may expand the audit to cover up to 6 years. The audits shall be undertaken by a qualified person or entity selected by City. The cost of the audit shall be borne by City, unless the results of the audit reveal an underpayment of more than 3% of the franchise fee for the period audited. In the case of underpayment of 3% or more, the full cost of the audit shall be paid by Franchisee. Franchisee shall immediately pay the amount of the underpayment as determined by the audit to City together with 9% annual interest from the date the payment should have been made to the date the payment is actually made.

C. Any audit information obtained by City under these provisions shall be kept confidential to the maximum extent allowed by Oregon law, except that this obligation shall not prevent the City from introducing audit results in any forum where enforcement of the provisions of this Franchise Agreement is at issue.

Section 11. Permit and Inspection Fees.

Nothing in this Agreement may be construed to limit the right of City to require Franchisee to pay reasonable costs incurred by City in connection with the issuance of a license or permit, making an inspection, or performing any other service for or in connection with Franchisee or its Facilities, whether pursuant to this Agreement or any ordinance or regulation, subject to any limitation imposed by Federal or state law.

Section 12. Enforcement and Termination of Agreement for Violation.

A. Default. Time of payment and performance are of the essence in the Agreement. The following are events of default:

   a. Default in Payment. The failure of Franchisee to pay City when due any amounts required by the Agreement pursuant to Section 9 and such failure continues for a period of 15 days after the postmark date of Licensee's notice of its failure to pay.

   b. Default in Other Covenants. The failure of Franchisee to perform any of the covenants and conditions required by this Agreement to be kept and performed by Franchisee, and such failure continues for a period of 30 days after notice from City of such failure, or longer than 30 days if the nature of the cure requires a longer period of time and the cure was commenced within the 30-day period. Upon the occurrence of an event of default, Franchisee must pay to City the sum of $200 per day for each day the default continues along with any additional damages suffered by City as a result of Franchisee's default.

B. The City may terminate this Agreement for defaults that are not cured within the time allowed by providing 30 days' notice to Franchisee of its intent to terminate. Franchisee may avoid termination by completely curing the default(s), including payment of the penalty required by Subsection A.2 of this section, unless the notice of termination is the third notice of termination within a 12-month period. Franchisee may challenge a notice of termination by providing a written protest to the City Manager within 15 business days after the postmark date of Franchisee notice of termination. The City Manager, on receipt of the protest shall either grant the protest, in which case the Agreement will remain in place, or refer the matter to the City Council for a decision. The termination will not become final until after the decision by the City Manager or City Council.

Section 13. Remedies not Exclusive; Waiver.

All remedies granted the City under this Agreement are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this Agreement are not exclusive and City reserves the right to enforce penal provisions of any ordinance and also use any remedy available to City at law or in equity. Failure to enforce any provision of this Agreement may not be construed as a waiver of a breach of any other term, condition or obligation of this Agreement.

Section 14. Franchise Term.

This Franchise is granted for a term of five years beginning the Effective Date ("Initial Term) and will automatically renew for two successive terms of five years each (each a "Renewal Term") unless notice of termination is provided. Franchisee and City may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing notice of termination at least 60 days prior to the end of the Initial Term or relevant Renewal Term. If notice of termination is provided, the parties may elect to negotiate a new franchise agreement in lieu of termination. In the event the City adopts code provisions, regulations or standards and specifications applicable to this Franchise or if state or federal legislation or regulation affects any provision of this Franchise, the Parties, at the request of either Party, may request renegotiation of the Franchise to reflect the changes in law or regulation.

Section 15. Severability.

If any section, subsection, sentence, clause, or portion of this Agreement becomes for any reason invalid, superseded by applicable authority, or if any such portion of this Agreement is rendered unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity or constitutionality of the remaining portion thereof. If for any reason, the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by such court or other governmental agency shall be the franchise fee charged by this Agreement.

Section 16. Notices.

Any notice required or permitted under this Agreement, including Annexation notifications, shall be deemed given when received or when deposited with the United States Postal Service, postage prepaid and sent as registered or certified mail addressed as follows:

TO CITY:

Keith Witcosky
City Manager
City of Redmond
411 SW 9th St
Redmond, OR 97756

TO FRANCHISEE:

Name:	Ziply Fiber Pacific, LLC
Attn:	Legal Department
Address:	135 Lake Street South, Suite 155 Kirkland, WA 98033 Legal@ziply.com

or to such other addresses as may be specified from time to time by either party in writing.

The primary contact regarding administration of this Franchise for the City is:

Position:	Billing and Collections Manager
Name:	Valerie Taylor
Email:	valerie.taylor@redmondoregon.gov
Phone:	541.923.7732

and for Franchisee is:

Position: Ziply Fiber Pacific, LLC
Name:
Legal Department Email: Legal@ziply.com
The primary contacts may be changed at any time by a written communication, including email, without the need for formal notice.

Section 17. Interpretation/Jurisdiction.

Interpretation of the Agreement shall be governed by laws of the State of Oregon and any legal action relating to this Agreement must be brought in the state or federal courts located in Deschutes County, or in the case of a federal court, the federal courthouse closest to Deschutes County.

Section 18. Change of Law.

If any federal or state laws or regulations or any binding judicial interpretations thereof that govern any aspect of the rights or obligations of one or more parties under this Agreement shall change after full execution, and such change makes any aspect of such rights or obligations inconsistent with the then-effective federal or state laws, regulations or binding judicial interpretations, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

City of Redmond	Franchisee
______________________________	______________________________
Ed Fitch, Mayor	Authorized Representative
______________________________	______________________________
Date	Printed Name
	______________________________
	Date
ATTEST:	ATTEST:
_________________________	By: _________________________
Kelly Morse, City Recorder	
	______________________________
	Printed Name

EXHIBIT A

Exhibit A

City of Redmond

Franchise Fee Percentage Reporting Form

Company: Ziply Fiber Pacific LLC

Reporting Period: ___________________________

Description	Revenue and Fee Calculation
Gross Revenues (as defined in Ordinance 2024-07)	$
Less: Revenues Exempt from Franchise Fee	$
Other Adjustments to Gross Revenues	$
Net Revenue Subject to Franchise Fee	**$**
Franchise Fee Rate	Seven Percent (7%)
Franchise Fee Remitted to City of Redmond	**$**

Prepared By:

____________________________ Signed ____________________________ Name, Title	____________________________ Date ____________________________ Phone, Email Address

Certification by Officer or Authorized Representative

I declare that the information provided herein is true, complete, and accurate to the best of my knowledge and belief.

____________________________ Signed ____________________________ Name, Title	____________________________ Date

Please remit payment to:
City of Redmond
411 SW 9th Street
Redmond, OR 97756

For questions, please contact City of Redmond Finance Department at 541.504.3066

CITY OF REDMOND

CITY HALL
411 SW 9th STREET
REDMOND, OR 97756
541.923.7710
FAX: 541.548.0706
info@redmondoregon.gov
redmondoregon.gov

STAFF REPORT

DATE: April 9, 2024
TO: Redmond City Council
THROUGH: Keith Witcosky, City Manager
Jason Neff, Deputy City Manager/Chief Financial Officer
James Wood, Finance Director
FROM: Valerie Taylor, Billing and Collections Manager
SUBJECT: Ordinance #2024-08: An Ordinance granting a non-exclusive telecommunications franchise to Lightspeed Networks, Inc. d/b/a LS Networks.

Report in Brief:
This item requests City Council approve a five-year non-exclusive telecommunications franchise agreement with Lightspeed Networks, Inc.

Background:
Formally Quantum Communications, Lightspeed Networks Inc is a telecommunications provider to the residents of the city of Redmond and other surrounding areas. The existing Quantum Communications agreement expired in October 2023, and a new franchise agreement has been negotiated and is ready for approval.

Discussion:
This ordinance is a five-year non-exclusive telecommunications franchise agreement granting Lightspeed Networks, Inc the authority to operate in the City's rights-of-way to provide telecommunication services while maintaining the City's development standards. The proposed franchise agreement is substantially similar in terms to the existing agreement. The agreement is set to automatically renew for two successive terms of five years each unless terminated.

Fiscal Impact:
With this agreement, Lightspeed Networks, Inc will continue to pay a seven percent monthly franchise fee to the City based off of the gross revenues received from customers within city limits. Lightspeed Networks, Inc will also pay a franchise fee equal to the sum of three percent of the Company's gross revenues received from telecommunication service providers who resell their use of facilities to third parties within city limits. The revenue that the City receives from this Franchisee equates to approximately $42,000 per year.

Alternative Courses of Action:

1. Approve Ordinance #2024-08.
2. Do not approve Ordinance #2024-08.
3. Request more information.

As required by City Charter, notices regarding this ordinance coming before the Council were posted in three public places on April 2, 2024, and three copies of the Ordinance were available for review at City Hall.

Recommendation / Suggested Motion:
"I move to have a first and second reading of Ord. #2024-08, by title only" (Voice vote)

(City Attorney will read the ordinance by title only.)

"I move to approve Ord. #2024-08." (Roll call vote)

REDMOND ORDINANCE
ORDINANCE NO. 2024-08

AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATION FRANCHISE TO LIGHTSPEED NETWORKS, INC. D/B/A LS NETWORKS.

WHEREAS, Lightspeed Networks, Inc dba LS Networks is a telecommunications provider seeking to provide telecommunication services in the City of Redmond; and

WHEREAS, providing telecommunication services requires the installation, operation and maintenance of facilities within the public rights of ways within the City of Redmond; and

WHEREAS, the City of Redmond desires to set forth the terms and conditions by which Lightspeed Networks Inc. dba LS Networks shall use the public rights of way within the City of Redmond; and

WHEREAS, the City of Redmond and Lightspeed Networks Inc. dba LS Networks desire to enter into a franchise agreement and have reached agreement on the terms of that franchise agreement.

NOW, THEREFORE, THE CITY OF REDMOND, OREGON, ORDAINS AS FOLLOWS:

This Telecommunications Franchise Agreement (“Agreement”) is between the City of Redmond, an Oregon municipal corporation ("City") and Lightspeed Networks, Inc dba LS Networks ("Franchisee").

Section 1. Definitions.

Any terms defined in the Redmond Code and not in this Agreement have the meaning provided by the Redmond Code.

“Effective Date” means thirty (30) days from council approval, or the date on which each party has signed this Agreement, whichever is later.

"Facilities" means the conduits, cables, optic fibers, poles, wires, vaults, fixtures, aboveground and underground lines, antennas, support mast and mounts, amplifiers, receivers, equipment cabinets, through bolts, washers, nuts, power supply cabinets, power meters, grounding or bond wires, enclosures, cabinets, battery back-up units, and other physical components and related equipment of Franchisee's Telecommunication System that are in compliance with applicable laws, rules and regulations as required by Section 3.

“Fiscal Year” means the 12-month reporting period that begins on July 1st and ends on June 30th.

"Gross revenue" means and includes recurring revenues received by the Franchisee for the provision of telecommunications services, either directly by the Franchisee or indirectly through a reseller, if any, to customers of such services consumed wholly or in part within the City. Gross Revenue shall not include:

a) sales, ad valorem, or other types of "add on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid or collected for federal, state, or local government (exclusive of the Right-of-Way Use Fee paid to the City as provided herein);
b) retail discounts or other promotions;
c) non-collectable amounts due the Franchisee or its customers;
d) refunds or rebates;
e) non-operating revenues such as interest income or gain from the sale of an asset; or
f) payments received by Franchisee for the construction of network facilities.

To the extent the Franchisee provides services through facilities in City rights of way other than through telecommunication facilities, the definition of "gross revenues" means any revenue received from sources within the City limits by the Franchisee, including revenue from the use, rental or lease of operating facilities of the Franchisee and from the provision of services by the Franchisee.

"Telecommunications System" means all Facilities owned, operated or used by Franchisee to provide telecommunication services, including voice, data and audio and video transmission services, and located in rights-of-way administered by the City.

Section 2. Grant of Authority.

City grants to Franchisee the right to construct, install, maintain, restore, replace, and operate Facilities over, in, on, and under present and future City rights-of-way for the purpose of providing telecommunication services on the terms stated in this Agreement and subject to applicable law.

This Franchise is not exclusive. The City reserves the right to grant a similar franchise to any other person or entity at any time during the period of this Agreement. This Agreement is subject to all prior rights, interests, agreements, permits, easements, or licenses granted by the City, and to the City's right to use and administer rights-of-way for any purpose.

Section 3. Compliance with Laws, Rules and Regulations.

Franchisee shall comply with all applicable federal, state and City laws, rules and regulations, including but not limited to the Redmond Development Code, other provisions or revisions of the Redmond Code, and City ordinances. The locations and methods of installation and maintenance of all Franchisee's Facilities shall be subject at all times to regulation by the City (including City's ordinances, standards and specifications, and regulations on street cuts and use of rights-of-way or public easements).

Franchisee must obtain all applicable permits prior to any work in the rights-of-way or construction of Facilities. Franchisee must develop, site, construct, install, and at all times maintain and operate all Facilities in accordance with telecommunications industry standards and City standards and specifications, including but not limited to Redmond Development Code and as directed by the City Engineer in accordance with the Redmond Code.

Section 4. Franchisee Liability, Indemnification of City, and Insurance.

A. Liability and Indemnification. Franchisee will defend, indemnify , and hold the City, its officers, agents, employees and volunteers harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively known as "claims") that may be based on, or arise out of damage or injury, including death, to persons or property caused by or resulting from any act or omission sustained in connection with the performance of this Agreement or by conditions created thereby or based upon violation of any statute, ordinance or regulation. This indemnification does not apply to claims caused by the negligence or willful misconduct of the City, its officers, agents, employees and volunteers. Franchisee agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

B. Insurance. Franchisee must maintain, at Franchisee's expense during the term of this Agreement, commercial general liability covering bodily injury and property damage in an amount of $2 million per occurrence and $4 million general aggregate; commercial automobile insurance $2 million combined single limit per accident which limits may be met by any combination of primary and excess or umbrella insurance. The insurance policies obtained by Franchisee shall be primary and non-contributory. Franchisee shall defend, indemnify, and hold City, its officers, employees, and volunteers harmless for any claims resulting from negligence or intentional misconduct of Franchisee and its employees in performance of this Agreement, even if not covered by, or in excess of insurance limits.

   Commercial general liability coverage must include by blanket additional insured endorsement, the City, its officers, employees, and volunteers as additional insureds as their interest may appear under this Agreement with respect to Franchisee's work or services conducted under this Agreement. Upon receipt of notice from its insurers, Franchisee will give the City 30 days' written notice of any cancellation of any required coverage. Any failure to comply with this provision will not affect the insurance coverage provided to City.

   Franchisee must maintain workers' compensation insurance as required by ORS Chapter 656 and meeting the statutory requirements therein.

   Franchisee must ensure that each contractor and subcontractor obtains and maintains substantially the same insurance as required of Franchisee before performing work.

   Coverages provided by Franchisee must be underwritten by an insurance company authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

As evidence of the insurance coverage required by this Agreement, Franchisee must provide a certificate of insurance and blanket additional insured endorsement from the carrier(s). This Agreement will not be in effect until the required certificate and blanket additional insured endorsement have been received and approved by City, which reasonable approval may not be withheld or delayed. Renewal certificates and blanket additional insured endorsements will be provided to City upon receipt by Franchisee. The City may terminate this Agreement for failure to maintain the required insurance.

C. Waiver of Subrogation. Franchisee grants a waiver of subrogation to the City, its officers, employees and volunteers for any claims arising out of Franchisee's work or service. Further, Franchisee agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery will be solely with its insurance carrier, and also grants to City, on behalf of any insurer providing coverage to either Franchisee or City with respect to the work or services of Franchisee, a waiver of any right to subrogation which any insurer or subcontractor may acquire against City by virtue of the payment of any loss under such insurance coverage.

Section 5. Performance Bond.

Before commencing any work in any right-of-way administered by the City, Franchisee must provide a performance bond in the amount of $50,000, or a lesser amount as agreed to in writing by the City as being sufficient to assure proper restoration of any street, sidewalk or other surface disturbed by Franchisee. Franchisee must keep the bond in full force and effect during any activities that disturb the surface of any rights-of-way and for a period of at least one year after restoration of rights-of-way. The bond may be withdrawn one year after restoration of rights-of-way but must be restored prior to any further action that would disturb any street, sidewalk, or other surface. The bond must be issued by surety authorized to do business in the state of Oregon and with a Best's rating of A- VII or higher.

City may, in the event of any construction which is likely to be substantially greater than $50,000, or in the event the City's cost to complete or repair the construction upon Franchisee's failure to perform the same would be greater than $50,000, as reasonably determined by the City, require the amount of the performance bond to be increased. The performance bond is subject to increase each time Franchisee applies for permits to perform work within the city of Redmond. Franchisee must provide to City all necessary documentation demonstrating Franchisee's cost estimation in a format reasonably acceptable to City.

Section 6. Construction and Conditions on Right-of-Way Occupancy.

A. Use. Franchisee must conduct its operations under this Franchise, including installation, construction, operations, and maintenance of its Facilities, in compliance with all lawful governmental regulations and in a safe, competent, and skillful manner so as not to present a danger to the public or City. Franchisee must construct, install, maintain and operate its Facilities in designated City rights- of-way consistent with industry standards and in City's commercially reasonable satisfaction, in compliance with all City ordinances, rules, standards and specifications, policies and regulations, in a manner so as to interfere as little as practicable with traffic and other use of rights of way, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the rights of way, including existing and future City services. All work in City right-of-way requires a permit and a traffic plan that is fully compliant with the City of Redmond Design Standards and Specifications, prior to the start of any work.

B. Construction. Prior to beginning construction, Franchisee must obtain all necessary land use approvals and permits. When construction is complete, Franchisee must provide the City Engineer as-built drawings with a map showing the location of installed Facilities in City rights-of-way as required by City codes, standards and specifications, and building requirements. The City Engineer may require additional information on the as-built drawings.

C. Restoration. In case of any disturbance of pavement, sidewalk, driveway, or other surface by Franchisee, Franchisee must, at its own cost and expense and in compliance with the City's standards and specifications, promptly replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, reasonable wear and tear excepted. Franchisee warrants all restoration work for a period of one year from completion of the work. If Franchisee fails to make restoration as required by this section within a reasonable timeframe following written notice from City to Franchisee, or if the restoration fails within the one-year warranty period, City may cause the repairs to be made at the expense of Franchisee. If Franchisee fails to reimburse the City for any costs incurred under this section within 45 days of demand for reimbursement and such failure is not a result of a good faith dispute between City and Franchisee, City may refuse to issue additional permits.

D. Notification. Franchisee must comply with the requirements of Oregon Utility Notification Law and implementing rules and regulations.

E. Relocation. City may require Franchisee to relocate its Facilities. If the removal or relocation of Facilities is caused directly by an identifiable development of property or other third-party project and the removal or relocation of Facilities is expected to occur within the area to be developed, or is made for the convenience of other third-party, Franchisee may charge the expense of removal or relocation to the developer or other third-party. Franchisee will be solely responsible for enforcing collection from the developer or other third-party.

If the removal or relocation of Facilities results from City's need to provide public facilities, a City-funded project, or is otherwise requested by City or is made for the purpose of improving a street to City standards or other improvement for the benefit of the public, Franchisee will remove or relocate its Facilities at Franchisee's expense within one hundred twenty (120) days after notification by City. For any relocation required under this section, City will make a reasonable effort to provide Franchisee with a mutually agreeable alternate location for its Facilities within City rights-of-way, or allow Franchisee to temporarily remove or relocate its Facilities for the duration of the City Project and allow Franchisee the opportunity to replace its Facilities in the same or similar location after completion of the City project, consistent with City approval for Franchisee's location of the Facility.

In cases of capital improvement projects undertaken by City where overhead utility are converted to underground installations, Franchisee must convert above-ground Facilities to underground, at Franchisee's expense, if requested to do so by City, except to the extent Franchisee's Facilities must remain above-ground to operate. City agrees to comply with provisions of applicable law when requiring such conversion and to do so in a non-discriminatory manner.

F. Placement of Facilities. Franchisee will not knowingly place its Facilities where they will interfere with any existing or future City utility, gas, electric, or telephone fixture or power, sanitary sewer, storm sewer, or water facility. Franchisee must consult with City Engineer prior to placement of Facilities, and will comply with all City ordinances, policies, rules, and regulations in connection with its placement of Facilities. Whenever all existing electric utilities, cable facilities and telecommunications facilities are located underground within a public right-of-way in the City, Franchisee must also locate or relocate its Facilities underground to the extent possible.

G. Temporary Rearrangement of Facilities. Franchisee must, consistent with City policies, ordinances, rules, and regulations, arrange to temporarily raise, lower, or otherwise move its Facilities to permit the moving of buildings or other objects if the person or entity wishing to move the building or other object makes a reasonable arrangement to reimburse Franchisee for its expenses in rearranging its Facilities. Nothing in this section precludes City from requiring Franchisee to move its Facilities at Franchisee's expense when public convenience requires the move.

H. Maps and Records. Franchisee shall at all times keep maps and records showing the locations and components of all facilities constructed by it or owned by it within the City right of way. Spatial data for facilities located in the rights-of-way shall be available to the City as needed. Franchisee shall keep as-builts on file and available for City use upon request.

Section 7. Transfer of Franchise.

Franchisee may not sell, assign, dispose of, or transfer in any manner whatsoever any interest in this Franchise or in the Facilities authorized by this Agreement, or any part of the Facilities, without prior written approval of City, which approval will not be unreasonably withheld. The City may impose reasonable conditions on any such approval, including but not limited to the requirement that the transferee acknowledge in writing and agree to be bound by the terms of this Agreement. City has the right to collect from Franchisee City's actual administrative costs associated with processing a transfer request, including the cost of ascertaining the financial responsibility of the proposed transferee. Use of Franchisee's Facilities by third parties shall not constitute an assignment or transfer of privileges for purposes of this Agreement. Notwithstanding the foregoing, no City approval is required but notice shall be provided for any assignment, disposal, or transfer of this Franchise or the Facilities to an affiliate of Franchisee or its parent company.

Section 8. City Rights in Franchise.

A. City Supervision and Inspection. City has the right to supervise all construction or installation of Franchisee's Facilities subject to the provisions of this Agreement and make such inspections as it finds necessary to ensure compliance with governing laws, ordinances, rules, and regulations.

B. Termination or Abandonment of Agreement. Upon any termination of this Agreement, all Facilities installed or used by Franchisee must be removed by Franchisee at Franchisee's expense within one hundred twenty (120) days after such termination, and the property upon which the Facilities were used restored by Franchisee to the condition it was in before installation.

C. Co-location. Franchisee must offer the City the opportunity to co-locate City conduit and lines in trenches dug by Franchisee in City rights-of-way and may charge City only any incremental additional costs incurred in making the trenches available for City use.

Section 9. Franchise Fee.

A. Franchisee shall pay monthly to City a Franchise fee equal to the sum of 3% of Company's gross revenues received from telecommunications service providers who re-sell their use of the facilities to third parties within the corporate limits of City, plus 7% of Company's gross revenues received from ultimate consumers of the facilities who do not re-sell their use of the facilities to third parties within the corporate limits of City. Company also may at its option deduct uncollectible accounts of customers within the corporate limits of City from these gross revenues.

   The intention of the parties in charging different fees for telecommunications service providers and ultimate consumers is to prevent any end user from paying a permit or franchise fee to City more than once for the same use of the facilities, while at the same time charging a fair amount for the use of City's rights of way.

B. The Franchise Fee required by this section is due and payable within 60 days after the end of each applicable calendar month. Any payment not made when due will bear interest at the rate of 9% per annum, compounded monthly, from the date due until paid. Together with each payment of the Franchise Fee, Franchisee will submit a Telecommunications Franchise Fee Percentage Reporting Form in the form of Exhibit A.

C. City's acceptance of any payments due under this section shall not be considered a waiver by City of any breach of this franchise agreement.

D. Except to the extent prohibited by Federal or State law, the Franchise Fee is in addition to any permit fee required to comply with Section 3.

Section 10. Franchisee Records and Reports.

A. Franchisee shall keep accurate books of financial accounts throughout the term of this Franchise Agreement and for six years after the expiration or termination of this Agreement. Franchisee shall produce all books and records directly concerning its Gross Revenues and other financial information deemed necessary by City for purposes of calculation of the franchise fee for inspection by City, upon 30 days' written notice, during normal working hours. City may require periodic reports from Franchisee relating to its operation within City.

B. City shall have the right during the term of this Franchise Agreement or within 180 days after expiration or termination of the franchise to audit Franchisee's records for the period of three years prior to the audit. If the audit reveals underpayment of 3% or more, the City may expand the audit to cover up to 6 years. The audits shall be undertaken by a qualified person or entity selected by City. The cost of the audit shall be borne by City, unless the results of the audit reveal an underpayment of more than 3% of the franchise fee for the period audited. In the case of underpayment of 3% or more, the full cost of the audit shall be paid by Franchisee. Franchisee shall immediately pay the amount of the underpayment as determined by the audit to City together with 9% annual interest from the date the payment should have been made to the date the payment is actually made.

C. Any audit information obtained by City under these provisions shall be kept confidential to the maximum extent allowed by Oregon law, except that this obligation shall not prevent the City from introducing audit results in any forum where enforcement of the provisions of this Franchise Agreement is at issue.

Section 11. Permit and Inspection Fees.

Nothing in this Agreement may be construed to limit the right of City to require Franchisee to pay reasonable costs incurred by City in connection with the issuance of a license or permit, making an inspection, or performing any other service for or in connection with Franchisee or its Facilities, whether pursuant to this Agreement or any ordinance or regulation, subject to any limitation imposed by Federal or state law.

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A. <u>Default.</u> Time of payment and performance are of the essence in the Agreement. The following are events of default:

   a. <u>Default in Payment.</u> The failure of Franchisee to pay City when due any amounts required by the Agreement pursuant to Section 9 and such failure continues for a period of 15 days after the postmark date of Licensee's notice of its failure to pay.

b. Default in Other Covenants. The failure of Franchisee to perform any of the covenants and conditions required by this Agreement to be kept and performed by Franchisee, and such failure continues for a period of 30 days after notice from City of such failure, or longer than 30 days if the nature of the cure requires a longer period of time and the cure was commenced within the 30-day period. Upon the occurrence of an event of default, Franchisee must pay to City the sum of $200 per day for each day the default continues along with any additional damages suffered by City as a result of Franchisee's default.

B. The City may terminate this Agreement for defaults that are not cured within the time allowed by providing 30 days' notice to Franchisee of its intent to terminate. Franchisee may avoid termination by completely curing the default(s), including payment of the penalty required by Subsection A.2 of this section, unless the notice of termination is the third notice of termination within a 12-month period. Franchisee may challenge a notice of termination by providing a written protest to the City Manager within 15 business days after the postmark date of Franchisee notice of termination. The City Manager, on receipt of the protest shall either grant the protest, in which case the Agreement will remain in place, or refer the matter to the City Council for a decision. The termination will not become final until after the decision by the City Manager or City Council.

Section 13. Remedies not Exclusive; Waiver.

All remedies granted the City under this Agreement are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this Agreement are not exclusive and City reserves the right to enforce penal provisions of any ordinance and also use any remedy available to City at law or in equity. Failure to enforce any provision of this Agreement may not be construed as a waiver of a breach of any other term, condition, or obligation of this Agreement.

Section 14. Franchise Term.

This Franchise is granted for a term of five years beginning the Effective Date ("Initial Term) and will automatically renew for two successive terms of five years each (each a "Renewal Term") unless notice of termination is provided. Franchisee and City may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing notice of termination at least 60 days prior to the end of the Initial Term or relevant Renewal Term. If notice of termination is provided, the parties may elect to negotiate a new franchise agreement in lieu of termination. In the event the City adopts code provisions, regulations or standards and specifications applicable to this Franchise or if state or federal legislation or regulation affects any provision of this Franchise, the Parties, at the request of either Party, may request renegotiation of the Franchise to reflect the changes in law or regulation.

Section 15. Severability.

If any section, subsection, sentence, clause, or portion of this Agreement becomes for any reason invalid, superseded by applicable authority, or if any such portion of this Agreement is rendered unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity or constitutionality of the remaining portion thereof. If for any reason, the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by such court or other governmental agency shall be the franchise fee charged by this Agreement.

Section 16. Notices.

Any notice required or permitted under this Agreement, including Annexation notifications, shall be deemed given when received or when deposited with the United States Postal Service, postage prepaid and sent as registered or certified mail addressed as follows:

TO CITY:

Keith Witcosky
City Manager
City of Redmond
411 SW 9th St
Redmond, OR 97756

TO FRANCHISEE:

Name:	Lightspeed Networks, Inc.
Attn:	Contracts Dept
Address:	921 SW Washington St, Suite 210 Portland, OR 97205

or to such other addresses as may be specified from time to time by either party in writing.

The primary contact regarding administration of this Franchise for the City is:

Position:	Billing and Collections Manager
Name:	Valerie Taylor
Email:	valerie.taylor@redmondoregon.gov
Phone:	541.923.7732

and for Franchisee is:

Position:	Contracts Manager
Name:	Audra Koopmann
Email:	contracts@lsnetworks.net
Phone:	971-339-5497

The primary contacts may be changed at any time by a written communication, including email, without the need for formal notice.

Section 17. Interpretation/Jurisdiction.

Interpretation of the Agreement shall be governed by laws of the State of Oregon and any legal action relating to this Agreement must be brought in the state or federal courts located in Deschutes County.

Section 18. Change of Law.

If any federal or state laws or regulations or any binding judicial interpretations thereof that govern any aspect of the rights or obligations of one or more parties under this Agreement shall change after full execution, and such change makes any aspect of such rights or obligations inconsistent with the then-effective federal or state laws, regulations or binding judicial interpretations, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

City of Redmond

____
Ed Fitch, Mayor

____
Date

Franchisee

____
Authorized Representative

____
Printed Name

____
Date

ATTEST:

____
Kelly Morse, City Recorder

ATTEST:

By: __________________________

____
Printed Name

EXHIBIT A

City of Redmond
Telecommunications Franchise Fee Percentage Reporting Form

Franchisee: ________________________________

Reporting Period: ________________________________

Description	**Revenue and Fee Calculation**
A. Gross Revenues-Resold	$
B. Less: Revenues Exempt from Franchise Fees	$
C. Other Adjustments to Gross Revenues	$
D. **Net Revenues Subject to Franchise Fees**	**$**
E. Franchise Fee	3%
F. **Total Franchise Fee for Gross Revenues-Resold**	**$**
G. Gross Revenues-Not Resold	
H. Less: Revenues Exempt from Franchise Fees	$
I. Other Adjustments to Gross Revenues	$
J. **Net Revenues Subject to Franchise Fees**	**$**
K. Franchise Fee	7%
L. **Franchise Fee for Gross Revenues-Not Resold**	**$**
M. **Total Franchise Fee Remitted to City of Redmond**	**$**

Certification by Officer or Authorized Representative:

I declare under the penalties for perjury that the information provided herein is true, complete, and accurate to the best of my knowledge and belief.

________________________________ ________________________
Name Date

____
Title

Please remit payment to:

City of Redmond
411 SW 9th Street
Redmond, OR 97756

For questions, please contact City of Redmond Finance Department at 541-504-3066.

CITY OF REDMOND

CITY HALL
411 SW 9th STREET
REDMOND, OR 97756
541.923.7710
FAX: 541.548.0706
info@redmondoregon.gov
redmondoregon.gov

STAFF REPORT

DATE:	April 9, 2024
TO:	Redmond City Council
THROUGH:	Keith Witcosky, City Manager Jason Neff, Deputy City Manager/Chief Financial Officer
FROM:	Jessica MacClanahan, Public Works Director/City Engineer
SUBJECT:	South Redmond Tract Large Lot Industrial Infrastructure Master Plan and Financing Plan Contract Award to DOWL: $249,580

Report in Brief:
This item requests City Council award a $249,580 contract to DOWL for the development of the South Redmond Tract Large Lot Industrial Infrastructure Master Plan and Financing Plan.

Background:
The South Redmond Tract is a 949-acre parcel owned by the Department of State Lands (DSL) located in the southeast quadrant of the City and adjacent to Deschutes County Fairgrounds. Approximately 789 acres of the parcel is proposed for large lot industrial development and is designated under the City's LLI zone. A 160-acre portion of the South Redmond Tract is planned for an expansion of the Deschutes County Fairgrounds and a relocated facility for the Oregon Military Department (OMD). Previous attempts to develop the large lot industrial parcels have discovered the cost to construct the required infrastructure was substantially large and prohibited the development of the lots. The results of this project will provide an Infrastructure Master Plan and a Financing Plan for the South Redmond Tract that will better inform the development of the Large Lot Industrial parcels.

Discussion:
The City informally procured engineering services per the Oregon Revised Statutes Section 279A and the State of Oregon Model Rules for professional services for proposals estimated to not exceed $250,000. Four Engineering firms were contacted to provide quotes based on the scope of work generated by the City. The firms were AKS Engineering and Surveying, DOWL, Know Ledge Engineering, and Anderson Perry & Associates Inc. AKS Engineering and Surveying and DOWL were the only two firms to provide quotes by the deadline. The quote from AKS was in the amount of $235,796 and the quote from DOWL was $249,580.

After evaluating the quotes, DOWL was chosen to have more experience in the specific infrastructure elements to be analyzed for the Large Lot Industrial area. DOWL has previous experience developing Public Infrastructure Master Plans and has had known communications with the required consultants about this project. ORS 279B.070 does allow for the selection of a firm based on the interest of the City stating *"If a contracting agency awards a public contract, the contracting agency shall award the public contract to the offeror whose quote or proposal will best serve the interests of the contracting agency, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110."*

Fiscal Impact:
$300,000 is included for this work in the Fiscal Year (FY) 2024/25 budget within the South Highway 97 Urban Renewal District. The quote received by DOWL based on the scope of services generated is within procurement thresholds and budget allocations.

Alternative Courses of Action:

1. Approve a contract with DOWL.
2. Do not approve a contract.
3. Request additional information.

Recommendation / Suggested Motion:
"I move to award the contract for the development of the South Redmond Tract Infrastructure Master Plan and Financing Plan to DOWL in the amount of 249,065.00, and authorize the City Manager to sign the contract."

City of Redmond Application for Boards, Advisory Committees and Commissions

Name: Nate Kitt

Street Address: [redacted]
Redmond, OR 97756

Mailing Address: Nate Kitt
[redacted]
Redmond, OR 97756

Preferred Phone Number: [redacted]

Alternate Number: ____________________

Email Address: [redacted]

Do you reside within the City Limits? ☑ Yes ☐ No
If yes, how long? Since July 2018
If no, do you reside in the Urban Growth Boundary ________

Have you previously served on any of the City's Boards/Committees/Commissions? ☐ Yes ☑ No
If yes, please indicate which one(s) and when? ____________________

Are you applying for a Youth Ex-Officio Position (terms are only one year)? ☐ Yes ☑ No
If yes, what school do you attend and what grade are you in? ____________________

Board/Committee/Commission applying for (you may apply for more than one):

- ☐ Airport Committee
- ☐ Downtown Urban Renewal Advisory Committee
- ☑ Juniper Golf Committee
- ☐ Redmond Commission for Art in Public Places
- ☐ Bicycle & Pedestrian Advisory Committee *Interest:* Bike ☐ Ped ☐
- ☐ Historic Landmarks Commission
- ☐ Nuisance Appeal Board
- ☐ Tourism and Lodging Committee
- ☐ Budget Committee
- ☐ Housing & Community Development Committee
- ☐ Parks Committee
- ☐ Urban Area Planning Commission

Employment/Occupation: Executive Director of Central Oregon Junior Golf Association

Please indicate why you are volunteering and what makes you a good candidate to serve. Please include any special training, experience, education, and/or qualifications you may have that are unique or specific to the board/committee/commission for which you are applying (you can include an extra sheet of paper).

As Executive Director of COJGA, I have passion for junior golf and creating access to opportunities for young people to get a club in their hands and trying the sport. I have lived in Central Oregon for 10 years working at Tetherow, Broken Top and Bend Golf Club. My wife and I moved to Redmond 5.5 years ago and are raising our young family in this community. Being a family of passionate golfers, it is important to be involved with the goings on at Juniper (one of our community's greatest assets) as I hope the course will have a healthy golf culture complete with junior golf and family golf opportunities when my kids are ready to play. My training as a golf professional has provided me with a varied background and understanding of how golf courses operate and engage with community members while remaining financially sustainable.

My signature affirms that the information in this application is true to the best of my knowledge. I understand that misrepresentations of facts are cause for removal from any advisory committee, board, or commission I may be appointed to. I also understand that City policy requires disclosure of actual or potential conflicts of interest by persons appointed by [redacted] information and documentation related to service on this commission is subject to public

____________________ April 3, 2024
Date

PLEASE RETURN YOUR COMPLETED APPLICATION TO: **Kayla Duddy, Deputy City Recorder** at 411 SW 9th Street, Redmond, OR 97756 or by email at kayla.duddy@redmondoregon.gov