

Services Agreement

This Services Agreement (this "Agreement") is made this DD day of MMMM, 2018 by and between Oxcart Permits Systems, LLC, an Illinois limited liability corporation of 440 W Colfax, Suite 2384, Palatine, IL 60078 ("Oxcart") and the County of Lake ("County"), collectively known as the "Parties." The term "Customer" shall refer to any third party requesting over-dimension and/or overweight vehicle permits from the County.

1. Oxcart Services.

Oxcart shall develop, establish, set up and maintain an internet application ("County web page"), which shall include but not be limited to the creation of online over-dimension and overweight vehicle permit applications and the processing of said permit applications, for the County for the purposes of accepting over-dimension and overweight vehicle 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 over-dimension and overweight vehicle permit applications as authorized by the County's Code.
- iv. The Service will be hosted using computer servers contracted by Oxcart.
- 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 to the County for review.
- vii. The content of the County web pages within the Service shall be dedicated solely to the County. 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 County.
 3. Automated permits, in which permits do not need to be reviewed by County, and non-automated permits, in which permits must be reviewed by County, as directed by the County.
- viii. The online over-dimension and overweight vehicle permit application will be based upon and processed according to the requirements of the County's Code.

- ix. The Service shall provide the County and Customers with an unlimited number of free user access accounts with which to apply and pay for the issuance of over-dimension and overweight vehicle permits.
- 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 County 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 County with all information necessary for the County to review, approve or deny, or establish conditions under which the permit will be granted. Upon the County'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 County permit fees and any other applicable fees, and issue the permit.
- xi. All payments shall be accepted utilizing an integrated credit card payment processor to accept online payments for the County. In addition to the County permit fee, for each transaction, the credit card payment processor will assess the Customer with a fee calculated on the sum of the total of the maximum County permit fee and the Oxcart Service Fee, plus an additional service fee for each transaction. Payment in full of the County 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 set the credit card payment processor fees or 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 County permit fee and the Oxcart Service Fee, plus a \$.30 per transaction fee. Oxcart shall promptly notify the County of changes to these rates as soon as Oxcart becomes aware of the rate change.
 - 2. Upon change of credit card payment processor fees, Oxcart shall update the County web application to reflect the new rates and notify the County of the change.
 - 3. Oxcart reserves the right to change credit card payment processors at any time with notice to the County.
- xii. County permit fees shall be collected by Oxcart in accordance with the provisions of the County's Code.

- xiii. On or before the tenth business day of each month, Oxcart shall transfer to the County through ACH direct deposit or bill payment system through the United States Postal Service all County permit fees for all approved permits for the preceding calendar month. All County permit fees shall be paid in full by Oxcart each month to the County. In addition, by the tenth business day of each month, Oxcart shall transmit by email or United States Postal Service, a report providing the name, address, date of payment, date of permit issuance and County 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 County for a minimum of ninety (90) calendar days and allow the County to download County permit data during this time. Oxcart shall maintain the County'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 County permit fees and the permit services provided to the County and the amount collected for County permit fees. Such books and records shall be made available for examination and audit by the County at any time during business hours upon 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 County for review.
- xviii. Oxcart may choose to add standard features and upgrades to the application at no additional charge to the County 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, municipalities, and customers without exception or exclusion except at the sole discretion of Oxcart.

2. Oxcart Representations and Warranties. Oxcart represents and warrants to County 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.

3. County Representations and Warranties. The County represents and warrants to Oxcart that:

- i. It shall encourage all Customers to apply for oversize and overweight vehicle permits using the County web page developed by Oxcart. However, the County 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 for extremely large or heavy vehicles which require route studies, surveys or special engineering;
- iv. It shall provide Oxcart with all pertinent information and ordinances necessary to adequately set-up and maintain the Service as requested by Oxcart. It shall be the duty of the County 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 a vehicle violating the conditions of the permit or federal, state or local laws are the responsibility of the County;
- v. It shall provide Oxcart with the names, email addresses and phone numbers of any County personnel who will be administratively accessing the application on behalf of the County;
- 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.

4. Payment and Fees for Service.

- i. As full and complete compensation for the Service to be provided hereunder, Oxcart shall asses a Service Fee to the Customer, in addition to the credit card payment processing fees, as provided in Section 1(xi).
- ii. Such Service Fee shall be assessed based upon the cost of the permit applied for and as provided in the following Schedule:

County Permit Fee	Oxcart Fee
\$0.00 - \$49.99	\$5.00 flat fee
\$50.00 - \$99.99	10%
\$100.00 - \$199.99	\$12.50 flat fee
\$200.00 or more	\$15.00 flat fee

- iii. All payments are final and Oxcart will not refund the Customer any monies collected through the credit card 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 credit card payment processor, or the County requests a refund be processed through the credit card processor for an approved permit to which the credit card processor fee assessed to Oxcart will be deducted from the monthly payment to the County. Oxcart may elect to refund monies via check or ACH at its sole discretion, and the County reserves the right to internally issue County permit fee refunds to Customers through their finance department. Oxcart shall provide the County with notice of any payment that is in dispute.
- iv. Once the transaction has been completed and all fees received from the credit card payment processor, Oxcart will not store or retain any Customer financial or credit information.

5. 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 County, 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 County.** Subject to the limitations described in this Section 5 and elsewhere in this Agreement, the County 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 County of this Agreement or any negligence or intentional acts of the County or its employees, 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.

- 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.

6. **Confidentiality.** Oxcart and the County 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 County 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 County 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 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 receives a validly issued administrative or judicial order, warrant or other process requiring disclosure of Proprietary Information or if Oxcart or the County is otherwise required to disclose Proprietary Information in order to comply with any law.

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.

7. 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 County through Oxcart will be forwarded to the County, and Oxcart shall pay to the County all County permit fees due and owing to the County pursuant to the terms of this Agreement. Oxcart will download and transmit all previous permit data belonging to the County.

8. 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 deliver; (c) by United States certified mail, postage prepaid; or (d) if sent by nationally recognized overnight carrier, addressed to Oxcart or the County,

respectively, at the following addresses, or at such other place as Oxcart or the County may from time to time designate in writing:

(COUNTY OF LAKE REPRESENTATIVE) NAME, TITLE, DEPARTMENT, STREET ADDRESS, COUNTY, IL ZIP CODE.

Bryce Baker, COO/Member, Oxcart Permit Systems; 440 W. Colfax, Suite 2384, Palatine, IL 60078. bbaker@oxcartpermits.com, or

David Wordhouse, CISO/Member, Oxcart Permit Systems; 440 W. Colfax, Suite 2384, Palatine, IL 60078. dwordhouse@oxcartpermits.com

9. Disclosure.

Oxcart and the County may notify existing and prospective customers that the County online permit application system is provided by Oxcart.

10.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.

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

12.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.

13.Survival. Notwithstanding anything in this Agreement to the contrary, the representations and indemnification obligations of the parties, the disclaimer of warranties, 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.

14.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 Lake County, Illinois shall have exclusive jurisdiction of any disputes arising out of this Agreement.

15. 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.

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

17. Freedom of Information Act. Oxcart understands and agrees that the County, 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 County 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 County within two (2) business days of the request being made by the County. Oxcart agrees to indemnify and hold harmless the County 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 County under this Contract.

18. 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 COUNTY OF LAKE

BY: BRYCE BAKER

BY:

TITLE: COO/MEMBER

TITLE:

DATE: MMM DD, 2017

DATE:

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 County 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 County and/or Customers. Such scheduled maintenance activates 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 County for review by the County via email within four (4) hours of submission by the Customer within the Application. Upon the County 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 County's and/or Customer's networks, hardware, or software.
- All internet connectivity and infrastructure issues/failures not attributable to Oxcart's facilities or equipment.
- Service or availability issues related to malicious behavior by the County or any of its employees, agents or Customers.
- Attacks by third parties (hacks, viruses, etc.) provided that Oxcart has made all reasonable efforts to defend against such attacks.
- Events of force majeure, including acts of war, earthquake, flood, acts of God, etc.