AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter "COUNTY" or "Agency" or "Customer") and Accela, Inc. with an address at 2633 Camino Ramon, Suite 120, San Ramon, CA 94583 (hereafter "CONTRACTOR" or "Accela"), and Granicus, LLC. parent of OpenCities, Inc, with an address at 408 St. Peter Street, suite 600 Saint Paul, MN 55102 (hereafter "SOFTWARE COMPANY" or "OpenCities"), wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein and specific to product provided by OpenCities.

WHEREAS, COUNTY purchased Accela's Cloud-hosted software platform in June 2021 for the Planning and Development Department for land use and development permits; and

WHEREAS, Accela's Cloud-hosted software includes a standard public-facing portal for COUNTY customers and constituents to review the status of permitting online; and

WHEREAS, Accela partners with OpenCities to provide a premium public-facing portal for government agencies who wish to customize the standard public-facing portal; and

WHEREAS, OpenCities provides a customizable premium public-facing portal based on COUNTY's unique needs; and

WHEREAS, the purchase, development, and use of a premium public-facing portal will enhance and benefit the COUNTY's constituents; and

WHEREAS, Accela and OpenCities jointly represent that they are specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of Accela and OpenCities pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Linda Liu, Planning and Development at phone number (805) 568-2035 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Arielle Mallen at phone number (732) 600-6638 is the authorized representative for CONTRACTOR. Lena Mertel at phone number (847) 962-8299 is the authorized representative for OpenCities. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery, email, or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY:	Linda Liu, Planning and Development, 123 E. Anapamu St, Santa Barbara, CA 93101 (lliu@countyofsb.org)
To ACCELA:	Contracts Admn Accela Inc., 2633 Camino Ramon, Suite 120, San Ramon, CA 94583 (contractsadmin@accela.com)
To OPENCITIES:	Contracts Department, 408 St. Peter Street, suite 600, Saint Paul, MN 55102 (contracts@granicus.com)

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. <u>SCOPE OF SERVICES</u>

CONTRACTOR and SOFTWARE COMPANY agree to provide services to COUNTY in accordance with EXHIBIT A.1 attached hereto and incorporated herein by reference.

SOFTWARE COMPANY further agrees to provide services to COUNTY in accordance with EXHIBIT A.2 attached hereto and incorporated herein by reference.

4. <u>TERM</u>

CONTRACTOR and SOFTWARE COMPANY shall commence performance and end performance as described in EXHIBIT A.1 and EXHIBIT A.2 unless otherwise directed by COUNTY or unless earlier terminated.

5. <u>COMPENSATION OF CONTRACTOR</u>

In full consideration for CONTRACTOR's and SOFTWARE COMPANY's services, CONTRACTOR and SOFTWARE COMPANY shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 <u>NOTICES</u> above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. <u>INDEPENDENT CONTRACTOR</u>

It is mutually understood and agreed that CONTRACTOR and SOFTWARE COMPANY (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR or SOFTWARE COMPANY shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to reasonably verify that CONTRACTOR and SOFTWARE COMPANY are performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR and SOFTWARE COMPANY understand and acknowledge that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR and SOFTWARE COMPANY each individually shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR and SOFTWARE COMPANY shall each individually be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's or and SOFTWARE COMPANY's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR or and SOFTWARE COMPANY may be providing services to others unrelated to the COUNTY or to this Agreement.

It is further understood and agreed that CONTRACTOR and SOFTWARE COMPANY are independent contractors to each other. Neither party has the right or ability to bind the other company in contract, nor does either party have the right to control or direct performance of each party's obligations hereunder. Any liability under this Agreement is individual liability of CONTRACTOR and SOFTWARE COMPANY, as applicable, and neither party will incur any obligation, financial or otherwise, that is the legal obligation of the other party.

7. <u>STANDARD OF PERFORMANCE</u>

CONTRACTOR and SOFTWARE COMPANY each represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR and SOFTWARE COMPANY shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR and SOFTWARE COMPANY is engaged. All products of whatsoever nature, which CONTRACTOR or and SOFTWARE COMPANY delivers to COUNTY pursuant to this Agreement, shall be prepared in a workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's or and SOFTWARE COMPANY's profession. CONTRACTOR or and SOFTWARE COMPANY, as may be applicable to each individually, shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR or SOFTWARE COMPANY without additional compensation.

8. <u>DEBARMENT AND SUSPENSION</u>

CONTRACTOR and SOFTWARE COMPANY each individually certify to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR and SOFTWARE COMPANY each individually certify that it shall not contract with a subcontractor that is so debarred or suspended.

9. <u>TAXES</u>

CONTRACTOR and SOFTWARE COMPANY each individually shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement except for any applicable sales or use taxes associated with purchases made by COUNTY hereunder, and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's or SOFTWARE COMPANY's behalf, and should COUNTY be required to pay taxes otherwise the responsibility of CONTRACTOR OR SOFTWARE COMPANY so by state, federal, or local taxing agencies, CONTRACTOR and SOFTWARE COMPANY each individually agree to promptly reimburse COUNTY for the full value of such paid taxes outside of what COUNTY is otherwise responsible for, plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance, but in no event will include sales, use or other taxes applicable to COUNTY's use of the Services provided hereunder.

10. <u>CONFLICT OF INTEREST</u>

CONTRACTOR SOFTWARE COMPANY each individually covenant that it presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR SOFTWARE COMPANY each individually further covenant that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR or SOFTWARE COMPANY. CONTRACTOR SOFTWARE COMPANY each individually must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR or SOFTWARE COMPANY if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR or SOFTWARE COMPANY in writing.

11. <u>OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY</u>

CONTRACTOR or SOFTWARE COMPANY each individually, as applicable and further described in Exhibits A.1 and A.2 shall be the owner of all intellectual property right in all documents, work product, and other materials prepared by CONTRACTOR and SOFTWARE COMPANY or delivered to COUNTY during the course of performing the services (collectively, the "Deliverables"). Excluding CONTRACTOR's cloud-based software ("Accela SaaS Software"), and subject to COUNTY payment of all fees for the services, CONTRACTOR grants the COUNTY a license to use the Deliverables subject to the terms and restrictions

applicable to the Subscription Agreement governing COUNTY's use of the Accela SaaS Software, as such terms apply to Accela SaaS Software. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement. Additional intellectual property rights relating to SOFTWARE COMPANY are set forth in Exhibit A.2.

12. NO PUBLICITY OR ENDORSEMENT

Neither CONTRACTOR nor SOFTWARE COMPANY shall use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Neither CONTRACTOR nor SOFTWARE COMPANY shall use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR or SOFTWARE COMPANY. Neither CONTRACTOR nor SOFTWARE COMPANY shall in any way contract on behalf of or in the name of COUNTY. Neither CONTRACTOR nor SOFTWARE COMPANY shall release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

13. COUNTY PROPERTY AND INFORMATION

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR or SOFTWARE COMPANY, as applicable, shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR and SOFTWARE COMPANY may use such items only in connection with providing the services. Neither CONTRACTOR nor SOFTWARE COMPANY shall disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

14. RECORDS, AUDIT, AND REVIEW

CONTRACTOR and SOFTWARE COMPANY each individually shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's or SOFTWARE COMPANY's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such financial documents and records at any time during CONTRACTOR's or SOFTWARE COMPANY's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars ($10,000.00), CONTRACTOR and SOFTWARE COMPANY shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR and SOFTWARE COMPANY shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

15. INDEMNIFICATION AND INSURANCE

CONTRACTOR and SOFTWARE COMPANY agree to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. LIMITATION OF LIABILITY

EXCEPT AS IMMEDIATELY STATED IN THE BELOW PARAGRAPH, NO PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL EXCEED THREE TIMES THE TOTAL AMOUNT PAID BY COUNTY HEREUNDER. IN NO EVENT SHALL ANY PARTY OR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SUBSCRIPTION SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

NO PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT (i) THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR; (ii) LOSSES ARISING OUT OF THE WILLFUL MISCONDUCT, FRAUD OR GROSS NEGLIGENCE OF CONTRACTOR; (iii) LOSSES ARISING OUT OF ANY BREACH OF OBLIGATION TO COMPLY WITH LAWS; OR (iv) CLAIMS FOR PROPERTY DAMAGE OR PERSONAL INJURY SHALL EXCEED THE INSURANCE LIMITS IN EXHIBIT C.

THE FOREGOING LIMITATION UPON THE TYPES OF DAMAGES AND AMOUNTS OF LIABILITY SHALL NOT APPLY TO (I) DAMAGES ARISING FROM CONTRACTOR'S RECKLESSNESS, BAD FAITH OR INTENTIONAL MISCONDUCT; (II) DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS BY CONTRACTOR, AND (III) BREACH OF CONTRACTOR'S SECURITY AND PRIVACY OBLIGATIONS UNDER THIS CONTRACT TO THE EXTENT THAT BREACH OF SUCH OBLIGATIONS RESULTED IN UNAUTHORIZED USE OR DISCLOSURE OF PERSONAL INFORMATION.

17. NONDISCRIMINATION

COUNTY hereby notifies CONTRACTOR and SOFTWARE COMPANY that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR and SOFTWARE COMPANY agree to comply with said ordinance.

18. NONEXCLUSIVE AGREEMENT

CONTRACTOR and SOFTWARE COMPANY each individually understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR or SOFTWARE COMPANY as the COUNTY desires.

19. NON-ASSIGNMENT

CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. SOFTWARE COMPANY is permitted to assign this Agreement to an affiliate or successor-in-interest resulting from a sale of assets, merger, reorganization or share exchange on sufficient notice to provide the County with opportunity to grant preliminary approval of such assignment prior to approval by the COUNTY Board of Supervisors. The County will not withhold approval of assignment unreasonably or with undue delay. Should the COUNTY fail to approve such assignment of this Agreement by SOFTWARE COMPANY, the COUNTY may terminate this Agreement for convenience as set forth in Section 20(A)(1) below.

20. **TERMINATION**

A. <u>By COUNTY.</u> COUNTY may, by written notice to CONTRACTOR or SOFTWARE COMPANY each individually terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR or SOFTWARE COMPANY to fulfill the obligations herein.

1. **For Convenience**. COUNTY may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR or SOFTWARE COMPANY shall, as directed by COUNTY, wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of Services.

2. **For Nonappropriation of Funds**. Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR, SOFTWARE COMPANY, or both, of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.

3. **For Cause**. As may be applicable to each individually, should CONTRACTOR or SOFTWARE COMPANY default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice ("Termination Notice") if such default or material breach is not remedied by CONTRACTOR or SOFTWARE COMPANY within thirty (30) days of written notice to CONTRACTOR or SOFTWARE COMPANY of such default or material breach ("Notice of Default or Material Breach"). Upon receipt of Termination Notice, CONTRACTOR, SOFTWARE COMPANY, or both, shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date the Termination Notice is received by CONTRACTOR or SOFTWARE COMPANY, unless the Termination Notice directs otherwise.

B. <u>By CONTRACTOR or SOFTWARE COMPANY.</u> Should COUNTY fail to pay CONTRACTOR or SOFTWARE COMPANY, as applicable to each individually, all or any part of the payment set forth in EXHIBIT B, CONTRACTOR or SOFTWARE COMPANY may, at CONTRACTOR's or SOFTWARE COMPANY's option terminate this Agreement as applicable to it if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.

C. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other COUNTY property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. COUNTY will retain the right to access COUNTY data and information retained or stored in the SOFTWARE COMPANY SERVICES for up to thirty (30) days after termination of the Agreement in order for COUNTY to extract any such data. SOFTWARE COMPANY has no obligation to retain any COUNTY data in excess of such thirty (30) day period. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR or SOFTWARE COMPANY as applicable to each individually for services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall

CONTRACTOR or SOFTWARE COMPANY be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR or SOFTWARE COMAPANY each individually shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR or SOFTWARE COMPANY.

D. Additional termination rights specific to CONRACTOR are set forth in Exhibit A.1. Additional termination rights specific to SOFTWARE COMPANY are set forth in Exhibit A.2.

21. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

22. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

24. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

25. NO WAIVER OF DEFAULT

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

26. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

27. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

28. **COMPLIANCE WITH LAW**

CONTRACTOR and SOFTWARE COMPANY each individually shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. As may be applicable to each individually, the judgment of any court of competent jurisdiction, or the admission of CONTRACTOR or SOFTWARE COMPANY in any action or proceeding against CONTRACTOR or SOFTWARE COMPANY, whether COUNTY is a party thereto or not, that CONTRACTOR or SOFTWARE COMPANY has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR or SOFTWARE COMPANY and COUNTY.

29. **CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

30. **EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

31. **AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR and SOFTWARE COMPANY each individually hereby warrant that it shall not have breached the terms or conditions of any other contract or agreement to which it is obligated, which breach would have a material effect hereon.

32. **SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

33. **PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

34. **FORCE MAJEURE**

No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.

35. <u>IMMATERIAL AMENDMENTS</u>

The parties agree that immaterial amendments to the Statement of Works (such as time frame and Change Orders which will not result in a change to the total Agreement amount) that are mutually agreed upon in writing, may be authorized by COUNTY's Planning and Development Director, or designee, and the similarly authorized representative of either CONTRACTOR, SOFTWARE COMPANY, or both, will not constitute an amendment to the Agreement.

(Signatures on following page.)

Agreement for Services of Independent Contractor between the **County of Santa Barbara,** OpenCities, Inc, and Accela, Inc.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY ("Effective Date").

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
       Deputy Clerk

COUNTY OF SANTA BARBARA:

By: _____
       Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:
Planning & Development

DocuSigned by:
Lisa Plowman
By: _____
    8FD182C83465420...
    Department Head

CONTRACTOR:

Accela, Inc.

DocuSigned by:
Aaron Haggarty
By: _____
    A04409D028344D8...
    Authorized Representative

Name: Aaron Haggarty

Title: CLO

APPROVED AS TO FORM:
Rachel Van Mullem
County Counsel

DocuSigned by:
[signature]
By: _____
    E39147D9C7E94EC...
    Deputy County Counsel

SOFTWARE COMPANY:

OpenCities, Inc.

DocuSigned by:
Kelly Oliver
By: _____
    065201CE166448D...
    Authorized Representative

Name: Kelly Oliver

Title: Vice President Contracts

APPROVED AS TO FORM:
Risk Management

DocuSigned by:
Gregory Milligan
By: _____
    DC240AC1E04247D...
    Risk Management

APPROVED AS TO ACCOUNTING FORM:
Betsy-Schaffer, CPA
Auditor-Controller

DocuSigned by:
Robert Geis IV
By: _____
    D25019E2AF094BE...
    Deputy

EXHIBIT A.1

STATEMENT OF WORK

1. **Introduction.**

   A. This Statement of Work ("SOW") dated as of the last date of signature of the Agreement sets forth the scope and definition of the project-based professional services (collective, the "Services") to be provided by Accela Inc. ("Accela") or OpenCities, Inc. ("OpenCities") to Santa Barbara County ("Agency" or "County").

   B. For services actually provided by Accela to County, this SOW is governed by the above Agreement for Services of Independent Contractor.

   C. Agency has selected OpenCities a Delaware limited liability company, to provide certain products and/or services, as set forth in this SOW.

   D. Notwithstanding anything to the contrary, Agency acknowledges and agrees that Accela is not liable or responsible for any products and/or services provided by OpenCities.

   E. For services actually provided by OpenCities to Agency, notwithstanding anything to the contrary, this SOW is governed by OpenCities terms of use, as amended and incorporated as Exhibit A.2.

2. **Executive Summary.** This Statement of Work captures the configurations Santa Barbara County will receive and provides visibility into how Accela will perform the implementation of Agency's solution.

3. **Solution Overview.** Accela and OpenCities shall provide the following SaaS products: Civic Premium Citizens Experience.

4. **Governing Principles.** For Accela and Agency to successfully perform the onboarding described herein, there are several critical success factors that must be closely monitored and managed by the Accela and Agency stakeholders. These factors are critical in setting expectations between the Agency and Accela, identifying and monitoring risks, and promoting strong communication:

   A. **Clear Business Objectives** – The Agency has clearly documented their business objectives before the commencement of onboarding and shared those objectives with Accela.

   B. **Dedicated Agency Participation** – Agency acknowledges and agrees, throughout the duration of the services, to have (i) its staff and/or agents Agency personnel actively involved in the Project, and (ii) its software, hardware and other technology performing (or available for performance), each as specified in the agreed upon Project Plan (such Agency personnel and technology, collectively the Agency resources). Accela will communicate insufficient participation of Agency resources through Project Status Reports and will indicate actual and potential impacts to the Project Timeline. Accela will work the Agency's Executive Sponsors and department leaders to determine appropriate team member involvement. This could range from full-time, during early analysis meetings, to part-time during the technical development phase.

   C. **Executive Sponsorship, Governance, and Change Control** – The initiative is supported by executive sponsors within the Agency who will drive the Agency staff participants towards overarching goals and standardization/adoption of the Civic Application Solution. The executives will remove roadblocks, quickly make decisions, support risk mitigation, and resolve escalated issues. Effective governance during the onboarding period and a tight change control processes for the subscribed solution requires alignment across Agency stakeholders. Throughout the project, the teams will encounter issues and decisions that require engagement of the joint Agency/Accela

governance team. Invariably, changes to the identified solution will arise and the governance process must resolve these issues with urgency in order to avoid impacts to the schedule and scope.

D. **Knowledge Transfer** – Agency personnel must participate in all the implementation stages and activities for Accela to transfer knowledge to the Agency. Once Post-Production transition tasks are completed by Accela, Agency personnel will assume all day-to-day business operation of the solution, outside of the subscribed support and hosting services.

5. **Administration.**

A. **Project Timeline.** The project is estimated to take three (3) months. The projected start date for the project is forty-five (45) calendar days after mutual acceptance and signature on this Agreement. A detailed schedule will be developed during the Define stage in collaboration with Accela and County Project Manager. If County determines they cannot meet the timeframes estimated in this SOW, this will be escalated at the start of the project as discussion for a change order.

B. **Term for EXHIBIT A.1.** CONTRACTOR and SOFTWARE COMPANY shall commence performance no sooner than December 15, 2022 and end performance upon completion, but no later than June 30, 2023 unless otherwise directed by COUNTY or unless earlier terminated. Upon expiration of this Term for Exhibit A.1 Accela shall no longer be a party to this Agreement.

C. **Projects Put On Hold and County Delays:**

   i. It is understood that sometimes County priorities are revised requiring the County to place Accela implementation on hold. The County must send a formal written request to Accela to put the project on hold. Delays of two (2) weeks or more that have a tangible impact to Accela's resource plan are subject to a Change Order.

   ii. If a County-based delay puts the project on hold for more than 90 days, Accela reserves the right to terminate this Agreement as applicable to Accela and negotiate new terms. If a County-based delay puts the project on hold past the termination period, Accela reserves the right to terminate this Agreement as applicable to Accela at the time of the delay. After that time, Accela can choose to cancel the rest of the Statement of Work. To finish the project will require a new Statement of Work at new pricing at the standard rates.

   iii. When a project is put on hold, at minimum, Accela will draft a Change Order to keep some of the Accela project manager's time engaged to monitor progress and to resource the project once it comes off hold. Other Change Order items may be needed as a result of the delay. When a project goes on hold, project resources will be re-deployed and Accela will be given at least a forty-five (45) calendar day notice to re-staff the project. Accela cannot guarantee a Project Start Date until Accela resources are confirmed.

   iv. Should the County become non-responsive to Accela communications for a term of 30 calendar days regarding continuance of the project work, Accela can choose to cancel the remainder of the Statement of Work. To finish the project will require a new Statement of Work at new pricing at the standard rates that is mutually agreed to in writing and in accordance with Section 26 of this Agreement.

D. **Change Orders.** The estimated fees for this SOW are predicated on the timely completion of Project milestones. However, should completion of milestones slip due to actions or inactions of Agency, and should this slippage result in material effort to Accela in excess of the hours provided for in this Agreement, Accela will produce a Change Order for additional hours in support of the scope and deliverables contained herein. Any change order must be approved by both Agency and Accela in accordance with Agreement Sections 26 or 35 as may be applicable. The County agrees to approve

Change Orders that can be authorized under Section 35 of the Agreement within three (3) business days of delivery from Accela to avoid a halt of work on the Project.

E. **Changes via Change Order or Amendments.** In order to make a change to the scope of the Services in this SOW, and subject to the Disclaimers below, Agency must submit a written request to Accela specifying the proposed changes in detail. Accela will submit to Agency an estimate of the charges and the anticipated changes in the delivery schedule that will result from the proposed change, based on the standard rate for Accela resources of $250 per hour. Accela will continue performing the Services in accordance with the SOW until the parties agree in writing on the change in scope of work, scheduling, and fees. If Accela's effort changes due to changes in timing, roles, responsibilities, assumptions, scope, etc. or if additional support hours are required, a Change Order or Amendment to this Agreement will be created that details these changes, and impact to project and cost (if any). Any Change Order or Amendment must be agreed to by Accela and Agency in accordance with Agreement Sections 26 or 35 as applicable, and prior to commencing any activities defined in the Change Order or Amendment.

6. **Disclaimers.**

    A. Accela makes no warranties in respect of its Services described in this SOW except as set out in the Agreement. Any configuration of or modification to the Product that can be consistently supported by Accela via APIs, does not require direct database changes and is capable of being tested and maintained by Accela will be considered a "Supported Modification". Accela's obligations and warranties in respect of its Services, Products, and maintenance and support, as set out the agreement between Accela and Agency, does not extend outside the Supported Modifications or to any Agency manipulation of implemented scripts, reports, integrations and adaptors.

    B. In the event County requires significant work beyond the scope of the included configuration and onboarding services, Accela may request that Agency separately engages Accela's Services organization to complete the out-of-scope services. In such instance, a separate proposal and statement of work for the additional services will be drawn up and agreed between the parties.

7. **Assumptions. The parties agree to the following assumptions:**

    A. **General Scope Assumptions**
        i. Any coding or integrations not specifically described in this Agreement are not in scope.
        ii. The Customer is responsible for configuring and creating content. Accela will provide examples that can be imported for the Agency. The Agency will type the words that go on the website(s) and form(s).
        iii. Development of test cases are not in scope of Accela Services.
        iv. Development of custom training materials are not in scope of Accela Services.
        v. Scope of the Project is based on discovery sessions with Agency prior to additional SOW development.
        vi. Any additional worked hours over the hours or scope stated in the SOW will require a Change Order or Amendment to this Agreement.
        vii. Pre-existing defects will not be in this scope unless specifically identified.

    B. **Project Resourcing Assumptions**
        i. Accela personnel will attend Agency executive steering committee meetings, either in-person or remotely.
        ii. In the pricing, Accela has assumed the appropriate resourcing to ensure success for the scope outlined. Additional support requested by Agency over this level of resourcing would necessitate a Change Order or Amendment to the Agreement that could impact the cost of the project.

    iii. Accela personnel will not be required to provide Services on-site if doing so would put Accela personnel at actual or potential risk, as determined at Accela's sole discretion.

    iv. Accela is not responsible for impacts to project timeline created by dependency on Agency third party consultants. Timeline changes may result in a Change Order or an Amendment to this Agreement for extension of Accela project resources caused by Agency third party consultant actions (including availability) resulting in additional time or scope.

    v. When the project team works onsite at an Agency facility, suitable workspace will be provided and equipped with appropriately functional and network access to and connectivity with all systems, networks, and data as necessary to perform the project. Agency will also provide necessary security badges, parking passes as required.

C. **Accela Technical Assumptions**

    i. Agency will select/purchase/acquire the appropriate third-party software prior to the Project Start Date. In the event third party software is not available and provisioned by Project Start Date, a Change Order or Amendment to this Agreement may be needed to cover delays in project work.

    ii. Agency must provide a Contact for all third-party systems, to be available for collaboration.

    iii. Agency is responsible for obtaining a code source repository prior to go-live, to maintain custom scripting code.

D. **Not in Scope**

    i. Scripting – EMSE, batch, or pageflow

    ii. Configuration of custom fields and custom lists

    iii. Configuration of document groups/types

    iv. Configuration of pageflows

    v. Reporting

    vi. Online payments

    vii. Support ticket or Case Management

    viii. Data Conversions

    ix. Custom Application Development

    x. Interface Development

    xi. Content migration

    xii. Information Architecture

8. **Product and Services. Accela and OpenCities shall deliver and provide the following Services to the COUNTY:**

Deliverables for Accela and OpenCities	Tasks
OpenCities Deliverable 1: Design and Configuration	• Collect asset such as logos and images • Create and review analytics report • Departmental Portal page & Theme Light Design Review
Accela Deliverable 1: Design, Configuration, and Training	• Branding and Data Premium Citizen Experience integration consulting • Accela Integration training and consultation
OpenCities Deliverable 2: Training and Handover	• Content Publisher training • OpenCities Help Center 24 x 7 • OpenForms Training • Site Administrator training

A. **OpenCities Deliverable 1: Design and Configuration**

In this deliverable, the OpenCities project team and the County will share assets and work to align and deliver a navigation, look and feel that reflects the spirit and goals of the Agency while leveraging the best practices for effective site layout and design.

   i.   **Design Values/Asset Collection** – County will work with OpenCities to secure assets such as logos and images along with any existing style guides.
   ii.   **Create/Review Analytics Report** – County will provide access to existing Google Analytics and any data collection that has been ongoing, and the OpenCities team will assess analytics for the current site and incorporate findings for each service into a Digital Services Inventory.
   iii. **Departmental Portal Page & Theme Light Design Review** – The OpenCities project team will present up to two (2) options for the site design and layout based on the assets and intentions shared in the Design meeting. This will coincide with up to three (3) iterations of Light design. Agency will provide feedback on each iteration. Discussion of who should be included in the design review is at the discretion of the Customer, but is it highly recommended to include those Agency staff responsible to addressing routine citizen engagement and Accela admins.
   iv.   **Design Finalization** – Once the designs are skinned onto a published Premium Citizen Experience powered by OpenCities instance, content publishing/migration can immediately begin.

B. **Accela Deliverable 1: Design, Configuration, and Training. Accela will provide the following:**

   i.   **Accela Premium Citizen Experience Branding and Data Integration Configuration** – Configuration will be done any global or module settings in Accela Citizen Access (ACA). Specifically, the global settings will include configuration of the "Site Brand Builder" section. Standard choices will be configured as part of the branding integration. Up to two service workflow integrations will be made by the Accela team as a training exercise for both the branding and data integration. The Application Programming Interface (API) keys and URLs will be made in the ACA global settings section, "Third Party Data Integrations" and OpenForms settings to allow the data integration. Login/Logout settings will be made with copies of the necessary scripts.

   ii.   **Integration Training** – Training the core components of the Accela Citizen Access integrations features.

   iii. **Accela Data and Branding Integration Training** – Accela will provide one (1) hour remote training session to the Agency Accela administration team on how to administer the integration features of the Premium Citizen Experience powered by OpenCities. This will empower the Agency to create their migration checklist to move their Accela non-production configuration to Accela production when they are ready to publish the OpenCities platform content. This deliverable includes:
   - Enabling the Branding integration
   - Service page workflow integrations
   - Import of sample landing, general/embed, and service pages
     - One (1) landing page per Accela Solution – Public Works, Planning and Development Services and Cannabis Licensing.
     - General/embed pages for Manage my Records and Search Records
     - Two (2) services pages per Accela Solution for two (2) Civic Application record types – Public Works, Planning and Development Services and Cannabis Licensing.
     - Creation of any additional pages and design of those pages are the responsibility of the Agency. Up to 100 pages.

- Sharing of sample forms for Accela Civic Applications related to the data integration for two record types to be copied into Agency OpenForms instance.
  - o Creation of any additional forms and design of those forms are the responsibility of the agency. Up to 100 forms.
- Enabling the data integration
- Logon/logout setup

C. **OpenCities Deliverable 2: Training and Handover**

Given the current COVID-19 pandemic, OpenCities is currently providing all training and consultation remotely, depending on the status of the situation at that time and the comfort level of the Agency. The Premium Citizen Experience powered by OpenCities is designed to be intuitive enough for anyone in the Agency to effectively create and maintain beautiful and well-architected web pages. OpenCities will make sure that there is comfort with the platform by providing the following:

i. **Content Publisher Training** – Detailed below, this training introduces the product and sets the foundation for experimentation and mastery. Up to 20 people per remote training session.
ii. **Site Administrator Training** – By training and supporting key staff members to have a deeper understanding or OpenCities product capabilities, we assure that SME's at the department level are well supported internally. Up to 15 people per session.
iii. **OpenForms Publisher Training** – Staff responsible for creating and editing forms will be trained on the functions of how to build a beautiful, accessible and functionally rich form using our drag and drop editor. They'll learn to set up smart logic on fields, build notifications and confirmation messages, apply pre-built themes, and construct calculations. Up to 15 people per session.
iv. **OpenCities Help Center 24 x 7** – An introduction to the online OpenCities Help Center, which houses full documentation with screenshots and reference materials, video training, updates on the most recently released features and how to use them. Provide the Agency access to our online documentation and training portal means that everyone can reference "how to" guides and other training materials whenever they are needed.

EXHIBIT A.2

TERMS OF USE – OPENCITIES, INC.

1. **DEFINITIONS.** The following capitalized terms will have the following meanings whenever used in this Exhibit A.2 in reference to the OpenCities software.

   1.1. "Acceptable use Policy ("AUP") means, as of any date, the version of OpenCities' acceptable use policy posted at http://help.OpenCities.com as of such date.

   1.2. "Business Day" means a day other than a Saturday or a Sunday or holidays on which banks in the State of California are open for business.

   1.3. "Core Module" means the individual modules that are included within the Services. From time to time, new Core Modules will be introduced to the Services via Version Updates which are included in the Fees paid by Customer.

   1.4. "Customer Data" means any and all data and information, including text, graphics, photographs, audio-visual elements, music, illustrations, video or other content, domain names, email, chat room content, bulletin board postings, or any other items or materials of Customer, any user or any other third party provided or permitted by Customer to be made available by or to reside within the Services or Customer's Website.

   1.5. "Customer's Website" means the website(s) created by or on behalf of Customer through use of the Services for Customer's internal business purposes.

   1.6. "Customizations" has the meaning ascribed to it in Section 2.3.

   1.7. "Documentation" means OpenCities' standard user documentation and any other operating, training and reference manuals related to the Services, all of which are contained in the OpenCities Help Center.

   1.8. "Integrations" means optional enhancements to the Services involving third party products or services, which are offered separately by OpenCities and are available for purchase by Customer via the OpenCities Help Center.

   1.9. "Intellectual Property Rights" means all intellectual or industrial property, including without limitation any copyright, trade or service mark, patent, moral right, trade secret, logo, know how, rights in relation to inventions, drawings, discoveries, improvements, technical data, formulae, computer programs, know-how, logos, designs, circuit layouts, domain names, business names, software, whether or not now existing, and whether or not registered or unregistered rights, and rights in respect of Confidential Information.

   1.10. "Malicious Code" means code, files scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

   1.11. "Order" means an OpenCities, or an OpenCities' authorized reseller, order form or other mutually acceptable document that expressly incorporates this Agreement and is duly executed by Customer and, as applicable, OpenCities or an OpenCities authorized reseller.

   1.12. "OpenCities Help Center" means the Documentation and the specifications for the Services (the "Specifications") currently posted at http://help.OpenCities.com.

   1.13. "Privacy Policy" means, as of any date, OpenCities' privacy policy posted at http://help.OpenCities.com as of such date.

   1.14. "Scheduled Maintenance Window" means the date and time slot identified by OpenCities in a written notice given to Customer via the OpenCities Help Center no later than 5 Business Days prior to the proposed Scheduled Maintenance Window to enable maintenance work and Version Updates to be performed. The Scheduled Maintenance Window will be outside of Customer's normal business hours and periods of peak demand, whenever reasonably possible.

   1.15. "Services" means the components of OpenCities' proprietary content management system set forth in the Order, including, as applicable, data traffic management, website publishing and web hosting services, and any Version Updates and Core Modules released by OpenCities, and all related Specifications and Documentation.

   1.16. "SLA" or "Service Level Agreement" means, as of any date, OpenCities' service level agreement, the current version of which is set forth in Schedule A.

1.17. "Support Services" means the support and maintenance services provided by OpenCities in accordance with Article 3.

1.18. "Term" is defined in Section 10.1 below.

1.19. "Version Updates" means updated versions of the Services (indicated by a higher numerical version number) developed by OpenCities with enhancements or additions to the functionality, and/or performance improvements and bug fixes.

2. SCOPE AND USAGE OF SERVICES

2.1. Notwithstanding any language to the contrary, nothing in this Agreement is intended to or shall affect or modify any existing Master Services Agreement between Customer and CONTRACTOR. Use of Services. During the Term and upon payment of the applicable Fees set out in the applicable Order, OpenCities shall make the Services available to Customer in accordance with the terms of this Agreement solely for Customer's internal business purposes. Customer may permit an unlimited number of its employees and its contractors to use the Services provided their use is solely for Customer's internal business purposes and at all times in compliance with the terms of this Agreement. Customer agrees to be responsible for any breach of this Agreement by its contractors.

2.2. Provision of Services. Upon payment of the applicable Fees and subject to the terms of the applicable Order and the other terms and conditions hereof, OpenCities will use commercially reasonable efforts to provide the Services to Customer during the Term and to ensure the Services are available in accordance with the then applicable Service Level Agreement.

2.3. Professional Services. Upon payment of the applicable Fees and subject to the terms of the applicable Order and the other terms and conditions hereof, OpenCities may provide certain professional services to Customer, including developer training and custom development services ("Professional Services"). Any Professional Services to be supplied by OpenCities will be provided pursuant to a separate statement of work executed by Customer and OpenCities. Except as otherwise provided in an Order, all such Professional Services will be charged on a time and materials basis at OpenCities then-current rates for the applicable Professional Services. OpenCities agrees that any custom software developed by OpenCities ("Custom Software") will be compatible with the then-current version of the Services in accordance with the terms set forth in the applicable statement of work. Customer acknowledges that the support and maintenance services set out in Article 3 will not be provided for any Custom Software and that Custom Software is not covered by the Service Level Agreement. If Customer desires to obtain support for any Custom Software, any support offered by OpenCities will be charged on a time and materials basis at OpenCities' then-current rates for such support. Any Custom Software developed by OpenCities shall be the property of OpenCities. Effective upon delivery of any such Custom Software to Customer, OpenCities grants Customer a nonexclusive, non-transferable, fully paid license to copy, modify, create derivative works of and use such Custom Software solely as part of Customer's Website during the Term. All modifications and derivative works of the Services by whomever produced shall be the property of OpenCities.

2.4. Use of Third-Party Service Providers. Customer acknowledges that OpenCities has, and in the future may, retain one or more third party service providers to supply certain aspects of the Services, including certain of the facilities, equipment, products, services and connectivity necessary to offer the Services. Customer acknowledges that OpenCities currently obtains web hosting services from a third party, and that OpenCities has no responsibility or liability for any third-party services performance or failure to perform, which are governed by the service level agreements supplied by such third parties. The foregoing does not limit or modify SOFTWARE COMPANY's warranty obligations or any service levels provided for in this Agreement as relating to the OpenCities Services, including those set forth in Schedule A, below.

2.5. Documentation: Customer may reproduce and use the Documentation solely as necessary to support its use of the Services during the Term.

2.6. Users of Customer's Website. Customer may authorize an unlimited number of users to access and use Customer's Website. Customer agrees that it is not authorized to, and agrees not to, make any representations or warranties regarding the Services or OpenCities to any user or third party, and further agrees not to otherwise create or purport to create any obligations or liabilities on the part of OpenCities. Customer agrees to indemnify OpenCities for its and any user's acts and omissions related to Customer's Website and/or the Services caused by the County's negligence. OpenCities has no obligation to provide support or any other services, or any SLA or other remedies, to such users.

2.7. Notwithstanding any language to the contrary, nothing in this Agreement is intended to or shall affect or modify any existing Master Services Agreement between Customer and CONTRACTOR.

3. MAINTENANCE AND SUPPORT SERVICES

3.1. Maintenance and Support; SLA. Subject to the other provisions of the Order and Exhibit B to this Agreement, this Article 3 and Customer's payment of all applicable Fees, during the Term: (a) OpenCities will provide the remedies listed in the SLA for any defect, error, or failure of the Services or in the Documentation in accordance with the SLA. Such remedies are Customer's sole remedy for any failure of or defect in the Services or the Documentation. Any credits issued pursuant to the SLA for failure to meet the uptime guarantee specified in the SLA will apply to outstanding or future invoices only and are forfeited upon termination of this Agreement. OpenCities is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation after termination of this Agreement. (b) OpenCities may revise the SLA or the features and functions of the Services at any time, provided no such revision materially reduces the features or functionality provided to Customer as set forth herein. (c) OpenCities will provide Customer with Version Updates. Customer acknowledges that Version Updates are mandatory and necessary for the proper function and security of the Services. Customer agrees to the implementation of all Version Updates by OpenCities. Implementation will occur during a Scheduled Maintenance Window. Any SaaS downtime or functionality issues arising during a Scheduled Maintenance Window will not be subject to the Service Level Agreement. (d) OpenCities grants Customer personnel unlimited access to the OpenCities Help Center to review the Documentation and Specifications. Customer acknowledges and agrees that it does not have an unlimited right to request maintenance and support services through the OpenCities Help Center; requests for maintenance and support must be made in compliance with paragraph (e) hereof. (e) OpenCities will make available to Customer an online and telephone help desk service, which will allow a reasonable number of support representatives of Customer (as agreed to by the parties) who have received training in the Services to request maintenance and support services in accordance with the Service Level Agreement. Requests from other personnel will not be accepted. The contact details for the online and telephone help desk support services are set out in Schedule A. (f) Notwithstanding the provisions of paragraphs (d) and (e) above, where Customer's Website is experiencing a Severity 1 problem, any Customer personnel may contact OpenCities via the telephone help desk to report the Severity 1 problem.

3.2. Scheduled and Emergency Maintenance. OpenCities agrees to use commercially reasonable efforts to conduct all SaaS maintenance within a Scheduled Maintenance Window. However, Customer acknowledges that an unplanned event may occur that will require the need for OpenCities to perform maintenance on the Services on an emergency basis outside of a Scheduled Maintenance Window. OpenCities will use reasonable efforts to give Customer advance notice of emergency maintenance, but it is possible that advance notification of emergency maintenance will not occur. Any SaaS downtime or functionality issues during the Scheduled Maintenance Window or during emergency maintenance will not be subject to the Service Level Agreement.

3.3. Conditions. OpenCities provision of the maintenance and support services set forth in this Article 3 is subject to the following conditions: (a) Customer must document and promptly report all errors or malfunctions of the Services to OpenCities or its assigned agents and

representatives; (b) Customer must carry out procedures to rectify errors or malfunctions within a reasonable period after receiving instructions from OpenCities on such procedures; and (c) Customer must provide OpenCities with reasonable access to Customer's personnel, its assigned agents and representatives as required by OpenCities to meet its obligations under this Agreement.

3.4.   Exclusions. OpenCities is under no obligation to provide the maintenance and support services specified in this Article 3 if they are requested as a result of or related to: (a) operation of the Services with other media and hardware, or services or interfaces not authorized or maintained in accordance with this Agreement or the Documentation; (b) use of the Services that is not in accordance with the Documentation; (c) any modification, alteration or addition or attempted modification, alteration or addition to the Services (unless such modifications were developed by OpenCities or authorised by OpenCities in writing); (d) failure of any data service, internet service, hosting service or any other third-party service, or failure of a telecommunications connection, hardware, software, web services, or third party content, software, or equipment; or (e) any non-reproducible error or defect reported by Customer.

3.5.   Abuse of Maintenance Services. In the event Customer abuses the maintenance and support services offered by OpenCities (e.g. by declaring a problem Severity Level 1 when it is only Severity Level 2, 3 or 4, unless such distinction could not reasonably have been determined, or by reporting problems which are not Severity 1 during non-business hours) an "Abuse Incident" will be noted, and OpenCities will inform Customer of such.

4. FEES AND PAYMENT TERMS

4.1.   Subscription Fees. Except as otherwise provided in the Order, Customer shall make payments pursuant to and in accordance with the terms of the applicable Statement of Work (SOW) and any applicable Order Forms. Except as otherwise expressly provided in this Agreement, all Fees are non-cancelable and non-refundable. Except as otherwise provided in the Order, the Fees for the first year of the Initial Term are payable within 30 days of execution of this Agreement, and the Fees for each successive year during the Initial Term and each Renewal Term shall be payable net 30 days from the date of OpenCities' invoice.

4.2.   Fee Adjustments. Upon expiration of the Initial Term, Fees may be adjusted for each Renewal Term to take into account any increases in the Consumer Price Index for all Items as published by the US Bureau of Labor Statistics. OpenCities shall notify Customer of any Fees adjustments made pursuant to this Section 4.2 at least seventy (70) days prior to the commencement of the applicable Renewal Term.

4.3.   Overdue Charges. Except as otherwise provided in the Order, if any invoiced amount is not received by OpenCities by the due date, then without limiting OpenCities' rights or remedies, OpenCities may condition future subscription renewals on payment terms shorter than those specified herein, and may condition continued access to the Services on pre-payment of fees for subsequent terms.

4.4.   Taxes. The Fees charged by OpenCities do not include any taxes, levies, duties or similar governmental assessments of any nature, including, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated Customer's purchase of the Services. If OpenCities has the legal obligation to pay or collect any Taxes for which Customer is responsible under this Section 4, then Customer agrees that OpenCities will invoice Customer that amount unless Customer provides OpenCities with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, OpenCities is responsible for taxes assessable against it based on its income, property and employees.

4.5.   Purchases from Authorized Resellers. Notwithstanding the foregoing, in the event that Customer has purchased Services through an authorized OpenCities reseller pursuant to an Order that incorporates these terms, the payment arrangements and related terms set forth in the Order shall control, such terms shall be exclusively by and between such reseller and Customer, and OpenCities' sole obligation will be to provide the Services set forth in the Order to Customer on the other terms and conditions, and subject to the limitations, set forth in this Agreement.

4.6. Future Functionality. Customer agrees that its purchase is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by OpenCities, or any authorized reseller or other third party regarding future functionality or features.

5. CUSTOMER DATA AND SECURITY

5.1. Customer Rights to Data. Customer retains all right, title and interest (including any Intellectual Property Rights) in and to all data and content supplied by or on behalf of Customer in connection with the Services and Customer's Website, including data uploaded by users thereof (collectively, the "Customer Data"). Customer hereby grants OpenCities a limited, non-exclusive, royalty-free, non-transferable license to host, reproduce, transmit, cache, store, exhibit, publish, display, distribute, perform, and otherwise use the Customer Data solely as necessary to provide the Services for Customer.

5.2. Responsibility for Customer Data. Customer is solely responsible for Customer Data, including the accuracy, quality, appropriateness and legality of all Customer Data and the means by which the Customer Data is acquired, and OpenCities shall have no responsibility or liability therefor. Customer represents and warrants to OpenCities that Customer owns or has the right to use Customer Data, and has the rights necessary to grant OpenCities the license set forth in Section 5.1, all Customer Data will be "server ready" and otherwise remain fully compatible with OpenCities' SaaS (including all software and operating systems); and Customer has obtained all necessary rights, releases and consents to allow the Customer Data to be collected, used and disclosed in the manner contemplated by this Agreement and to grant OpenCities the rights herein.

5.3. OpenCities' Use of Customer Data. Unless it receives Customer's prior written consent, OpenCities: (a) will not access, process, or otherwise use Customer Data other than as necessary to facilitate the Services; and (b) will not intentionally grant any third party access to Customer Data, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, OpenCities may disclose Customer Data, including, without limitation, user profile information (i.e. name, e-mail address, etc.), IP addressing and traffic information, and usage history, as required by applicable law or by proper legal or governmental authority. OpenCities will give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

5.4. Protection of Customer Data. OpenCities will use commercially reasonable, industry standard administrative, physical and technical safeguards for the protection of the security, confidentiality and integrity of the Customer Data, including implementation of measures designed to prevent unauthorized access, use, modification, disclosure and loss of the Customer Data. OpenCities will archive Customer Data on a regular basis during the Term by performing 6 daily and 8 weekly backups for the purposes of disaster recovery. In the event of equipment failure or data corruption, OpenCities will restore from the most recent uncorrupted archive. In the event of corruption of all of OpenCities' archives, or in the event that an old archive is used to restore data, Customer will have the responsibility of uploading new Customer Data to Customer's Website. OpenCities will not be liable for incomplete, out-of-date, corrupt or otherwise deficient Customer Data recovered from OpenCities' backups.

5.5. No Obligation to Monitor; Right to Remove. OpenCities may, but has no obligation to, monitor, review or edit Customer Data. In all cases, OpenCities reserves the right to remove, delete or disable access to any Customer Data that OpenCities determines, in the exercise of its sole discretion, violates this Agreement (including the Acceptable Use Policy) or is illegal, damaging, problematic, objectionable or otherwise inappropriate. OpenCities may take such action without prior notification of Customer.

5.6. Privacy Policy. The Privacy Policy applies only to the Services and does not apply to any third-party website or service linked to the Services or recommended or referred to through the Services or by OpenCities staff.

5.7.   Risk of Exposure. Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that Customer, by accessing and using the Services, assumes such risks. OpenCities offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.

5.8.   Aggregate Data. Notwithstanding the provisions of this Article 5, OpenCities may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. ("Aggregate Data" refers to Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its users.)

6. CUSTOMER'S OBLIGATIONS AND RESTRICTIONS

6.1.   Acceptable Use. Customer will comply with OpenCities' AUP as in effect from time to time. Customer will not: (a) sell, resell, license, sublicense, distribute, make available, rent or lease the Services or use the Services for service bureau or time-sharing purposes or in any other way allow third parties to exploit or access the Services, except users accessing Customer's Website as specifically authorized by this Agreement; (b) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (c) use the Services to store or transmit Malicious Code; (d) share non-public SaaS features or content with any third party; (e) frame or mirror any part of the Services other than framing on Customer's own intranets or otherwise for Customer's internal business purposes; (f) reverse engineer any portion of the Services, or (g) access the Services in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Services, or to copy any ideas, parts, features, functions or graphics of the Services. In the event that it suspects any breach of the requirements of this Section 6.1, including without limitation by Customer's users, OpenCities may suspend or terminate Customer's access to the Services without advance notice, in addition to such other remedies as OpenCities may have. Neither this Agreement nor the AUP requires that OpenCities take any action against Customer or any user or other third party for violating the AUP, this Section 6.1, or this Agreement, but OpenCities is free to take any such action it sees fit. Any breach of the AUP or any of the provisions of this Article 6 will entitle OpenCities to elect to terminate this Agreement immediately upon written notice to Customer.

6.2.   Unauthorized Access; Security. Customer will take reasonable steps to prevent unauthorized access to the Services and the network, including without limitation by protecting its passwords and other log-in information. Customer will notify OpenCities immediately of any known or suspected unauthorized access to or use of the Services or breach of its security and will use best efforts to stop said breach. Customer shall not: (a) interfere with or disrupt the integrity or performance of the Services or attempt to gain unauthorized access to the Services, or OpenCities' or its suppliers' related systems and networks; (b) commit, cause or allow any breach (or do anything which might put us in breach) of any applicable law, regulation, government direction or industry standard or code; (c) attempt to or actually access the Services by any means other than through the portals or interfaces provided by OpenCities; (d) attempt to or actually override any security component included in or underlying the Services; or (e) attempt or engage in any action that directly or indirectly interfere with the proper working of or place an unreasonable load on OpenCities' infrastructure.

6.3.   Customer Data. Customer agrees that, to the extent provided by the COUNTY: (a) the Customer Data and its use will not violate, misappropriate or infringe any Intellectual Property Rights or any other personal, privacy or moral right arising under the laws of any jurisdiction, nor will same constitute a libel or defamation of any person or entity; and (b) the Customer Data will not contain any harmful components, including, but not limited to, viruses, trap doors, hidden sequences, hot keys, or time bombs. The COUNTY agrees to make reasonable efforts to notify users of the OpenCities Services of the foregoing prohibitions, and will mitigate against damage to OpenCities or the Services to the extent within COUNTY's control in the event of a user's violation of the foregoing.

6.4.   Compliance with Laws. In its use of the Services, Customer and OpenCities will comply with all applicable laws, including without limitation export control, decency, privacy and intellectual

property laws, laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Data.

6.5. **Responsibility for Users; Access to Services.** Customer is responsible and liable for: (a) its own and its users use of the Services, including without limitation for any unauthorized user conduct and any user conduct that would violate the AUP or the requirements of this Agreement applicable to Customer; and (b) any use of the Services through Customer's account, whether authorized or unauthorized. Customer agrees to indemnify OpenCities against any loss or damage that OpenCities suffers as a result of any unauthorized access to OpenCities' SaaS or network or those of OpenCities' suppliers, caused by the County's negligence.

6.6. **Required Third Party Services.** (a) Customer will establish and maintain, at its own expense, all telecommunications equipment and access lines necessary to gain access to the Services. (b) In order for OpenCities to provide some of the Services under this Agreement, Customer may at times, be required to give OpenCities access to or provide login information and password information for accounts or services Customer may have with third party providers. When Customer provides OpenCities with this information or provides OpenCities with access to these third-party accounts, Customer warrants that it has all the necessary contractual and legal rights to give OpenCities such access, login information and passwords. (c) Customer acknowledges that OpenCities will not have any responsibility or liability with regard to any third party services used by the Customer on or through the Services, as part of Customer's Website or otherwise, such as payment and e-commerce services, and any use of such third party services will be at Customer's own risk. Customer further acknowledges that the technical ability to link to such third-party services (such as the possibility of a 'PayPal' button), is provided only as part of the Services but will not be deemed to create any liability or responsibility on behalf of OpenCities. (d) Where any third-party software or services integration to the Services is found to cause performance, stability or security issues, OpenCities reserves the right to disable or remove such software or services in order to restore the Services to acceptable levels.

6.7. **Customer Representative.** Customer will appoint a designated representative who will be authorized to act as the primary point of contact for Customer in dealing with OpenCities with respect to each party's obligations under this Agreement and on a timely basis.

7. OPENCITIES IP AND FEEDBACK

7.1. **IP Rights in the Services.** OpenCities retains all Intellectual Property Rights and all other right title and interest in the Services, the Documentation, the Support Services, the Professional Services, the Custom Software and the Aggregate Data, including without limitation all software used to provide the Services, all graphics, user interfaces, logos, and trademarks reproduced through the Services that are owned by, attributed to, or developed by OpenCities or its third party suppliers, and all work product and derivative works thereof by whomever produced. This Agreement does not grant Customer any intellectual property license or rights in or to the Services or any of its components or any Documentation. Customer recognizes that the Services and its components and the Documentation are protected by copyright and other laws. The foregoing does not include any logos, trademarks, or other intellectual property owned, created or developed by COUNTY, which will remain the property of COUNTY.

7.2. **Feedback.** OpenCities has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that Customer or other users provide, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict OpenCities's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer or the user in question. Customer hereby grants OpenCities a perpetual, irrevocable right and license to exploit Feedback in any and every way. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of OpenCities's products or services.)

8. CONFIDENTIAL INFORMATION

8.1. "Confidential Information" shall have the meaning set forth in subdivision (d) Section 3426.1 of the California Civil Code. Confidential Information does not include information that: (i) is in the receiving party's possession at the time of disclosure; (ii) is independently developed by the receiving party without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the receiving party's improper action or inaction; (iv) is approved for release in writing by the disclosing party; (v) is disclosed to others without similar restrictions; or (vi) is subject to disclosure under court order or other lawful process. OpenCities acknowledges and understands that all information that is not Confidential Information as defined in this Section, including but not limited to, this Agreement, any order form, and invoices submitted for payment are subject to open records laws and regulations such as the California Brown Act and the Public Records Act, and therefore may be released, disclosed, and posted online, to and for the public without prior notice to OpenCities.

8.2. Nondisclosure. Neither OpenCities nor Customer will use Confidential Information for any purpose other than in performance of this Agreement (the "Purpose"). Each of OpenCities and Customer agrees that it: (a) will not disclose Confidential Information to any of its employees or contractors unless such persons need access in order to facilitate the Purpose and, in the case of a contractor, such contractor executes a nondisclosure agreement with the appropriate party with terms no less restrictive than those of this Article 8; and (b) will not disclose Confidential Information to any other third party without the disclosing party's prior written consent. Without limiting the generality of the foregoing, each party will protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Each party agrees that it will promptly notify the other party of any misuse or misappropriation of the other party's Confidential Information that comes to its attention. Notwithstanding the foregoing, each party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority, provided such party gives the other party prompt notice of any such legal or governmental demand and reasonably cooperates with the other party in any effort to seek a protective order or otherwise to contest such required disclosure, at the other party's expense.

8.3. Injunction. The parties agree that breach of this Article 8 would cause the disclosing party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, and that the disclosing party will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

8.4. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 8.1 above will terminate five (5) years after the date of disclosure; provided that such obligations related to Confidential Information of a party constituting trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, each party will return all copies of the other party's Confidential Information to the other party or certify, in writing, the destruction thereof.

8.5. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Each party will retain all right, title, and interest in and to all of its Confidential Information.

9. **WARRANTY DISCLAIMER**

9.1. Warranty Disclaimers. THE SERVICES ARE PROVIDED "AS IS" AND AS AVAILABLE, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND QUIET ENJOYMENT, AND ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, AND OPENCITIES DISCLAIMS SUCH WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) OPENCITIES DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM WILL

PERFORM WITHOUT INTERRUPTION OR ERROR OR IN A TIMELY FASHION; AND (b) OPENCITIES DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE. OPENCITIES DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS EXCEPT AS PROVIDED UNDER SECTION 2.4 ABOVE

10. TERM AND TERMINATION

10.1. **Term for EXHIBIT A.2.** SOFTWARE COMPANY shall commence performance no sooner than December 15, 2022 and end performance upon completion, but no later than June 30, 2023 unless otherwise directed by COUNTY or unless earlier terminated.

10.2. Termination for Cause. Either party may terminate this Agreement for the other's material breach by written notice, effective in 30 days unless the other party first cures such breach, or immediately upon written notice if the other party becomes subject to any insolvency, bankruptcy or similar proceeding, whether voluntary or involuntary. Without limiting OpenCities' other rights and remedies, OpenCities may suspend or terminate any user's access to the Services at any time, without advance notice, if OpenCities reasonably concludes such user has conducted him, her or itself in a way that is not consistent with the requirements of the AUP or the other requirements of this Agreement or in a way that subjects OpenCities to potential liability.

10.3. Effects of Termination. Upon termination of this Agreement, Customer will cease all use of the Services and delete, destroy, or return all copies of the Documentation in its possession or control, and Customer will have the right to access the Services for 30 days following termination of this Agreement to download Customer Data. If requested by Customer in writing, at the Customer's expense on a time-and-materials basis, OpenCities will provide Customer an export of the Customer Data in an industry standard format. Upon the expiration of the thirty-day period following termination of this Agreement, all Customer Data in the Services will no longer be available, and OpenCities shall have the right to delete and/or destroy all such Customer Data (including all data supplied by third parties), unless otherwise agreed by the parties in writing.

10.4. Technology Export. Customer will not: (a) permit any third party to access or use the Services in violation of any U.S. or foreign law or regulation; or (b) export any software provided by OpenCities or otherwise remove it from the United States or Canada except in compliance with all applicable laws and regulations. Without limiting the generality of the foregoing, Customer will not permit any third party to access or use the Services in, or export such software to, a country subject to an applicable embargo.

SCHEDULE A – SERVICE LEVEL AGREEMENT

Subject to the terms and conditions of this Agreement, OpenCities provides a guarantee of 99.9% uptime availability, calculated monthly. In a typical 30 day/730 hour month, this equates to no more than 1 hour of downtime per month (not inclusive of Scheduled and emergency Maintenance). For confirmed downtime during any month during the Term, Open Cities will credit Customer 1% of Customer's pro-rata monthly Base Subscription Fee for every hour of Customer's public facing website downtime over and above the 99.9% uptime guarantee, up to a maximum of 100% of the pro rata monthly Base Subscription Fee for that month.

Issue Severity Level and Measure / Guide	Resolution Process and Contact Information	Resolution Target
Priority 1 – Downtime (your public facing website or critical intranet is experiencing downtime)	• Reportable 24 x 7 via telephone (877-466-7756 x 3) • Acknowledgement and assignment of the problem for resolution within an hour.	Within 4 hours
Priority 2 – Urgent (important publishing functionality fails to work as intended, and there is no work-around available-you cannot publish content to the site)	• Reportable 24 x 7 via online helpdesk; or • Telephone during business hours (7x6 PT) 877-466-7756x2 • Acknowledgement and assignment of the problem for resolution within one business day	Provide a workaround to the problem or release a version update to fix the problem by close of next business day
Priority 3 – High (important publishing functionality fails to work as intended, but workarounds are available)	• Reportable 24 x 7 via online helpdesk • Acknowledgement and assignment of the problem for resolution within one business day	Scheduled or next version update
Priority 4 – Normal (functionality is not working as intended)	• Reportable 24 x 7 via online helpdesk • Acknowledgement and assignment of the problem for resolution within 3 business days	Within specified version update

EXHIBIT B

PAYMENT ARRANGEMENTS
Periodic Compensation at Selected Milestones

A. For CONTRACTOR and SOFTWARE COMPANY services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed $**60,000.00**. CONRACTOR is responsible to pay SOFTWARE COMPANY.

B. Payment for services and/or reimbursement of costs shall be made upon each individual performance of CONTRACTOR or SOFTWARE COMPANY's based upon the scope and methodology contained in **EXHIBIT A.1 or Exhibit A.2** as applicable and as determined by COUNTY.

C. Upon completion of the work for each milestone and/or delivery to COUNTY of item(s) specified below, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed in accomplishing each milestone. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.

Percentage of Total Contract Amount	Milestone Description	Maximum Amount Chargeable
50%	Contract Execution	$30,000.00
50%	Project Completion	$30,000.00

The final milestone payment above shall not be made until all services have been completed and item(s) as specified in **EXHIBIT A.1** have been delivered and found to be satisfactory.

D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR or SOFTWARE COMPANY individually as applicable to correct such work or billings or seek any other legal remedy.

E. There is no provision for travel expenses or travel time for this project because this project does not require onsite resources. Travel will not be conducted unless an Amendment to this Agreement is completed inclusive of travel expense terms and conditions, is signed prior to travel commencing.

Exhibit C
Indemnification and Insurance Requirements
(For Professional Contracts)

A. <u>INDEMNIFICATION BETWEEN COUNTY AND CONTRACTOR</u>

1. CONTRACTOR agrees to indemnify, defend and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement due to the willful misconduct or gross negligence of CONTRACTOR and will pay for any costs (including but not limited to attorneys' fees) and damages incurred by COUNTY on account of such claim except where such indemnification is prohibited by law, provided that COUNTY provides: (a) CONTRACTOR notice of such claim as soon practical and in no event later than would reasonably permit CONTRACTOR to respond to such claim, (b) reasonable cooperation to CONTRACTOR, at CONTRACTOR's expense, in the defense and/or settlement of such claim, and (c) CONTRACTOR exclusive control of the defense, litigation, and settlement of such claim, except that COUNTY is entitled to (i) regular updates on proceeding status; (ii) employ its own counsel, at its own expense, and participate in the defense; (iii) retain control of the defense, at its own expense, of any portion of the claim to the extent that any principles of County government or public law, or issues involving COUNTY employees, are involved or challenged; and (iv) the right to consent (not to be unreasonably withheld, delayed, or conditioned) to the settlement entry of any judgment of any claim, action or proceeding, involving direct payment by COUNTY to a third party. CONTRACTOR's indemnification obligation does not apply to COUNTY's sole negligence or willful misconduct.

2. CONTRACTOR warrants that any Deliverables and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Deliverables or other items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims.

B. <u>INDEMNIFICATION BETWEEN COUNTY AND SOFTWARE COMPANY</u>

1. <u>Indemnification of Customer.</u> Subject to the other provisions of this Section B.3, OpenCities will defend Customer and the employees, directors, and authorized users of the OpenCities Services (collectively, "Indemnified Parties") against any third party claim, suit, or proceeding alleging that the Services or the permitted use thereof infringes any U.S. trademark, patent, copyright, or trade secret right of a third party (collectively, "Customer Indemnified Claims") and will indemnify Indemnified Parties from any damages, attorney's fees and costs finally awarded against Indemnified Parties for any Customer Indemnified Claim, to the extent Indemnified Parties notified SOFTWARE COMPANY of the Customer Indemnified Claims, permitted SOFTWARE COMPANY sole control and authority with respect to the settlement or defense of such claim to the extent permitted by law, and provided reasonable assistance and cooperation with respect to such defense or settlement. Customer is not permitted to enter into any settlement for a Customer Indemnified Claim unless approved by SOFTWARE COMPANY in writing. The County has a right to consent to any settlement and that such consent will not be unreasonably withheld.

2. If in OpenCities reasonable judgment any Customer Indemnified Claim, or threat of any such Claim, materially interferes with Customer's use of the Services, OpenCities will, after

consultation with Customer, at OpenCities' option and in its sole discretion, either (i) substitute functionally equivalent non-infringing Services or Documentation; (ii) modify the Services to make them non-infringing, (iii) obtain for Customer at OpenCities' expense the right to continue using the infringing Services; or, (iv) if OpenCities determines that it cannot achieve any of the foregoing on a reasonable commercial basis, it may, by written notice, require Customer to cease using the Services, in which case OpenCities, or, as applicable, its authorized reseller, shall refund Customer a pro-rata portion of the Fees paid for the Services for such period of time for which Customer was unable to use the Services.

3. OpenCities' obligations set forth in this Section B.1 do not apply to the extent that a Customer Indemnified Claim arises out of: (i) Customer's breach of this Agreement; (ii) revisions or modifications to the Services or any components thereof made by a party other than OpenCities if such infringement would not have occurred but for such revisions or modifications; (iii) Customer's failure to incorporate or use any Version Updates, or any other updates or upgrades that would have avoided the alleged infringement; (iv) inclusion of the Customer Data; (e) the use of the Services other than for its intended purposes or contrary to OpenCities' Specifications; or (v) the combination, operation or use of the Services with equipment, programs, hardware or software not provided by OpenCities to the extent that absent such combination, operation or use the infringement would not have occurred. (c)The provisions of this Section B.1 state OpenCities entire liability and Customer's remedy in the event of any Customer Indemnified Claim.

4. <u>Indemnification of OpenCities.</u> Customer will indemnify and defend OpenCities and OpenCities' Associates (as defined below in Section B.3) against any and all claims, liabilities, losses, damages, costs and expenses (including attorneys fees and costs) (a) arising out of or related to Customer's or its users' alleged or actual use or misuse of, or failure to use the Services, including without limitation: (b) claims by Customer's users or by Customer's employees or agents; (c) claims related to unauthorized disclosure or exposure of personally identifiable information or other private Confidential Information, including Customer Data; (d) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by any Customer Data; and (e) claims that use of the Services harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising (collectively, "OpenCities Indemnified Claims").

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

As applicable to each individually, each indemnifying party will notify all indemnified parties promptly in the event of any damage to property or third-party claim arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

As applicable to each individually, CONTRACTOR and SOFTWARE COMPANY shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR or SOFTWARE COMPANY, its agents, representatives, employees or subcontractors.

A. <u>Minimum Scope of Insurance</u>

Coverage shall be at least as broad as:

1. **Commercial General Liability (GGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than $1,000,000 per occurrence and $2,000,000 in the aggregate.
2. **Automobile Liability**: (SO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than $1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the CONTRACTOR's profession, with limit of no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate.

B. Other Insurance Provisions
   The insurance policies are to contain or be endorsed to contain, the following provisions:
   1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR or SOFTWARE COMPANY, as applicable, including materials, parts, or equipment furnished in connection with such work operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

   2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's or SOFTWARE COMPANY's separate and individual, as applicable to each, insurance coverage shall be primary insurance as respect to the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's or SOFTWARE COMPANY's insurance and shall not contribute with it.

   3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.

   4. **Waiver of Subrogation of Rights** – CONTRACTOR and SOFTWARE COMPANY each individually hereby grant to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR or SOFTWARE COMPANY may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR and or SOFTWARE COMPANY agree to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

   5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR, SOFTWARE COMPANY, or both, to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management Accent insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".

7. **Verification of Coverage** – CONTRACTOR and SOFTWARE COMPANY each individually shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's or SOFTWARE COMPANY's obligation to provide them. The CONTRACTOR and SOFTWARE COMPANY each individually shall furnish evidence of renewal of coverage throughout the term of the Agreement.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of this Agreement.

9. **Subcontractors** – CONTRACTOR and SOFTWARE COMPANY each individually shall require and verify that all subcontractors contracted to perform services directly for or on behalf of COUNTY maintain insurance meeting all the requirements stated herein and shall ensure that COUNTY is listed as an additional insured or insurance required from subcontractors.

10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
    i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
    ii. Insurance must be maintained and evidence of insurance must be provided for at least two (2) years after completion of contract work.
    iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR and SOFTWARE COMPANY each individually must purchase "extended reporting" coverage for a minimum of two (2) years after completion of contract work.

11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR and SOFTWARE COMPANY each individually agrees to execute any such amendment with agreed-upon insurance modifications within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the COUNTY.