

SoS Agreement #PO-16500-00006591

# State of Oregon

## Election Modernization Grant Agreement

This Grant Agreement (this "Agreement") is entered into by and between the State of Oregon, acting by and through its Secretary of State's Office ("SoS") and Yamhill County, a political subdivision of the State of Oregon, hereinafter referred to as "Grantee", each referred to as a "Party" and collectively as the "Parties".

### SoS Grant Manager:

**Name:** Molly Woon  
**Address:** 255 Capitol St NE, Suite 180  
Salem, OR, 97310  
**Phone:** 971-375-2640  
**Email:** [molly.woon@sos.oregon.gov](mailto:molly.woon@sos.oregon.gov)

### Grantee Grant Manager:

**Name:** ~~Brian Van Bergen~~ Keri Hinton  
**Address:** 414 NE Evans Street  
McMinnville, OR, 97128  
**Phone:** 503.434.7518  
**Email:** [vanbergenb@co.yamhill.or.us](mailto:vanbergenb@co.yamhill.or.us)

### 1) Authority

Pursuant to Oregon House Bill 5006 (2021), SoS is authorized to enter into this Grant Agreement and provide Grantee funding for the purposes described in this Agreement.

### 2) Term of Agreement

This Agreement becomes effective when it has been fully executed by the Parties (the "Effective Date"). Unless extended or terminated earlier in accordance with its terms, this Agreement expires July 31, 2023. Agreement termination will not extinguish or prejudice SoS's right to enforce this Agreement with respect to any default by Grantee that has not been cured.

### 3) Program Activities

Grantee must use the Grant Funds as set forth in Exhibit A (the "Program").

### 4) Disbursements

#### 4.1) Disbursement Generally

Subject to the availability of sufficient moneys in and from the Funding Source, SoS will disburse Grant Funds to Grantee for the allowable Program activities described in Exhibit A that are undertaken during the Performance Period.

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#### **4.2) Disbursement Amount and Method**

SoS will disburse \$82,000.00 to Grantee within 30 calendar days upon execution of this Agreement.

#### **4.3) No Duplicate Payment**

Grantee may use other funds in addition to the Grant Funds to complete the Program activities; provided, however, that Grantee may not credit or pay any Grant Funds for Program costs that are paid for with other funds and would result in duplicate funding.

#### **4.4) Compliance Review**

By receiving Grant Funds, Grantee agrees to participate in a randomly selected review by SoS of Grantee's use of Grant Funds. If selected, Grantee will be notified and must submit documentation to substantiate any of Grantee's claims for reimbursement that are selected by SoS for review.

### **5) Representations and Warranties**

#### **5.1) Grantee Organization and Authority**

Grantee represents and warrants to SoS that:

- a) Grantee is an Oregon County duly organized and validly existing;
- b) Grantee has all necessary rights, powers, and authority under any organizational documents and under Oregon Law to (i) execute this Grant, (ii) incur and perform its obligations under this Grant, and (iii) receive financing, including the Grant Funds, for the Program;
- c) If applicable and necessary, the execution and delivery of this Grant by Grantee has been authorized by an ordinance, order or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and
- d) There is no proceeding pending or threatened against Grantee before any court of governmental authority that if adversely determined would materially adversely affect the Program or the ability of Grantee to carry out the Program activities.

#### **5.2) False Claims Act**

Grantee acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) made by (or caused by) Grantee that pertains to this Grant or to the Program. Grantee certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Grantee further acknowledges in addition to the remedies under Section 10, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Grantee.

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### 5.3) No Limitation

The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Grantee.

## 6) Termination

### 6.1) Mutual

This Grant may be terminated at any time by mutual written consent of the Parties.

### 6.2) By SoS

SoS may terminate this Grant as follows:

- a) At SoS's discretion, upon 30 days advance written notice to Grantee;
- b) Immediately upon written notice to Grantee, if SoS fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient in SoS's reasonable administrative discretion, to perform its obligations under this Agreement;
- c) Immediately upon written notice to Grantee, if federal or state laws, rules, regulations, or guidelines are modified or interpreted in such a way that SoS's performance under this Grant is prohibited or SoS is prohibited from funding the Grant from the Funding Source; **or**
- d) Immediately upon written notice to Grantee, if Grantee is in default under this Grant and such default remains uncured 15 days after written notice thereof to Grantee.

### 6.3) By Grantee

Grantee may terminate this Agreement as follows:

- a) Immediately upon written notice to SoS, if Grantee fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient to perform its obligations under this Agreement;
- b) Immediately upon written notice to SoS, if applicable laws, rules, regulations, or guidelines are modified or interpreted in such a way that the Program activities contemplated under this Agreement are prohibited by law or Grantee is prohibited from paying for the Project from the Grant Funds or other planned Program funding; **or**
- c) Immediately upon written notice to SoS, if SoS is in default under this Agreement and such default remains uncured 15 days after written notice thereof to SoS.

### 6.4) Suspension of Activities

Upon receiving a notice of termination of this Agreement, Grantee must immediately cease all activities under this Agreement, unless SoS expressly directs otherwise in such notice.

## 7) Indemnity & Liability

### 7.1) Indemnity

Grantee must defend, save, hold harmless, and indemnify the State of Oregon and SoS and their officers, employees and agents from and against all claims, suits, actions, losses, damages,

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liabilities, costs, and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, contractors, subcontractors, or agents under this Agreement (each of the foregoing individually or collectively a "Claim" for purposes of this Section). If legal limitations apply to the indemnification ability of Grantee, this indemnification must be for the maximum amount of funds available for expenditure, including any available contingency funds, insurance, or other available non-appropriated funds.

## 7.2) Defense

Grantee may have control of the defense and settlement of any Claim subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the Claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any Claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its sole discretion and expense, assume its own defense and settlement in the event the State of Oregon determines Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or an important governmental principle is at issue and the State of Oregon desires to assume its own defense. Grantee may not use any Grant Funds to reimburse itself for the defense of or settlement of any Claim.

## 7.3) Limitation

Except as provided in this Section, neither Party will be liable for incidental, consequential, or other direct damages arising out of or related to this Agreement, regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither party will be liable for any damages of any sort arising solely from the termination of this Grant in accordance with its terms.

## 7.4) Insurance

### 7.4.1) *Workers' Compensation*

If Grantee employs subject workers, as defined in ORS 656.027, Grantee must comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee must require and ensure each of its contractors and subcontractors complies with these requirements.

### 7.4.2) *Public Body Insurance*

Grantee agrees to insure any obligations that may arise for Grantee under this Grant, including any indemnity obligations, through (i) the purchase of insurance; (ii) the use of self-insurance or assessments paid under ORS 30.282; or (iii) a combination of any or all of the foregoing.

## 8) Governing Law; Jurisdiction

This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding

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(collectively "Claim") between SoS or any other agency or department of the State of Oregon, or both, and Grantee that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS.

## **9) Alternative Dispute Resolution**

The Parties will attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each Party will bear its own costs incurred for any mediation or non-binding arbitration.

## **10) Default; Remedies**

### **10.1) Grantee Default**

Grantee will be in default under this Agreement if:

- a) Grantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe, or discharge any of its obligations under this Agreement; **or**
- b) any representation, warranty, or statement made by Grantee in this Agreement, or any documents relied upon by SoS to measure Grantee's use of Grant Funds is untrue in any material respect when made; **or**

### **10.2) SoS Default**

SoS will be in default under this Agreement if SoS fails to perform its obligations under this Agreement; provided, however, SoS will not be in default if SoS fails to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from, the funding source for this Agreement.

### **10.3) Grantee Remedies**

If SoS is in default, Grantee's sole remedy will be, within the limits set forth in this Agreement, disbursement for Allowable Expenses incurred during the term of the Agreement, less any claims SoS has against Grantee.

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#### **10.4) SoS Remedies**

If Grantee is in default, SoS may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including without limitation, specific performance, or setoff.

### **11) Miscellaneous**

#### **11.1) Conflict of Interest**

Grantee by signature to this Agreement declares and certifies the award of the Grant and the Program activities to be funded by this Grant Agreement create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer, or employee of Grantee.

#### **11.2) Amendments**

The terms of this Agreement may not be altered, modified, supplemented, or otherwise amended, except by written agreement of the Parties.

#### **11.3) Notices**

Except as otherwise expressly provided in this Agreement, any notices to be given under this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Grant Manager at the physical address or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

#### **11.4) Survival**

All rights and obligations of the Parties under this Grant will cease upon termination of this Grant, other than the rights and obligations arising under Sections 7, 8, 9, 10.3, 10.4, and this subsection 11.4, and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

#### **11.5) Severability**

The Parties agree if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

#### **11.6) Counterparts**

This Agreement may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

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#### **11.7) Compliance with Law**

In connection with their activities under this Agreement, the Parties must comply with all applicable federal, state, and local laws.

#### **11.8) Intended Beneficiaries**

SoS and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons.

#### **11.9) Assignments; Successors**

Grantee may not assign or transfer its interest in this Agreement without the prior written consent of SoS and any attempt by Grantee to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. SoS's consent to Grantee's assignment or transfer of its interest in this Agreement will not relieve Grantee of any of its duties or obligations under this Agreement. The provisions of this Grant will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

#### **11.10) Records Maintenance and Access**

Grantee must maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Agreement in such a manner as to clearly document Grantee's performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Grantee acknowledges and agrees that the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later.

#### **11.11) Headings**

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

#### **11.12) Agreement Documents**

This Agreement consists of the following documents, which are incorporated by this reference and listed in descending order of precedence: (i) this Agreement; and (ii) Exhibit A – Program Activities & Requirements.

#### **11.13) Entire Agreement**

This Agreement and all exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this

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Agreement binds either Party, unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

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**12) Certifications & Signatures**

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**Grantee:**

*Lindsay Berschauer*  
Signature

Lindsay Berschauer, Chair Commissioner  
Name, Title

7-14-2022  
Date

**State of Oregon, acting by and through its Secretary of State's Office:**

DocuSigned by:  
*Luke Belant*  
Signature

Luke Belant, Deputy Elections Director  
Name, Title

3/30/2022  
Date

Accepted by Yamhill County  
Board of Commissioners on  
7-14-2022 by Board Order  
# 22-235

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## Exhibit A – Program Activities & Requirements

1. Grantee must utilize the Grant Funds on elections equipment and technology needs which includes:
  - Additional exterior video cameras to meet U.S. Department of Homeland Security's provided recommendations.
  - Additional interior video cameras to meet U.S. Department of Homeland Security's provided recommendations.
  - Installation of bollards to meet U.S. Department of Homeland Security's provided recommendations.
  - "Glass-break" (intrusion), motion, and other Zigbee-based sensors added to security system.
  - Installation of motion and water alarms.
  - New scanners for the vote tally system.
  - Inbound ballot mail sorter and software.
  - Ballot drop boxes.
  - Upgraded desktop computers and peripheral monitors for the purpose of the signature verification stations.
  - Exhaust/AC unit for communications/network closet.
  - Ceiling-mounted retractable extension cables.
  - Envelope opener.
  - Tracking application/system for end-to-end chain of custody tracking of in-bound ballot totes from drop boxes.
  
2. Notwithstanding **Exhibit A Section 1** above, Grantee is not permitted to use the Grant funds for the following purposes:
  - Automatic Signature Verification.
  - Ongoing costs, such as (but not limited to) maintenance & support services.
  
3. Grantee shall ensure that elections equipment and technology purchased with the Grant is compatible with the Oregon Votes System. SoS will provide Grantee with the Oregon Votes specifications upon request.
  
4. SoS may request a status report on Grantee's use of the funds during the term of this Agreement. Upon such request, Grantee shall respond no later than 60 calendar days. The status report must show how funds are planned to be spent, and should include:
  - planned elections equipment and technology purchase(s);
  - vendor source(s); and
  - amount to be spent by item(s) and/or vendor(s).

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5. Grantee shall submit a Final Report to SoS no later than June 30, 2023. The Final Report must include the following:

- Summary of how the Grant funds were spent; **and**
- Purchasing documentation, which includes Quote(s) and/or Purchase Order(s) itemizing what was purchased, vendor name(s), and the unit cost(s).
- The Elections Division may request additional detail as necessary on use of funds.