

Memorandum of Understanding
Between
The Barack Obama Foundation
And
National Archives and Records Administration
Regarding the Digitization of Obama Presidential Records

This Memorandum of Understanding (“MOU”) is entered into on February 15, 2019, and sets forth the terms and understanding between The Barack Obama Foundation (the “Foundation”) and the National Archives and Records Administration (“NARA”, together with the Foundation, collectively, the “Parties”) regarding the digitization of the unclassified, textual Presidential records of the Executive Office of the President under the Obama Administration (the “Records”). The Records are owned by NARA and currently held at a NARA-controlled facility located in Hoffman Estates, Illinois (“Hoffman Estates”).

Background

In May 2017, the Foundation and NARA announced a new partnership for the digital age, whereby the Parties would work together to, among other things, complete the digitization of the Records (the “Digitization Project”). Since that time, the Foundation and NARA have been working toward a partnership that uses the resources, financial and otherwise, of both organizations to create a new model for digitizing, managing, and sharing Presidential records and artifacts.

Purpose

This MOU defines the scope of the Digitization Project, defines the roles and responsibilities of each Party, and outlines the ways in which the Parties will work together to complete the Digitization Project, including by engaging a qualified third-party vendor that will be responsible for undertaking the Digitization Project. The Parties agree that the Digitization Project will at all times be performed in accordance with the requirements of the Presidential Records Act (PRA) and other applicable federal law, and for the purpose of making the records more accessible to historians and the public pursuant to that Act.

Procedures

Selection of the Vendor

1. The Foundation will develop and issue a Request for Proposals (“RFP”) in consultation with NARA to ensure that the RFP reflects all NARA requirements. The RFP will include, among other things:
 - a. An overview of the Records to be digitized
 - b. An articulation of project deliverables

- c. A description of the place of work and options for remote work
 - d. Project timeline
 - e. Technical specifications for scanning and packaging for transfer to NARA systems
 - f. Metadata and document classification requirements
 - g. Workflow considerations, physical and digital
 - h. Auditing, validation, quality control and assurance requirements
 - i. Physical and information security requirements
 - j. Insurance requirements
 - k. Personnel security requirements for all Vendor staff
2. The Foundation will identify and send the RFP to a select group of qualified vendors, each of whom will be invited to submit a response to the RFP (a “Response”). The RFP will request that each Response include:
 - a. Proposed project plans and cost estimates based on completion dates of (i) August 31, 2021 and (ii) August 31, 2022.¹
 - b. Projected staffing requirements and costs (both at Hoffman Estates and off-site through NARA’s Virtual Private Cloud (VPC) via AWS GovCloud, if applicable).
 - c. Detailed workflow narrative and model.
 - d. Floor plan for work room (template will be provided with RFP) with proposed physical layout.
 - e. Inventory and cost estimate for all furniture, fixtures & equipment (“FF&E”) requirements.
 - f. Certificates of Insurance.
 - g. Support contract for digitization equipment (if applicable and available).
 3. The Foundation intends to issue the RFP no later than February 22, 2019.
 4. The RFP will remain open for a four-week period (the “Open Period”). During the Open Period, the Foundation will field questions from potential vendors and will refer all questions regarding NARA rules, requirements, and technical or other standards (e.g., NARA digitization requirements, information security, site issues, handling of the records, etc.) to NARA. NARA and the Foundation agree to respond to all questions and requests related to the Digitization Project from one another and from the RFP respondents in a timely manner. Upon request and to the extent reasonably practicable, NARA and the Foundation will coordinate and facilitate site visits for potential vendors during the Open Period.
 5. After the Open Period ends, the Foundation will evaluate all Responses and will consult with NARA to obtain its views on the quality of the technical solutions proposed by the

¹ The Foundation will cover all costs of the facility and monitors beyond 2021, but will not cover the cost of any other NARA staff that would need to be retained in the event the project is extended beyond 2021.

Responses, and whether the Responses otherwise conform to NARA's rules, requirements, and standards. The Foundation will select a successful Response (the author of such successful Response, the "Vendor"), with NARA's approval, not to be unreasonably withheld, conditioned, or delayed.

6. The Foundation and the Vendor will enter into a separate contract (the "Vendor Agreement") whereby the Foundation will engage the Vendor to perform the scope of work defined in the RFP (the "Work"). The Foundation will administer and manage the contract, provide whatever contract oversight it deems necessary to protect its interests, and retain responsibility at all times for signing contract amendments, changes, and modifications, as well as other contractual documents that would result in the expenditure of the Foundation's funds. The Foundation will consult with NARA prior to replacing the Vendor; NARA must consent to the replacement contractor, which consent will not be unreasonably withheld, conditioned, or delayed.

Project Management and Operations

1. The Foundation and NARA will work together in good faith on an ongoing basis to support the Vendor in carrying out the Work.
2. The Foundation's Project Manager will supervise the Digitization Project and ensure that the Work progresses according to the project plan and timeline set forth in the Vendor Agreement. Although the Project Manager will not be located at Hoffman Estates full-time, he/she will be responsible for addressing any issues concerning the Vendor's performance under the Vendor Agreement and in conformance to NARA's rules, requirements, and standards.
3. NARA will provide the Vendor with rent-free² use of the scanning room at Hoffman Estates for the duration of the Digitization Project in order for the Vendor to perform the Work. The Project Manager and the Vendor's personnel will have the status of on-site NARA contractor employees, will be provided with contractor identification and proximity badges (if used), and will be subject to all applicable NARA facility and holdings security requirements.³
4. Pursuant to NARA's requirements, NARA will hire and train security monitors to oversee the Vendor's staff on site at Hoffman Estates (the "Monitors"). The Foundation will be responsible for the actual cost of the Monitors through one or more gifts to the National Archives Trust Fund, subject to the following limitations: (a) the number of Monitors shall not exceed a ratio of one Monitor for every five members of Vendor's staff on site at Hoffman Estates, and (b) the total annual cost per Monitor shall not exceed \$70,000.

² Until December 31, 2021.

³ NARA will provide relevant portions of NARA Directives 275 and 1572.

5. The Foundation will authorize the specific Vendor personnel who will have access to the Obama Presidential records in accordance with the PRA, 44 U.S.C. § 2205(3).
6. NARA will provide the Vendor and the Project Manager with ongoing access to the work room at Hoffman Estates during the established working hours in order to support the Vendor's performance of the Work.
7. NARA and the Foundation will work with the Vendor to determine at the outset a reasonable daily work schedule that supports the completion of the Digitization Project within the timeline set forth in the Vendor Agreement.
8. NARA staff, including the monitors, at Hoffman Estates will coordinate with the Vendor to ensure an appropriate flow of Records into and out of the scanning work room sufficient for the Vendor to meet the project timeline set forth in the Vendor Agreement and which considers NARA's need to maintain physical and intellectual control over the Records and follows NARA's holdings security requirements.
9. NARA will proactively notify the Foundation and the Vendor in writing of any changes to its personnel, physical, or data security procedures or policies, or other policies that may affect the Digitization Project.
10. The Vendor's and the Foundation's obligations with respect to the Digitization Project will be completed upon the performance of all of the Work and payment in full of the Vendor, respectively, subject to approval and acceptance of the digitized images and metadata by NARA.⁴ Upon completion of the Digitization Project, NARA will be solely responsible for the ongoing storage, maintenance, preservation, processing (including review and notification), and providing of access to the digitized Records.
11. Upon notification by the Vendor that a submission information package is ready for transfer inspection, NARA will as soon as practicable perform all necessary transfer acceptance routines and notify the Vendor of any necessary remediations. Transfer acceptance by NARA will constitute the completion of the Vendor's work on that unit of content, and any costs associated with ongoing storage or processing after transfer acceptance will be NARA's responsibility.
12. Nothing in this MOU is intended to alter or impair any rights of control, custody, ownership, or use that NARA or the U.S. Government may have in any of the Records that may be digitized as part of the Digitization Project or in the metadata that is developed during the project's execution. The Parties understand and agree that NARA will not be transferring control, custody, or ownership over any of the Records to the Foundation, the Vendor, or any other third party. The Parties further understand and agree that any use of the Records as part of the Digitization Project will be made in strict accordance with Federal law and NARA procedures. Nothing in this MOU is intended to alter or impair the status of any of the Records that are in the public domain, or that may enter the public domain in the future. Nothing in this MOU is intended to establish a

⁴ Based on the quality control and assurance processes called for in the RFP and implemented in project deliverables.

“work made for hire” situation as between the Foundation and NARA, or the Foundation or NARA and any third party, for purposes of copyright law.

Rooms, Furniture, Fixtures & Equipment

NARA will make rooms 31, 32, 35, and 37 at Hoffman Estates available to the Vendor “as is” (but subject to the Building Improvements as set forth in the Section below) to undertake the Digitization Project. The Vendor will supply, maintain, and replace all FF&E needed to complete the Work, including any necessary scanning hardware and software and other equipment and supplies necessary to complete the Work (e.g., paper, fax machines, copiers, data transfers and/or connections to NARA’s VPC, etc.). All such equipment will operate as stand-alone equipment, or as part of a local area network maintained solely by the Vendor for digitization purposes. Connection to or interoperability with NARA’s voice and data communications systems is prohibited, except for connections authorized to enable staging, transfer, and initial processing of digitized content in NARA’s VPC. The Vendor will coordinate delivery and installation and on-going support of FF&E with appropriate NARA staff at Hoffman Estates and Foundation staff. The Vendor will remove all FF&E installed in the scanning room promptly upon completion of the Digitization Project.

Building Improvements

The workroom within the Hoffman Estates facility will require a number of building improvements in order to accommodate a mass digitization operation, including but not limited to:

- Installing and providing ongoing maintenance and support of data and telephone lines
- Enhancing electrical capacity
- Installing appropriate flooring tile
- Constructing a server cage
- Holdings security requirements (e.g., security cameras, etc.)

These building improvements will be outside the scope of the RFP but will be informed by the FF&E, staffing, and workflow requirements of the Vendor.

After the selection of the Vendor, NARA, the Foundation, and the Vendor will agree upon the precise building improvements that are required. NARA, through GSA, will undertake the agreed-upon building improvements as promptly as possible, and the Foundation will be responsible for the actual, itemized costs of such building improvements, through one or more gifts to the National Archives Trust Fund.

Scanning Priorities

To the extent necessary, the Foundation and NARA will work cooperatively with the Vendor to determine a scanning order that balances anticipated demand for certain groups of Records with overall project efficiency.

Data Security

All Information Systems used to store, process, or transmit digitized content will meet the moderate baseline security requirements set forth in the RFP, which are based on the NARA IT Security Requirements document. The Vendor will designate an Information System Security Officer (ISSO) and resources to conduct a security assessment of its Information Systems and submit a report of this assessment to NARA for review and approval. The Vendor must receive a NARA Authority to Operate (ATO) before the system can be used in production.

The Vendor may choose to use its own infrastructure (not connected to the public internet) or NARA's VPC to create, store, and/or process images. To avoid doubt, all Vendor digitization, processing, storage, and transmission must be conducted at NARA's physical facility and/or within NARA's VPC. The Vendor will deliver digitized content to NARA's VPC via AWS (Amazon Web Services) Snowball or DirectConnect for further processing or ingest to NARA's Electronic Records Archives (ERA EOP). Based on the Vendor's proposal in response to the RFP, the Foundation, in consultation with NARA, will determine the configuration of the Vendor's processing environment and frequency of delivery of digitized content.

NARA will review the Vendor's security assessment of the system and grant an ATO to the system. Any security vulnerabilities identified as critical or high must be remediated before an ATO will be granted. Vulnerabilities will be tracked in a Plan of Action and Milestone (POA&M) and fixed or remediated as outlined in NARA's IT Security Requirements document.⁵

All systems will be configured in such a way so that NARA data, including scanned images, metadata, and textual contents, cannot be exported, copied, or downloaded outside of the Vendor's system, other than by a system administrator for transfer to NARA.

At the successful completion of the project, the Vendor must certify to the Foundation of deletion of all NARA-owned information from their systems, in accordance with the applicable destruction standard in NIST Special Publication 800-88, Rev. 1, Guidelines for Media Sanitization.

NARA will provide the Vendor with access to a segment of NARA's VPC in a timely manner and for the duration of the Digitization Project, as agreed to by all the parties. NARA staff or contractors will provide troubleshooting and other technical assistance to the Vendor as necessary. The Foundation will be responsible, through one or more gifts to the National Archives Trust Fund, for the actual costs of transmitting, storing, and processing digitized

⁵ NARA's IT Security Requirements document will be included with the RFP.

content in NARA's VPC, provided that the Foundation, in consultation with NARA, will determine the configuration of the Vendor's processing environment and frequency of delivery of digitized content.

Background Checks

At NARA's expense, the Vendor will obtain Tier 1 background checks for all Vendor employees in accordance with NARA procedures for the issuance of contractor identification and proximity badges. The relevant procedures are currently set forth in NARA Directive 275, Background and Identity Verification Process for Access Privileges, and NARA will provide the most up-to-date version of the Directive to the Foundation or its contractor(s) and any subcontractors.

Liability

Assumption of risk and release by NARA. To the extent permitted by Federal law, including the Federal Tort Claims Act, NARA assumes, for the matters covered by this MOU, all risk of claims, losses, damages or injury suffered by persons or property that may be caused by the acts or omissions of NARA or its agents, servants, employees, independent contractors, volunteers, or invitees ("NARA Parties"), excluding claims, losses, damages or injury caused by the Foundation or its officers, directors, agents, servants, employees, independent contractors, volunteers, or invitees ("Foundation Parties"). The Foundation and the Foundation Parties shall not be liable for and are hereby released from any responsibility for any claims, losses, damages or injury caused by the act or omission of NARA, the NARA Parties, or any persons claiming through or under NARA.

Assumption of risk and release by Foundation. The Foundation likewise assumes, for the matters covered by this MOU, all risk of claims, losses, damages or injury suffered by persons or property that may be caused by the acts or omissions of the Foundation or the Foundation Parties, excluding claims, losses, damages or injury caused by NARA or the NARA Parties. NARA and the NARA Parties shall not be liable for and are hereby released from any responsibility for any claims, losses, damages or injury caused by the act or omission of the Foundation, the Foundation Parties, or any persons claiming through or under the Foundation.

Force Majeure

Neither Party to this MOU will have any liability to the other Party for any delay or failure to perform, in whole or in part, or for any cancellation in connection with performance of any obligations hereunder, if such failure or cancellation is due to any cause beyond its reasonable control, including, but not limited to, acts of God, war, riots, civil disturbances, fires, floods, earthquakes, strikes, terrorist acts or credible threat of same, lock-outs, Government shutdown

due to lapse in appropriations, labor disputes, failures in public supply of utilities or any other causes beyond the control of the Parties, whether similar or dissimilar to the foregoing.⁶

Resolution of Disputes

If a dispute arises out of or relates to this MOU, or the breach thereof, and the dispute cannot be resolved through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation administered by a neutral acceptable to the Parties before resorting to arbitration, litigation, or some other dispute resolution procedure. NARA shall exercise its authority to engage in mediation, arbitration, or other form of dispute resolution in accordance with the Administrative Dispute Resolution Act of 1996, as amended, 5 U.S.C. §§ 571-84.

Confidentiality

All potential vendors that are invited to submit responses to the RFP will be required to sign a non-disclosure agreement with the Foundation, and with NARA only as necessary. The Vendor will be required to sign non-disclosure agreements with NARA and the Foundation on each Party's applicable form.

Communications

The Foundation and NARA agree to work together on any external communications relating to the Digitization Project, including without limitation publicity of the RFP process. Neither Party may publish any press release or other public relations communications relating to the Digitization Project without the written approval of the other Party.

Miscellaneous

1. Independent Parties: Nothing in this MOU is or shall be intended to create, nor shall anything herein be construed or interpreted as creating, an agency, a partnership, a joint venture or any other relationship between the Parties except the collaboration expressly described herein, and each Party understands and agrees that each Party shall be responsible for its own separate debts, obligations and other liabilities, subject to the right of reimbursement, if any, for certain reimbursable expenses expressly permitted herein.
2. Governing Law: This MOU shall be governed by and in accordance with the laws of the United States (without regard to conflicts of laws) and the District of Columbia.
3. Miscellaneous: No agreements between the parties shall be legally binding unless contained in a legally binding written instrument signed by both parties. Nothing herein or in any other prior writing or course of action shall be construed to create any partnership or other fiduciary relationship of any sort whatsoever. This MOU may not be assigned by NARA or the Foundation, and any purported assignment will be null and void. This MOU

⁶ The Foundation will include a Force Majeure provision in its Vendor Agreement as well.

is intended to be solely for the benefit of the Parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the Parties hereto. This MOU may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original and all of which shall constitute one and the same agreement.

[SIGNATURES FOLLOW]

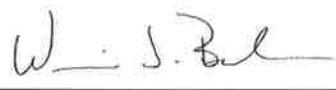
Signatures:

The Barack Obama Foundation

By:  _____

Name: Robbin Cohen
Title: Executive Director

National Archives and Records Administration

By:  _____

Name: William J. Bosanko
Title: Chief Operating Officer