

Resolution 2023-D Exhibit A

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

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DEPUTY SECRETARY OF STATE



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INTERGOVERNMENTAL AGREEMENT # PO-165-00015269
For
Electronic Records Management Services
between
Oregon Secretary of State and (City of Sheridan)

This Intergovernmental Agreement (the "Agreement") is made and entered into between the State of Oregon, acting through its Office of the Secretary of State ("SoS") and City of Sheridan ("Entity") (each a "Party", collectively, the "Parties"). This Agreement is effective on the date this Agreement is fully executed and approved by an authorized representative of each Party as indicated by signature below (the "Commencement Date").

RECITALS

Under ORS 192.015, the legislature designated SoS as public records administrator of the state, with the responsibility "*...to obtain and maintain uniformity in the application, operation and interpretation of the public records laws.*" Further to this designation, "[t]he State Archivist may grant to public officials of the state or any political subdivision specific or continuing authorization for the retention or disposition of public records that are in their custody." (ORS 192.105(1))

In order to effectively carry out the above-stated duties and assist state agencies and local governments in the shared responsibility of public records retention and disposal, SoS has determined that the effective management of public records must address information that is primarily contained in or derived from electronic formats. ORS 192.001 to 192.105 gives the State Archivist the authority to conduct an electronic records management system ("ERMS") services program.

The State Archivist has developed services for managing electronic records (including e-mail) that include a uniform, non-technical records classification specification (file structure and records classification). SoS has established a statewide agreement with a service provider for ongoing ERMS services, including provision of a central repository to house electronic records that allows for the consistent and proper management, access and final disposition of electronic records. These additional services are available to state agencies and local governments through a separate contract between each participating entity and the Oregon Records Management Solution (ORMS) service provider. The Entity may enter into a contract with the ORMS service provider under the cooperative purchasing provisions of the contract and state law. For those agencies and local government bodies that implement the ORMS under the statewide agreement, it is the goal of the State Archivist, through interagency agreements, to provide archival consulting and implementation services to participating state agencies and local government entities that incorporate improved and consistent record management practices and comply with the Secretary of State's public records administration requirements.

Jan. 11, 2023

AGREEMENT

SECTION 1. TERM AND RENEWAL

The initial term of this Agreement begins on the Commencement Date and ends two years from the Commencement Date, unless otherwise amended (the “Initial Term”).

SECTION 2. SERVICES; OBLIGATIONS

2.1 Services.

- 2.1.1 SoS shall make consulting services (“Consulting Services”) available to the Entity as set forth in this Agreement. As used in this Agreement “ORMS Services” means the Oregon Records Management Solution that incorporates Micro Focus’ Content Management software and is provided under separate contract between the Entity and the third party provider (“ORMS Provider”) under statewide agreement with SoS. The parties mutually agree that, a service level agreement (SLA) which describes the minimum levels of system performance, availability, operation, reliability and continuity will be made part of Agreement as an addendum and remain in effect during the use of the ORMS. SoS will work with the individuals identified in Appendix A in order to provide the services and obligations provided in this Agreement.
- 2.1.2 SoS shall provide the Entity with the following services, including those described in Appendix B
 - a. Record Classification and Retention Consulting;
 - b. File Structure Consulting;
 - c. Preparation for use of the ORMS; and
 - d. Training for the Entity personnel related to the ORMS and record management.
- 2.1.3 In providing Consulting Services, SoS shall:
 - a. Provide appropriately trained staff to fulfill its obligations under this Agreement;
 - b. Use reasonable efforts to ensure that levels of service quality, responsiveness and dependability are maintained; and
 - c. Make revisions to the SoS internal incident-resolution escalation process to the extent SoS determines such revisions are necessary to fulfill its obligations under this Agreement.

Provision of Consulting Services is subject to the Entity’s timely response to requests for critical information necessary to resolve issues.

2.2 The Entity’s Obligations. The Entity shall:

- a. Negotiate to enter into an agreement with the ORMS service provider through the cooperative purchasing provisions of the State agreement as allowed under state law;
- b. Incorporate, with SoS assistance, the record structure work provided by SoS that is required to use the ORMS;
- c. Appoint an authorized representative upon signing and notify SoS immediately of any change in authority; and
- d. Respond in a timely manner to SoS requests for critical information necessary to resolve issues.

Nothing in this Agreement shall be construed to require SoS to perform any record management activities that the Entity is required to perform pursuant to state or federal law.

SECTION 3. TREATMENT OF DATA

Each Party shall comply with applicable state laws governing the use and disclosure of public records. Each Party shall be responsible for responding to any public records request it receives, to the extent that it has access to the information requested, including responsibility for evaluating and appropriately handling the confidentiality of the information.

SECTION 4. FEES

There shall be no charge to the Entity by SoS for the Consulting Services described in this agreement during the Initial Term.

If fees will be charged during any subsequent or renewal term, SoS shall notify the Entity of the total anticipated fees in January of the fiscal year preceding the fiscal year in which such fees will be due.

If Entity requires a background check, such as, Criminal Justice Information Services (CJIS) or Law Enforcement Data System (LEDS), etc. Entity shall be responsible for all associated fees.

SECTION 5. REPRESENTATIONS AND WARRANTIES

5.1 The Entity. The Entity represents and warrants to SoS as follows:

- 5.1.1 The Entity is a unit of state government as defined under ORS 190.003, duly organized and validly existing under the laws of the State of Oregon. The Entity has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- 5.1.2 The making and performance by the Entity of this Agreement: (a) have been duly authorized by all necessary action of the Entity; (b) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of the Entity's charter or other organizational document; and (c) does not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which the Entity is a party or by which the Entity or any of its properties may be bound or affected.
- 5.1.3 No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by the Entity of this Agreement.
- 5.1.4 This Agreement has been duly executed and delivered by the Entity and constitutes a legal, valid and binding obligation of the Entity, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

5.2 By SoS. SoS represents and warrants to the Entity as follows:

- 5.2.1 SoS is an agency of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. SoS has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- 5.2.2 The making and performance by SoS of this Agreement: (1) has been duly authorized by all necessary action of the State; (2) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of any other organizational document' and (3) does not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which SoS is a party or by which SoS or any of its properties may be bound or affected.
- 5.2.3 No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by SoS of this Agreement.
- 5.2.4 This Agreement has been duly executed and delivered by SoS and constitutes a legal, valid and binding obligation of SoS, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

6. DEFAULT

A Party shall be in default under this Agreement if:

- a. The Party fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein; or
- b. Any representation, warranty or statement made herein by the Party is untrue in any material respect when made and is made in bad faith.

7. TERMINATION

7.1 By Entity. The Entity may terminate this Agreement:

- a. Immediately upon written notice to SoS, or at such later date as the Entity may establish in such notice, if the Entity fails to receive funding, appropriations, limitations or such other expenditure authority at levels sufficient to enable it to meet its contract obligations under this Agreement. In the event the Entity reasonably believes it must terminate this Agreement pursuant to this section, the Entity shall provide notice to SoS as soon as possible of its intent to terminate this Agreement. When possible, the Entity shall provide such notice to SoS 6 months prior to the effective date of the termination;
- b. Immediately upon written notice to SoS if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Entity's performance of its obligations under this Agreement is prohibited;
- c. Upon breach of this Agreement by SoS and failure by SoS to cure the breach within 30 calendar days after written notice from the Entity specifying the breach.
 - i. If the Entity chooses to terminate, then:
 1. SoS shall have no responsibility for any of the Entity's costs out of termination;
 2. SoS shall have no obligation after the termination date to develop or maintain the Entity's interface to the system employed under the ORMS that allows the Entity to use another application to manage records within the Entity's own systems, however, SoS shall reasonably cooperate with and assist the Entity in developing such interfaces;

3. SoS shall allow the Entity to export records, and shall provide reasonable cooperation and assistance to the Entity in completing such export, however SoS shall have no obligation to provide the Entity with any data that resides in the system employed under the ORMS in any particular format; and
4. The Entity shall continue to maintain records in accordance with Oregon record retention laws.

7.2 By SoS. SoS may terminate this Agreement:

- a. Immediately upon written notice to the Entity or at such later date as SoS may establish in such notice, if SoS fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to continue to provide the Services.
- b. Immediately upon written notice to the Entity, if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that SoS's performance of Consulting Services under this Agreement is prohibited.
- c. Upon breach of this Agreement by the Entity and failure by the Entity to cure the breach within 30 calendar days after written notice from SoS specifying the breach.

7.3 By Either Party. Either Party may terminate this Agreement, for any or no reason, upon six month's written notice to the other Party.

7.4 Remedies. Termination of this Agreement shall not affect any other remedies and rights which a Party may have under this Agreement, in law or in equity.

8. INDEMNITY

The Parties shall (consistent with ORS chapter 180) defend, save, hold harmless, and indemnify one another, including all officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of any negligent acts or omissions under this Agreement. SoS's liability under this Section is limited to the extent permitted by Article XI, Section 7 of the Oregon Constitution and subject to the terms, conditions and limitations of the Oregon Tort Claims Act (ORS 30.260 - 30.300). The Entity's liability under this Section is limited to the extent provided by any applicable provisions of the Oregon Constitution and the Oregon Tort Claims Act. The Entity shall carry appropriate insurance to cover the indemnity requirement. Neither the Entity nor any attorney engaged by the Entity or any other entity shall defend the claim, suit or action in the name of the State of Oregon or any agency 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 Oregon 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 shall the Entity or any other entity settle any claim, action or suit on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Entity is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important government principle is at issue and the State of Oregon desires to assume its own defense.

9. OWNERSHIP OF WORK PRODUCT

All Work Product created solely by SoS pursuant to or in connection with this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of SoS. All Work Product created solely by the Entity pursuant to or in connection with this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall

be the exclusive property of the Entity. All Work Product created jointly by the Entity and SoS pursuant to or in connection with this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the joint property of SoS and the Entity, "Work Product" means every invention, discovery, work of authorship including academic programs or course curricula, trade secret or other tangible or intangible item and all intellectual property rights therein that a Party may produce pursuant or in connection with this Agreement. As to Work Product created solely by SoS pursuant to this Agreement, the Parties agree that such original works of authorship are "work made for hire" of which SoS is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to this Agreement is not "work made for hire," SoS hereby irrevocably retains any and all of its rights, title, and interest in all original Work Product created by SoS, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The Entity forever waives any and all rights relating to original Work Product created pursuant to this Agreement, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

10. GENERAL PROVISIONS

- 10.1 Notices. Notices shall be in writing and either delivered personally or sent by registered or certified mail, postage prepaid, by internationally recognized air courier or by facsimile or electronic means which provides for confirmation and acknowledgment of receipt. Notices sent to any Party under this Agreement shall be sent to the Party's Authorized Representative. "Authorized Representative" means (i) with respect to Entity, the person that is designated in Appendix A; and (ii) with respect to SoS, the Director of the Archives Division of the Office of the Oregon Secretary of State or the person that the Director of the Archives Division designates. Each Party may change its address for receiving notice or its Authorized Representative at any time upon notice given in accordance with this Section. Notices shall be deemed given upon delivery or, in the case of facsimile or electronic transmission, when acknowledgment and confirmation of receipt is received electronically, provided that a printed copy of such acknowledgment and confirmation is forwarded on the date received, by another means provided for in this Section.
- 10.2 Force Majeure. Neither Party shall be liable for a delay or failure to perform due to causes beyond its control including, but not limited to, a labor dispute, strike, lock-out, civil commotion or like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials, or through act of God or causes beyond the reasonable control of Parties, provided such cause is not due to the willful act or neglect of SoS or the Entity.
- 10.3 Independent Status. The Entity shall have no right to, and shall not, control the manner or determine the method of accomplishing Consulting Services. Neither SoS nor SoS's staff are employees or agents of the Entity, nor are the Entity or the Entity's staff employees or agents of SoS for any purpose whatsoever. Neither Party nor its staff shall, under any circumstances, have any authority to act for or to bind the other Party, or to sign the name of the other Party, or to otherwise represent that it is in any way responsible for the other Party's acts or omissions.
- 10.4 Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflict of law. Any claim, action, suit or proceeding, (collectively, "Claim") between SoS (or

any other agency or department of the State of Oregon) and the Entity that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court of the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The Entity, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

- 10.5 Severability; Waiver. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid. The failure by a Party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.
- 10.6 Survival. All rights and obligations shall cease upon termination or expiration of this Agreement except for the rights and obligations set forth in the following sections: Section 4 (Payment); Section 5 (Representations and Warranties); Section 8 (Indemnity); Section 9 (Work Product); Section 10.4 (Governing Law; Venue; Consent to Jurisdiction); Section 10.6 (Survival); Section 10.8 (Records); and Section 10.9 (Entire Agreement; Amendments).
- 10.7 Compliance with Law. Both Parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement.
- 10.8 Records. Each Party shall maintain financial records relating to this Agreement in accordance with generally accepted accounting principles to clearly document the Party's performance. Additionally, each Party shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the Party's performance of its duties under this Agreement. SoS, the Entity, and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of the Parties that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. The Entity and SoS shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- 10.9 Entire Agreement; Amendments. This Agreement constitutes 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 amendment, waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such amendment, waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day, month and year noted below.

THE STATE OF OREGON, acting through its OFFICE OF THE SECRETARY OF STATE

By: _____

Title: _____

Date: _____

Address and Email for Notices: Oregon Secretary of State
Attn: Phillip Andrews
255 Capitol St NE, Suite 180
Salem, OR 97310
Phone # 503-986-2244
Email: purchasing.sos@oregon.gov

City of Sheridan

By: _____

Title: _____

Date: _____

Address and Fax for Notices **MUST** be filled in:

Contact: _____

Address: _____

Phone number: _____

Fax Number: _____

**Appendix A
City of Sheridan (Entity)**

The Entity will use the ORMS

Annual Payment to SoS for the Initial Term (as that term is defined in Section 2.1): \$0

The Entity Contact Information:

Title	Name	Phone	email
Project Management and Records Contact			
IT Contact			

**Appendix B
Supported Services**

Record Classification: SoS shall assist the Entity with classification of all appropriate records as determined jointly by SoS and the Entity

Retention Services: SoS shall specify and recommend record retention schedules and SoS shall assist the Entity with applying the Entity Records Retention Schedule to electronic records in the ORMS.

File Structure: SoS will work with the Entity to develop and implement a file structure that best fits the needs of the Entity and the use of the ORMS. SoS shall assist the Entity to help ensure that file structures are in place to effectively implement the ORMS.

ORMS Preparation: SoS shall ensure the Entity records and structures are in order to effectively begin using the ORMS.

Training Services: SoS shall provide all necessary training to ensure a successful migration to the new records management system.

Final Acceptance: SoS will work with the Entity for final user acceptance which meets success criteria outlined by both parties.