

## Services Agreement

This Services Agreement (this “Agreement”) is made this DD day of MMMM by and between Oxcart Permit Systems, LLC, an Illinois limited liability corporation of 440 W Colfax Street Unit 2384, Palatine IL 60078 (“Oxcart”) and the City of Crest Hill (“City”), collectively known as the “Parties.” The term “Customer” shall refer to any third-party requesting permits from the City.

### 1. Oxcart Services.

Oxcart shall develop, establish, set up and maintain an internet application which shall include but not be limited to the creation of online local permit applications and the processing of said permit applications, for the City for the purposes of accepting local permit applications and payment for such permits as set forth herein, which shall be referred to as the “Service.”

- i. All Services provided by Oxcart shall be conducted and accomplished in a professional and workmanlike manner.
- ii. The Service will be made available per the attached Service Level Agreement (Exhibit 1).
- iii. The Service will allow for the acceptance and processing of permit applications as authorized by the City’s permit policy.
- iv. The Service will be hosted using computer servers contracted by Oxcart, which shall be located within the United States.
- v. Oxcart reserves the right to change computer servers and computer server hosting providers at any time with notice during the term of this Agreement.
- vi. Oxcart reserves the right to update code and/or security measures at any time without notice during this agreement. Oxcart will maintain a Security Incident Response plan which will be made available upon request to the City for review.
- vii. The content of the City web pages within the Service shall be dedicated solely to the City. The content of such pages shall include but not be limited to:
  1. Application fields necessary to receive, pay for and process a permit.
  2. Maintain user information and icons representative of the City.
  3. Automated permits, in which permits do not need to be reviewed by City, and non-automated permits, in which permits must be reviewed by City, as directed by the City.
- viii. The online oversize and overweight vehicle permit application will be based upon and processed according to the requirements of the City’s permit policy.

- ix. The Service shall provide the City and Customers with an unlimited number of free user access accounts with which to apply and pay for the issuance of permits and related document submissions.
- x. Oxcart shall process all permit applications (both automated and non-automated). Upon receipt of an automated permit application, Oxcart shall within the time limit set forth in Exhibit 1, contact the Applicant with information regarding the approval, denial or approval with pre-programmed conditions of the permit, and, upon approval, collect payment for City permit fees and any other applicable fees, and issue the permit. Upon receipt of a non-automated permit application, Oxcart shall within the time limit set forth in Exhibit 1, provide the City with all information necessary for the City to review, approve or deny, or establish conditions under which the permit will be granted. Upon the City's review of a non-automated permit application, Oxcart shall contact the Applicant with information regarding the approval, denial, or approval with conditions of the permit, and, upon approval, collect payment for City permit fees and any other applicable fees, and issue the permit.
- xi. All payments shall be accepted utilizing an integrated payment processor to accept online payments for the City. In addition to the City permit fee, for each transaction, the payment processor will assess the Customer with a fee calculated on the sum of the total of the maximum City permit fee and the Oxcart Service Fee, plus an additional service fee for each transaction. Payment in full of the City permit fee, the credit card payment processor fee, the transaction fee and the Oxcart Service Fee will be required in order for the Customer to access the approved permit.
  - 1. Oxcart does not determine the payment processor fees nor transaction fees, which are subject to change at any time without notice. At the time of this Agreement the payment processor fee is 2.9% of the calculated sum of the total of the maximum City permit fee and the Oxcart Service Fee, plus a \$.30 per transaction fee. Oxcart shall promptly notify the City of changes to these rates as soon as Oxcart becomes aware of the rate change.
  - 2. Upon change of payment processor fees, Oxcart shall update the City web application to reflect the new rates and notify the City of the change.
  - 3. Oxcart reserves the right to change or add payment processors at any time with notice to the City.
  - 4. In the event a Customer disputes a transaction with their bank, Oxcart will provide notice to the City and shall withhold the permit fees from the City until such time the dispute has been resolved.

- xii. City permit fees shall be collected by Oxcart in accordance with the provisions of the City's permit policy.
- xiii. On or before the tenth business day of each month, Oxcart shall transfer to the City through ACH direct deposit or bill payment system through the United States Postal Service all City permit fees for all approved permits for the preceding calendar month. All City permit fees shall be paid in full, less any amounts in dispute, by Oxcart each month to the City. In addition, by the tenth business day of each month, Oxcart shall transmit by email a report providing the name, address, date of payment, date of permit issuance and City permit fee collected for each permit approved and issued. Such report shall be sent as provided in Section 8.
- xiv. Oxcart will not disseminate any phone numbers, email addresses or other personal information of Customers other than what is displayed on an approved permit.
- xv. Oxcart shall maintain permit data for online access by the City for a minimum of ninety (90) calendar days and allow the City to download City permit data during this time. Oxcart shall maintain the City's permit data for a period of seven (7) years.
- xvi. Oxcart shall maintain complete and accurate books, records and accounts showing the permits issued and its billings for the City permit fees and the permit services provided to the City and the amount collected for City permit fees. Such books and records shall be made available for examination and audit by the City at any time during business hours upon 30 days written request.
- xvii. Notwithstanding anything to the contrary in the foregoing, Oxcart is free to upgrade and modify its network, application, and backup infrastructure pursuant to a Systems Maintenance policy which will be available to the City upon request for review.
- xviii. Oxcart may choose to add standard features and upgrades to the application at no additional charge to the City or Customer. Oxcart reserves the right to add proprietary premium features for Customers at an additional cost to the Customer.
- xix. Oxcart is free to market the Service to other organizations, units of government and customers without exception or exclusion except at the sole discretion of Oxcart.
- xx. Oxcart is free to use any non-proprietary data at its discretion.

## **2. License**

- i. Subject to the terms of this agreement, Oxcart grants the City a limited, nonexclusive and nontransferable license to access and use the Application

on computers or devices owned or otherwise controlled by the City strictly in accordance with the application's documentation.

ii. License Restrictions. Licensee shall not:

1. Copy the application, except as expressly permitted by this license;
2. Modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the application;
3. Reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the application or any part thereof;
4. Remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the application, including any copy thereof; or,
5. Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the application or any features or functionality of the application, to any third party for any reason.

**3. Reservation of Rights.** The City acknowledges and agrees that the application is provided under license on a subscription basis, and not sold, to the City. The City does not acquire any ownership interest in the application under this Agreement, or any other rights thereto other than to use the application in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. Oxcart reserves and shall retain its entire right, title and interest in and to the application, including all copyrights, trademarks and other intellectual property rights therein or relating thereto, except as expressly granted to the City in this Agreement.

**4. Oxcart Representations and Warranties.** Oxcart represents and warrants to the City that:

- i. It holds all necessary third-party government rights, including without limitation all intellectual property rights to any and all applications needed to provide the Service;
- ii. It maintains commercially reasonable electronic security to protect Customer information from third party intrusion;
- iii. It has full power and authority to enter into and fulfill the terms of this Agreement and it has not entered and will not enter into any agreements or activates that will or might interfere or conflict with the terms hereof;
- iv. In performing its obligations hereunder, it shall comply with all applicable laws, rules and regulations of any federal or state regulatory body that has jurisdiction over its activities hereunder.

**5. City Representations and Warranties.** The City represents and warrants to Oxcart that:

- i. It shall encourage all Customers to apply for oversize and overweight vehicle permits using the City web page developed by Oxcart. However, the City is free to maintain an internal system of issuing oversize and overweight permits as it deems necessary.
- ii. It will immediately inform Oxcart of any technological difficulties with the Service;
- iii. It will take all reasonable steps to approve non-automated permits for the Customer within twenty-four (24) hours, on normal business days, of receipt of the permit application from Oxcart except in cases of permits with extenuating circumstances such as extremely large or heavy vehicles which require route studies, surveys, site visits or special engineering;
- iv. It shall provide Oxcart with all pertinent information and policies necessary to adequately configure and maintain the Service as requested by Oxcart. It shall be the responsibility of the City to update Oxcart with any changes or modifications to the permit requirements or permit structure. Any errors or omissions of information which may result in an applicant violating the conditions of the permit or federal, state or local laws are the responsibility of the City;
- v. It shall provide Oxcart with the names, email addresses and phone numbers of any City personnel who will be administratively accessing the application on behalf of the City;
- vi. It has full power and authority to enter into and fulfill the terms of this Agreement and it has not entered and will not enter into any agreements or activities that will or might interfere or conflict with the terms hereof.

**6. Payment and Fees for Service.**

- i. As full and complete compensation for the Service to be provided hereunder, Oxcart shall assess a Service Fee to the Customer, in addition to the payment processing fees, as provided in Section 1(xi).
- ii. Upon the effective date of this Agreement, such Service Fee shall be assessed based upon the cost of the assessed City fee for and as provided in the following Schedule:

<b>Assessed City Fees</b>	<b>Oxcart Service Fee</b>
\$0.00 - \$59.99	\$6.00 flat fee
\$60.00 - \$99.99	10% + \$1.00
\$100.00 - \$199.99	\$13.50 flat fee
\$200.00 or more	\$16.00 flat fee

From time to time, Oxcart may modify the Service Fee based on market conditions. Oxcart will provide 60 days notice to the City of any changes.

- iii. All payments are final and Oxcart will not refund the Customer any monies collected through the payment processor unless the payment was made in error or without authorization, the permit was issued in error or an error occurred which was directly attributable to Oxcart or the payment processor, or the City requests a refund be processed through the processor for an approved permit to which the processor fee assessed to Oxcart will be deducted from the monthly payment to the City. Oxcart may elect to refund monies via check or ACH at its sole discretion, and the City reserves the right to internally issue City permit fee refunds to Customers through their finance department or through the Service.
- iv. Oxcart will not store Customer financial information.

## **7. Indemnification, Warranties and Remedies.**

- i. **Indemnification by Oxcart.** Subject to the limitations described in this Section 5 and elsewhere in this Agreement, Oxcart shall indemnify the City, its directors, officers, agents, and employees and shall hold it and them harmless from and against any claims, demands, losses, liabilities, actions, suits, damages, judgments, costs, charges, expenses, attorney fees incurred, made or suffered by any third party arising out of 1) any breach by Oxcart of this Agreement or 2) any negligence, omission or fraudulent or intentional acts of Oxcart or its officers, directors, agents or employees, including, without limitation, to claims related to breach of security or identity theft and claims of infringement of trademarks or copyrights, licenses or any other claims relating to intellectual property subject to the Agreement, or 3) any act or omission by Oxcart or any officer, director, agent or employee of Oxcart, in violation of any state, federal or local law or regulation.
- ii. **Indemnification by City.** Subject to the limitations described in this Section 5 and elsewhere in this Agreement, the City shall indemnify Oxcart, its directors, officers, employees and agents and shall hold it and them harmless from and against any claims, demands, losses, liabilities, actions, suits, damages, judgments, costs, charges, expenses, attorney fees incurred, made or suffered by any third party resulting from any breach by the City of this Agreement or any negligence or intentional acts of the City or its employees, or 3) any act or omission by the City or any officer, director, agent or employee of the City, in violation of any state, federal or local law or regulation.

- iii. **Indemnification Procedure.** Promptly after receipt by a party of notice of any claim (other than insurance claims arising in the ordinary course of business) or the commencement of any action arising from an occurrence for which a party (the “indemnitor”) has agreed to indemnify the other party (the “indemnitee”), the party receiving such notice shall promptly notify the other in writing. The indemnitor may assume the defense thereof with counsel reasonably satisfactory to the indemnitee and the indemnitee shall cooperate in the defense and prosecution thereof and shall further provide such records, information and testimony and attend all such conferences, discovery, pre-hearings, hearings, trials and appears as may be necessary, all reasonable costs and expenses thereof to be paid for the account of the indemnitee and to be payable to the indemnitee upon demand. The indemnitor shall have the right, in its sole discretion, to settle any monetary claim to which this paragraph applies at indemnitor’s sole cost and expense.
- iv. **Internet Delays.** The Service may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications. Neither Party is responsible for any delays, delivery failures other damages resulting from such problems.
- i. **Limitation of liability.** The application is provided to licensee “as is” and with all faults and defects without warranty of any kind. To the maximum extent permitted under applicable law, Oxcart, on its own behalf and on behalf of its affiliates and its and their respective licensors and service providers, expressly disclaims all warranties, whether express, implied, statutory or otherwise, with respect to the application, including all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and warranties that may arise out of course of dealing, course of performance, usage or trade practice. without limitation to the foregoing, company provides no warranty or undertaking, and makes no representation of any kind that the application will meet your requirements, achieve any intended results, be compatible or work with any other software, applications, systems or services, operate without interruption, meet any performance or reliability standards or be error free or that any errors or defects can or will be corrected. Some jurisdictions do not allow the exclusion of or limitations on implied warranties or the limitations on the applicable statutory rights of a consumer, so some or all of the above exclusions and limitations may not apply to the City.

To the fullest extent permitted by applicable law, in no event will Oxcart or its affiliates, or any of its or their respective licensors or service providers, have any liability arising from or related to the City’s use of or inability to use the application or the content and services for:

1. Personal injury, property damage, lost profits, cost of substitute goods or services, loss of data, loss of goodwill, business interruption, computer failure or malfunction or any other consequential, incidental, indirect, exemplary, special or punitive damages.
2. Direct damages in amounts that in the aggregate exceed the amount actually paid by the City for the application.

The foregoing limitations will apply whether such damages arise out of breach of contract, tort (including negligence) or otherwise and regardless of whether such damages were foreseeable or company was advised of the possibility of such damages. Some jurisdictions do not allow certain limitations of liability so some or all of the above limitations of liability may not apply to the City.

- 8. Confidentiality.** Oxcart and the City shall hold in confidence and not disclose (except on a confidential basis to its employees who need to know and who are bound in writing to preserve the confidentiality thereof) all Proprietary Information received from the other party and shall not use any such Proprietary Information except for the purposes contemplated by this Agreement. Either party shall promptly report to the other any unauthorized disclosure of use of any Proprietary Information of the other party of which it becomes aware and shall take such further steps as may reasonably be requested by the other party to prevent unauthorized use thereof.

As used in this Agreement, "Proprietary Information" shall mean with respect to the City all confidential and proprietary information, including but without limitation, all customer, contact, payment data, and files covered by this Agreement. In addition, Proprietary Information shall include all data and other information or material, owned, possessed or used by either Oxcart or the City which is at any time so designated by such party in writing, whether by letter or by the use of a proprietary stamp or legend, prior to the time any such Proprietary Information is disclosed to the other party. In addition, information which is orally disclosed to the other party shall constitute Proprietary Information if identified as such at such time and if within ten (10) days after such disclosure the disclosing party delivers to the receiving party a written document describing such Proprietary Information and referencing the place and date of such oral disclosure and the name of the employees of the party to whom such disclosure was made. "Proprietary Information" does not include information already known to the public or information subject to disclosure under the Illinois Freedom of Information Act.

Notwithstanding the foregoing, this confidentiality obligation shall not apply to information if Oxcart or the City receives a validly issued administrative or judicial



order, warrant or other process requiring disclosure of Proprietary Information or if Oxcart or the City is otherwise required to disclose Proprietary Information in order to comply with any law.

The City acknowledges that when their employees or customers access or use the application, Oxcart may use automatic means (including, for example, cookies and web beacons) to collect information about the City's or the City's customer's devices and about use of the application. The City or their customers also may be required to provide certain information about themselves as a condition for accessing or using the application or certain features or functionality. All information Oxcart collects through or in connection with this application is subject to the Oxcart Privacy Policy. By accessing or using and providing information to or through this application, the City consents to all actions taken by Oxcart with respect to its information in compliance with the Privacy Policy.

If the City provides Oxcart with information relating to personal contact information (the "Data") of third parties (e.g. email, mail, telephone, fax), such information shall be provided by the City free of any charge or fee. The City warrants that: (i) they make no claim of copyright or other intellectual property rights in the data; (ii) they have all necessary rights to provide the data to Oxcart and warrant that the data was not collected, generated, compiled, obtained and/or being supplied to Oxcart in any manner that would subject Oxcart to legal or regulatory liability for the use as contemplated herein; (iii) none of the individuals included in the data have "opted out" of receiving future messages from the City; (iv) the City providing the data to Oxcart does not infringe upon any rights of any third party; (v) there are no material suits, claims, charges or proceedings currently pending or threatened against the City relating to the data.

The parties acknowledge that the breach or threatened breach of this Section 6 would cause irreparable harm to the non-breaching party, the extent of which would be difficult to ascertain. Accordingly, each party agrees that, in addition to any other remedies to which a party may be legally entitled, a party may seek immediate injunctive relief in the event of a breach or threatened breach of such paragraph by the other party or any of the other party's employees.

- 9. Employee Background Checks.** Oxcart shall not allow any of its employees or subcontractor personnel to access customer data except to the extent that such individual has received a clean report with regard to each of the following:

- (i) verifications of education and work history;
- (ii) a 7-year all residence criminal offender record information check; and

(iii) a 7-year federal criminal offender record information check. (A clean report refers to a report with no discrepancies in education or work history and has not been convicted of or entered into a court-supervised diversion program related to felonies or to crimes involving identity theft, misuse of sensitive information, fraud, embezzlement, larceny, perjury, terrorism, or any other breach of trust or fiduciary duty crime.)

However, the requirements of this section shall not apply to the extent forbidden by applicable law.

**10. Termination.**

- i. This Agreement may be terminated without penalty by either party for any reason upon sixty (60) days' notice to the other party.
- ii. Upon the date of termination, any unapproved permit application which has been submitted to the City through Oxcart will be forwarded to the City, and Oxcart shall pay to the City all City permit fees due and owing to the City pursuant to the terms of this Agreement. Oxcart will download and transmit all previous permit data belonging to the City.

**11. Notices.** Any notices or demands which may be or are required to be given by either party shall be in writing and all notices required to be given or made hereunder shall be given or made either: (a) email at the following email addresses; (b) by hand delivery; (c) by United States certified mail, postage prepaid; or (d) if sent by nationally recognized overnight carrier, addressed to Oxcart or the City, respectively, at the following addresses, or at such other place as Oxcart or the City may from time to time designate in writing:

- (CITY REPRESENTATIVE) NAME, TITLE, DEPARTMENT, STREET ADDRESS, COUNTY, MI ZIP CODE.
- Bryce Baker, COO/Member, Oxcart Permit Systems; 440 W Colfax Street Unit 2384, Palatine IL 60078, [bbaker@oxcartpermits.com](mailto:bbaker@oxcartpermits.com), or David Wordhouse, CISO/Member, Oxcart Permit Systems; 440 W Colfax Street Unit 2384, Palatine IL 60078, [dwordhouse@oxcartpermits.com](mailto:dwordhouse@oxcartpermits.com)

**12. Disclosure.** Oxcart and the City may notify existing and prospective customers that the City online permit application system is provided by Oxcart.

**13. Future Modifications.** Based on the anticipated ongoing development of the relationship of the parties it is anticipated that it may be necessary to amend this Agreement to conform to developments. Each of the parties agree to cooperate

with the other in every reasonable way in negotiating a mutually agreeable amendment of this Agreement should an amendment be necessary or advisable.

**14. Nonassignment.** Neither party may assign its interest in this Agreement without the prior written consent of the other party.

**15. Independent Contractors.** Oxcart is and shall be considered an independent contractor and neither Oxcart nor its officers, directors, agents or employees shall be deemed to be an agent, employee or joint venture partner of the other, nor shall this Agreement be interpreted as creating a partnership or joint venture. Oxcart shall be solely responsible for the payment of salary, payroll taxes and worker's compensation insurance for its employees.

**16. Survival.** Notwithstanding anything in this Agreement to the contrary, the representations and indemnification obligations of the parties, the disclaimer of warranties, return and erasure of City permit data and Proprietary Information, the limitation of liabilities, the independent contractor status and the governing law and venue provisions and this survival section shall survive any termination of this Agreement and remain binding upon the parties.

**17. Governing Law.** This Agreement is to be governed by and construed under the laws of the State of Illinois, excluding conflicts of law provisions. The Circuit Court of Will County, Illinois shall have exclusive jurisdiction of any disputes arising out of this Agreement.

**18. No Waiver.** No delay in acting with regard to any breach of any provision of this Agreement shall be construed as a waiver of such breach.

**19. Entire Agreement.** Once signed by both Oxcart and the City, the Agreement controls over any other prior agreement, written or verbal.

**20. Freedom of Information Act.** Oxcart understands and agrees that the Village, as a public body, is subject to and obligated to comply with the Freedom of Information Act, 5 ILCS 104/1 *et seq.*, (FOIA) and certain information with respect to the Service provided hereunder may be subject to disclosure in whole or in part under FOIA. Oxcart acknowledges the requirements of FOIA and agrees to comply with all requests made by the Village for public records (as that term is defined by Section 2(c) of FOIA) in the undersign's possession and provide the requested public records to the Village within two (2) business days of the request being made by the Village. Oxcart agrees to indemnify and hold harmless the Village from all

claims, costs, penalty, losses and injuries (including but not limited to, attorneys' fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or related to its failure to provide the public records to the Village under this Contract.

**21. Miscellaneous.** This Agreement contains the entire agreement between the parties; cannot be modified except in writing and signed by the parties; shall be binding on the parties and their legal representatives, successors and assigns. If any provision of this Agreement is held to be invalid, then the remaining provisions shall remain in full force and effect. This Agreement may be executed in counterparts in the same form and such parts so executed shall together form one original document and be read and construed as if one copy of the Agreement had been executed.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

**OX CART PERMIT SYSTEMS, LLC**

**THE CITY OF CREST HILL**

BY: BRYCE BAKER

BY:

TITLE: COO/MEMBER

TITLE:

DATE:

DATE:

DRAFT

## EXHIBIT 1

### Service Level Agreement

Oxcart will use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week. Down time is defined as the period of time over which the City and/or Customers is unable to access the Service due to a failure of Oxcart's application.

Scheduled maintenance will be performed from time to time as determined by written and available Oxcart policy which may result in the Application being inaccessible to the City and/or Customers. Such scheduled maintenance activities are not considered down time. Care will be taken to minimize impact to the Service during normal business hours, considered as Monday through Friday 7:00 AM to 6:00 PM Central Standard Time.

Information regarding the approval, denial, or approval with pre-programmed conditions of a new automated permit application will be sent by Oxcart to the Customer via email within one (1) hour of submittal of the Application. Non-automated permit applications will be sent by Oxcart to the City for review by the City via email within four (4) hours of submission by the Customer within the Application. Upon the City providing Oxcart information regarding the approval, denial, or approval with conditions of the non-automated permit, Oxcart will provide said information to the Customer via email within four (4) hours.

The following items or situations are exempt from the availability service level commitment:

- Down time resulting from issues with the City's and/or Customer's networks, hardware, or software.
- All internet connectivity and infrastructure issues/failures not attributable to Oxcart's facilities or equipment.
- All internet connectivity and infrastructure issues/failures of internet service providers.
- Service or availability issues related to malicious behavior by the City or any of its employees, agents or Customers.
- Attacks by third parties (hacks, viruses, etc.) provided that Oxcart has made commercially reasonable efforts to defend against such attacks.
- Events of force majeure, including acts of war, earthquake, flood, acts of God, etc.