

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 63-2019
Series of 2019

TITLE: A RESOLUTION APPROVING THE SEX OFFENDER TRACKING AND REGISTRATION SYSTEM (SOTAR) INTERGOVERNMENTAL AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, COLORADO

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), acting through its City Council ("Council") is a home rule municipality with statutory and constitutional authority to enact ordinances and enter into agreements for protection of the public health, safety and welfare; and

WHEREAS, the Douglas County, Colorado Sheriff's Department has developed a system to manage and exchange information regarding sex offenders which is accessed through a web-based interactive software program called the Sex Offender Tracking and Registration System (SOTAR™); and

WHEREAS, the purpose of SOTAR is to provide the public with information about sex offenders and the Wheat Ridge Police Department believes that community education is paramount to the success as a public safety provider and view SOTAR to be an integral part of the education effort; and

WHEREAS, SOTAR provides a number of advantages to the Wheat Ridge Police Department to include a detailed database, tracking of registration dates, tracking of house checks, productions of a public registry, investigative tools and the sharing of files with other SOTAR users; and

WHEREAS, in accordance with Section 14.2 of the City's Home Rule Charter, the City Council wishes to approve an intergovernmental agreement with the County, providing for access to and use of SOTAR, by this resolution.

NOW, THEREFORE, BE IT RESOLVED by the City council of the City of Wheat Ridge, Colorado, as follows:


The Intergovernmental Agreement between the City and the Board of County Commissioners of the County of Douglas, Colorado, for the use of the Sex Offender Tracking and Registration System (SOTAR™), attached hereto and incorporated herein by reference, is hereby approved. The Mayor and City Clerk are authorized to execute the same. This Resolution shall be effective immediately.

DONE AND RESOLVED this 25th day of November, 2019.



Bud Starker, Mayor

ATTEST:



Steve Kirkpatrick, City Clerk
Robin Eaton, Deputy City Clerk

AGREEMENT
BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, ON BEHALF OF THE DOUGLAS COUNTY SHERIFF'S OFFICE, AND THE CITY OF WHEAT RIDGE, COLORADO

THIS Agreement made this 25th day of November 2019, by and between the Board of County Commissioners of the County of Douglas, on behalf of the Douglas County Sheriff's Office ("DCSO"), State of Colorado ("DOUGLAS COUNTY"), and the City of Wheat Ridge, Colorado, hereinafter referred to as ("USER"), hereinafter referred to jointly as the Parties ("PARTIES"); and

WHEREAS, pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and Section 29-1-203, C.R.S., there is established a means whereby governmental units may cooperate or contract with one another to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, DOUGLAS COUNTY, in partnership with DCSO, has developed a system to manage and exchange information regarding sex offenders which is accessed through a web-based interactive software program called SOTAR™. DOUGLAS COUNTY has exclusive rights of ownership in the SOTAR™ system including, but not limited to, SOTAR™, the name, the software, all source code contributed by Douglas County, the structure of any data repositories created to support SOTAR™, and all associated documentation (collectively, "SYSTEM").

WHEREAS, USER desires to obtain access to the SOTAR™ SYSTEM.

WHEREAS, DCSO agrees to provide USER access to the SOTAR™ application on a basis commonly known as "software as a service" whereby USER has access to, but does not receive a copy of, SOTAR™ and obtains no right, title or interest whatsoever in or to the SYSTEM.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and the recitals as set forth above, the PARTIES hereby agree as follows:

1. **TERM OF AGREEMENT.** It is mutually agreed by the parties that the initial term of this Agreement shall commence as of January 1, 2020 through December 31, 2020. Thereafter, this Agreement shall automatically renew for each subsequent calendar year, unless terminated as outlined in Section 2 below. Prior to the expiration of the initial term (and each subsequent renewal term), USER will be invoiced the amount outlined in Section 4 below. This Agreement and/or any extension of its original term shall be contingent upon annual funding being appropriated, budgeted and otherwise made available for such purposes.
2. **TERMINATION.** Either party shall have the right to terminate this Agreement with at least 30 days' written notice and effective upon January 1st of the next renewal term. Upon termination of this Agreement, USER shall immediately and permanently discontinue using, in any manner whatsoever, the SYSTEM.

3. **SERVICES.** DCSO will provide USER non-exclusive, limited access to SOTAR for only the following activities: view the portion of SOTAR™ available to law enforcement personnel (which includes access to all data input by jurisdictions that participate in SOTAR™), view the portion of SOTAR™ available to the general public and, subject to Section 7 below, access SOTAR™ so that USER can input data regarding sex offenders residing in its jurisdiction (all of the above collectively are “SERVICES”). DCSO may suspend or terminate the SERVICES in the event USER fails to comply with any of the terms and conditions of this Agreement and may pursue all other remedies that DOUGLAS COUNTY has available to it against USER. USER shall not be entitled to a credit or refund in the event this Agreement is terminated pursuant to Section 2.

4. **USAGE.** USER agrees that its access to and use of the portion of SOTAR™ available to law enforcement, access to the data repository underlying SOTAR™, and all associated documentation will be limited to the law enforcement personnel employed by USER and the Local Administrators designated by USER. USER shall not, directly or indirectly, disclose, copy, distribute or publish to any third party any information from SOTAR™ except for information obtained from the portion of SOTAR™ available to the general public. USER may inform the general public that SOTAR™ exists and how to access the portion of SOTAR™ available to the general public. The general public will only be able to view the portion of SOTAR™ available to the general public. USERS shall not violate any federal (including CJIS), state or local statutes, charter provisions, ordinances, rules, regulations, or standards that apply to the storing, handling and disclosure of information regarding any person listed in the SYSTEM.

A. **FBI Criminal Justice Information Services (CJIS) Compliance:**

1. CCIC OSN Validation – Individuals authorized to access SOTAR will have a unique and active OSN that is validated and authorized by the Colorado Bureau of Investigation. Individuals will not share logins. USER is responsible for inactivating users who leave the agency or are otherwise ineligible for access to CJIS protected data.

 2. USER will adhere to the current CJIS Security Policy regarding the proper access, use, and dissemination of Criminal History Record Information and associated procedures.

 3. USER Agency’s Jurisdiction Administrator has the ability to enter this information if available. If these conditions are not met, SOTAR™ SYSTEM access will be limited to non-CJIS information using the public view of the system.
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5. **SERVICE FEE.** Beginning for the 2020 contract year, SOTAR will have a Tiered Agency Participation Cost. Below is the SOTAR Cost per Agency depending on population. The population for your agency is calculated by either: County’s by adding all the unincorporated population plus any contracted cities that you serve, City’s by looking at the total population for the city. Please check the box next to the population that best fits your County/City population the most accurately:

SOTAR Tiered Cost Table

Population	Annual Cost
<input type="checkbox"/> 0 - 1,000	\$1,000
<input type="checkbox"/> 1,001 - 10,000	\$1,500
<input type="checkbox"/> 10,0001 - 50,000	\$2,000
<input type="checkbox"/> 50,001 - 100,000	\$2,500
<input type="checkbox"/> 100,001 - 250,000	\$3,000
<input type="checkbox"/> 250,001 - 500,000	\$3,500
<input type="checkbox"/> 500,001 +	\$4,000

6. COMPLIANCE WITH ARTICLE X SECTION 20 OF THE COLORADO CONSTITUTION (IF APPLICABLE TO USER):

Notwithstanding other provisions in this Agreement to the contrary, the PARTIES understand and acknowledge that they are subject to Article X, Section 20 of the Colorado Constitution ("TABOR").

- i. The PARTIES do not intend to violate the terms and requirements of TABOR by the execution of this Agreement.
- ii. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the PARTIES are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the PARTIES' current fiscal period ending upon the next succeeding December 31.
- iii. Financial obligations of the PARTIES payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the responsible party and other applicable law.
- iv. Failure of a party to make appropriation of amounts required in any fiscal year, if not promptly cured, shall result in termination of this Agreement.

7. DEPLOYMENT AND OPERATION. DCSO shall provide the SYSTEM in its "AS IS" condition. DCSO shall use reasonable efforts to maintain the servers and infrastructure necessary to run the SYSTEM. Provided, however, inaccessibility of the SYSTEM related to technical difficulties shall not be a breach of this Agreement. USER shall call 303-814-7040 (or such other number USER is notified to call) for any issues in accessing SOTAR or the proper function of the SYSTEM. DCSO may modify (add, delete or change) the functions and format of the SYSTEM at any time and in any way without any advance notice to USER.

8. LOCAL ADMINISTRATORS. USER will designate a Local Administrator within USER'S jurisdiction and provide DCSO with their contact information and notify

DCSO promptly if they are removed or replaced. DCSO will provide and maintain a contact number and email address, through which only USER'S designated Local Administrator may communicate to DCSO any issues or concerns with SYSTEM availability or performance. DCSO will communicate via the contact information for the Local Administrator it has on file regarding the SYSTEM including, but not limited to, any planned system maintenance or outages or known system defects.

9. **USER ACCESS AND MAINTENANCE; LICENSE.** As a condition of granting USER access to the SYSTEM, USER shall input data on all existing and new sex offenders in USER'S jurisdiction and manage existing data in the data repository underlying SOTAR™. DCSO will provide the Local Administrator with secure access limited system documentation and instructions for acceptable use. USER'S Local Administrator shall be responsible for provisioning, de-provisioning, maintaining and supporting system operators in USER'S jurisdiction. Only the Local Administrator for that jurisdiction shall have access to the user management feature for the USER'S jurisdiction. USER understands and agrees that USER shall be solely liable for any errors, omissions or claims arising out of or related to the data USER input into the data repository underlying the SOTAR™ application. USER understands and agrees that all data input by USER will be viewable by all other authorized users of the SYSTEM.
10. **USE OF USER INFORMATION.** USER understands and agrees that, even if USER discontinues its use of the SOTAR™ application, DCSO and all active users of the SOTAR™ application shall have the continued right to use the data contributed by USER, provided such use complies with this Agreement. Neither DCSO nor any other authorized USERS shall have any obligation at any time to segregate or stop using the information USER contributes to the data repository underlying SOTAR™.
11. **NO REVERSE ENGINEERING.** USER shall not reverse engineer, decompile, decrypt, or otherwise derive the design, internal logic, structure or inner workings (including algorithms and source code) of any software, products, models or prototypes related to the SYSTEM. USER shall not copy any part of the SYSTEM for any reason, including that information input by USER or related to USER'S jurisdiction.
12. **NO THIRD PARTY USE OR ACCESS.** USER shall not sell or in any manner, directly or indirectly, give any access to SOTAR™, the data repository underlying SOTAR™, documentation, or derivative works to any third party, including but not limited to, any governmental agency in USER'S jurisdiction, any other government agency, or any for profit or non-profit entity. All inquiries from third parties regarding access to the SYSTEM must be directed to DCSO.
13. **EXCLUSIVE OWNERSHIP.** It is expressly understood and agreed by USER that the SYSTEM is protected by copyright and other intellectual property laws and that DOUGLAS COUNTY is the sole owner of all right, title and interest in and to the SYSTEM, and that through this Agreement, DCSO is conveying only the limited access rights expressly contained in this Agreement, but DCSO is not conveying to USER any right, title or interest in or to the SYSTEM or derivative works.

14. **DISCLAIMER OF WARRANTY.** The SYSTEM is provided by DCSO on an “AS IS, WHERE IS” basis, with no warranties whatsoever except as expressly set forth in this Agreement. DCSO hereby disclaims all other warranties, express or implied, including the implied warranties of merchantability, fitness for a particular purpose, title, non-infringement of intellectual property rights and course of dealing. DCSO makes no warranties or representations regarding applicability of the SYSTEM to USER or compatibility of the SYSTEM with the infrastructure used by USER. DCSO makes no warranties as to the accuracy of the information contained in the data repository or mapping information provided by any third-party vendor. Without limiting the generality of the foregoing, DCSO has no obligation to indemnify or defend USER against any claims arising out of or related to the use of the SYSTEM including, but not limited to, infringement of intellectual property rights.
15. **LIMITATIONS ON LIABILITY.** In no event will DOUGLAS COUNTY be liable for any direct, indirect, incidental, special, consequential or punitive damages arising out of or related to this Agreement regardless of the form of action, whether in contract, tort (including, but not limited to, negligence), strict product liability or otherwise even if DOUGLAS COUNTY is advised in advance of the possibility of the damages in question and even if such damages were foreseeable and even if USER’S remedies fail of their essential purpose.
16. **NOTICE.** Any notice required by this Agreement shall be given, in writing. Any such notice shall be deemed given (a) on the date of delivery, if personally delivered (if a signed receipt is obtained); (b) by electronic transmission, provided electronic or other written confirmation of delivery is obtained; or (c) on the third business day following mailing by registered or certified mail, return receipt requested, provided proper postage was prepaid and the mail was addressed to the address set forth immediately below or such new address that is given to the other PARTY in accordance with this Section 16.

To Wheat Ridge Police Department

AGENCY NAME Wheat Ridge Police Department
 AUTHORIZED USER Cindy Case
 TITLE Evidence Technician
 AGENCY STREET ADDRESS 7500 W. 29th Ave.
 CITY, STATE, ZIP Wheat Ridge, CO 80033
 PHONE NUMBER 303-235-2928
 EMAIL ADDRESS ccase@ci.wheatridge.co.us

To DOUGLAS COUNTY SHERIFF’S OFFICE:

Douglas County Sheriff’s Office
 Sheriff’s Office Technology Services
 4000 Justice Way
 Castle Rock, CO 80109
 (303) 814-7006
 SOTAR@dcsheriff.net

17. **APPLICABLE LAW.** The PARTIES agree to comply with applicable federal, state and local statutes, charter provisions, ordinances, rules, regulations and standards as are in effect at the time this Agreement is executed and as they may change from time to time. Any disputes arising under this Agreement shall be brought exclusively in Douglas County District Court in the State of Colorado. USER hereby knowingly and voluntarily waives any objection to Douglas County, Colorado as an inconvenient forum and hereby consents to the exercise of personal jurisdiction by the Douglas County District Court in the State of Colorado. The PARTIES may mutually agree to informal resolution of disputes. Prior to filing litigation, the PARTIES shall discuss participation in alternative dispute resolution, which may include pre-suit mediation or settlement conferences.
18. **NON-WAIVER.** The PARTIES shall not be excused from complying with any provisions of this Agreement by the failure or delay of any PARTY to insist upon or seek compliance with such provisions.
19. **SEVERABILITY.** Should any provision(s) of this Agreement be determined to be illegal or unenforceable, such provision shall be modified to make it legal and enforceable to the fullest extent of the law. In the event modification would not make the provision legal and enforceable, such provision shall be deleted from this Agreement and all remaining provisions of this Agreement shall remain fully enforceable. Provided, however, with respect to the deleted provision, the PARTIES shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the PARTIES hereunder.
20. **AMENDMENT.** This Agreement may be amended, modified, or changed, in whole or in part, only by written Agreement executed by the PARTIES hereto.
21. **ASSIGNABILITY; SUBLICENSING.** USER shall not assign or sublicense its rights or delegate its duties under this Agreement without the prior written consent of DCSO.
22. **HEADINGS FOR CONVENIENCE.** Headings and titles contained herein are intended for the convenience and reference of the PARTIES only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.
23. **GOVERNMENTAL IMMUNITY.** The PARTIES hereto understand and agree that the PARTIES and their commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 to 120, C.R.S., or otherwise available to the PARTIES.
24. **OPEN RECORDS.** The PARTIES expressly agree that if any request is made that subjects the subject matter of this Agreement to disclosure pursuant to the Colorado Open Records Act, Section 24-72-201, C.R.S. *et. seq.*, or the Colorado Criminal Justice Records Action, Section 24-72-301, C.R.S. *et. seq.* then the data will be disclosed in printed, hardcopy form, and not in digital form, so long as the law allows this discretion.

In the event it must be disclosed in digital form, the recipient shall sign a non-disclosure and non-use agreement related to the SYSTEM (which will be supplied by DCSO) prior to obtaining the digital information.

25. **THIRD PARTY BENEFICIARIES.** DOUGLAS COUNTY does not intend by the Agreement to assume any contractual obligations to anyone other than the USER, and the USER does not intend by the Agreement to assume any contractual obligation to anyone other than DOUGLAS COUNTY. DOUGLAS COUNTY and USER do not intend that there be any third-party beneficiary to this Agreement.
26. **SURVIVAL:** Where the context of this Agreement reasonably requires such an interpretation, the provisions of this Agreement shall survive termination.
27. **EXECUTION.** This Agreement may be executed in counterparts.

THEREFORE, IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement, the day and year first above written.

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO:**

BY: _____
Tony G. Spurlock
Sheriff

Date: _____

APPROVED AS TO LEGAL FORM:

Kelly Dunnaway,
Deputy County Attorney

Date: _____

APPROVED AS TO FISCAL CONTENT:

Andrew Copland,
Finance Director

Date: _____

CITY OF WHEAT RIDGE, COLORADO:

Bud Starker
Bud Starker, Mayor

Date: *11-25-19*

ATTEST:

Robin Estom
Steve Kirkpatrick, City Clerk
Robin Estom, Deputy City Clerk

Date: *11-25-19*

