



**PURCHASE ORDER
YAMHILL COUNTY CLERK**

414 NE Evans Street
McMinnville, Oregon 97128-4607
Phone: 503-434-7518 • Fax: 503-434-7520
e-mail: vanbergenb@co.yamhill.or.us

Order Date:	10/23/17
Purchase Order # CL-2018-28	

Vendor Name

Clear Ballot Group, Inc.
7 Water Street Suite 7
Boston, MA 02109
(857) 250-4961

Deliver and Invoice To:

Yamhill County Clerk
414 NE Evans St
McMinnville, OR 97128-4607

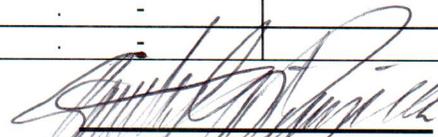
Ordered by: e-mail	Shipping Terms: FOB: Yamhill County Clerk	Deliver by: 11/20/2017
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PART NO.	DESCRIPTION	QTY	PRICE	EXTENDED
	Perpetual ClearDesign Enterprise Software License	1	\$30,000.00000	\$30,000.00
	Perpetual ClearCount Enterprise Software License	1	\$30,000.00000	\$30,000.00
	Fujitsu fi-6800 Scanner Bundle	2	\$35,000.00000	\$70,000.00
	ClearDesign Laptop Server	1	\$1,600.00000	\$1,600.00
	ClearCount Server, monitor, keyboard, and mouse	1	\$2,784.00000	\$2,784.00
	Adjudication Station - Dell Optiplex all-in-one	4	\$1,600.00000	\$6,400.00
	Admin Station - Dell Precision desktop	1	\$1,500.00000	\$1,500.00
	Additional components (as listed on quote)		\$725.00000	\$725.00
	Project management	5	\$1,500.00000	\$7,500.00
	Onsite 5-day Training Course and 4 Sessions		\$8,700.00000	\$8,700.00
	Discounts and incentives			(\$14,760.00)
	First year license, maintenance and support included			\$0.00

\$144,449.00

10-	15-	800 .	04 -	A001	\$144,449.00
10-	15-	.	-		
10-	15-	.	-		
10-	15-	.	-		
10-	15-	.	-		

Accepted by Yamhill County
Board of Commissioners on
11-9-17 by Board Order
17-468

Authorized by:  Title: Chair, Board of Commissioners Date: 11-9-17

Counter signed by:  Title: Vice Chair, Board of Commissioners Date: 11-9-17
(Purchases over \$5,000)



Clear Ballot Group, Inc.
Yamhill County, Oregon
 Quote Details

	QTY	Per Unit	Total
Software			
Perpetual ClearDesign Enterprise Software License	1	\$30,000	\$30,000
Perpetual ClearCount Enterprise Software License	1	\$30,000	\$30,000
Central Count Scanners			
Fujitsu fi-6800 Scanner Bundle	2	\$35,000	\$70,000
Base Hardware			
ClearDesign Laptop Server	1	\$1,600	\$1,600
ClearCount Server, monitor, keyboard, and mouse	1	\$2,784	\$2,784
Adjudication Station - Dell Optiplex All-in-One	4	\$1,600	\$6,400
Admin Station - Dell Precision Desktop	1	\$1,500	\$1,500
Admin Monitor - 27 Inch	1	\$399	\$399
Router - 4 Port	1	\$95	\$95
Switch - 8 Port	1	\$44	\$44
Ethernet Cables - 8 Pack	1	\$27	\$27
4TB Backup Storage Drive	1	\$160	\$160
Accessories and Consumables			
fi-6800 ScanAid Kit	1	\$225	N/C
Report Printer	1	\$150	N/C
Services			
Project Management	5	\$1,500	\$7,500
Onsite Training Course (per day)	5	\$1,500	\$7,500
Online Training Session (per hour)	4	\$300	\$1,200
Discounts			
No RFP - 3%			(\$4,760)
2017-2018 Financial analysis incentive			(\$10,000)
Total Upfront Proposal Price			\$ 144,449

Annual Post-Warranty License, Maintenance, and Support Fees

Software	\$15,000
Hardware	\$9,000
Total Annual Post-Warranty License, Maintenance, and Support Fees	\$ 24,000

(First-year maintenance is included without charge.)

Note: Optimal configuration and number of scanners determined by the customer.

Annual maintenance and support fees shall begin in year two of the Agreement, shall be fixed at the initial rate in years 2-5, and increase not more than 3% each year thereafter.



Clear Ballot

This Software License and Services Agreement, part of the Master Services Agreement ("Agreement") dated for reference purposes as of January 4, 2018, ("Effective Date") is entered into between Clear Ballot Group, Inc., a Delaware corporation ("Clear Ballot") and Yamhill County, Oregon, a political subdivision of the State of Oregon ("Customer").

1 DEFINITIONS

1.1 "Authorized Users" means Customer's employees, support staff, including Election Board Workers, and such other types of users, if any, as may be expressly authorized in an Order and who are performing services solely for the benefit of Customer. Unless expressly provided otherwise in the relevant Software Order, Authorized Users do not include Customer's vendors, contractors, or any other third parties, including technology service providers.

1.2 "Days" means calendar days, unless specified otherwise.

1.3 "Designated Jurisdiction" means the jurisdiction in which the Licensed Software and Services will be used, and includes all jurisdictions for which the Designated Jurisdiction administers elections on behalf of. The initial Designated Jurisdiction shall be identified in the applicable Software Order.

1.4 "Documentation" means the documentation made generally available by Clear Ballot to its customers for use of the Licensed Software, as updated from time-to-time by Clear Ballot in its discretion.

1.5 "Licensed Software" means the Object Code version of Clear Ballot's ClearVote Software ("CBG Software") and the Object Code version of any other computer programs to be licensed by Clear Ballot to Customer under a Software Order, including any bug fixes, updates and new releases thereof provided by Clear Ballot as part of Support Services or purchased by Customer under a subsequent Software Order. The Licensed Software shall be used solely for the purposes of defining an election and tabulating and reporting election results in the Designated Jurisdiction. The term "Licensed Software" also includes any and all Documentation applicable to such computer programs.

1.6 "Object Code" means computer programs assembled or compiled, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse compiling, or reverse-engineering.

1.7 "Order" means a request to license Licensed Software (a "Software Order") or purchase Services (a "Service Order") under this Agreement. Each Order will be sequentially numbered and specifically reference this Agreement.

1.8 "Services" means, collectively, any Support Services or Professional Services, both as defined below, purchased by Customer under an Order.

1.9 "Source Code" means computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling.

CLEAR BALLOT GROUP SOFTWARE LICENSE AND SERVICES AGREEMENT

1.9.1 "Source Code Escrow" means the storage of the Source Code in an account with an independent third-party escrow provider.

1.10 "Warranty Period" means three-hundred-sixty-five (365) calendar days for ClearVote Software from the completion of Final Acceptance (as defined in the SOW) testing by the Designated Jurisdiction.

2 SOFTWARE, SUPPORT AND SERVICE ORDERS

2.1 *Master Agreement.* This is a master agreement under which Customer may order software products, services and support from Clear Ballot. Clear Ballot's acceptance of any Order made by Customer under this Agreement shall be subject to all applicable provisions of this Agreement, as well as any additional provisions that may be set forth in the Order. In the event of conflicting terms or conditions, the terms of the Agreement shall govern. Exhibits 1-5 are attached to this contract and by reference incorporated herein.

2.2 *Software Orders.* Customer may order software products by using a Software Order in the form shown in Exhibit 1 (Software Order). Upon Clear Ballot's receipt of a Software Order from Customer, the software products described in the Software Order will be "Licensed Software" for purposes of this Agreement.

2.3 *Support.* Customer support will be accessible via phone, e-mail, and a secure web portal on the Clear Ballot website. Detail on support is set forth in the corresponding Maintenance and Service Level Agreement, attached hereto as Exhibit 3.

2.4 *Service Orders.* Customer may order on-site support and services for the Licensed Software by signing and delivering to Clear Ballot an order in a form reasonably approved by Clear Ballot.

3 LICENSE AND RESTRICTIONS

3.1 *Grant of License.* Subject to the terms and conditions of this Agreement and provided Customer has paid all undisputed fees and costs due under this Agreement, Clear Ballot grants Customer a perpetual, nonexclusive, nontransferable license to use the Licensed Software during the term set forth in the applicable Software Order. Authorized Users may use the Licensed Software on Customer's behalf for the purposes contemplated herein. Customer shall ensure Authorized Users comply with all relevant terms of this Agreement and any breach by an Authorized User will constitute a breach by Customer. Customer may make a single copy of the Licensed Software for backup and archival purposes.

3.2 *Restrictions on Use.* Except as expressly authorized by this Agreement, Customer may not knowingly (i) use or permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable Customer's employees, agents,

or any other person or entity to use the Licensed Software in any jurisdiction other than the Designated Jurisdiction or for anyone's benefit other than Customer, (ii) rent, sell, assign, lease, sublicense, or otherwise transfer the Licensed Software, (iii) derive or attempt to derive the Source Code, source files, or structure of all or any portion of the Licensed Software by reverse engineering, disassembly, decompilation, or any other means, except to the extent permitted by applicable law, (iv) copy, translate, port, modify, or make derivative works based on the Licensed Software, (v) use the Licensed Software except as set forth in the Documentation, (vi) use the Licensed Software or Clear Ballot Confidential Information to contest the validity of any Clear Ballot intellectual property, including the Licensed Software; (vii) modify, remove, or destroy any proprietary markings or confidentiality legends placed upon or contained within the Licensed Software, the Documentation, or any related materials; (viii) use the Licensed Software in a manner to compete with Clear Ballot or to assist a third party in competing with Clear Ballot; (ix) except with Clear Ballot's prior written consent, use the Licensed Software outside the Designated Jurisdiction; (ix) operate a service bureau or other similar service for the benefit of third parties using the Licensed Software; (x) export, directly or indirectly, the Licensed Software from the United States; or (xi) disclose the Licensed Software to any non-U.S. national in the United States in violation of any United States export or other similar law (e.g., unauthorized "deemed exports"). Notwithstanding the foregoing, Clear Ballot expressly authorizes Customer to temporarily use or allow use of the Licensed Software on behalf of or by other Clear Ballot customers ("Other Customers") for purposes of continuity of operations of the Other Customer in the event of an emergency. Clear Ballot also expressly authorizes Customer to use Other Customer's Licensed Software to facilitate Customer's continuity of operations in the event of an emergency.

3.3 Minimum System Configuration. The minimum hardware and software requirements for proper operation of the Licensed Software are set forth in the Software Order or the relevant Documentation. Such minimum requirements shall not be augmented or otherwise revised to significantly increase the requirements or render existing hardware or software unsupported without Clear Ballot providing to Customer at least 180 days prior written notice of Clear Ballot's intent to do so. Customer shall be solely responsible for purchasing, providing and installing all other required equipment, networks, peripherals and hardware not included in the Statement of Work.

3.4 Intellectual Property Ownership. The Licensed Software contains material that is protected by United States copyright, trade secret law and other intellectual property law, and by international treaty provisions. All rights not expressly granted to Customer under this Agreement are reserved by Clear Ballot. All copyrights, patents, trade secrets, trademarks, service marks, tradenames, moral rights and other intellectual property and proprietary rights in the Licensed Software and Services will remain the sole and exclusive property of Clear Ballot or its licensors, as applicable. Customer agrees and acknowledges that (i) except in the case of any work product

contracted for by Customer pursuant to a mutually agreed Statement of Work and specified in such Statement of Work as work-made-for-hire under Section 101 of Title 17 of the United States code, and developed by Clear Ballot under said Statement of Work, Clear Ballot will be the exclusive owner of all right, title and interest in and to all software, programming, tools, documentation, materials and other intellectual property of any kind used, developed, or delivered by Clear Ballot to Customer in connection with this Agreement; and (ii) this is not a work-made-for-hire agreement under Section 101 of Title 17 of the United States Code.

3.5 Feedback. Customer may provide suggestions, comments, or other feedback (collectively, "Feedback") to Clear Ballot with respect to its products and services, including the Licensed Software. Feedback is voluntary and Clear Ballot is not required to hold it in confidence and may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Customer's intellectual property rights to make use of the Feedback, Customer hereby grants Clear Ballot an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Clear Ballot's business, including enhancement of the Licensed Software.

3.6 License Term. The term of the license granted in Section 3.1 (Grant of License) will commence upon execution of the relevant Software Order and continue for the term specified in the Order, unless earlier terminated in accordance with the provisions of this Agreement.

4 TERM

This Agreement shall be effective as of the Effective Date and continue in effect until the expiration or termination of all Orders (the "Term").

5 FEES, EXPENSES AND TAXES

Payment Terms. Customer will pay the license, service and support fees required under the mutually executed Orders, all of which will be billed on an annual basis, payable in advance. Customer will reimburse Clear Ballot for reasonable special or unusual expenses incurred at Customer's specific written request. Provided that the work described in the invoice has been completed in accordance with the terms of the Order and accepted by Customer, all undisputed amounts to be paid by Customer are due and payable thirty (30) Days after Customer's receipt of the complete and accurate invoice. All payments not disputed in good faith by Customer and not made by Customer within ninety (90) days of when due will be subject to late charges of the lesser of (i) one percent (1.0%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. Customer will pay all sales, use and excise taxes relating to, or under, this Agreement, exclusive of taxes based on or measured by Clear Ballot's net income, unless Customer is exempt from the payment of such taxes and provides Clear Ballot with evidence of the exemption.

6 HARDWARE

6.1 Hardware. Although the Licensed Software may be used with scanners made by various manufacturers, the Licensed Software is only supported when used with scanners described

in the Documentation.

6.2 *Hardware Discounts.* During the Term, and provided Customer is in compliance with this Agreement and has paid all undisputed fees and costs due under this Agreement, Customer will be eligible to receive Clear Ballot's pricing when Customer purchases, leases, or rents scanners from the Hardware manufacturer described in the Documentation. Customer shall be responsible for negotiating all other terms of such rental, purchase, or support agreements with said manufacturer or their authorized reseller.

7 LIMITED WARRANTIES

7.1 *Licensed Software.* Clear Ballot warrants that during the Warranty Period the Licensed Software will operate in substantial conformance with this documentation. All warranty claims not made in writing within the Warranty Period will be deemed waived. This warranty is contingent on the proper installation and use of the Licensed Software as described in the Documentation. Clear Ballot further warrants it will use commercially reasonable efforts to screen the Licensed Software prior to delivery to Customer for viruses, Trojan horses and other malicious code (collectively "Malicious Code Breach").

7.2 *Services.* Clear Ballot warrants that any Services will be performed in a professional, workmanlike manner and shall substantially conform to the specifications set forth in the applicable Service Order for a period of thirty (30) Days from the date of completion, unless specified otherwise in the Service Order.

7.3 *Exclusive Remedy.* The foregoing warranties are solely for the benefit of Customer and Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer and the sole and exclusive liability of Clear Ballot for breach of the foregoing warranties, shall be: (1) at Customer's sole discretion, to seek repair or replacement of the non-conforming Licensed Software, or (2) for Services performed by Clear Ballot or an authorized subcontractor, re-performance of the relevant Services at no additional cost to Customer, or (3) in the case of Clear Ballot's Malicious Code Breach of the Customer's systems, Clear Ballot shall be fully liable to Customer for any costs or expenses, including, but not limited to, any Customer staff time, that results from said breach. In the event of such an introduction into the Customer's systems, Clear Ballot shall fully cooperate, at its sole expense, with Customer's subsequent efforts to mitigate the effect of any such introduction. Clear Ballot shall not be responsible for use of the Licensed Software if not operated substantially in a manner recommended in the Documentation or any material failure by Customer to use due care in the use and validation of the results produced by the Licensed Software.

7.4 *Modification of Licensed Software.* Except as otherwise agreed in writing by the parties, any modification to the Licensed Software by Customer or any third party engaged by Customer, or failure by Customer to reasonably implement any improvements or updates to the Licensed Software as supplied by Clear Ballot, shall void Clear Ballot's support obligations under the relevant Support Order and Clear Ballot's warranties

under this Section 7 (Limited Warranties), to the extent any failure or error results from such modification.

7.5 *Disclaimer of Other Warranties.* EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 7 (LIMITED WARRANTIES) AND CLEAR BALLOT'S OBLIGATIONS UNDER ANY CERTIFICATIONS WHICH CLEAR BALLOT IS REQUIRED TO MAINTAIN, THE LICENSED SOFTWARE AND ANY SERVICES ARE PROVIDED TO CUSTOMER "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. EXCEPT FOR CLEAR BALLOT'S OBLIGATIONS UNDER ANY CERTIFICATIONS WHICH CLEAR BALLOT IS REQUIRED TO MAINTAIN, CLEAR BALLOT EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR CLEAR BALLOT'S OBLIGATIONS UNDER ANY CERTIFICATIONS WHICH CLEAR BALLOT IS REQUIRED TO MAINTAIN, CLEAR BALLOT DOES NOT WARRANT THAT THE LICENSED SOFTWARE AND ANY SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT FOR CLEAR BALLOT'S OBLIGATIONS UNDER ANY CERTIFICATIONS WHICH CLEAR BALLOT IS REQUIRED TO MAINTAIN, CLEAR BALLOT DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE LICENSED SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CLEAR BALLOT OR CLEAR BALLOT'S AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES PROVIDED IN THIS SECTION 7 (LIMITED WARRANTIES). If applicable law affords Customer implied warranties, guarantees, or conditions despite these exclusions, those warranties will be limited to one (1) year and Customer's remedies will be limited to the maximum extent allowed by Sections 7.5 (Disclaimer of Other Warranties) and 10 (Limitations of Liability and Actions).

8 INDEMNIFICATION

8.1 *Clear Ballot Indemnity.* Clear Ballot will defend, indemnify and hold harmless Customer and its affiliates, officers, directors, employees and agents from any and all third party claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising from; (a) a claim by a third party that Customer's licensed use of the Licensed Software infringes that third party's United States patent, copyright, or trade secret rights, or (b) Clear Ballot's breach of Confidential Data, or (c) Clear Ballot's Malicious Code Breach. The foregoing is contingent upon Customer promptly notifying Clear Ballot in writing of the claim, permitting Clear Ballot sole authority to control the defense or settlement of the claim and providing Clear Ballot reasonable assistance (at Clear Ballot's expense) in connection with the defense and settlement. If a claim of infringement under this Section 8.1 (Clear Ballot Indemnity) occurs, or if Clear Ballot determines a claim of infringement is likely to occur, Clear Ballot will have the right,

in its sole discretion, to either (i) procure for Customer the right or license to continue to use the Licensed Software, or (ii) modify the Licensed Software to make it non-infringing, providing that such modifications do not impair, diminish or otherwise reduce the functionality or value of the Licensed Software. If neither of these remedies is reasonably available to Clear Ballot, Clear Ballot may, in its sole discretion, terminate the relevant Orders and return the prorated portion of any pre-paid, unused fees for the relevant Licensed Software. Notwithstanding the foregoing, Clear Ballot will have no obligation with respect to any claim of infringement that is based upon or arises out of (a) the use or combination of the Licensed Software with any hardware, software, products, data except Confidential Data, or other materials not provided by or authorized by Clear Ballot, (b) modification or alteration of the Licensed Software by anyone other than Clear Ballot or any party expressly authorized by Clear Ballot to modify the Licensed Software, (c) use of the Licensed Software in excess of the rights granted in this Agreement, (d) any specifications, data except Confidential Data, or intellectual property provided by Customer (collectively, the "Excluded Claims"). The provisions of this Section 8.1 (Clear Ballot Indemnity) state the sole and exclusive obligations and liability of Clear Ballot and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Licensed Software, Services, or this Agreement, and are in lieu of any implied warranties of non-infringement, Confidential Data breach, or Malicious Code Breach, all of which are expressly disclaimed.

8.2 Customer Indemnity. Subject to Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act and any other applicable law, customer will defend, indemnify and hold harmless Clear Ballot and its affiliates, officers, directors, employees and agents from any and all third-party claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising from (i) Customer's use of the Licensed Software in excess of the rights expressly granted in this Agreement, (ii) the Excluded Claims. The foregoing indemnification obligation of Customer is contingent upon Clear Ballot promptly notifying Customer in writing of such claim, permitting Customer sole authority to control the defense or settlement of such claim and providing Customer reasonable assistance (at Customer's expense) in connection with the defense and settlement.

9 AUDIT

9.1 Audit of Customer by Clear Ballot. During the Term of this Agreement and for one (1) year thereafter, no more than once in any twelve (12) month period, Clear Ballot may audit Customer's use of the Licensed Software ("Audit"). An Audit may include the inspection and review of computers or servers on which the Licensed Software has been installed or hosted, and records, procedures, or business practices that relate to Customer's performance under and compliance with the terms of this Agreement. Clear Ballot shall provide Customer reasonable advance notice of an Audit, which must be performed by Clear Ballot. Customer will reasonably cooperate with Clear Ballot in the conduct of the Audit. Audits will be conducted during Customer's normal business hours and shall

in no event disrupt Customer's business. The cost of the Audit shall be borne by Clear Ballot. In the event that Customer is found by Clear Ballot to be out of compliance with the terms of this Agreement, Clear Ballot shall notify Customer of the Clear Ballot's findings, in detail. Customer shall have fifteen (15) days to review Clear Ballot's findings and respond to Clear Ballot and become compliant.

9.2 Customer Access to Records. Clear Ballot shall retain, maintain and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Term of the Agreement, or as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Clear Ballot shall maintain all financial Records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Clear Ballot shall permit the County's authorized representatives access to the Records at reasonable times and places for purposes of examination and copying.

10 LIMITATIONS OF LIABILITY AND ACTIONS

EXCEPT FOR CLEAR BALLOT'S BREACH OF CONFIDENTIAL INFORMATION, THIRD PARTY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT, OR MALICIOUS CODE, CLEAR BALLOT SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SIMILAR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF CLEAR BALLOT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (II) EXCEPT FOR CLEAR BALLOT'S BREACH OF CONFIDENTIAL INFORMATION, THIRD PARTY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT, OR MALICIOUS CODE, CLEAR BALLOT'S AGGREGATE LIABILITY TO CUSTOMER AND ANY THIRD PARTY FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION [WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE] SHALL NOT EXCEED THE TOTAL TWO (2) TIMES THE FEES PAID OR PAYABLE UNDER THE ORDER AS TO WHICH THE CLAIM ARISES.

11 CONFIDENTIALITY

11.1 Definition of Confidential Information. "Confidential Information" means, with respect to a party hereto, all information or material which (i) gives the disclosing party (the "Disclosing Party") some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of the Disclosing Party, or (ii) is either (a) marked "Confidential," "Restricted" or "Proprietary Information" or other similar marking, (b) reasonably known by the receiving party (the "Receiving Party") to be considered by the Disclosing Party as confidential, or (c) from all the relevant circumstances should reasonably be assumed to be confidential and proprietary. Clear Ballot's Confidential Information includes any trade secrets related to the Licensed Software.

11.2 Exclusions. Except as required by law or statute, Confidential Information will not include any information or material, or any element thereof, to the extent any such

information or material, or any element thereof (i) has previously become or is generally known, unless it has become generally known through a breach of this Agreement or a similar confidentiality or non-disclosure agreement, (ii) was already rightfully known to the Receiving Party prior to being disclosed by or obtained from the Disclosing Party as evidenced by written records kept in the ordinary course of business of or by proof of actual use by the Receiving Party, (iii) has been or is hereafter rightfully received by the Receiving Party from a third person (other than the Disclosing Party) without restriction or disclosure and without breach of a duty of confidentiality to the Disclosing Party, or (iv) has been independently developed by the Receiving Party without access to Confidential Information of the Disclosing Party.

11.3 Treatment of Confidential Information. Each party recognizes the importance of the other's Confidential Information. In particular, each party recognizes and agrees that the Confidential Information of the other is critical to their respective businesses and that neither party would enter into this Agreement without assurance that such information and the value thereof will be protected as provided in this Section and elsewhere in this Agreement. Accordingly, each party agrees as follows: (i) the Receiving Party will hold any and all Confidential Information it obtains in strictest confidence and will use and permit use of Confidential Information solely for the purposes of this Agreement; and (ii) without limiting the foregoing, the Receiving Party will use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of this Confidential Information as the Receiving Party employs with respect to its own Confidential Information of a like importance.

11.4 Compelled Disclosures. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over the Receiving Party, the Receiving Party may disclose Confidential Information in accordance with such law or order or requirement, subject to the following conditions: (i) as soon as possible after becoming aware of such law, order or requirement, and prior to disclosing Confidential Information pursuant thereto, the Receiving Party will so notify the Disclosing Party in writing and, if possible, the Receiving Party will provide the Disclosing Party notice not less than five (5) business days prior to the required disclosure; (ii) the Receiving Party will use reasonable efforts not to release Confidential Information pending the outcome of any measures taken by the Disclosing Party to contest, otherwise oppose, or seek to limit such disclosure by the Receiving Party, and any subsequent disclosure of use of Confidential Information that may result from such disclosure; and (iii) the Receiving Party will reasonably cooperate with and provide assistance to the Disclosing Party regarding such measures. Notwithstanding any such compelled disclosure by the Receiving Party, such compelled disclosure will not otherwise affect the Receiving Party's obligations hereunder with respect to Confidential Information so disclosed. Notwithstanding any provision in any agreement between the parties, including parts 3.2, 8.1 and 11 of this Exhibit, Clear Ballot recognizes that Customer is a public agency subject the state Public Records Laws, ORS 192. Upon

receipt of a public disclosure request for any material which is the subject of this Agreement, Customer will promptly notify Clear Ballot of the request and Clear Ballot will promptly elect whether it will at its own expense commence court action to protect the material from disclosure. If Clear Ballot does elect to seek such protection, Clear Ballot will fully defend and indemnify Customer from any liability, including attorney fees and statutory penalties, which may arise under the Public Records Laws in connection with the request. Similarly, Clear Ballot recognizes that Customer is subject to state record retention regulations, including ORS 192.108, and Customer will comply with all such requirements.

12 TERMINATION

12.1 Breach. If either party fails to observe or perform any material obligation under this Agreement, the non-defaulting party may give written notice to the defaulting party specifying the material failure. If the material failure is not corrected or a mutually agreed plan to correct the failure has not been established by the parties working together in good faith within thirty (30) Days after the date of such notice, the non-defaulting party may terminate this Agreement upon written notice to the defaulting party. The right of the non-defaulting party to terminate this Agreement under this Section 12.1 (Breach) is in addition to all other rights that are available to it under this Agreement, at law, or in equity. Notwithstanding the foregoing, if Customer fails to make payments as required hereunder and such failure is not cured within fifteen (15) days of notice from Clear Ballot, Clear Ballot may immediately (i) terminate Customer's license to the Licensed Software and (ii) cease performing all Services hereunder, including Support Services. In the event the Clear Ballot solution is unable to meet the agreed upon Acceptance Criteria, at Customer's sole discretion, Clear Ballot shall pay to Customer two (2) times the fees paid to date, including licensing fees, support fees, hardware purchase price and any fees relating to the implementation of the Licensed Software, not as a penalty but as liquidated damages.

12.2 Termination for Convenience. Customer may, at any time, elect to terminate this Agreement or an individual Order at Customer's convenience (i.e., for any reason whatsoever or no reason at all) provided Customer provides Clear Ballot with forty-five (45) Days prior written notice.

12.3 Bankruptcy and Insolvency. Either party may terminate this Agreement on written notice to the other party, if the other party becomes insolvent or bankrupt, admits its inability to pay its debts as they mature, or takes action for the purpose of entering into winding-up, dissolution, bankruptcy, reorganization, or similar proceedings that are analogous in purpose or effect, or an action has been instituted against the other party or if the County does not have funds available to meet its obligations under this Agreement. In the event that Clear Ballot is no longer solvent or no longer able to provide the agreed upon support for the Licensed Software, the Source Code Escrow shall be released to Customer and Customer shall receive all rights necessary to run and maintain the Licensed Software.

12.4 De-certification. If Clear Ballot fails to maintain any required certifications which are necessary to provide the

Licensed Software, Customer may give written notice to Clear Ballot of Customer's intent to terminate the Agreement or any Service Order. If Clear Ballot is unable to acquire the necessary certification within a reasonable, mutually agreed upon timeframe, at Customer's sole discretion, Customer may terminate the Agreement or any Service Order and be entitled to a refund of the fees paid during the prior twelve (12) months, as liquidated damages.

12.5 Disposition of Licensed Software on Termination. Upon the expiration or termination of this Agreement for any reason, the license and all other rights granted to Customer hereunder shall immediately cease, and Customer shall (i) return the Licensed Software to Clear Ballot together with all reproductions and modifications of the Licensed Software and all copies of any Documentation, notes and other materials respecting the Licensed Software, (ii) attest that Customer shall no longer use or allow to be used the Licensed Software, (iii) provide Clear Ballot a written certification that Customer has ceased all use of the Licensed Software and has complied with all of its obligations under this Section.

13 GENERAL

13.1 Government Restricted Rights. The Licensed Software is provided with Restricted Rights. Use, duplication, or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR clause 52.227-19 or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 et seq. or its successor. The Licensed Software constitutes proprietary data, all rights of which are reserved under the copyright laws of the United States.

13.2 Waiver, Amendment, Or Modification. The waiver, amendment, or modification of any provision of this Agreement, or any right, power, or remedy hereunder, shall not be effective unless made in writing and signed by the party against whom enforcement of such waiver is sought, or in the case of amendment, or modification unless signed by both parties. The terms of this Agreement shall not be amended or changed by the terms of any purchase order or acknowledgement issued by Customer even though Clear Ballot may have accepted or signed such documents. No failure or delay by either party in exercising any right, power, or remedy with respect to any of its rights hereunder shall operate as a waiver thereof.

13.3 Notice. All notices, demands, or consents given under this Agreement will be in writing and will be deemed given when delivered personally, or three (3) Days after deposit in the mail (certified or registered mail), or one (1) Day after being sent by overnight courier, to the receiving party at the address set forth in this Agreement or at such other address given by either party to the other in writing.

13.4 Entire Agreement. This Agreement, together with the Orders, and any exhibits attached hereto, constitutes the entire agreement between the parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no

warranties, representations, or agreements between the parties in connection with the subject matter hereof except as specifically set forth or referred to herein. In the event of any conflict between the body of this Agreement and any Orders or exhibits, the body of this Agreement shall control.

13.5 Assignment. Neither party may assign this Agreement without the express, written consent of the other party. With such written consent, the assigning party may assign this Agreement to any entity acquiring or merging with assigning party, or to whom assigning party transfers all or substantially all of its assets, provided the resulting use, functionality, and support of the Licensed Software remains consistent with the terms of this Agreement and with the scope of use made by assigning party immediately before the assignment. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns and legal representatives.

13.5.1 Sub-Contractors. Clear Ballot shall not subcontract any of the work required by this Agreement without the prior written consent of Customer. If any subcontractors are authorized by Customer, Clear Ballot shall be responsible for the satisfactory completion of all requirements, deliverables, and services hereunder, and Clear Ballot shall remain liable for all acts and omissions of subcontractor

13.6 Governing Law; Severability; Venue. The validity, construction and performance of this Agreement and the legal relations among the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, excluding that body of law applicable to choice of law. If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall continue in full force and effect. Venue for any legal action relating to the validity, construction and performance of this Agreement is exclusively with the Circuit Court for Yamhill County, Oregon.

13.7 Construction. The section headings in this Agreement are for convenience of reference only, will not be deemed to a part of this Agreement, and will not be referred to in connection with the construction or interpretation of this Agreement. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to sections of this Agreement as a whole and not to any particular section, subsection, or other subpart of this Agreement. The words "include" and "including" shall not be construed as terms of limitation and shall, in all instances, be interpreted as meaning "including, but not limited to."

13.8 Relationship Of The Parties. Clear Ballot is an independent contractor under this Agreement, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Neither party shall have authority to enter into agreements of any kind on behalf of the other party and shall have no power or authority to bind or obligate the other party in any manner to any other third party.

13.9 Survival. The following Sections shall survive expiration or termination of this Agreement: 3.5 (Feedback); 5 (Fees,

Expenses and Taxes) (to the extent of fees accrued prior to the date of termination), 7.5 (Disclaimer of Other Warranties); 8 (Indemnification); 9 (Audit); 10 (Limitations of Liability and Actions); 12.5 (Disposition of Licensed Software On Termination); and 13 (General).

13.10 *Force Majeure*. Except for Customer's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of

God, export control regulation, laws, judgments, or government instructions.

13.11 *Counterparts*. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed an original, but all of which together will constitute the same Agreement.

13.12 *Agreement Drafted By All Parties*. This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by all parties such that any ambiguities in this Agreement shall not be construed against either party.

The parties have executed this Agreement to become effective as of the Effective Date.

CUSTOMER

BY:



BRIAN VANBERGEN

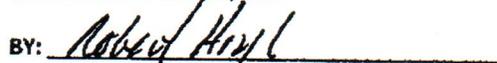
(PRINTED NAME)

COUNTY CLERK

(TITLE)

CLEAR BALLOT GROUP, INC.

BY:



Robert Hoyt

(PRINTED NAME)

VP Business Dev.

(TITLE)

1/22/18

(DATE)

**EXHIBIT 1
SOFTWARE ORDER**

This Software Order is entered into by and between Clear Ballot Group, Inc. ("Clear Ballot") and the undersigned ("Customer") under the Master Services Agreement (the "Agreement") between the parties. The terms and conditions set forth in the Agreement shall have the same meaning when used as defined terms in this Software Order. In the event of any conflict between the body of the Agreement and this Software Order, the body of the Agreement shall prevail.

1. **Designated Jurisdiction.** Designated Jurisdiction for the Licensed Software shall be: Yamhill County
2. **Licensed Software and Fees**

Licensed Software	Licensing Fee
ClearVote Software (including the functionality of ClearDesign, and ClearCount)	Perpetual License Agreement: \$60,000
	Annual Maintenance and Support Fee: \$15,000
	Annual maintenance and support fees shall begin in year two of the Agreement, shall be fixed at this rate in years 2-5, and increase not more than 3% each year thereafter.

3. **License Term**

Perpetual License with separate annual support fees: The term of the license shall begin on the Software Order Effective Date and continue in perpetuity thereafter, unless earlier terminated in accordance with the Agreement (the "Term").

**EXHIBIT 2
HARDWARE ORDER**

1. Initial Hardware Purchase

Item	Quantity
<u>Central Count Scanners</u>	
Fujitsu fi-6800 Scanner Bundle	2
<u>Base Hardware</u>	
ClearDesign Tower Server	1
ClearCount Tower Server	1
Tower Server Monitor and Keyboard	1
Administration Station-Dell Precision Desktop	1
Adjudication Station - Dell Optiplex All-in-One	4
Router - 4 Port	1
Switch - 8 Port	1
Fujitsu ScanAid Consumables and Cleaning Kit	1
Ethernet Cables	1
4TB Backup External Storage Drive	1
Fujitsu 6800 ScanAid Kit	1
Report printer	1
Total Upfront Hardware Price	\$68,249
Total Annual Hardware Post-Warranty Maintenance and Support Fees	\$9,000
Note: Annual maintenance and support fees shall begin in year two of the Agreement, are fixed from years 2-5, and increase not more than 3% each year thereafter.	

2. Additional Bundle Details

Fujitsu fi-6800 Scanner Bundle Fujitsu fi-6800 Scanner ScanStation ClearCount Tabulation Software Laptop Stand Ethernet Cables

**EXHIBIT 3
MAINTENANCE SERVICES AGREEMENT**

Clear Ballot Maintenance Services will be accessible via phone, e-mail, and a secure web portal on the Clear Ballot website. Clear Ballot will respond to issues raised through one of these channels promptly.

1. Overview

The objective of Clear Ballot Maintenance Services is to earn and maintain customer trust and satisfaction. The Clear Ballot Customer Support organization provides support during all phases of the election.

The Clear Ballot Help Desk is available by telephone or email. Alternatively, customers may enter their issues into Clear Ballot's secure Support Portal system. Customers can also access the Clear Ballot online FAQ (knowledge base), which is updated regularly, and the online user forums. Clear Ballot's customer support portal may be unavailable to customers during routine maintenance.

Clear Ballot customer support organization works closely with our training and documentation staff to ensure that all materials are accurate, comprehensive, and up to date. If support is on a procedural or non-proprietary matter is required, Clear Ballot customer support staff may arrange a web conference or demonstration.

On an ongoing basis, Clear Ballot hosts User Group meetings. Statewide user group meetings may be held, as well as national group meetings can be scheduled in the future with key accounts. Key accounts can provide useful product feedback and system enhancement recommendations

2. Clear Ballot Support Staff

The Clear Ballot customer support organization includes the following staff members:

- Customer support representatives available by phone or internet.
- Clear Ballot will provide extended support hours, 7 am – 7 pm Pacific Time during ballot preparation. This extended support schedule will be provided for a period of five continuous business days, upon reasonable advance request by Customer.
- During off cycle, non-peak phases, Clear Ballot Help Desk operates M – F, 8 am – 5 pm Pacific Time, with next business day callback for after hours or weekend requests.
- Clear Ballot will provide remote technical support for all elections run using the ClearVote system.
- Onsite Clear Ballot Technical Support resources are available at the rate of \$1,500 per day upon request.

3. Clear Ballot Support Portal

The secure web portal will allow counties to submit issues, inquire about past issues and solutions, and engage a forum for county administrators to assist one another in determining and disseminating best practices and answers to common questions. While Clear Ballot reserves the right to moderate the forum, it does not plan to restrict the statements made by county representatives on the forum, nor does it take responsibility for any views expressed, suggestions provided, or information posted by non-Clear Ballot personnel.

4. Software Upgrades

Clear Ballot Maintenance Services shall also include the Customer's access to software upgrades and new releases issued by Clear Ballot during the term of the Maintenance Services Agreement.

5. Third Party Hardware

Clear Ballot has designed its products to operate with specified hardware licensed to Customer by third parties. Clear Ballot provides all maintenance services in connection with Clear Ballot products, and is available to serve as the Customer's intermediary in the resolution of hardware issues. In that fashion, any identified problem can be addressed efficiently and seamlessly. Clear Ballot shall on the Customer's behalf place service calls to the hardware manufacturer's service staff, and coordinate with the Customer third party hardware service visits. The Customer shall be responsible for allowing for technical visits in accordance with standard terms and conditions. Hardware warranties run in favor of the Customer, and are subject to standard exclusions.

Hardware manufacturer's service times are currently listed as follows:

Dell – ProSupport – 24x7 phone-based troubleshooting - Next Business Day On-Service: After telephone-based troubleshooting, replacement parts and a ProSupport technician arrive on-site, the next business day. Parts, labor and travel included.

Fujitsu - Annual Basic Service Program – 8x5 Next Business Day onsite. Next business day onsite technical assistance and parts and dispatched after phone support and diagnostics are conducted. - 2 Cleanings per year, parts, labor, travel included. Ongoing consumables are the Customer's responsibility.

Lenovo – 24x7 service window - 4hr on-site response time after phone diagnostics. Includes phone support and trouble-shooting, onsite hardware repair or replacement, parts and labor and travel.

6. Software Support Services Matrix

Customer Success support is provided at no additional cost to the customer. First year support is included in the up-front cost of acquiring the ClearVote system, and additional years are covered under the annual software maintenance and support fee.

Outside of election cycle coverage, support is provided during regular business hours. During election cycle coverage, Clear Ballot's Customer Success team supports customers whenever they are using ClearVote products, with response and escalation times as noted below. Clear Ballot's Customer Success model means that "If you're working, we're working".

Clear Ballot Support	Response Time Guarantee	Escalation Time Period
Off-Election Cycle	Next Business Day*	2 Days**
Election Cycle (E-60 through Canvas)	2 Hour Response**	4 Hours**
Peak Election Cycle (E-7 to E+7)	1 Hour*	2 Hours**

*Note: Clear Ballot will respond to the Customer within the times set forth above within the election cycle. Clear Ballot will attempt to resolve the deficiency or help with questions that address the issue within the "Escalation Time Period". Clear Ballot further agrees to address on a priority basis any deficiency of the Clear Ballot software which may affect its function during the ClearDesign election cycle. Should the software deficiency require a software upgrade, Clear Ballot will work diligently with the Oregon Secretary of State's office to provide information and review of any required software updates.

**Note: Resolution will be on a best effort basis. Proper testing is the best method to ensure that problems arise outside of critical timeframes. Additionally, should software modifications be required, the State of Oregon may need to provide administrative approval prior to installing an updated version of software.

On-Site Support: Clear Ballot will provide on-site election coverage for any elections run prior to final acceptance of the Clear Ballot system in this agreement. After final acceptance, the Customer will schedule on-site election support or additional training on an as needed basis by contacting their Customer Success manager at the rate published in section 2 of this document.

Performance Guarantees

1. Clear Ballot shall resolve all reported malfunctions that prevent the system from creating ballots, scanning ballots, adjudicating ballots, or reporting results within the following timeframes or the specified performance penalties shall apply:
 - a. Up to ten (10) business days – No penalty
 - b. More than ten (10) business days – Credit of 10% of Annual Maintenance and Support Fees paid during the current term.
2. Repeat Malfunctions
 - a. Should the same malfunction that prevents the system from creating ballots, scanning ballots, adjudicating ballot, or reporting results occur more than one (1) time in any given month, or on one or more times in any two (2) consecutive months, and Clear Ballot fails to resolve the malfunctions within ten (10) business days, the credit of Annual Maintenance and Support Fees described in sub-section 1.b. of this Performance Guarantees Section shall be doubled.
 - b. Should the same malfunction occur three (3) or more times in any given month, or in any three (3) consecutive months, and Clear Ballot fails to resolve the malfunctions within ten (10) business days, the credit of Annual Maintenance and Support Fees described in sub-section 1.b. of this Performance Guarantees Sections shall be tripled.

3. Malfunctions During Peak Election Cycle

- a. During the Peak Election Cycle, if Clear Ballot has not resolved a reported malfunction that prevents the system from scanning ballots, adjudicating ballots, or reporting results within twenty four (24) hours of the initial report, Clear Ballot shall prepare, execute, and bear the costs of a mutually agreed resolution, such as provide additional labor or equipment, to resolve the Election Day malfunction, or refund to Customer the Annual Maintenance and Support Fees paid during the prior twelve (12) months.
4. Performance guarantees for hardware shall only apply to hardware provided by Clear Ballot and shall only apply while hardware is covered by manufacturer's warranty and maintained according Clear Ballot documentation.

7. Clear Ballot Additional Support Services

A list of additional services Clear Ballot can provide to Customer follows.

- Training – the following courses can be provided to Customer new hires and temporary workers.
 - a. Product training
 - ClearDesign administration and ballot preparation
 - ClearCount administration and operation
 - ClearAccess administration and operation
 - Acceptance testing ClearDesign, ClearCount, ClearAccess
 - b. Pollworker training - ClearAccess:
 - Train-the-trainer
 - c. Warehouse staff:
 - Acceptance testing
 - Configuration and testing equipment prior to deployment to voting centers
- Election Support Services
 - a. Assistance with election programming and ballot layout
 - b. Assistance with Logic and Accuracy Testing
 - c. Assistance with ballot tabulation and election night reporting
 - d. Voting center rovers
 - e. Customer phone bank and help desk staffing – Tier 1 and Tier 2 support

- 8. Ongoing annual maintenance beyond the term of this agreement may be processed as a simple Purchase Order.**

EXHIBIT 4
Statement of Work

On the date of the latest signature hereto ("SOW Effective Date"), Yamhill County and Clear Ballot hereby attach and incorporate this Statement of Work ("SOW") pursuant to the Clear Ballot Software License and Services Agreement ("Agreement") entered into by the parties effective on the Effective Date set forth therein. Capitalized terms used but not defined in this SOW, shall have the meanings given to them in the Agreement.

Solution Overview & Scope of Work (General):

The purpose of this SOW is to implement the Clear Ballot central ballot-tallying solution, including ClearDesign and ClearVote, (hereinafter collectively referred to as the "Solution") for the County. The Solution will replace the County's current system and will be used to design and tally ballots. The County plans to have ballots printed by a third-party vendor, and Clear Ballot's certification of the selected print vendor is part of the scope of the project.

The high-level scope includes:

1. Providing and installing hardware (scanners, workstations and servers).
2. Installing software.
3. Setting up the system in the County Clerk's office.
4. Conducting training on the system for County Elections and County IT staff.
5. Redesigning the elections process to leverage the features of the Solution.
6. Conducting Acceptance Testing.

Key Assumptions:

1. The county will first use the system at the May 18, 2018 election (May Election).
2. Designing and printing ballots is the most immediately critical task that the system needs to support in order to prepare for a May Election. Therefore, configuration and testing of the ClearDesign module should take place as early in the schedule as possible.
3. County will select a ballot-printing vendor for certification by Clear Ballot.

Goals and Objectives:

1. Implement the system in time to conduct the May Election.
2. Increase the efficiency of the ballot-tallying process.
3. Increase the accuracy and transparency of the voting process.
4. Redesign the current ballot-tallying process to leverage the innovative features of ClearVote, including on-screen adjudication.

Project Schedule:

The project shall be initiated and completed pursuant to a mutually agreed upon schedule and work plan.

Scheduling assumptions:

1. Hardware requirements will be finalized prior to signing the Agreement, since the cost needs to be finalized in order to complete the Agreement.
2. In order to be most efficient in time, Clear Ballot proposes to conduct the ClearDesign installation and training before the ClearVote installation and training, in order to focus on ensuring that the ability to design and print ballots is in place in time for a May Election.

Implementation Process:

Kick-off Meeting:

A kick-off meeting will be held as soon as possible after the Agreement is executed. Target date is sometime during early February, 2018. Kick off meeting should be attended by (following list is just an example):

1. Clear Ballot Project Manager
2. Brian Van Bergen, Project Sponsor and County Project Manager
3. County IT Project Manager (Suggested)
4. Other County elections staff as assigned
5. Other Clear Ballot staff as required

Purpose of the kick-off meeting will be to review the scope and schedule, roles and responsibilities, ground rules, etc. Clear Ballot shall be responsible for the meeting agenda with input from the County Clerk.

Planning:

The primary planning that needs to take place on the County's part prior to beginning implementation is identifying the resources that will need to take part and ensuring the availability of those resources at the appropriate times.

Training and Testing:

Training will be a combination of in-person and online training as outlined below.

Acceptance testing will also be conducted on-site and shall adhere to the concepts and procedures further described in the Testing section and the Acceptance Criteria section below.

Requirements for the Solution:

This is a placeholder for the general requirements for the Solution. It should be sufficiently detailed to explain what the Solution should do/accomplish/provide such that the following table with the bulleted Requirements and their corresponding Acceptance Criteria represent the satisfactory completion of the delivery of all of the Solution requirements.

The following requirements will be included in the Acceptance Test, to occur no later than May 1, 2018.

Requirement	Acceptance Criteria
OCVR import	County staff is able to import data from a past election in OCVR and demonstrate the data was imported with zero errors.
Certify third-party ballot printing company	County has selected and Clear Ballot has certified ballots printed by third-party printer sufficiently scan and tally during acceptance testing.
Ballot Design	County staff is able to design 30 ballot styles from a past election to Oregon State Election standards.
Creating ballot definition files and importing them into ClearVote to set up the election.	County staff is able to import data from a past election in OCVR into ClearVote to set up an election with zero errors.
Exporting raw data for analysis and ad hoc reporting	County staff has exported data and been able to import 100% accurate data into Microsoft Excel.
Archiving elections and ballot images	Election has been archived to backup storage medium along with ballot images.
Restoring an archived election	County staff is able to restore an archived election.

The following requirements will be included in the Final Acceptance Test, to occur concurrent with the May Election or mock election. Each of these items will be tested during implementation and acceptance testing prior to the May 2018 election; the requirements also allow County to see each in a live election environment and the Acceptance Criteria will satisfy a successful election for Final Acceptance:

Requirement	Acceptance Criteria
Scanning ballots and performing online adjudication	County staff has scanned a minimum of 2,000 ballots on each scanner with a jam rate of less than 0.2%. On-screen adjudication decisions for ballots scanned during acceptance testing are reflected in the results for 100% of the ballots.
Ability to locate the paper ballot associated with an image stored in the system	County staff can locate 10 paper ballots, selected by County, based on information associated with images stored in the system.
Exporting results to OCVR	County staff is able to export results data directly to OCVR & the Oregon SOS's ENR system with zero errors.

Deliverables:

1. Detailed project plan, delivered no later than January 31, 2018.
2. Hardware (including scanners, workstations/ScanServer, and laptops) delivered to the County in new condition and installed and in working order.
3. Installation of ClearDesign and ClearVote software.
4. Configuration of ClearDesign, including OCVR import.
5. Results export suitable for upload.

Hardware, Software, and/or Storage Design, installation, and/or Consulting:

1. Clear Ballot shall be responsible for procuring, configuring and shipping all hardware to County.
2. Clear Ballot staff shall be responsible for installing hardware and software, with assistance from County Elections or IT staff as needed. The need for County resources shall be defined as part of the detailed project plan. County shall provide one (1) Elections staff member and one (1) IT staff member to participate/observe the hardware and software installation in order to become familiar with the installation procedures.

Project Management:

1. Clear Ballot shall have primary project management responsibility and shall be responsible for ensuring that the project is completed on time and on budget.
2. The Clear Ballot Project Manager shall provide a weekly status report to the Project Sponsor and County Project Manager. At a minimum, the status report should include tasks at risk/in jeopardy, tasks completed, estimate of time required to complete tasks in progress, and tasks planned to start in the upcoming week.

County Responsibilities:

1. County will ensure that County Elections and IT staff are available to work with Clear Ballot when needed.
2. County will be responsible for providing furniture needed in the counting room (tables, chairs, etc.).
3. County will be responsible for selecting a third-party, ballot-printing vendor and making any necessary arrangements for printing ballots.

Contractor Responsibilities:

1. Clear Ballot shall have primary project management responsibility.
2. Clear Ballot shall notify the County in advance as to what resources are required and when.
3. Clear Ballot shall be responsible for procuring, configuring, shipping and installing all hardware.
4. Clear Ballot shall be responsible for installing software, with County participation.
5. Clear Ballot shall be responsible for conducting training on site and shall provide the necessary equipment and training materials, unless prior arrangements have been made with the County.
6. Clear Ballot shall be responsible for certifying any ballot printer(s) selected by the County.

Training:

1. Training shall be conducted onsite at the County by Clear Ballot staff.
2. Training shall be completed no later than February 27, 2018.
3. Training shall consist of the following 6 courses, or as mutually agreed upon during project kick-off:
 - a. ClearVote Overview - 2 hours
 - b. ClearVote Installation and Setup - 4 hours
 - c. ClearVote System Administration - 4 hours
 - d. ClearVote Operations and General Maintenance - 12 hours
 - e. Using ClearVote Election Reports - 2 hours
 - f. Using ClearDesign - 3 days
4. The Clear Ballot Project Manager shall work with the County Clerk to develop a detailed training schedule by no later than 15 business days after project kickoff. The schedule shall identify the date, time and location for each course and the attendees for each course. The timing requirement for the schedule is to allow adequate time for staff to arrange their schedules to be able to attend.
5. Clear Ballot shall provide manuals and training videos. Manuals and videos are currently available for the ballot-tabulation process.

Testing:**Acceptance Test Plan:**

A detailed acceptance test plan shall be developed as part of the project. At a high level, the acceptance test plan must demonstrate that the system can support items defined in the Requirements section of this SOW to the satisfaction of the County.

Acceptance Testing:

Following delivery of the Solution, County shall have ten (10) business days to test the Solution and respond to Clear Ballot with written indication of any defects (hereinafter "Acceptance Testing"). Lacking such response within the agreed upon timeframe, the Solution shall be deemed to be accepted as delivered. Upon notification of any Solution defect(s), Clear Ballot shall repair said defect(s) at no additional cost to County and resubmit the resolved defective component or the entire Solution to County for Acceptance Testing as described herein.

Final Acceptance Testing:

The Solution shall be considered fully accepted following the successful completion of the May Election using the Solution ("Final Acceptance").

Acceptance Criteria or Procedure:

Acceptance criteria for all standard features of the system are described in the table entitled "Requirements for Solution" and will be based on an acceptance test that will exercise all system functions that the County will use in the course of conducting an election.

System Documentation and Manuals:

Clear Ballot shall provide one complete set of product documentation on paper and one complete set in PDF format. Said documentation shall be maintained on Clear Ballot's online support portal. This documentation shall include all technical, database, application, training and user documentation and manuals.

Knowledge Transfer:

Clear Ballot shall provide knowledge transfer to ensure County staff are fully capable of using and supporting the Solution. Such knowledge transfer will be facilitated by the following:

1. County staff will work alongside Clear Ballot staff when Clear Ballot staff are installing Software and Hardware or performing any other standard configuration and maintenance on the system.
2. County staff will participate in formal training as described in the Training Section of this SOW.
3. County staff will participate in an acceptance test that will simulate the actual ballot-tallying process as closely as possible.

Change Order Process:

In the event that a change in the scope, schedule, or cost of this SOW is necessary, such change shall be documented, communicated, and agreed upon in writing signed by both parties following the Change Control Process described in the Agreement.

Fees/Rates, Invoices, Payment:

Prices for Hardware, Software, and Services:

Category	Total Price
Hardware	\$68,249
Software	\$60,000
Services	\$16,200

Invoices/Payments: Unless specified otherwise herein, upon acceptance of deliverables by County, and successful achievement of the milestones described in the Payment Milestones below, Clear Ballot shall invoice for payment as described in the Payment Milestones table.

Payment Milestones:

Milestone	Payment Amount
1. Hardware and Software Purchase	100% of Hardware \$68,249 50% of Software \$30,000
2. Hardware and Software Installation	20% of Software \$12,000 50% of Services \$8,100
3. Acceptance Testing Completion	20% of Software \$12,000 50% of Services \$8,100
4. Final Acceptance Testing Completion	10% of Software \$6,000

The maximum amounts to be invoiced by Clear Ballot under this SOW, including expenses, shall not exceed \$144,449 for all Payment Milestones and as outlined in the above "Prices for SOW Categories" table.

NOTE: County shall have the right to withhold from payments due Clear Ballot such sums as are necessary in County's sole opinion to protect County from any loss, damage or claim which may result from Clear Ballot's failure to perform in accordance with the terms of this Agreement or failure to make proper payment to suppliers or subcontractors.

Termination of SOW: This SOW may be terminated upon ten (10) days written notice from County. In the event that the Solution cannot pass County's Final Acceptance, Clear Ballot shall refund all fees paid by County, and at County's sole discretion, either; 1) accept the return of the Hardware and Software with no further cost or liability to County, or 2) accept the return of the Software and transfer any Clear Ballot rights and responsibilities relating to the Hardware to County, and County shall retain possession of the Hardware for use with a replacement Solution.

The undersigned hereby agree to be bound by the terms and requirements of this SOW and the attached Exhibits and Attachments.

Yamhill County

Clear Ballot Group

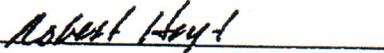
Name: BRIAN VAN BEREN

Name: Robert Hoyt

Title: COUNTY CLERK

Title: VP BUSINESS DEV.

Signature: 

Signature: 

Date: 1.24.2018

Date: 1/22/18

Name: _____

Title: _____

Signature: _____

Date: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Exhibit 5

Clear Ballot Testing Plan

Acceptance testing

Acceptance, test case, and load testing will be performed on each piece of hardware and each software configuration delivered to the County. This process will confirm that everything was delivered without damage, installed correctly, and performs as expected. Acceptance testing should occur shortly after the hardware/software configuration is installed. Testing should be repeated on each hardware bundle or configuration.

This test plan incorporates industry standard test scenarios. Additional test cases and scenarios required by the county will be incorporated into this testing plan as part of the development of a project plan at the project kick-off meeting, and will be finalized no later than February 28, 2018.

Acceptance Testing will be performed in three groups to cover the entire ClearVote suite:

- ClearDesign
- ClearAccess
- ClearCount

The lead Contacts for the County will be assigned at project kick-off and included in the full project plan. The lead Contact for Clear Ballot will be a member of the customer success implementation team assigned to this account. We will use a single election throughout to test each of the three groups. This will enable the testing to confirm the end-to-end success of the system.

Clear Ballot will provide **Test Checklists**, to be used by County officials to complete the **Acceptance** of each piece of the ClearVote system. These checklists will be finalized in consultation with the County and modified to fit County specific requests, test cases, or scenarios no later than March 31, 2018.

ClearDesign Checklist

1. Server – An inspection of the server revealing no damage. The server must be the correct model specified.
2. ClearDesign Admin Station(s) – A thorough inspection revealing that the ClearDesign station is the correct model specified & shows no damage.

Steps to take

1. Power on the Server and Design station(s) and verify the OS (Match state approved models/versions).
2. Login to the ClearDesign admin station.
Verify that the correct ClearDesign version is displayed.
3. Configure user(s) and permission(s) as desired.
4. Restore a test election to verify the installation.
5. Verify the election data as desired using proofing reports.
6. Print ballot PDFs and save PDF files to a USB device or another designated location.
7. Perform a backup of the election.
8. Export an ADF (Accessible Definition File) and load it onto a USB device.
Install the files onto the ClearAccess ballot marking devices (see ClearAccess acceptance testing).
9. Export a BDF (Ballot Definition File) and load it onto a USB device.
Then, create an election on the ClearCount admin station with the BDF.
10. Print the ballot PDFs and mark them in a pre-determined test pattern.
Then, scan and verify that the ballots are correctly tabulated by ClearCount.
11. When the ClearDesign system passes the acceptance test, the identified County and Clear Ballot test staff will sign and date the acceptance form.

ClearCount Checklist

- **ScanServer:**
 1. Ensure that the server reveals no damage, and that the server is the correct specified model.
- **Scanners:**
 1. Inspect the outer shell of the device to ensure there is no damage, and that the accessed interior areas of the scanner appear clean and undamaged.
 2. Verify the scanner model and serial number.
 3. Ensure that all parts of the system are included and are undamaged:
 - Network cables
 - Switch
 - External hard drive for election backup
- **Admin Stations Phase:**
 1. Inspect the workstation and monitor to ensure there is no damage.
 2. Create a test election with the BDF.
 3. On the **Election Administration Page**, verify that the test election is active.
 4. On the **Election Index Menu**, select the "Test Election".
 5. From the **Dashboard and Statement of Votes Cast report**, verify that the totals amount to zero.
- **ScanStations:**
 1. Inspect the workstation and monitor to ensure there is no damage.
 2. Start the ScanStation and verify the operating system version.
 3. Start the Tabulator and verify the **election name, scanner model, and scanner serial number**.
 4. Scan the test deck ballots preceded by a target card.
 5. When using ClearAccess accessible ballot marker, vote and then tabulate the test ballots.
 6. Scan one damaged ballot to verify that adjudication is functioning properly.
 7. Verify that all ballot images were saved to the ScanServer, then close the tabulator.
- **Adjudication Stations:**
 1. Inspect the workstation and monitor to ensure there is no damage.
 2. Verify that the wireless features have been disabled.
 3. Adjudicate an unreadable ballot.
- **Admin Stations Phase 2:**
 1. In conjunction with testing the Scanner and ScanStation, review that the election reports match and test deck patterns.
 2. Verify that the statement of Votes Cast report can be exported as "CSV" to a USB device connected to the Election Admin Station.
 3. Plug the external drive into ScanServer.
 4. Backup the test election.
 5. Restore the election from the external hard drive.
 6. From the **Election Index**, select the restored test election.
 7. Review reports to verify that the election has been restored properly.

Logic and Accuracy Testing

Clear Ballot will work with Customer to modify its election L&A testing procedures to better fit with the ClearVote program. The L&A procedures will first be used for the election agreed to with Customer, and then repeated for each election thereafter. Clear Ballot will supply L&A procedures used by other customers, and will work with Customer to integrate those procedures into Customer's testing plans.

- **Logic and Accuracy Testing Meeting:**
 1. Audience – Clear Ballot Subject-matter expert, Clear Ballot Project Managers and County Project Team
 2. Objective – The purpose of the meeting is initially to instruct the county on how the L&A process works in the ClearVote system.

Note:

As an additional service, Clear Ballot can mark the County's Test Ballots in the Full Pattern and First Position (other patterns are also available).

Load Testing

- Load testing will be done in preparation for the first Election at which ClearVote is used. If a new version of the software is installed, a second load test will be performed as a check.

Note:

The load test will confirm that the system can handle the number of ballots, simultaneous adjudication stations, and throughput required.

- Clear Ballot is writing an automated script which allows for scalability testing of millions of ballots without having to scan each ballot. A small subset of ballots will be scanned while the rest will be automated through the ScanStation.

Note:

The first test will include all adjudication stations.

- **Load Testing Meeting:**

1. Audience – Clear Ballot Subject-matter expert, Clear Ballot Project Manager(s) and County Project Team.
2. Objective – The purpose of this meeting is to define a load test plan to test the system's maximum capacity when everything is running during an election. This would encompass Adjudication stations, scan stations, and running reports.

- **Sample Load Testing Schedule:**

1. Create 100 adjudication/write-in ballots and scan in multiple batches.
2. Create 3 batches of 500 ballots, then scan and send files to Clear Ballot for replication.
3. Clear Ballot replicates scanning batches with different target cards.
4. Load the Test Final setup.
5. Perform a 1st trial run of Load Testing/Review
6. (IF NEEDED) Perform a 2nd trial run of Load Testing/Review
7. Perform an official Load Testing/Review.

Changes, modifications, and corrective action tracking

If, during any acceptance, test case, or load testing, any piece of hardware or software configuration is found to be dysfunctional at expected levels, the Clear Ballot Resiliency Process is initiated as follows:

Steps to take

1. The Customer Success personnel will review the expected hardware and software configurations to determine if there is a logistical (wrong hardware ordered or delivered, incorrect software version shipped, etc.), hardware (mechanical failure), or software problem.
2. A ticket will be created on www.desk.com and assigned to the proper team.
3. Once a resolution is determined, the Clear Ballot QA team will fully test the solution prior to application in the field.
4. If necessary, the solution will be fully tested and vetted at a federal Voting System Test Laboratory (VSTL), and a report will be issued to the Oregon Secretary of State's office.
5. Full acceptance, test case, and load testing will be completed in the field to ensure full compliance with the county's requirements.

Clear Ballot will work to remediate issues in a timely and efficient manner, within the scheduling constraints of testing labs, State authorities, hardware vendors, and any other required participants.