

RESOLUTION NO. 2018-08-038R

**A RESOLUTION AUTHORIZING ENTRY INTO ELECTRONIC
DOCUMENT RECORDING SERVICE AGREEMENT**

**(Electronic Filing Agreement for Filing Documents with Champaign
County Recorder's office)**

WHEREAS, the City of Urbana (the "City") is an Illinois home rule unit of local government pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and the statutes of the State of Illinois; and

WHEREAS, the City staff, on a routine and regular basis, records various documents including, but not necessarily limited to liens on property, with the Champaign County Recorder's Office; and

WHEREAS, in order to record documents with the Champaign County Recorder's Office, City staff must travel to the Brookens Administrative Center, located at 1776 E. Washington Street, Urbana, Illinois, which travel consumes staff time which could be used more efficiently in the performance of the City's business and affairs; and

WHEREAS, Simplifile, LC, a Utah-based company, has entered into a contractual arrangement with the Champaign County Recorder's Office that allows persons who file documents with the said Recorder's Office to do so electronically and from their respective locations; and

WHEREAS, the City Council deems it appropriate for the City to enter into an agreement with Simplifile, LC in order to permit City staff to have the ability to file documents with the said Recorder's Office electronically.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Urbana, Illinois, resolves as follows:

Section 1.

The Mayor of the City of Urbana, Illinois, shall be and hereby is authorized to enter into, on behalf of the City, the Master Services Agreement with Simplifile, LC in substantially the form of the exhibit appended hereto and made a part hereof.

Section 2.

The Mayor of the City of Urbana, Illinois, shall be and hereby is authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, and the City Clerk shall be and hereby is authorized to attest to said execution of the said Master Services Agreement in substantially the form of the exhibit appended hereto and made a part hereof.

PASSED BY THE CITY COUNCIL this ____ day of _____, 2018

Charles A Smyth, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, 2018.

Diane Wolfe Marlin, Mayor

Master Services Agreement (MSA)

This Master Services Agreement (the "Agreement") is entered into and made effective as of this ___ day of June, 2018 (the "Effective Date"), by and between Simplifile, LC, a Utah limited liability company located at 5072 North 300 West, Provo, Utah 84604 ("Service Provider"), and **the City of Urbana** located at **400 S. Vine Street, Urbana, Illinois 61801** ("Customer") with respect to the facts set forth below. Throughout this Agreement any reference to "Customer" shall include not only **the City of Urbana** but also any employee, contractor, manager, member, director, officer, shareholder, agent or representative of Customer; provided that as set forth in Section 2.d below.

RECITALS

- A. Customer recognizes and acknowledges that Service Provider's Confidential Information constitutes a valuable, special, and unique asset and that the provisions of this Agreement are necessary to protect it.
- B. Customer desires to obtain access to Service Provider's web-based software application and services for the purpose of submitting documents for recording with the Champaign county recorder of deeds office, pursuant to the terms and conditions of this Agreement; and
- C. Pursuant to the terms and conditions of this Agreement, Customer desires to subscribe the Right to Use from Service Provider and Service Provider desires to subscribe the Right to Use and the Customer Application to Customer under the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, in exchange for their mutual covenants and promises contained herein, each intending to be legally bound hereby, and in consideration of the following mutual promises and covenants, the parties hereby agree as follows:

1. Definitions. Capitalized terms shall have the meaning set forth herein.
 - a. Confidential Information. The term "Confidential Information" shall mean all data, trade secrets, business information and other information of any kind and in whatever form whatsoever, including data developed or produced through access to Confidential Information that a party ("Discloser") discloses, in writing, orally, visually or in any other medium, to the other party ("Recipient") or to which Recipient obtains access by reason of an act or omission by Discloser. A "writing" shall include an electronic transfer of information by e-mail, in written form over the Internet or otherwise. Information shall not be considered confidential to the extent that Recipient can establish by competent proof that it:
 1. Is publicly disclosed through no fault of Recipient, either before or after it becomes known to Recipient; or
 2. Was known to Recipient prior to the date of this Agreement, which knowledge was acquired independently and not from Discloser (or Discloser's employees); or
 3. Is subsequently disclosed to Recipient in good faith by a third party who has a right to make such disclosure; or
 4. Has been published by a third party as a matter of right; or
 5. Is otherwise in the public domain.
 6. In the event that Confidential Information is required to be disclosed by law or court order, in which event Recipient shall limit the same to the minimum required to comply with the law or court order, and prior to making such disclosure. If possible, Recipient shall notify Discloser, not later

than ten (10) days before the disclosure in order to allow Discloser to comment and/or to obtain a protective or other order, including extensions of time and the like, with respect to such disclosure.

- b. Customer Application. The term “Customer Application” shall mean any applications of Service Provider that allow the Customer to access Customer Services rendered by Service Provider under the terms of this Agreement.
- c. Customer Services. The term “Customer Services” shall mean any services provided by Service Provider pursuant to this Agreement, limited to those services selected by Customer in the applicable Service Addendum, which is attached to this Agreement and is incorporated herein by reference.
- d. Intellectual Property Right. The term “Intellectual Property Right” shall mean any patent, patent application, copyright, moral right, trade name, trademark, service mark, trade secret, and any applications or right to apply for registration therefore, internet domain names, logos, designs, slogans, and general intangibles of like nature, computer software programs or applications, tangible or intangible proprietary information, know-how, proprietary processes, formulae, algorithms, or any other intellectual property right, whether registered or unregistered, and whether first created before or after the effective date of this Agreement that is owned by Service Provider.
- e. Right to Use. The term “Right to Use” shall mean Customer’s collective right to use the Customer Application and the Customer Services.
- f. User. The term “User” shall mean each person or entity that has access to any of the Customer Services through the Customer Application.

2. Grant of Right to Use; Intellectual Property Rights.

- a. Grant of Right to Use. Subject to the terms and conditions of this Agreement, and in consideration of Customer’s payment of all applicable fees set forth in Section 3 below, Service Provider grants to Customer a non-subscribable, nonexclusive, nontransferable right to internally use and access the Customer Service vis-à-vis the Customer Application solely for Customer’s business operations as referenced in this Agreement during the term of this Agreement.
- b. Retention of Rights; Responsibility for Equipment. As between the parties, Service Provider retains all right, title, and interest to all Intellectual Property Rights in its Customer Application and the Customer Services, and any copies thereof. Customer shall only be entitled to use the Right to Use as specified herein. Nothing in this Agreement grants Customer any right, title, Right to Use or interest in or relating to the source code of the Customer Application. Any third-party software embedded, included or otherwise provided by Service Provider for use with the Customer Application may only be used in conjunction with such Customer Application. The Customer Application is designed for use with certain equipment and accessories. Service Provider assumes no responsibility under this Agreement for obtaining or providing such equipment. Customer is also responsible for ensuring a proper environment and proper utilities for the computer system with which the Customer Application will be used.
- c. Maintenance of Intellectual Property Rights; Protection of Customer Application. Customer agrees to maintain all of the Intellectual Property Rights included in the Right to Use and shall not (nor shall it allow any third party to): (i) reverse engineer, decompile, translate, disassemble or attempt to discover any source code or underlying ideas or algorithms of any part or all of the Customer Application (except to the extent such restriction is prohibited by applicable local law in order to obtain interoperability), (ii) sell, lease, lend, disclose, or use for timesharing or service bureau purposes any part or all of the Customer Application, (iii) use, provide, or allow others to use Customer Application for the benefit of any third party, (iv) use Customer Application, or allow the transfer, transmission, export, or re-export of any Customer Application, or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department’s Bureau of Export Administration, the U.S.

Department of Treasury's Office of Foreign Assets Control, or any other applicable government agency, or (v) except as otherwise set forth in this Agreement reset or disable the Customer Application.

- d. Sub-Subscribing Prohibited. Customer shall have no right to subscribe or sub-subscribe any of the foregoing to any party with respect to the rights conferred upon Customer under this Agreement without the express written consent of Service Provider. Notwithstanding the foregoing, Service Provider recognizes and acknowledges that more than one of Customer's employees will be using those of Service Provider's services as provided in Section 3 of this Agreement.
 - e. No Other Right to Use. This Agreement confers no additional rights to use or other rights by implication, estoppel, or otherwise under any patent applications or patents of Service Provider other than the Right to Use regardless of whether such patents are dominant or subordinate to the Right to Use.
3. Right to Use Fees. Customer agrees to pay the following fees and costs to Service Provider in exchange for the Right to Use:
- a. Fees. Customer shall pay to Service Provider those fees (the "Fees") for those services set forth in the applicable Service Addendum.
 - b. Customer Support. Service Provider will provide Customer with customer support Monday through Friday from 6:00 a.m. to 6:00 p.m., Mountain Time, excluding Service Provider's observed holidays, which include Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the date after Thanksgiving, Christmas Eve day, Christmas Day, New Year's Eve, New Year's Day. Emergency support is available outside the normal help desk support times twenty-four (24) hours each day, seven (7) days per week. Access to customer support or emergency support shall be made to the following e-mail address or the following toll-free number:

Toll-free Number: 800.460.5657
E-mail address: support@simplifile.com
 - c. Payment of Taxes. The parties acknowledge that Customer is a unit of local government in the State of Illinois and, as such, is not obligated to pay any sales, use or other taxes.
4. Payment of Fees. Customer agrees to pay the Fees set forth in the applicable Services Addendum, as amended or added to. Service Provider reserves the right to suspend its service to Customer upon five (5) days' notice to Customer if Customer's account becomes delinquent (meaning, any payment of Fees set forth in an Invoice is not paid within the time frame set forth in the applicable Services Addendum, as amended or added to). Customer agrees that it shall be liable for all costs of collection of any delinquency, including collection agency fees, reasonable attorney's fees, and court costs.
5. Ownership.
- a. Ownership by Service Provider. Service Provider retains all rights, title and interest in and to the Customer Services and the Customer Application as delivered by Service Provider to Customer hereunder, along with all updates, modifications or improvements and all documentation related thereto and all intellectual property rights embodied in any of the foregoing.
 - b. Service Provider Trademark Ownership. Customer acknowledges that Service Provider owns or holds exclusive rights in and to any and/or all of its Intellectual Property Rights. As such, without the express written consent of Service Provider, Customer will not use any Intellectual Property Rights as part of any of its product, service, domain, sub-domain or company names and will not take nor authorize any action inconsistent with Service Provider's exclusive trademark rights during the term of this Agreement or thereafter. Nothing in this Agreement grants Customer ownership or any rights in or to use the Intellectual Property Rights. Subject to Customer's rights under and except as otherwise set forth in this Agreement, Service Provider will have the exclusive right to own, use, hold, apply for registration for, and register its Intellectual Property Rights during the term of this Agreement and after the expiration or termination of

this Agreement, in any country worldwide. Customer shall not use any brands or trademarks to identify any component of the Right to Use other than those designated by Service Provider.

6. Service Level Commitment.

- a. Availability. Service Provider intends to provide Availability of any services required hereunder during 99.9% of each month during the term of this Agreement, where "Availability" refers to any User's ability to access and run the Customer Application, and as further defined in Section 6.b below. If Service Provider fails to meet Availability for three (3) consecutive calendar months, Customer may terminate this Agreement upon thirty (30) days' prior written notice to Service Provider at any time). During each month where Service Provider fails to achieve the aforementioned level of service, the fees due to Service Provider by Customer will be reduced by 1% for each 1% loss in "Availability", up to a maximum of a 5% reduction in fees.
- b. Availability Defined. "Availability" percentage shall be calculated as the product of 100 times a fraction, the numerator of which is the number of hours that services are provided by Service Provider in a particular month and the denominator of which is the total number of hours during the month, less the hours during which service is interrupted for any of the following reasons:
 1. Scheduled maintenance windows (which shall include, without limitation, the following): Service Provider reserves the right to discontinue service for (i) up to six (6) hours each Saturday/Sunday between the hours of 11:00 p.m. on Saturday and 6 a.m. on Sunday Mountain Time; and (ii) between the hours of 6:00 pm and 6:00 am on any day Mountain Time if the Customer is given 48-hour notice (such notice does not include weekends) of such scheduled maintenance.
 2. Reasons of force majeure, including any unforeseen event beyond the control of that Service Provider that prevents it from performing its obligations under the contract;
 3. Issues associated with Customer's personal computers, local area networks or Internet Service Provider connections;
 4. Customer's use of unapproved or modified hardware or software;
 5. Issues arising from the misuse of the Customer Application by Customer or any User; and/or
- c. Limitations. The commitments and obligations set forth in this Section 6 shall not apply if any part of the Right to Use is not used by Customer in accordance with the specifications or documentation provided to Customer by Service Provider or to unauthorized actions of Customer or others authorized by Customer to use the Customer Application under the Agreement. In addition, Service Provider will not be responsible for any damages or costs incurred by Customer, if any, for any lack of Availability that occurs during the scheduled maintenance windows set forth in Section 6.b.1.

7. Indemnity. Customer hereby agrees to indemnify, defend and hold harmless Service Provider and any parent, subsidiary or other affiliated entity and their trustees, directors, officers, members, managers, employees, programmers, contractors, agents, successors, assigns and other representatives (collectively, the "Indemnitees") from and against all damages, claims, liabilities, losses and other expenses, including without limitation reasonable attorney's fees, expert witness fees and costs, arising from claims asserted by third parties ("Claim"), that arise out of or relate to (a) Customer's (which shall include any of Customer's officers, employees, programmers, contractors, agents, successors, assigns and other representatives, known hereafter as the "Indemnitors") misuse of any part of the Right to Use, (b) Indemnitors' transactions with third parties or the operation of their respective businesses, (c) the negligent or willful acts or omissions of an Indemnitor; except to the extent any Claim arises out of any negligent action, or failure to act, by Service Provider or Service Provider's breach of any law or regulation, or breach of this Agreement by Service Provider. An Indemnitor shall not enter into any settlement of such claims, that admits liability on behalf of Service Provider without Service Provider's prior written consent, which consent shall not be unreasonably withheld or denied. Indemnitees, at their expense, shall have the right to retain separate independent counsel to assist in defending any such claims.

In the event Customer fails to properly indemnify and defend such claims and or pay Indemnitees expenses as provided above, Indemnitees shall have the right to defend themselves, and in that case, Customer shall reimburse Indemnitees for all of their reasonable attorney's fees, costs and damages incurred in settling or defending such Claims.

Service Provider agrees to indemnify and pay all costs to defend the Customer in the event the Customer is named as a Defendant in a suit, claim or proceeding by a third party pertaining to the Right to Use, or any infringement on any patent, trademarks, service mark, logo or copyrights or related rights of a third party which are protected under law and that would materially affect the Right to Use. In any such case, in which Customer is named, Service Provider shall provide prompt notice to Customer and Customer may, but shall not be required to retain separate counsel to represent Customer in the defense of any of the aforesaid. Further, Service Provider agrees to indemnify and pay all costs to defend Customer and its officers, employees, agents and representatives and their respective executors, administrators, trustees, heirs, beneficiaries, agents, representatives and successors in the event the Customer is named as a Defendant in a suit, claim or proceeding by a third party which suit, claim or proceeding is based on a negligent act or omission by Service Provider or any of Service Provider's members, managers, employees, programmers, contractors, agents, successors, assigns and other representatives.

8. Limited Warranty; Limitation of Liability.

- a. Limited Warranty. OTHER THAN THE WARRANTIES ALREADY SET FORTH IN THIS AGREEMENT, SERVICE PROVIDER MAKES NO OTHER WARRANTIES CONCERNING THE RIGHT TO USE OR ANY OTHER MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR ARISING OUT OF COURSE OF CONDUCT OR TRADE CUSTOM OR USAGE, AND SERVICE PROVIDER DISCLAIMS ALL SUCH EXPRESS OR IMPLIED WARRANTIES. SERVICE PROVIDER MAKES NO WARRANTY OR REPRESENTATION AS TO THE VALIDITY OR SCOPE OF RIGHT TO USE, OR THAT SAID RIGHT TO USE WILL BE FREE FROM AN INFRINGEMENT ON PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR THAT NO THIRD PARTIES ARE IN ANY WAY INFRINGING UPON ANY RIGHTS INCLUDED IN THE RIGHT TO USE COVERED BY THIS AGREEMENT. FURTHER, SERVICE PROVIDER HAS MADE NO INVESTIGATION AND MAKES NO REPRESENTATION THAT THE RIGHT TO USE IS SUITABLE FOR CUSTOMER'S PURPOSES.
- b. Limitation of Liability. EXCEPT WITH RESPECT TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SERVICE PROVIDER OR SERVICE PROVIDER'S PERSONNEL ARISING OUT OF SERVICE PROVIDER'S OBLIGATIONS AS SET FORTH IN THIS AGREEMENT OR SERVICE PROVIDER'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 7 ABOVE, AS TO WHICH THE FOLLOWING LIMITATIONS DO NOT APPLY, IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR EXPECTED SAVINGS OR OTHER ECONOMIC LOSSES, OR FOR INJURY TO PERSONS OR PROPERTY) IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER.

IN ADDITION, EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SERVICE PROVIDER OR SERVICE PROVIDER'S PERSONNEL ARISING OUT OF SERVICE PROVIDER'S OBLIGATIONS AS SET FORTH IN THIS AGREEMENT OR SERVICE PROVIDER'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 7 ABOVE, THE CUMULATIVE LIABILITY OF SERVICE PROVIDER AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, MANAGERS, ATTORNEYS OR AGENTS FOR DAMAGES FOR CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, WILL NOT EXCEED ONE-HUNDRED PERCENT (100%) OF THE FEES PAID, BY CUSTOMER FOR THE MOST RECENT 12 MONTHS AS DETERMINED BY SERVICE PROVIDER, FOR THE RIGHT TO USE AND RELATED SERVICES UNDER THIS AGREEMENT.

THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS SECTION 8.2 SHALL APPLY TO ALL CLAIMS AND ACTIONS OF ANY KIND AND ON ANY THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER GROUNDS, AND REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Notwithstanding anything to the contrary in any Schedule or any other documents or agreements exchanged between the parties, this Section 8 sets forth the only limitation of liability in effect between the parties.

9. Confidentiality.

- a. Treatment of Confidential Information. The parties agree that during the term of this Agreement, and for a period of five (5) years after this Agreement expires or terminates, any Recipient (as that term is defined in Section 1(b) above) receiving Confidential Information of the Discloser (as that term is defined in Section 1(b) above) will maintain in confidence such Confidential Information to the same extent such party maintains its own proprietary information; not disclose such Confidential Information to any third party without the prior written consent of the other party; and not use such Confidential Information for any purpose except those permitted by this Agreement; provided that Service Provider may use Customer's Confidential Information as necessary in the performance of Service Providers services for the benefit of the Customer as set forth in this Agreement. Service Provider agrees that Customer and its subcontractors shall be permitted to disclose information that relates to the subject matter claimed in the Right to Use in connection with the exercise of the rights included in the Right to Use hereunder by Service Provider to Customer as long as the disclosure of such information is protected under written obligations of confidentiality which are at least as restrictive as those contained in this Agreement. A "third party" shall not include (1) Affiliates of Customer; (2) Recipient's employees or officers; (3) Affiliates of Recipient, its independent contractors at any level, agents and consultants, provided that all such persons are subject to a written confidentiality agreement that shall be no less restrictive than the provisions of this Section 9(a), evidence of which shall be provided to Customer upon request; (4) pursuant to the exceptions set forth in 15 U.S.C 6802(e) and accompanying regulations, which disclosures are made in the ordinary course of business and (5) as required by law or as otherwise expressly permitted by this Agreement. Upon expiration or termination of this Agreement for any reason, Discloser shall promptly return to Customer, at Customer's election, all Customer Confidential Information in the possession of Discloser, subject to and in accordance with the terms and provisions of this Agreement.
- b. Non-Disclosure of Confidential Information. A Recipient shall take reasonable steps to prevent unauthorized disclosure or use of Discloser's Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Recipient shall not disclose Confidential Information of Discloser to any person or entity other than its employees, contractors and consultants who need access to such Confidential Information in order to affect the intent of this Agreement and who have entered into confidentiality agreements which protect the Confidential Information of Discloser sufficient to enable Recipient to comply with this Section 9(b). Recipient shall immediately give notice to Discloser of any unauthorized use or disclosure of Discloser's Confidential Information. Recipient agrees to assist Discloser to remedy such unauthorized use or disclosure of its Confidential Information. It is understood that Service Provider shall have the right to use information relating to any statements of errors and other error reports in connection with its products and services, including without limitation for purposes of modifying its products and resolving problems with other customers and developers; provided that Service Provider will treat the identity of Customer as the source of the respective error report as Confidential Information of Customer in accordance with this Section 9(b).
- c. Acknowledgement. Discloser acknowledges that Recipient has a responsibility to its customers and other consumers using its services to keep Confidential Information strictly confidential.

- d. Notice of Action Affecting Confidential Information. To the extent legally permitted, Recipient shall notify Discloser of any actual or threatened requirement of law to disclose Confidential Information promptly upon receiving actual knowledge thereof and shall cooperate with Discloser's reasonable, lawful efforts to resist, limit or delay disclosure. Nothing in this Section 9.d shall require any notice or other action by Recipient in connection with requests or demands for Confidential Information by bank external examiners, regulators or others with lawful enforcement and oversight powers with respect to Recipient or its Affiliates. Service Provider recognizes and acknowledges that Customer is a unit of local government in the State of Illinois and, thus, is obligated to respond to requests for records under the State of Illinois' Freedom of Information Act (5 ILCS 140/1 et seq.). In the event Customer receives a request for records pursuant to the State of Illinois' Freedom of Information Act that seeks Service Provider's Confidential Information, Customer shall provide Service Provider with prompt notification of such request. Service Provider shall promptly identify to Customer the records that Service Provider believes are confidential, trade secret, proprietary, and/or privileged. Where reasonable, it shall be the responsibility of Service Provider to identify and mark as "Confidential" any and all records which Service Provider provides to Customer and which Service Provider believes are confidential, trade secret, proprietary, and/or privileged at the time Service Provider provides such information to Customer.
- e. Use of Logos; Disclosure of Relationship. Without the prior written approval of the other party hereto, neither party shall issue any media releases, public announcements and public disclosures, relating to this Agreement or use the name or logo of the other party, including, without limitation, in promotional or marketing material or on a list of customers, provided that nothing in this paragraph shall restrict any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the releasing party
- f. Confidential Information Property of Discloser. All Confidential Information disclosed by a Discloser and any results of processing such Confidential Information or derived in any way therefrom shall at all times remain the property of Discloser. The Recipient shall have responsibility for and bear all risk of loss or damage to Confidential Information and damages resulting from improper or inaccurate processing of such data arising from the gross negligence or willful misconduct of the Recipient, its representatives, Affiliates or subcontractors.
- g. Protection of Confidential Information. During the course of performance under this Agreement, a Recipient shall ensure the following:
1. Adequate governance and risk assessment processes are in place to maintain controls over Confidential Information.
 2. Upon request from Discloser, notification to Discloser of changes that may impact the security of Confidential Information. Such changes requiring notification include, by way of example and not limitation, outsourcing of computer networking, data storage, management and processing or other information technology functions or facilities and the implementation of external Web-enabled (Internet) access to Confidential Information.
 3. Use of strong, industry-standard encryption of Confidential Information transmitted over public networks (e.g. Internet, non-dedicated leased lines).
- h. Virus/Malicious Code Prevention. Service Provider shall use the latest, commercially available virus and malicious code detection and protection products on all workstations and servers used to provide goods and services to Customer; and shall report all occurrences of viruses and malicious code that are not successfully resolved by deployed detection and protection measures on any workstation or server used to provide goods or services to Customer as soon as possible after discovery.

Service Provider shall promptly notify Customer if Service Provider becomes the subject of any regulatory or other investigation or of any government or other enforcement or private proceeding relating to its data handling practices.

i. Privacy Laws.

1. "Privacy Laws" means the privacy provisions contained in the Gramm-Leach Bliley Act, Title V, Subtitle A, 15 U.S.C. § 6801 et seq., ("GLB Act"), the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. and all other applicable federal and state privacy and data protection laws and all implementing regulations thereof.
 2. Security. Service Provider shall implement and maintain, at all times during the term of this Agreement, commercially reasonable security so as to protect Customer data. Service Provider's security policies shall at a minimum contain provisions for the following: (A) a privacy policy and an information security program containing commercially reasonable and appropriate measures to maintain the security of Customer's Confidential Information, including without limitation, the data and Nonpublic Personal Information under the GLB Act, to comply with the objectives of the Privacy Laws and in conformance with the information and physical security procedures described in Service Provider's current security procedures, already provided to Customer. Service Provider shall comply with all of its security policies and procedures provided by Service Provider for Customer's review. In no event shall Service Provider's security procedures with respect to such Confidential Information be less than that required by the applicable legal requirements, including without limitation the Privacy Laws; (B) in no event shall Service Provider reduce or diminish the security measures that it uses to protect Customer's Confidential Information, including without limitation the data and Nonpublic Personal Information, stored therein as of the Effective Date of this Agreement; (C) access to and use of Customer data must be in accordance with this Agreement, and local legal and regulatory requirements for trade and business secrecy, and data privacy and protection, including the federal GLB Act, the federal Fair Credit Reporting Act ("FCRA") and the Securities and Exchange Commission Privacy of Consumer Financial Information ("Regulation S-P") where applicable; (D) all non-public Customer data must be secured using industry standard encryption technology, such as 128-bit encryption, PGP key-based encryption or password protected zip files, when: (i) stored on transportable media without physical access protection, (ii) transmitted over the Internet, (iii) transmitted over networks to which third parties may have access (e.g., shared backbones), or (iv) accessed remotely; (E) Service Provider shall have and enforce policies and procedures for secure information disposal. Where consumer report information is concerned, disposal methods must be in compliance with local legal, regulatory and federal requirements including Rule 30(b) of SEC Regulation S-P; (F) backup media containing non-public Customer information must be maintained and stored in a secure safe location and in accordance with company documented records retention policies; and (G) areas, buildings and rooms which house critical systems and networks supporting Customer data or applications must be protected with physical security measures that prevent unauthorized persons from gaining access. "Nonpublic Personal Information" is defined herein as personally identifiable financial information (i.e., information that is provided by a consumer in order to obtain a financial product or service, results from a transaction with a bank involving a financial product or service, or is otherwise obtained by the bank in connection with providing a financial product or service to the consumer) that is not publicly available.
- j. Publicly Recorded Data. Customer acknowledges that (1) Service Provider may provide recorded data filed through the Customer Application to third parties associated with a transaction and (2) that such recorded data does not consist of nor contain Confidential Information as they are publicly filed by permission of Customer.

10. Term and Termination.

- a. Term. Unless terminated early in accordance with the provisions of Section 10.b or 10.c, this Agreement shall take effect on the date of its acceptance by Service Provider and shall continue in effect for one (1) year, subject to an automatic renewal unless either party gives written termination notice to the other party sixty (60) days prior to each yearly anniversary date of execution of this Agreement.
- b. Termination by Customer. Customer may terminate this Agreement as follows:
1. Pursuant to Section 6.a above;
 2. If Service Provider defaults in its indemnification obligations under Section 7, which such termination shall be deemed or construed as waiving or releasing Service Provider from its obligations under Section 7;
 3. If Service Provider becomes insolvent, makes an assignment for the benefit of creditors, or has a petition in bankruptcy filed for or against it. Such termination shall be effective immediately upon Customer giving written notice to Service Provider;
 4. If any of Service Provider's members, managers, directors or officers is convicted of a felony, and all rights of appeal with respect thereto have been exhausted.
 5. Except as provided in subparagraphs 1-4 above, if Service Provider defaults in the performance of any obligations under this Agreement and the default has not been remedied within sixty (60) days after the date of notice in writing of such default by Service Provider.
- c. Termination by Service Provider. Service Provider may terminate this Agreement as follows:
1. If Customer does not make a payment due hereunder and fails to cure such non-payment (including the payment of interest in accordance with Section 4.a) within ten (10) days after the date of notice in writing of such non-payment by Service Provider;
 2. If Customer defaults in its indemnification obligations under Section 7;
 3. If Customer becomes insolvent, makes an assignment for the benefit of creditors, or has a petition in bankruptcy filed for or against it. Such termination shall be effective immediately upon Service Provider giving written notice to Customer;
 4. If, in the reasonable opinion of Service Provider, Customer (i) takes any action, or fails to act, that will likely cause substantial financial harm or substantial injury to the reputation of Service Provider, or (ii) engages in any willful violation of any law, rule or regulation applicable to Customer's duties hereunder, or material breach of any provision of this Agreement.
 5. Except as provided in subparagraphs 1-4 above, if Customer defaults in the performance of any obligations under this Agreement and the default has not been remedied within sixty (60) days after the date of notice in writing of such default by Service Provider.
- d. Rights Upon Expiration. Neither party shall have any further rights or obligations upon the expiration of this Agreement upon its regularly scheduled expiration date other than the obligation of Customer to make any and all payments for the final monthly period based on Service Provider's final report. Provided, however, that upon such expiration, each party shall be required to continue to abide by the following sections of this Agreement: (1) all non-disclosure and confidentiality obligations as described in Section 9; (2) Customer's obligation to indemnify Service Provider as described in Section 7; (3) payment of fees as set forth in Sections 3, 4, 10.c and 10.d; and (4) any liability limitations set forth in Section 8. In addition, Customer shall be required to abide by his or her obligations to make full payment of all Fees set forth in Sections 3 and 4.

- e. Rights Upon Termination. Notwithstanding any other provision of this Agreement, upon any termination of this Agreement prior to the regularly scheduled expiration date of this Agreement, (1) the Right to Use granted hereunder shall terminate and revert to Service Provider; (2) no party shall have any further right to develop, manufacture or market any part of the Confidential Information of the other party; and (3) each party shall promptly return all materials, samples, documents, information, and other materials that embody or disclose any part of the Confidential Information of the other party; provided, however, that no party shall be obligated to provide the other party with any information that the party can show it independently developed. Any such termination shall not relieve either party from any obligations accrued to the date of such termination. Upon such termination, each party shall be required to abide by its nondisclosure obligations as described in Section 9 which shall survive such termination. Each party's obligation to indemnify the other party as described in Section 7, and Sections 5, 8 and 11 shall also survive the termination of this Agreement. In addition, Customer shall be required to abide by his or her obligations to make full payment of all Fees set forth in Sections 3 and 4.
- f. Suspension Rights. Service Provider may elect to suspend service to Customer, rather than terminate this Agreement, at Service Provider's sole election, for Customer's failure to make a payment due hereunder coupled with Customer's failure to cure such non-payment (including the payment of interest in accordance with Section 4.a. within ten (10) days after the date of notice in writing of such non-payment by Service Provider. Such suspension may be lifted at any time at the discretion of Services Provider; however, once all past due payments hereunder have been brought current, Service Provider shall lift the suspension immediately.

11. Assignment; Successors.

- a. Assignment. This Agreement may not be assigned or otherwise transferred (whether voluntarily, by operation of law or otherwise) by Customer without the prior written consent of Service Provider which shall not be unreasonably withheld; provided however that Customer may, without such consent, assign this Agreement and its rights and obligations hereunder to an Affiliate or in connection with the transfer or sale of all of its business, or in the event of its merger, consolidation, change in control, or other similar transaction. Any and all other assignments of this Agreement or any rights granted hereunder by Customer without the prior written consent of Service Provider are void.
- b. Binding Upon Successors and Assigns. Subject to the limitations on assignment herein, this Agreement shall be binding upon and inure to the benefit of any successors in interest and assigns of Service Provider and Customer. Any such successor or assignee of Customer's interest shall expressly assume in writing the performance of all the terms and conditions of this Agreement to be performed by Customer and such written assumption shall be delivered to Service Provider as a condition to Service Provider's agreement to consent to any such assignment.

12. General Provisions.

- a. Independent Contractors. The relationship between Service Provider and Customer is that of independent contractors. Service Provider and Customer are not joint venturers, partners, principal and agent, master and servant, employer or employee, and have no other relationship other than independent contracting parties. Service Provider and Customer shall have no power to bind or obligate each other in any manner, other than as is expressly set forth in this Agreement.
- b. Entire Agreement; Modification. This Agreement and all of the attached Addenda set forth the entire agreement and understanding between the parties as to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. There shall be no amendments or modifications to this Agreement, except by a written document that is signed by both parties.
- c. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah without regard to the conflicts of laws principles thereof. Each party hereby irrevocably submits to the exclusive jurisdiction and venue of the State courts located in Utah County, Utah (or any courts

residing therein with jurisdiction), and the Federal courts located in Salt Lake City, Utah, for any action or proceeding arising hereunder, and waives any right to contest or otherwise object to such jurisdiction or venue.

- d. Headings. The headings for each article and section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular article or section.
- e. Severability. Should any one or more of the provisions of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, it shall be considered severed from this Agreement and shall not serve to invalidate the remaining provisions thereof. The parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by them when entering this Agreement may be realized.
- f. No Waiver. Any delay in enforcing a party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.
- g. Name. Whenever there has been an assignment by Customer as permitted by this Agreement, the term "Customer" as used in this Agreement shall also include and refer to, if appropriate, such assignee or subcontractor.
- h. Attorneys' Fees. In the event of a dispute between the parties hereto or in the event of any default hereunder, the party prevailing in the resolution of any such dispute or default shall be entitled to recover its reasonable attorneys' fees and other costs incurred in connection with resolving such dispute or default.
- i. Force Majeure. Neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by riot, fire, flood, earthquake, natural disaster, electronic virus, electronic attack or infiltration, internet disturbance, government act or other similar cause beyond such party's (the "Affected party") control (collectively, a "Force Majeure Event"), provided that Affected party gives prompt notice of such condition, uses reasonable efforts to resume its full performance as soon as possible, and provided further that the other party (the "Non-Affected party") may terminate this Agreement if such condition continues for a period of sixty (60) days. During the Force Majeure Event, the Non-Affected party may similarly suspend its performance obligations, until such time as the affected party resumes its performance obligations.
- j. Notices. Any notices required by this Agreement shall be in writing, shall specifically refer to this Agreement and shall be sent by registered or certified airmail, postage prepaid, or by email, telefax, telex or cable, charges prepaid, or by overnight courier, postage prepaid and shall be forwarded to the respective addresses set forth below unless subsequently changed by written notice to the other party:

For Service Provider: Simplifile, LC
5072 North 300 West
Provo, Utah 84604
Attention: Auri Burnham
Fax No.: 801.373.1417
Email: aburnham@simplifile.com

with a copy to: MacArthur, Heder & Metler, PLLC
4844 North 300 West 3rd Floor
Provo, Utah 84604
Attention: K. Paul MacArthur
Fax No.: 801.377.1901

For Customer: City of Urbana

400 South Vine Street,
Urbana, Illinois 61801
Natika Roberson
ncroberson@urbanailinois.us

Notices shall be deemed delivered upon the earlier of (a) when received; (b) three (3) days after deposit into the U.S. Mail; (c) the date notice is sent via email, telefax, telex or cable; or (d) the day immediately following delivery to overnight courier (except Sunday and holidays).

- k. Terms of Use. The parties acknowledge that before any customer or other party accesses the Customer services through the Customer Application, said customer or third party is agreeing to those Terms of Use of Service Provider set forth at Simplifile.com. In the event of a conflict between the terms of this Agreement and the Terms of Use, the terms of this Agreement shall govern.

The parties have executed this Agreement by their duly authorized representatives as of the date set forth above.

SERVICE PROVIDER:

By: _____
Name (print): _____
Job Title: _____
Date: _____

CUSTOMER: City of Urbana

By: _____
Name (print): _____
Job Title: _____
Date: _____

SERVICE ADDENDUM

E-recording Service

ELECTED SERVICES AND FEES

The following services are available to the Customer hereunder at rates consistent with the Fees below:

Payment of Fees and Taxes. Customer agrees to pay Service Provider all Fees incurred hereunder and taxes due under Section 3.3 of the Master Services Agreement (MSA) as follows: Service Provider shall invoice Customer an amount equal to the Fees earned and any applicable taxes paid by Service Provider in any given “Billing Cycle” as set forth in the Fees and Payment Terms grid below. Customer shall pay each invoice within the “Payment Term” as set forth in the Fees and Payment Terms grid below. Each invoice shall be sent to Customer via e-mail to the e-mail address listed in Section 12.10 in the Master Services Agreement (MSA) to which this Exhibit is attached (the “Agreement”). Each invoice shall be paid in full by the “Date of Delinquency” as set forth in the Fees and Payment terms grid below. If Customer fails to pay an invoice by the “Date of Delinquency”, interest will be charged on any past due balances at an annualized rate of eighteen percent (18%) (1.5% per month) or the maximum allowed by law, whichever is less, beginning immediately thereafter.

The payment of fees will be made to Service Provider's account and Customer authorizes Service Provider to create and/or process such payments as either (a) Automated Clearing House (“ACH”) transactions, (b) captured check images and check data as substitute checks or remotely created checks, whether physical or electronic form, as may be applicable for further clearing through any other financial institution, clearinghouse, or Federal Reserve Bank (“E-Check”), or (c) through other means such as wire, ACH push, paper check, credit card or any other as pre-approved by Service Provider.

Notwithstanding anything in the Agreement to the contrary, Service Provider shall have the right to disable and deny access to the account of the Customer due to Customer's material breach of the Agreement (which will include, without limitation, failure to make payment by the dates and times set forth in this Exhibit A).

Fees and Payment Terms

Services	Description	System Costs ("Fees")
Year 1 License and Support (per physical location)	License fee – year 1	\$ <u>-0-</u> per license
Annual Renewal of a Current License System and Support (per physical location)	License fee Renewal	\$ <u>-0-</u> per license
Document Submission Fees	Submission fee for each document recorded using the System.	\$ <u>3.00</u> per document
Training	Fees for web, phone based or on-site training to Customer	Web and phone based \$0 Onsite: Quoted upon request
Billing Cycle	Frequency receiving an invoice for fees earned by the Service Provider.	Monthly
Payment Term	The maximum time to remit and Service Provider to receive payment for the invoiced fees.	Net 15
Date of Delinquency	The date upon which an interest rate will be applied to any unpaid balance.	5 days after the expiration of the Payment Term due date.
Dishonored charges fees	Processing fee for dishonored ACH charges or other payments.	\$25 per item
Receiver fees, if any. (recording, taxes, non- conforming, e-recording, rejection, etc.)	Any/all additional fees charged by others for e-recording processing.	Exact cost only. Service Provider does not control or add to receiver fees, if any. Document Submission quoted exclusive of these fees
Other fees, if any, (sales, use, or other taxes)	Taxes that may be assessed against either the Customer Services or the sale of the Customer Application.	Exact cost only. Service Provider does not control or add to these fees. Document Submission Fee is quoted exclusive of these fees.