



OPENCOUNTER ENTERPRISES, INC.

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into as of December 22, 2016 (the "Effective Date") by and between Open Counter Enterprises, Inc., a Delaware corporation, with principal offices at 25 Taylor Street, San Francisco CA, 94102 ("OpenCounter") and the City Gainesville, Florida with its principal offices at 200 E University Ave, Gainesville, FL 32601 ("City").

Recitals

Whereas, City is an agency or division of state or local government, and wishes to be supplied by OpenCounter with access to certain software-based services provided by OpenCounter and accessed via the Internet (as further described in an applicable Service Order, the "Hosted Service") and related professional services for its own use and that of persons and/or businesses applying for one or more permits, the issuance of which is within the jurisdiction of City ("Permit Applicant(s)"); and

Whereas, OpenCounter is willing to provide to City Hosted Services and related professional services pursuant to service orders entered into by the parties in a form substantially similar to that set forth in Exhibit A hereto ("Statement of Work"), and subject to the terms and subject to the conditions of this Agreement.

Now, Therefore, in consideration of the foregoing and the mutual promises made herein, the parties hereto, intending to be legally bound, agree as follows:

1. Hosted Service Implementation and Use

- i. **Implementation.** OpenCounter shall use its commercially reasonable efforts to perform the Implementation by the Implementation Target Date; provided, however, that City shall cooperate with OpenCounter to carry out all tasks reasonably necessary for Implementation of the Hosted Service, including without limitation providing to OpenCounter all City Content required for the Implementation. OpenCounter shall consult with City and provide assistance as reasonably necessary for City to carry out such tasks. OpenCounter shall notify City in writing when the Hosted Service is available for access and use by City and Permit Applicants
- ii. **Right to Use the Hosted Service.** Upon completion of the Implementation, and in consideration of all obligations of City hereunder, including, without limitation, the payment by City of any applicable fees, OpenCounter hereby grants to City, during the Term of this Agreement, a non-exclusive, non-transferable (except as otherwise provided for herein), right and license to access and use the Hosted Service, and to make a reasonable number of copies of and use the Documentation in connection with such use of the Hosted Service.
- iii. **Restrictions on Resale.** The foregoing license does not permit City to, and City hereby agrees not to, resell, relicense, re-syndicate or otherwise sublicense the Hosted Service to any third-party, except as may be expressly set forth herein

- iv. Use of Hosted Service by Permit Applicants. OpenCounter hereby agrees to allow Permit Applicants to use the Hosted Service, solely to the extent necessary to provide information to City regarding applications for permits the issuance of which are with City's jurisdiction, provided that Permit Applicants shall be required to consent to OpenCounter's Terms of Service presented to Permit Applicants when they register with the Hosted Service ("Terms of Service"). City understands and agrees that if any Permit Applicant declines to agree to the Terms of Service, OpenCounter has no obligation to permit such Permit Applicant to access or use the Hosted Service
- v. Use Restrictions. City shall not: (i) access and/or use the Hosted Service in order to design, create or build a service or product that is competitive with the Hosted Service, or which uses ideas, features or functions that are similar to the Hosted Service; (ii) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Hosted Service, except as expressly permitted herein; (iii) modify or make derivative works based upon the Hosted Service or any part thereof, or directly or indirectly disassemble, decompile, or otherwise reverse engineer the Hosted Service or any portion thereof.
- vi. Suspension of Access to Hosted Service. OpenCounter may suspend City's access to the Hosted Service at any time in order to: (i) prevent damages to, or degradation of, OpenCounter's network integrity; (ii) comply with any law, regulation, court order, or other governmental request or order which requires immediate action; or (iii) otherwise protect OpenCounter from potential legal liability; provided, however, OpenCounter will use commercially reasonable efforts to provide City with a minimum of five (5) business days' prior written notice of any such suspension. In addition, if City fails to pay, within ten (10) days of receiving written notice, when due any amounts owed hereunder, OpenCounter may suspend City's access to the Hosted Service. If suspended, OpenCounter will promptly restore use of the Hosted Service to the City after the event giving rise to the suspension has been resolved to OpenCounter's reasonable satisfaction.
- vii. Proprietary Rights. The Hosted Service, including all Intellectual Property Rights therein and thereto, and any modification thereof, are and shall remain the exclusive property of OpenCounter. City shall not take any action that jeopardizes the proprietary rights of OpenCounter or its licensors or acquire any right in the Hosted Service or OpenCounter Confidential Information, except the limited rights expressly granted in this Agreement.
- viii. Internet and Telecommunications Connections. City shall be responsible for obtaining any and all Internet and/or telecommunication connections used by City to access the Hosted Service. OpenCounter shall have no responsibility or liability for any interruption or delay in accessing or using the Hosted Service arising out of such Internet or telecommunications connections.
- ix. Licenses to OpenCounter:
- a) City Content. City hereby grants to OpenCounter a limited right and license, without the right to grant or authorize sub-licenses, during the Term of this Agreement to use and reproduce City Content, solely for the purpose of facilitating the performance of OpenCounter's obligations under this Agreement.
- b) Data Captured by the Hosted Service. City agrees that, subject to OpenCounter's confidentiality obligations below, OpenCounter may aggregate data captured by the Hosted Service in connection with the use of the Hosted Service by City and Permit Applicants ("Captured Data") with data captured by the Hosted Service from its use by other parties (collectively, "Aggregated Data").
- c) City agrees that solely as part of the Aggregated Data, OpenCounter may use, reproduce, distribute, prepare derivative works from the Captured Data, provided that under no circumstances will OpenCounter use the Captured Data in a way that identifies City or individual Permit Applicants as the

source of the data. The license granted in this Section 1.9(c) shall survive any termination or expiration of this Agreement.

- x. City Data. In the event this Agreement expires or is terminated, OpenCounter will make available to the City a file, in a format mutually agreed upon by the parties, within sixty (60) days of such termination or expiration if the City so requests at the time of termination or expiration. Upon termination for cause, OpenCounter shall have no obligation to maintain or to forward to City any City Content after sixty (60) days of the effective date of such termination.

2. Fees, Payments and Taxes

- i. Fees. Fees for use of the Hosted Service and the provision of Professional Services are set forth in Exhibit B, and unless otherwise set forth therein are due and payable within thirty (30) days of receipt of an invoice by City.
- ii. Past Due Accounts. Accounts that are past due will be subject to a monthly charge of one and one-half percent (1.5%) per month, or the maximum rate permitted by the law, whichever is less.
- iii. Suspension of Services for Nonpayment. After notification by OpenCounter to City, accounts more than sixty (60) days past due will be subject to suspension of Support Services until payment is received.
- iv. Taxes. No taxes apply

3. Term and Termination

- i. Term. Unless earlier terminated by either party as hereinafter provided, this Agreement shall commence upon the Effective Date and remain in effect for a minimum period of three (3) years, or such longer period as may be set forth in the applicable Service Order. This Agreement may, upon mutual written agreement, renew for consecutive one (1) year increments following the original Term.
- ii. Termination for Cause. Either party may terminate this Agreement for a breach by the other party of any of its material terms, provided the non-breaching party provides to the breaching party thirty (30) days written notice describing such breach and offering the breaching party an opportunity to cure. Failure to cure a material breach within the notice period shall result in automatic termination of this Agreement.
- iii. Termination for Non-Appropriation. This Agreement will terminate without any penalty at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year.

4. Indemnification

- i. Indemnity. OpenCounter agrees to: (a) indemnify, defend, and hold harmless the City, its officers, agents, and employees from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense arising in any manner from OpenCounter's negligence, recklessness, or willful misconduct, each as they pertain to the performance of this agreement, and (b) at its expense, defend, or at its option settle, any claim brought against City by an unaffiliated third party alleging that City's authorized use of the Hosted Service during the Term infringed such party's patent registered as

of the Effective Date in the United States or any copyright or trademark of such party, or made intentional, unlawful use of such party's trade secret (each, an "Infringement Claim"); and pay any settlement of such Infringement Claim consented to by OpenCounter or any damages finally awarded by a court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim.

- ii. **Exclusions.** OpenCounter will have no obligation to City to the extent any Infringement Claim or resulting award is based upon or results from: (a) the combination, operation, or use of the Hosted Service with any other products, services or equipment not provided by OpenCounter, which combination results in the Infringement Claim; (b) access and use of the Hosted Service other than in accordance with the terms and conditions of this Agreement; (c) damages attributable to the value of the use of any non-OpenCounter product or service or (d) any third party software.
- iii. **Certain Remedies.** If the Hosted Service is, or in OpenCounter's reasonable opinion are likely to become, the subject of an Infringement Claim and/or an injunction as the result of an Infringement Claim, OpenCounter may, at its expense and option: (i) obtain the right for City to continue to access and use the Hosted Service; (ii) modify the Hosted Service to make it non-infringing, but substantially functionally equivalent; or (iii) in the event that neither (i) or (ii) are, in OpenCounter's reasonable judgment, commercially reasonable options, terminate City's right to use the Hosted Service and refund to City, on pro-rated basis, any unused pre-paid fees paid by City for the Hosted Service.
- iv. **Conditions.** The obligations of OpenCounter in this Article 4 are conditioned upon City (a) notifying OpenCounter promptly in writing of any threatened or pending Infringement Claim, provided that failure to provide such notice will only relieve OpenCounter of its obligations under this Article 4 to the extent its ability to defend or settle an applicable Infringement Claim is materially prejudiced by such failure to provide notice, (b) giving OpenCounter, at OpenCounter's expense, reasonable assistance and information requested by OpenCounter in connection with the defense and/or settlement of the Infringement Claim and (c) tendering to OpenCounter sole control over the defense and settlement of the Infringement Claim. City's counsel will have the right to participate in the defense of the Infringement Claim, at City's own expense. City will not, without the prior written consent of OpenCounter, make any admission or prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Infringement Claim.
- v. **Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS ARTICLE 4 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF OPENCOUNTER, AND THE EXCLUSIVE REMEDY OF CITY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE HOSTED SERVICE.

5. Confidential Information

- i. **Restrictions on Use and Disclosure of Confidential Information.** The parties agree to maintain the confidentiality of each other's Confidential Information and not use such information except in furtherance of this Agreement during the term of the Agreement and for a period of three (3) years after the termination of this Agreement.

- ii. **Exceptions.** The parties agree that, unless required by law, they will not make each other's Confidential Information available in any form to any third party, or use each other's Confidential Information for any purpose other than the performance of this Agreement.

- iii. **Public Records.**

Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into an agreement with the City, contractor must:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

6. Representations, Warranties and Service Level Agreement

- i. **Mutual Warranties.** Each party represents and warrants the following to the other party: (i) such party has the full corporate right, power, and authority to enter into this Agreement, to perform the acts required of it hereunder; (ii) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate any agreement to which such party is a party or by which it is otherwise bound; and (iii) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use, of the Hosted Service
- ii. **Service Level Agreement.** The Hosted Services is subject to the Service Level Agreement, which sets forth City's exclusive remedy for any breach thereof. OpenCounter will provide 24-7 technical support for the duration of the contract utilizing the following Service Level Agreement (SLA) for remediation of errors / bugs and inconsistencies:
 - a. **Critical:** The defect affects critical functionality or critical data. It does not have a workaround. Example: Unsuccessful installation, complete failure of a feature. A plan for full resolution will be provided within twelve (12) hours of the notification.
 - b. **Major:** The defect affects major functionality or major data. It has a workaround but is not obvious and is difficult. A plan for full resolution will be provided within one (1) business day of the report.
 - c. **Minor:** The defect affects minor functionality or non-critical data. A plan for full resolution will be provided within three (3) business days of the first report.

- d. Trivial: The defect does not affect functionality or data. It does not even need a workaround. It does not impact productivity or efficiency. It is merely an inconvenience. Example: Petty layout discrepancies, spelling/grammatical errors. Full resolution will be provided within three (3) business days of the first report.
- iii. Disclaimer of Warranties. THE WARRANTIES SET FORTH IN THIS SECTION STATE OPENCOUNTER'S EXCLUSIVE WARRANTIES TO CITY AND ANY THIRD PARTY CONCERNING THE HOSTED SERVICE AND ANY PROFESSIONAL SERVICES AND OPENCOUNTER'S ONLY OBLIGATIONS, AND CITY'S EXCLUSIVE REMEDIES, FOR BREACH OF ANY SUCH WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6(iii), OPENCOUNTER MAKES NO, AND HEREBY EXPRESSLY DISCLAIMS (TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW) ALL OTHER, WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTE, AS TO THE HOSTED SERVICE, THE PROFESSIONAL SERVICES OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED. OPENCOUNTER DOES NOT WARRANT THAT CITY CONTENT INPUT INTO THE HOSTED SERVICE BY OPENCOUNTER WILL BE ACCURATE OR FREE OF ERRORS, (THE OPERATION OF THE HOSTED SERVICE WILL BE COMPLETELY SECURE, ERROR FREE OR UNINTERRUPTED, OR ALL ERRORS WILL BE CORRECTED. CITY ASSUMES ALL RISK OF DELAYS OR INTERRUPTIONS IN ACCESS TO OR USE OF THE HOSTED SERVICE RESULTING FROM USE OF THE INTERNET AND/OR TELECOMMUNICATIONS TO ACCESS THE HOSTED SERVICE, AND OPENCOUNTER SHALL HAVE NO LIABILITY FOR ANY SUCH DELAYS OR INTERRUPTION.

7. Limited Liability

- i. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, OR FOR ANY COST OF COVER OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT. SUCH LIMITATION ON DAMAGES INCLUDES, BUT IS NOT LIMITED TO, LOST GOODWILL, LOST PROFITS, LOSS OF DATA OR SOFTWARE OR WORK STOPPAGE, REGARDLESS OF THE LEGAL THEORY ON WHICH THE CLAIM IS BROUGHT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED IN THIS AGREEMENT. OPENCOUNTER'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY PRODUCT OR SERVICE, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES CITY HAS PAID TO OPENCOUNTER UNDER THIS AGREEMENT IN THE PREVIOUS SIX (6) MONTHS, AND IF SUCH DAMAGES RESULT FROM OR RELATE TO CITY'S USE OR INABILITY TO USE THE HOSTED SERVICE, SUCH LIABILITY SHALL BE LIMITED TO THE FEES PAID BY CITY FOR THE COMPONENT OF THE HOSTED SERVICE GIVING RISE TO THE CLAIM IN THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. OPENCOUNTER SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY DATA PROVIDED BY CITY. UNDER NO CIRCUMSTANCES SHALL OPENCOUNTER HAVE ANY LIABILITY OR RESPONSIBILITY FOR THE ACCURACY OF ANY CITY CONTENT THAT IS PUT INTO THE HOSTED SERVICES, WHETHER INPUT BY CITY, PERMIT APPLICANTS OR OPENCOUNTER, INCLUDING, WITHOUT LIMITATION, INACCURACIES IN CITY CONTENT INTRODUCED DURING THE INPUT BY OPENCOUNTER OF SUCH CITY CONTENT INTO THE HOSTED SERVICE. THE FOREGOING LIMITATION OF LIABILITY IS INDEPENDENT OF, AND SHALL NOT BE DEEMED TO MODIFY OPENCOUNTER'S OBLIGATION UNDER, ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT.

8. Miscellaneous

- i. **Entire Agreement.** This Agreement, together with any Exhibits completely and exclusively state the entire agreement of the parties regarding its subject matter, and supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter.
- ii. **Assignment.** Neither this Agreement nor any rights or obligations of City hereunder may be assigned by City in whole or in part without the prior written consent of OpenCounter. Any assignment in violation of this Section will be null and void. OpenCounter may assign this Agreement in its entirety to a successor in interest in connection with a merger, acquisition or sale of all or substantially all of its assets with the prior written consent of the City, which shall not be unreasonably withheld.
- iii. **Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause that is beyond the reasonable control of such party.
- iv. **Governing Law; Jurisdiction and Venue.** This Agreement and all matters arising under or related to its formation or performance whether sounding in contract, tort, or otherwise shall be governed in all respects by the laws of the of the State of Florida, without reference to conflict of laws principles and under the federal laws of the United States, as such may apply. If Federal jurisdiction exists, the parties hereby consent to exclusive venue and jurisdiction in the Federal Courts of Alachua County, Florida. If no Federal jurisdiction exists, the parties consent to exclusive venue and jurisdiction in the State Courts of Gainesville, Florida.
- v. **Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.
- vi. **Precedence of Terms.** In the event of any conflict between the terms of this Agreement and the terms of any purchase order or acknowledgement, the terms of this Agreement shall control. Acceptance by OpenCounter of any purchase order placed by City is conditioned on City's assent to the terms set forth herein. OpenCounter's fulfillment of any purchase order shall not imply OpenCounter's acceptance of any pre-printed terms on such purchase order. Any such conflicting terms shall be of no force or effect.
- vii. **No Agency.** Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties
- viii. **Notices.** All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery or five (5) days after deposit in the mail. Notices shall be sent to the parties at the addresses set forth above or such other address as either party may designate for itself in writing.
- ix. **Severability.** In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such un-enforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and

interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions

- x. Waiver and Modification. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of OpenCounter and City by their duly authorized representatives
- xi. Waiver of Rule of Construction. Each of the parties and their counsel have carefully reviewed this Agreement, and, accordingly, the normal rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting party shall not apply in the interpretation of this Agreement.

9. Definitions

- i. “Confidential Information” means any information disclosed by one party to the other, which, if in written, graphic, machine-readable or other tangible form is marked as “Confidential” or “Proprietary”, if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and reduced to a writing marked “Confidential” and delivered to the receiving party within thirty (30) days of such disclosure, or which because of its nature should have reasonably been understood by the receiving party to be confidential even in the absence of actual notification of such status. Confidential Information shall include, without limitation, information regarding party’s business plans, finances, pricing, products or services, investors, research and development and City information. Confidential Information may also include information disclosed to a disclosing party by third parties. The Hosted Service and all features and functions therein shall be the Confidential Information of OpenCounter.
- ii. “Florida Public Records Law” Florida has a very broad Public Records law, see Paragraph 5.iii. of this Agreement. Information that is provided to the City may only be considered confidential and exempt if it is identified as such by state statute. Accordingly, it is the responsibility of OpenCounter to identify those items meeting the statutory definition of confidential information. In the event City is requested to provide copies of information that OpenCounter has identified as confidential, City will notify OpenCounter and OpenCounter may file suit to enjoin City from releasing the information. If no suit is filed by OpenCounter, then City will release information with no liability to OpenCounter.
- iii. “City Content” means any information or data related to City, whether supplied by City or a Permit Applicant, that is input into the Hosted Service by City or a Permit Applicant, provided by City or a Permit Applicant to OpenCounter in connection with use of the Hosted Service by City and/or Permit Applicants.
- iv. “Documentation” means the information made generally available by OpenCounter to its customers that describes the form, features and/or operation of the Hosted Service, whether contained in a tangible medium, such as written format, tape, magnetic or other media, or made available in an electronic format. Documentation shall include any updates of Documentation that OpenCounter may make available to City pursuant to this Agreement
- v. “Hosted Service” means those components of the OpenCounter hosted service offering described in any Service Order entered into under this Agreement, to the extent that such Service Order is then in force and effect
- vi. “Implementation” means the implementation process and tasks described in Exhibit A.

- vii. "Implementation Target Date" means the date for which Implementation is targeted to be complete, as set forth in Exhibit A
- viii. "Intellectual Property Rights" means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (i) rights associated with works of authorship throughout the universe, including, but not limited to, all exclusive exploitation rights, copyrights, neighboring rights, moral rights and mask-works, (ii) trademark, trade dress, and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property and proprietary rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license or otherwise, and (vi) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force throughout the universe.
- ix. "Permit Applicant" means a third party individual or entity seeking to obtain one or more permits from City
- x. "Professional Services" means the professional services described in Exhibit A, to be performed for City by OpenCounter.

In Witness Whereof, the parties have executed this Agreement by their duly authorized representatives.




For	OpenCounter Enterprises	City of Gainesville
By		
Name	Peter Koht	Wendy Thomas
Title	President	Director of Doing
Address	25 Taylor Street, San Francisco, CA 94102	200 E University Ave, Gainesville, FL 32601
Approved as to Form		
	City Attorney 	200 E University Ave, Gainesville, FL 32601

Exhibit A

STATEMENT OF WORK

1. Implementation Plan

OpenCounter will create and configure an instance of the OpenCounter Economic Development suite (the "OpenCounter Instance") for the City of Gainesville, Florida (referred to as the "City"). The OpenCounter instance will include information and interactive tools related to land use regulations, economic development incentives, and industry-specific local permits for small business owners. The instance will be created utilizing the following actions ("Implementation Plan") and Phasing ("Implementation Phase"):

Phase 1: Data Collection and Project Management

The first phase of OpenCounter project is focused on collecting data and setting project expectations around the scope of work. This includes identifying the permits and licenses to be included in the project, as well as securing credentials and API keys for integrated systems as well as determining the points of integration within those systems and the depth of integration requested by the City.

Date	Milestone	Line Item	Description	Responsible Party
DEC 2017	Project Management	Send Configuration Schedule / Steps	Send configuration documents outlining project scope and steps to be taken. Set up bi-weekly project management update conference calls with key project staff.	OpenCounter
		Create Basecamp.com account	Deploy Project Management software and invite City staff. Configure admin access to in-app help resources and configuration ticket management.	OpenCounter
	Data Collection	City data collection	City Seal Vector Graphic, application forms (if not already online), fee schedules, internal documents showing permit routing, milestones and processes (for background).	City

Phase 2: OpenCounter | Zoning Portal

Phase 2 focuses on the collection and configuration of the OpenCounter Zoning Viewer and verification of land use regulations prior to launch. This includes the collection of the City's land use codes, cartographic zoning data (in the form of shapefile or geojson files), and any use-specific rules (like whether a restaurant serves alcohol) that can impact zoning clearances.

This Phase includes a two-week testing stage to enable staff to validate and sign off on the zoning content.

Date	Milestone	Line Item	Description	Responsible Party
January – February 2017	Zoning API Setup	Collect GIS data	Collect shape files for zoning districts and zoning overlays.	OpenCounter
		Collect use code data	Import Use Tables from Zoning Ordinance or create use table based on reading of the code. Surface areas not covered by the base zoning districts, find documents relating to those shapes. Read and import that data into master document.	OpenCounter
		Set up conditional zoning logic	For uses that require additional information other than use and location for zoning clearances, (i.e. restaurants that serve alcohol) set conditional logic questions to serve the proper clearance in zoning.io Assign common icons to uses, assign "keywords" to uses, gain City approval of these keywords.	OpenCounter
	Deploy OpenCounter Zoning Portal	Configure and deploy OpenCounter Zoning	Create instance of OpenCounter Zoning Portal for staff review and testing.	OpenCounter
2 weeks min.	OpenCounter: Zoning Portal Acceptance Testing	Validation of returns in the OpenCounter Zoning	Validation of zoning returns inside the OpenCounter Zoning Portal by City staff.	City Staff

2. Acceptance Testing

When an implementation milestone is ready for use and testing, OpenCounter will notify City and City will commence acceptance testing of the implementation milestone, with such assistance and support as necessary from OpenCounter personnel.

The acceptance test ("Acceptance Test") will be conducted solely for the purpose of demonstrating that the deliverable or functionality performs in accordance with its specifications set forth in the applicable documentation ("Acceptance Criteria"). The Acceptance Test will be in a form mutually agreed upon between the parties, and will be completed within five (5) business days of the date upon which OpenCounter informs City that the deliverable or feature is ready for use ("Acceptance Period").

If the implementation milestone passes the Acceptance Test, City will promptly so notify OpenCounter in writing ("Notice of Acceptance"). If the Implementation Milestone does not pass the Acceptance Test, City will notify OpenCounter, in writing, prior to the expiration of the Acceptance Period, specifying in reasonable detail in what respects the Implementation Milestone has failed to meet the Acceptance Criteria ("Notice of Rejection").

OpenCounter will promptly correct any deficiencies set forth in the Notice of Rejection, and City will have an additional Acceptance Period to repeat the Acceptance Test. The implementation milestone will be deemed accepted by City upon the earlier of (i) the issuance by City of a Notice of Acceptance, (ii) the use by City of the implementation milestone in production or (iii) the expiration of the applicable Acceptance Period prior to the receipt by OpenCounter of a Notice of Rejection (each of the foregoing shall constitute "Acceptance").

A Deliverable Acceptance Form is attached to this document as Exhibit C.

3. City Responsibilities and Level of Effort

Commercial Development is a complex project involving multiple departments across the City.

It is critical to the project schedule that City Staff are engaged throughout the project in order to ensure successful outcomes. It is also important that stakeholder roles are defined so that decisions can be made effectively and efficiently during the execution of the project.

The Department of Doing will serve as the project sponsor ("Project Sponsor"). The Project Sponsor will appoint a project owner ("Project Owner") as the key executive for the project, and a project manager ("Project Manager") to facilitate ongoing project administration.

The Project Owner will be responsible for accepting project deliverables per the Acceptance Criteria defined above as well as providing strategic oversight for the project.

The Project Manager will provide access to required data and resources, facilitate calls and meetings with City staff, and provide assistance and support during on-site visits and training sessions. OpenCounter will provide bi-weekly updates during the timeframe outlined in the Implementation Plan described above.

The Project Manager will also facilitate calls and meetings with City Subject Matter Experts ("Subject Matter Experts") in specific permitting verticals and provide assistance and support with communications with Subject Matter Experts.

Subject Matter Experts time commitments will be limited to Project Update calls on an as-needed basis and during the verification of content during defined Acceptance Testing periods defined in the Implementation Plan above.

4. Training

The goal of the project is to build a site that will be easy for citizens to use, and for City staff to administer. To that end, OpenCounter will offer training sessions to educate Department staff on the tools, technologies, and best practices of the various components of OpenCounter.

Three training sessions will be offered as part of the engagement. Three (3) will be offered via online video conferences. Training sessions will be 60 minutes each.

The schedule for the training sessions will be determined by OpenCounter and City project staff and defined during the Project Management Phase of the Implementation Plan outlined above.

OpenCounter maintains online documentation to explain the functionality of the software. Documentation will be updated to reflect new features. Documentation and support is available at <https://help.opencounter.com>

5. Publicity and Post-Launch Promotion

OpenCounter will link to the City's instance on its webpage, opencounter.com and its Twitter account @opencounter. The City will link to the OpenCounter instance from its homepage, departmental landing pages and in its outbound marketing and promotional materials in order to ensure that the service is easily accessible to small business owners and entrepreneurs.

OpenCounter and the City will collaborate on a launch press release as well as a mid-year press release featuring case studies of end users who utilize the tool. These case studies may be leveraged for existing City marketing / program materials.

Exhibit B**COSTS AND INVOICE SCHEDULE****Costs**

Deliverable	Frequency	Line Item	Cost
Subscription Service	Annual	OpenCounter Zoning Portal Annual Subscription	\$14,500

Invoices

Milestone	Date	Project Deliverables / Invoice Line Items	Total
Project Initiation*	January 2017	OpenCounter Zoning Portal Annual Subscription (Setup Services included in this cost)	\$14,500
Second Anniversary of Public Launch	Early 2018	Annual Subscription Renewal 2	\$14,500
Third Anniversary of Public Launch	Early 2019	Annual Subscription Renewal 3	\$14,500

**All invoices Net 30.*

Exhibit C**DELIVERABLE ACCEPTANCE FORM**

Please sign to acknowledge delivery and acceptance of project milestone detailed below. Completed Deliverable Acceptance Forms should be scanned and emailed to contracts@opencounter.com

Deliverable Acceptance Details

Date	
Department	
Approving Manager	
OpenCounter Project Manager	
Project Name	
Deliverable Description	

Signatures

For	Open Counter Enterprises Inc.	
By		
Name		
Title		
Address	25 Taylor Street, San Francisco, CA 94102	

Exhibit D

CERTIFICATE OF LIABILITY INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

JR
R022 DATE (MM/DD/YYYY)
12/9/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER STEELBRIDGE INS SERVICES INC/PHS 151884 P: (866) 467-8730 F: (888) 443-6112 PO BOX 33015 SAN ANTONIO TX 78265	CONTACT NAME PHONE (AC, HL, EXT): (866) 467-8730 FAX (AC, HL, EXT): (888) 443-6112 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Sentinel Ins Co LTD 11000 INSURER B: Hartford Underwriters Ins Co 30104 INSURER C: INSURER D: INSURER E: INSURER F:
INSURED OPEN COUNTER 25 TAYLOR ST SAN FRANCISCO CA 94102	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

FORM	TYPE OF INSURANCE	ADDL	STRT	POLICY NUMBER	POLICY EFF	POLICY EXP	LIMITS
TYPE		COVER	DATE		(MM/DD/YYYY)	(MM/DD/YYYY)	
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> General Liab GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOG OTHER:		X	57 SBN BR6620	07/29/2016	07/29/2017	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$1,000,000 MED EXP (Any one person) \$1,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMPROP AGG \$4,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY		X	57 SBN BR6620	07/29/2016	07/29/2017	COMBINED SINGLE LIMIT (Per accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE (SEE EXTENSION 1)						EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	57 WBC BR9349	11/19/2016	11/19/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE- EA EMPLOYEE \$1,000,000 E.L. DISEASE- POLICY LIMIT \$1,000,000
A	Technology E&O			57 SBN BR6620	07/29/2016	07/29/2017	1,000,000/2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 10), Additional Remarks Schedule, may be attached if more space is required
 Those usual to the Insured's Operations. Certificate holder is an additional insured per the Business Liability Coverage Form SS0008 attached to this policy.

CERTIFICATE HOLDER City of Gainesville Florida 200 E UNIVERSITY AVE GAINESVILLE, FL 32601	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

ACORD 25 (2016/03) The ACORD name and logo are registered marks of ACORD © 1988-2016 ACORD CORPORATION. All rights reserved.