

RESOLUTION NO. 47-2011

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON ACTING THROUGH ITS OFFICE OF THE SECRETARY OF STATE AND THE CITY OF MILWAUKIE.**

**WHEREAS**, under ORS 192.015 the legislature designated the Secretary of State as public records administrator of the State; and

**WHEREAS**, the 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; and

**WHEREAS**, Milwaukie Municipal Code Chapter 2.35 adopts Oregon Administrative Rules Chapter 166, Secretary of State, Archives Division, and further outlines the duties of the City's records officer as well as the duties of the City departments; and

**WHEREAS**, the State Archivist has developed services for managing electronic records and established a statewide agreement with a service provider for ongoing electronic records management system (ERMS) services that allows for the consistent and proper management, access, and final disposition of electronic records; and


**WHEREAS**, for those agencies and local government bodies that implement an ERMS under the statewide agreement it is the goal of the State Archivist to provide archival consulting and implementation services to participating agencies and entities that incorporate improved and consistent records management practices and comply with the Secretary of State's public records administration requirements; and

**WHEREAS**, The City of Milwaukie has an interest in implementing such a system and being a pilot project site;

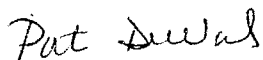
**NOW, THEREFORE, BE IT RESOLVED** that Milwaukie City Council wishes to enter into said agreement and authorizes the City Manager to execute the agreement attached herein as Exhibit A on behalf of the City of Milwaukie.

Introduced and adopted by the City Council on April 19, 2011.

This resolution is effective immediately upon adoption.

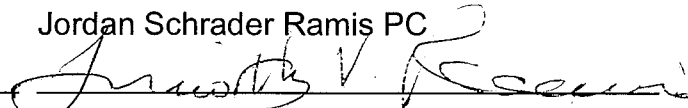
  
\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

  
\_\_\_\_\_  
Pat DuVal, City Recorder

APPROVED AS TO FORM:

Jordan Schrader Ramis PC

  
\_\_\_\_\_  
City Attorney

# VENDOR COPY

OFFICE OF THE SECRETARY OF STATE

KATE BROWN  
SECRETARY OF STATE

BARRY PACK  
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 #707030**  
**For**  
**The Oregon Records Management Solution**  
**between**  
**Oregon Secretary of State and City of Milwaukie**

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 the **City of Milwaukie**, (hereinafter "**City**"), a municipal corporation of the State of Oregon (each a "Party", collectively, the "Parties"). This Agreement is effective on the date this Agreement is fully executed and approved as required by applicable law (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 ERMS service provider. The City may enter into a contract with the ERMS service provider under the cooperative purchasing provisions of the contract and state law. For those agencies and local government bodies that implement an ERMS under the statewide agreement, it is the goal of the State Archivist, through intergovernmental 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, 2012 (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 City as set forth in this Agreement. As used in this Agreement "ERMS Services" means the ERMS services that incorporate HP TRIM, the ERMS software and are provided under separate contract between City and the third party provider ("ERMS 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 this separate contract and remain in effect during the use of the ERMS Services.

SOS will work with the individuals identified in Appendix A.

2.1.2 SOS shall provide City 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 ERMS Services; and
- d. Training for City personnel related to the ERMS 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 City's timely response to requests for critical information necessary to resolve issues.

### **2.2 City Obligations. City shall:**

- a. Negotiate to enter into an agreement with the ERMS 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 ERMS Services;
- c. Appoint an authorized representative upon signing and notify SOS immediately of any change in authority;
- d. Designate a City 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 ERMS Services, and making recommendations for implementation of such enhancements to the ERMS Provider;
- e. Act as a pilot participant and agree to aid in further developing a model for the statewide rollout of ERMS services related to public records management; and
- f. Timely respond 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 City is required to perform pursuant to state or federal law.

### **2.3 Opting Out.**

2.3.1 City 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 the City's "Opt Out"). City shall specify in its notice the date on which it will Opt Out, which shall not be earlier than 3 months following the date of City's Opt Out notice. Following the notification date of the City's Opt Out, SOS shall have no obligation to provide Consulting Services under this Agreement. Opting Out shall terminate this Agreement as provided in Section 7.

2.3.2 If City chooses to Opt Out, then:

- a. SOS shall have no responsibility for any of City's costs for Opting Out;
- b. SOS shall have no obligation to develop or maintain City's interface to the system employed under ERMS Services that allows City to use another application to manage records within City's own systems, however, SOS shall provide reasonable cooperation to City to assist City in developing such interfaces;
- c. SOS shall allow City to export records, and shall provide reasonable cooperation and assistance to City in completing such export, however SOS shall have no obligation to provide City with any data that resides in the system employed under ERMS Services in any particular format; and
- d. City 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 the City by SOS for the Consulting Services described in this agreement during the Term of this agreement, unless specified in a mutually acceptable amendment to this agreement, signed by both parties.

### **SECTION 5. REPRESENTATIONS AND WARRANTIES**

5.1 By City. City represents and warrants to SOS as follows:

5.1.1 City is unit of state government as defined under ORS 190.003, duly organized and validly existing under the laws of the State of Oregon and its duly enacted Charter. The City 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 City of this Agreement: (a) have been duly authorized by all necessary action of City; (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative City or any provision of City's charter or other organizational document; and (c) do 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 City is a party or by which City 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 City of this Agreement.

5.1.4 This Agreement has been duly executed and delivered by City and constitutes a legal, valid and binding obligation of City, 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 City 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) have been duly authorized by all necessary action of the State; (2) do 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) do 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.

## 7. TERMINATION

7.1 By City. City may terminate this Agreement:

- a. Immediately upon written notice to SOS, or at such later date as City may establish in such notice, if City 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 City reasonably believes it must terminate this Agreement pursuant to this section, City shall provide notice to SOS as soon as possible of its intent to terminate this Agreement. When possible, City 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 City'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 City specifying the breach; or
- d. By Opting Out as provided in Section 2.4.

7.2 By SOS. SOS may terminate this Agreement:

- a. Immediately upon written notice to City, 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 City, 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 City and failure by City 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). City's liability under this Section is limited to the extent provided by any applicable provisions of the Milwaukie Charter, the Oregon Constitution and the Oregon Tort Claims Act. City and SOS shall either carry appropriate insurance or comply with an appropriate self-insurance program. Neither City nor any attorney engaged by City or any other entity shall defend the claim, suit or action in the name of the State of Oregon or any city 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 City 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 City 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 City. All Work Product created jointly by City 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 City, "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. City 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.

10.3 Independent Status. SOS and SOS's staff, are at all times independent contractors. City 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 City, nor are City or City'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 city or department of the State of Oregon) and City 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. City, 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, City, 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. City 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.

*[Faint, illegible text, likely a signature or date]*



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

By: JBR Hunt  
Title: State Archivist  
Date: 4/25/11

Address and Fax for Notices: Oregon Secretary of State  
Attn: Linda Lichy  
255 Capitol St NE, Suite 180  
Salem, OR 97310  
Phone # 503-986-2241  
Fax #503-378-4991

[City of Milwaukie, Oregon]

By: Wendy Menasha  
Title: CITY MANAGER  
Date: April 19, 2011

City Address and Fax for Notices MUST be filled in:

City Contact: Pat DuVal  
City Address: 10722 SE Main St.  
Milwaukie OR 97222  
Phone Number: 503-786-7502  
Fax Number: 503-653-2444

Appendix A

City Profile

City will use the ERMS Services

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

City Contact Information:

Title	Name	Phone	email
Project Management and Records Contact	Pat DuVal	503.786.7502	duvalp@ci.milwaukee.or.us
IT Contact	Esther Gartner	503.786.7404	gartnere@ci.milwaukee.or.us

## Appendix B

### Supported Services

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

**Retention Services:** SOS shall specify and recommend record retention schedules and SOS shall assist the City with applying the City Records Retention Schedule to electronic records in the ERMS System

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

**ERMS Preparation:** SOS shall ensure the City records and structures are in order to effectively begin using the ERMS Services.

**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 City for final user acceptance which meets success criteria outlined by both parties.