



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2018-063

AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE STATE OF OREGON ACTING THROUGH ITS OFFICE OF SECRETARY OF STATE FOR OREGON RECORDS MANAGEMENT SOLUTION (ORMS) AND AUTHORIZING THE EXECUTION OF A SUBSCRIPTION SERVICES CONTRACT WITH CHAVES CONSULTING, INC. FOR HPRM SOFTWARE

WHEREAS, the City has a responsibility to manage its records in accordance with City policy, state law, and Oregon Secretary of State Administrative Rules; and

WHEREAS, the City conducted an evaluation of its records management system and concluded there is desire to implement a system that is supported by the Oregon Secretary of State; and

WHEREAS, in the adoption of the FY2018-19 City of Sherwood budget, the City Council approved funding for records management software; and

WHEREAS, the Oregon Secretary of State's office has contracted with Chaves Consulting Inc., for a cloud-based records management system (HPRM) and has offered an IGA to Oregon government agencies to partner and receive services per said agreements.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is hereby authorized to execute an Intergovernmental Agreement (IGA) with the State of Oregon, Secretary of State's office and a Subscription Services Contract with Chaves Consulting, Inc., in a form substantially similar to those attached hereto as Exhibits A and D, respectively.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 17th day of July, 2018.



Keith Mays, Mayor

Attest:



Sylvia Murphy, MMC, City Recorder

DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR
800 Summer Street NE
Salem, Oregon 97310
(503) 373-0701
Facsimile (503) 378-4118

INTERGOVERNMENTAL AGREEMENT # 165-190088-18
For
Electronic Records Management Services
between
Oregon Secretary of State and City of Sherwood

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 Sherwood ("Sherwood") (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. Sherwood 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.

AGREEMENT

SECTION 1. TERM AND RENEWAL

The initial term of this Agreement begins on the Commencement Date and ends on June 30, 2019 (the "Initial Term"). Thereafter, this Agreement shall automatically renew each year for a one-year term beginning on July 1 of a calendar year and ending on June 30 of the following calendar year ("Extension Term"; the Initial Term together with the Extension Term shall be hereinafter collectively referred to as the "Term"), unless either Party provides written notice to the other Party of its intent not to renew this Agreement at least six months prior to the expiration of the current Term.

SECTION 2. SERVICES; OBLIGATIONS; OPTING OUT

2.1 Services.

- 2.1.1 SOS shall make consulting services ("Consulting Services") available to Sherwood as set forth in this Agreement. As used in this Agreement "ORMS Services" means the Oregon Records Management Solution that incorporates Hewlett Packard's TRIM software and is provided under separate contract between Sherwood 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 Sherwood 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 Sherwood 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 Sherwood's timely response to requests for critical information necessary to resolve issues.

2.2 Sherwood's Obligations. Sherwood shall:

- a. Negotiate to enter into an agreement with the ORMS service provider using the HP TRIM solution 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;
- d. Designate a Sherwood employee to participate as necessary as a representative on a change advisory board made up of SOS personnel and representatives from the participating city, county and state entities which shall be responsible for reviewing requested enhancements to the ORMS, and making recommendations for implementation of such enhancements to the ORMS Provider; and
- e. 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 Sherwood is required to perform pursuant to state or federal law.

2.3 Opting Out.

- 2.3.1 Sherwood may, at its sole discretion and at any time during the Term, discontinue use of Consulting Services by sending 3 months prior written notice to SOS of its intention to discontinue such use (such action shall be referred to in this Agreement as “Opting Out,” or Sherwood’s “Opt Out”). Sherwood shall specify in its notice the date on which it will Opt Out (“Opt Out date”), which shall not be earlier than 3 months following the date of Sherwood Opt Out notice. Following notification Sherwood’s desire to Opt Out, SOS shall have no obligation to provide Consulting Services under this Agreement after the Opt Out date has occurred. Opting Out shall terminate this Agreement as provided in Section 7.
- 2.3.2 If Sherwood chooses to Opt Out, then:
 - a. SOS shall have no responsibility for any of Sherwood’s costs for Opting Out;
 - b. SOS shall have no obligation after the Opt Out date to develop or maintain Sherwood’s interface to the system employed under the ORMS that allows Sherwood to use another application to manage records within Sherwood’s own systems, however, SOS shall reasonably cooperate with and assist Sherwood in developing such interfaces;
 - c. SOS shall allow Sherwood to export records, and shall provide reasonable cooperation and assistance to Sherwood in completing such export, however SOS shall have no obligation to provide Sherwood with any data that resides in the system employed under the ORMS in any particular format; and
 - d. Sherwood shall continue to maintain records in accordance with Oregon record retention laws.

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 Sherwood 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 Sherwood of the total anticipated fees in January of the fiscal year preceding the fiscal year in which such fees will be due.

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

SECTION 5. REPRESENTATIONS AND WARRANTIES

5.1 Sherwood. Sherwood represents and warrants to SOS as follows:

- 5.1.1 Sherwood 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. Sherwood 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 Sherwood of this Agreement: (a) have been duly authorized by all necessary action of Sherwood; (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 Sherwood'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 Sherwood is a party or by which Sherwood 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 Sherwood of this Agreement.
- 5.1.4 This Agreement has been duly executed and delivered by Sherwood and constitutes a legal, valid and binding obligation of Sherwood, 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 Sherwood 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. Sherwood may terminate this Agreement:

- a. Immediately upon written notice to SOS, or at such later date as Sherwood may establish in such notice, if Sherwood 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 Sherwood reasonably believes it must terminate this Agreement pursuant to this section, Sherwood shall provide notice to SOS as soon as possible of its intent to terminate this Agreement. When possible, Sherwood 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 Sherwood'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 Sherwood specifying the breach; or
- d. By Opting Out as provided in Section 2.3.

7.2 By SOS. SOS may terminate this Agreement:

- a. Immediately upon written notice to Sherwood 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 Sherwood, 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 Sherwood and failure by Sherwood 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). Sherwood'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. Sherwood shall carry appropriate insurance to cover the indemnity requirement. Neither Sherwood nor any attorney engaged by Sherwood 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 Sherwood 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 Grantee 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 Sherwood 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 Sherwood. All Work Product created jointly by Sherwood 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 Sherwood, "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. Sherwood 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 v, 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 Sherwood.
- 10.3 Independent Status. Sherwood 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 Sherwood, nor are Sherwood or Sherwood’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 Sherwood 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. Sherwood, 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, Sherwood, 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. Sherwood 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 Fax for Notices: Oregon Secretary of State
Attn: Linda Lichty
255 Capitol St NE, Suite 180
Salem, OR 97310
Phone # 503-986-2241
Fax #503-378-4991

City of Sherwood

By: _____

Title: _____

Date: _____

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

Contact: _____

Address: _____

Phone number: _____

Fax Number: _____

Appendix A
City of Sherwood (Sherwood)

Sherwood will use the ORMS

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

Sherwood Contact Information:

Title	Name	Phone	email
Project Management and Records Contact			
IT Contact			

Appendix B
Supported Services

Record Classification: SOS shall assist Sherwood with classification of all appropriate records as determined jointly by SOS and Sherwood

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

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

ORMS Preparation: SOS shall ensure Sherwood 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 Sherwood for final user acceptance which meets success criteria outlined by both parties.

EXHIBIT D
SUBSCRIPTION SERVICES CONTRACT

This Subscription Services Contract Number ORMS – _____ (“Contract”) is effective _____, _____, 201_ (“Contract Effective Date”) between Chaves Consulting, Inc. (“Contractor”) and _____ (“Authorized Purchaser”).

THIS CONTRACT IS ENTERED INTO PURSUANT TO MASTER SOFTWARE AS A SERVICE AGREEMENT #0486 (the “MSA”) AND IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH THEREIN. THE TERMS AND CONDITIONS OF THE MSA ARE INCORPORATED HEREIN BY REFERENCE AND APPLY TO THIS CONTRACT AND TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

Authorized Purchaser Contact information:

Authorized Purchaser: _____
Contact Name: _____
Address: _____

Phone: _____
Email Address: _____

Invoices shall be sent to:

Authorize Purchaser: _____
Contact Name: _____
Address: _____

Phone: _____
Email Address: _____

1. Subscription Services

The Contractor will provide to the Authorized Purchaser all required services listed in Exhibit B which includes: access to and use of the HP Records Manager (HPRM) (formerly

HP TRIM) application, software and data hosting and storage, and helpdesk support services. The State Archives Division will provide the training for using HPRM. The Contractor may provide training to other software integrations.

Inquiry-Only Users Services are defined in Exhibit B to the MSA; Inquiry-Only Services do not include the full range of Subscription Services listed above.

Services shall be deemed to commence on the date that: (1) the Authorized Purchaser has access either to the ORMS HPRM production or quality assurance (QA) environment, to data hosting, storage and helpdesk support; and (2) the Authorized Purchaser's initial Users have been provided Phase 1 initial implementation training as specified in the ORMS Training Plan.

2. Role of State Archives Division

The State Archives Division will work with Authorized Purchaser in order to set milestones such as the number of initial Users, projected total end users upon full Authorized Purchaser implementation, and due date for full implementation. These Services are not provided to Inquiry-Only User(s).

In the event that Authorized Purchaser is not able to meet a specific milestone date, the Authorized Purchaser shall notify both the State Archives Division and Contractor.

The notification must be given in writing before the proposed milestone date stating the reason the date cannot be met and Authorized Purchaser will not be subject to any penalty charges.

SOS shall provide Authorized Purchaser training to designated User(s) to support their agency's Inquiry-Only Users.

3. Subscription Fee and Payment Schedule

Authorized Purchaser agrees to a minimum of ____ Users per month. Authorized Purchaser agrees to payment option # _____ below:

Payment option #1:

Authorized Purchaser shall pay Contractor a monthly fee based on the number of Users for Authorized Purchaser. The rate per User per month is specified in the following table:

Number of Users	Cost per Month per User	Monthly Rebate Per User
2,000	\$37.02	\$8.76
3,000	\$37.02	\$8.76
4,000	\$29.74	\$4.87

5,000	\$26.66	\$2.92
6,000	\$24.06	
7,000	\$21.61	
8,000	\$19.62	
9,000	\$18.81	
10,000	\$17.53	
11,000	\$16.55	
12,000	\$15.71	
13,000	\$14.68	
14,000	\$14.02	
15,000	\$13.55	
16,000	\$12.54	
17,000	\$11.96	
18,000	\$11.44	
19,000	\$10.99	
20,000	\$10.54	

Or

Payment option #2:

Authorized Purchaser may purchase a minimum of 300 Users at the rate of \$24.06 per User per month.

Payment option #2 pricing is available to Authorized Purchasers with an executed Contract with accepted Deliverables. Authorized Purchasers shall make payment for minimum of 300 Users upon Acceptance of Deliverables as per Section 3.5 and 5.3 in Exhibit A of the Master Services Agreement.

Or

Payment option #3:

Authorized Purchaser may purchase Inquiry-Only User Services at the rate of 50% of the monthly user fee with the lowest price at \$10.54 per User. Authorized Purchaser MUST commit to and implement the minimum number (10) of full Subscription Services Users in order to add Inquiry-Only Users and must have signed the Acceptance of Services prior to adding Inquiry-Only Users.

For the purpose of establishing the User cost per month for payment option #1, the number of Users is the cumulative number of users of all Authorized Purchasers that have executed a subscription services contract with Contractor pursuant to the MSA.

Rebates: The first 5,000 Users will begin receiving a rebate (in the form of reduced monthly billings) when the total number of combined Users exceeds 20,000. The number of months

that the Authorized Purchasers will receive the rebate will be equal to the number of months that the initial Users paid the higher rate. The amount of the rebate is specified in the table in Section 3 of this Contract. Authorized Purchasers that select payment Option #2 and #3 are not eligible for rebates as described in this paragraph.

If the Authorized Purchaser exceeds the 10 GB of data storage per User and the 1 GB of data transfer per User per month the cost for those Additional Services are:

- \$7.00 per 10GB of additional storage per month
- \$1.20 per 1 GB of additional data transfer per month

The initial invoice shall be issued on the 1st day of the month immediately following the Acceptance of Initial Deliverables described in Section 5 of this Contract.

Invoices shall be issued on the 1st day of the month of the current calendar month in which the Subscription Services will be provided. All undisputed, timely and valid invoices are due in full 15 days after receipt by Authorized Purchaser.

Default by Non-Payment: Authorized Purchaser shall not delay payment of monthly User fees based on a dispute or claim relating to Non-Subscription Services.

If Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of the Contract and fails to cure such failure within 45 business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice, Authorized Purchaser shall be in default under Exhibit A, Section 10.2 of the MSA.

4. Additional Users

During the term of this Contract, Authorized Purchaser may add additional Users at any time. The monthly installment fee for payment option #1 will be set according to the table in Section 3 for each additional User commencing on the day the additional Users are specified by Authorized Purchaser. Additional Users under payment option #2 shall be invoiced according to the rate in Section 3. Additional Inquiry-Only Users under payment option #3 shall be invoiced according to the rate in Section 3. Additional Users and Additional Inquiry-Only Users may be requested from an Authorized Purchaser, via email, to the ORMS helpdesk.

5. Authorized Purchaser Acceptance

Contractor shall commence the Services and provide Deliverables as set forth in the Contract. Within ten (10) business days after the commencement of Services, Contractor shall provide Authorized Purchaser with an Acceptance of Initial Deliverables Question and Answer Form that is reasonably constructed to test the ability of the Subscription Services and associated software applications, as implemented by Contractor, to produce the results and other Deliverables specified in this Contract. The Authorized Purchaser shall complete and

return this form to Contractor within ten (10) business days as initial acceptance of Deliverables to date; a non-response shall be deemed as an acceptance of initial Deliverables.

Authorized Purchaser may accept the proposed acceptance test as recommended or modify it as Authorized Purchaser deems reasonable. Contractor shall provide Authorized Purchaser with access to the Subscription Services on or before the commencement date described in Section 1 of this Contract and the implementation schedule agreed to by Authorized Purchaser, the State Archives Division and Contractor. On the transition date, Contractor shall assume responsibility for providing ongoing Subscription Services.

Upon the conclusion of any consecutive forty-five (45) day period of production processing from the transition date as specified in Section 10 of this Contract, when all Service Levels have been met successfully, the Subscription Services shall be deemed accepted in full. Authorized Purchaser will acknowledge completion of this milestone by written notification to Contractor. Nothing contained in this Section 5 or any other provision of this Contract shall be deemed to prevent Authorized Purchaser from using any portion of the Subscription Services in a live environment for productive processing, and any such use shall not alter, amend or modify any of Contractor's obligations pursuant to the Contract.

6. Period of Performance

The period of performance of this Contract shall commence on the Contract Effective Date and shall continue for a period of 12 months plus the interim period between the effective date and the date of acceptance (the "Initial Period"). Thereafter, unless Authorized Purchaser notifies Contractor in writing, this Contract shall automatically be renewed annually for additional 12-month periods (each a "Renewal Period") up to a maximum total term of ten years.

Authorized Purchaser may terminate this Contract by providing Contractor with a notice of termination sixty (60) days prior to the termination date.

7. Consulting, Implementation, Training and/or Support Services

Contractor shall provide the consulting, implementation, training and/or support services related to the Subscription Services as set forth in Section 5 of the MSA.

Inquiry-Only User Services include application configuration and administrative set up by Contractor and SOS.

8. Security Procedures

Contractor shall define certain policies and procedures that it shall have in place in order to provide the level of security associated with the Subscription Services and with the Service Levels set forth in Section 12. These policies and procedures shall be updated by Contractor from time to time to reflect updated Department of Administrative Services Security

Standards, emerging technologies, business practices and Internet-related issues. Contractor shall provide written notice to Authorized Purchaser of any changes made to its security policies and procedures within ten (10) days of such changes, and updated policies and procedures shall be distributed through ORMS Support (Helpdesk).

9. Specifications and Minimum Technical Requirements

Contractor warrants that the minimum technical requirements for access to and operation of the Software are updated and available upon Authorized Purchaser request.

If future releases of the Software require use of newer versions of any client application or change in any client application configuration, Contractor shall provide 15 - 45 days (depending on the kind of change and its impact) written notice to Authorized Purchaser prior to the general release of that Software Version.

By the conclusion of the Initial Period Contractor and the Secretary of State's Office shall implement the ORMS Advisory Board (Board). The Board shall consist of representatives of the Secretary of State's Office, State Archives Division, Contractor and selected representatives of Authorized Purchasers. The Board shall review recommendations, discuss and agree on the priority, implementation and timing of requested changes to the HPRM application.

10. Transition

Contractor and the State Archives Division shall assist in developing a transition plan that is approved by Authorized Purchaser. Subscription Services shall be transitioned and in production, as accepted by Authorized Purchaser, within thirty (30) calendar days from the Schedule Effective Date.

11. Transition Remedy

In the event that Contractor fails to meet the date for the completion of the transition into production of the Subscription Services, Contractor shall credit Authorized Purchaser one percent (1%) of the monthly Service fees for every business day the transition is late. If Contractor misses the target date by more than thirty (30) days, Contractor shall be deemed to be in material breach of the Agreement.

If Authorized Purchaser does not meet its obligations as identified in the transition plan provided by Contractor and Authorized Purchaser is the sole cause of a delay in the project, the transition milestone target dates shall be extended for the same amount of time as the delay. Contractor shall promptly notify the Authorized Purchaser Program Manager, in writing, of any delay in the project schedule as a result of Authorized Purchaser's failure to meet any of its obligations identified above. If Contractor fails to notify Authorized Purchaser of any such Authorized Purchaser failure to meet its obligations, Authorized

Purchaser shall be conclusively presumed under the Contract to have met its obligations, and consequently, Contractor shall not be entitled to rely on such delay to excuse it from meeting the milestone target dates.

12. Service Levels and Remedies

12.1 Security Service Level.

Contractor represents and warrants that Contractor shall provide Record Security as specified in Exhibit B, Section e. of the MSA.

The required security processes may include, but are not limited to, the following:

- (i) Contractor shall have staff on duty and at its site 24x7 and capable of identifying, categorizing, and responding to a security incident.
- (ii) Contractor shall notify Authorized Purchaser of any new potential security vulnerability within four (4) hours of discovery. This notification shall include the probable risks associated with the vulnerability.
- (iii) Contractor shall implement a security fix across the application within four (4) hours of approval from Authorized Purchaser.
- (iv) Contractor shall notify the Authorized Purchaser Program Manager within fifteen (15) minutes if Contractor believes that an attack is in process.
- (v) Contractor shall shut down ALL access to the Software or any component of it associated with the Subscription Services within fifteen (15) minutes upon request of the Authorized Purchaser Program Manager or officer of Authorized Purchaser.
- (vi) Contractor shall assist Authorized Purchaser in preparing written responses to audit requirements or findings without charge.
- (vii) After both the conclusion of the pilot period and the total number of active users remains at a minimum of 2,000 or more users per Section 8a of the MSA, Contractor must conduct and pass a SAS 70 Type II Audit every twelve (12) months during the term of this Contract. The first audit shall be performed by an independent CPA firm within twelve (12) months of the state meeting its commitment to the 2,000 user minimum; subsequent annual audit reviews shall be performed by the Contractor according to the auditor's recommended process and results shall be provide to the State and, upon request, to Authorized Purchasers. Failure by Contractor to pass the audit or to provide the audit results to Authorized Purchaser within

fifteen (15) days after receiving the results from the auditor shall constitute a material breach of the MSA.

12.2 Record Retrieval Time Service Level.

Contractor represents and warrants that Contractor shall provide Record Retrieval Delivery Time Levels in the HPRM server environment as set forth in Exhibit B, Section f. of the MSA, as amended. Record retrieval delivery time shall be measured at the server end between the ORMS workgroup server and database at Synergy Data Center, as described in Amendment #001 to the Master Agreement #0486 at Section 9.

Contractor represents and warrants that the above performance Service Levels shall be valid with up to 20,000 Users using the application at any given time.

If the Record Retrieval Delivery Time Level of 3 minutes or less falls below 95% in any month, Authorized Purchaser shall be entitled to a credit on that month's bill for Subscription Services according to the table in Exhibit B, Section f. of the MSA, as amended.

12.3 Subscription Services Availability Service Level.

Contractor represents and warrants that the Subscription Services shall be available as specified in Exhibit B, Section f. of the MSA, as amended.

Service Availability shall be measured on a 7 x 24 basis (7 days a week, 24 hours per day).

If the Subscription Services availability percentage falls below 99.7% in any month, Authorized Purchaser shall be entitled to a credit on that month's bill for Subscription Services according to the table below that represents the then-current cumulative number of all Authorized Purchaser Users.

A. Scale based on 20,000 users or more.

Availability Percentage	Percentage of Credit
99.60% to 99.69%	10%
99.50% to 99.59%	20%
99.0% to 99.49%	30%
97.0% to 98.99%	50%
Below 97.00%	75%

B. Scale based on 19,999 users or less.

Availability Percentage	Percentage of Credit
99.00% to 99.69%	10%
98.50% to 98.99%	20%
98.00% to 98.49%	30%
97.00% to 97.99%	50%
Below 97.0%	75%

12.4 Performance and Availability Scalability.

Contractor represents and warrants that the performance and availability Service Levels in Sections 12.2 and 12.3 above shall be valid and applicable with a concurrent User increase of up to 20,000 Users.

12.5 Notifications to Authorized Purchaser.

Contractor shall provide proactive notifications to Authorized Purchaser regarding scheduled system-maintenance downtime and system upgrades and enhancements. Contractor shall provide Authorized Purchaser with at least seven (7) calendar days' prior written notice of any scheduled outages; such notices shall include the date of the outage and the start and stop times of the outage.

Scheduled upgrades and enhancements shall be provided between the hours of 8:00 p.m. and 6:00 a.m. Monday through Friday, or during weekends and/or Federal holidays, with the exception of emergency security patches.

12.6 Additional Environment.

Contractor will provide an additional environment at no additional charge for Authorized Purchaser's testing and/or training purposes, without limitation. Authorized Purchaser agrees not to use the additional environment for production purposes.

12.7 Support and Error Resolution.

Contractor shall establish and maintain the organization and processes necessary to provide support and error-resolution services to Authorized Purchaser.

Contractor shall provide support and error-resolution services on a twenty-four (24) hours a day, seven (7) days a week basis. Authorized Purchaser's HPRM Users shall contact the ORMS Support Desk, which shall be staffed by on-site, on-duty Support staff during regular business hours from 7:00 a.m. to 5:00 p.m. Monday through Friday, excluding weekends and Federal holidays. Outside of regular business hours, Users may call the ORMS Support Desk and leave a message for on-call staff, who shall respond according to the priority levels specified in this Section.

Upon receipt of telephone or written notice from the Authorized Purchaser specifying a problem, and upon receipt of such additional information as Contractor may request, Contractor shall respond as described below to resolve reported and reproducible errors in the Subscription Services or SaaS Software, so that the application operates as specified in this Contract. Contractor shall determine the priority level in accordance with the following protocols:

- (i) **SEVERITY 1 – CRITICAL BUSINESS IMPACT.** The production use of the Subscription Services is stopped or so severely impacted that the Authorized Purchaser cannot reasonably continue work; requires round-the-clock attention until the problem is resolved (a "Severity 1 Error").
 - a. Contractor shall begin work on the error within fifteen (15) minutes of notification;
 - b. Contractor shall engage development staff until the problem is circumvented or corrected; and
 - c. Contractor shall provide Authorized Purchaser with ongoing communication on the status of the problem resolution.

- (ii) **SEVERITY 2 – SIGNIFICANT BUSINESS IMPACT.** A high-impact problem is affecting Service Levels and/or materially impacting Authorized Purchaser's use of the Subscription Services. Problem resolution shall be initiated within sixty (60) minutes, and the resolution of these problems requires serious and sustained attention during normal business hours (8:00 am to 5:00 pm, Pacific time, Monday through Friday, exclusive of State holidays) until the problems are circumvented or corrected (a "Severity 2 Error").
 - a. Contractor shall begin work on the error within sixty (60) minutes of notification;
 - b. Contractor shall engage development staff until the problem is circumvented or corrected; and

- c. Contractor shall provide Authorized Purchaser with ongoing communication on the status of the problem resolution.
- (iii) SEVERITY 3 – SOME BUSINESS IMPACT. This includes problems of general work- queue type and that do not come within the definitions of Severity 1 Error or Severity 2 Error. These problems shall be addressed after Severity 1 Errors and Severity 2 Errors have been corrected and may be pursued during normal business hours on a resources- available basis (a “Severity 3 Error”).
- a. Contractor shall begin work on the error within one (1) day of notification; and
 - b. Contractor shall engage development staff to provide a workaround and to resolve the problem as soon as possible after notification by Authorized Purchaser.
- (iv) SEVERITY 4 – MINIMUM BUSINESS IMPACT. Authorized Purchaser requests information, an enhancement, or documentation clarification regarding the Subscription Services or SaaS Software but there is no impact on the operation of the Subscription Services or SaaS Software. The implementation or production use of the Subscription Services or SaaS Software is continuing and there is no work being impeded at the time (a “Severity 4 Error”).
- a. Contractor shall provide a response regarding the requested information or documentation clarification within two (2) days of notification by Authorized Purchaser; and
 - b. Contractor shall consider enhancements for inclusion in a subsequent update to the Subscription Services, SaaS Software or Documentation.

13. Termination and Transition Assistance

Authorized Purchaser may terminate this Contract as provided in Exhibit A, Section 12, of the MSA. Contractor may terminate this Contract as provided in Exhibit A, Section 12.3, of the MSA.

**BY EXECUTING THIS CONTRACT, THE PARTIES AGREE TO BE BOUND
BY ITS TERMS AND CONDITIONS.**

AUTHORIZED PURCHASER

CONTRACTOR

By: _____

By: _____

Name: _____

Name: Richard T. Chaves

Title: _____

Title: President, Chaves Consulting

Date: _____

Date: _____

SECRETARY OF STATE CONTRACT ADMINISTRATOR

By: _____

Date: _____