

## **ECS WEB SERVICES AGREEMENT**

This Agreement (the Agreement), dated as of this 4th day of April 2016 (the Effective Date), is made and entered into by and between **eCity Systems, LLC** (hereinafter referred to as "ECS"), an New Hampshire limited liability company with an address at **9 Thomas Street Windham, NH 03087** and **The Town of Allenstown**, (hereinafter referred to as "the Client"), a New Hampshire municipal corporation with an address of **16 School St. Allenstown, NH 03275** (collectively, with ECS, "the Parties").

*WHEREAS*, ECS provides web based and over the counter applications facilitating online permitting between the Client and its citizens; and

*WHEREAS*, the Client desires to utilize the services more specifically articulated in Attachment A attached hereto and made a part hereof; and

*NOW THEREFORE*, in consideration of the foregoing and the mutual covenants contained herein, the Parties agree as follows:

### **1. SCOPE OF SERVICE**

#### **a. General**

ECS shall provide web software and/or services as listed in Attachment A. The Parties hereby acknowledge and understand that ECS only provides software to facilitate citizens' transactions with the Client; ECS does not approve, deny, accept, or generate any permits, licenses, approvals, applications, forms, or any other official documents of any kind used by the Client for the transacting of government business. All permits, licenses, approvals, applications, forms, or any other official documents completed or submitted using ECS software and services are generated by the Client and are the same as those permits, licenses, approvals, applications, forms, and other documents regularly used by the Client in its ordinary business operations.

#### **b. Other E-Services**

ECS may offer other e-services from time to time. The Client may subscribe to these additional e-services by way of attachments hereto.

#### **c. Payment / Funding**

Payment for services is collected directly from the citizen via a convenience fee (hereinafter referred to as "Convenience Fees"). The terms and conditions for the collection and remittance of Convenience Fees are set forth in the IDC Agreement, which is hereby incorporated by reference into this Agreement. In consideration of the services set forth in this Agreement and the attachments hereto, ECS shall be compensated exclusively through the remittance of Convenience Fees that are collected from citizens using ECS software. The Client shall not be responsible for, and ECS shall not be entitled to, any further compensation other than the remittance of the Convenience Fees provided for in this Paragraph.

### **2. ECS RESPONSIBILITY**

ECS shall be solely responsible for the following:

- a. Maintain the ECS web-services and other web-based management software running on ECSs web server with a subset of the relative data.
- b. Provide the necessary support, installation and training for the Client to administer any required ECS Web Service. Standard setup and training is provided via the internet and telephone. On-site setup and training is optional at the request of the client and the cost will be quoted separately if not included in the proposal or this Agreement.
- c. Maintain web-servers necessary to facilitate ECS Web Services to Clients and its citizens.

### **3. CLIENT RESPONSIBILITY**

The Client shall be solely responsible for the following:

- a. Charge all citizens Convenience Fees for the use of the software and services anticipated by this Agreement, as outlined in the IDC Agreement, and collect said Convenience Fees contemporaneous with the collection of any taxes, fees, fines, penalties, and other charges associated with the conduct of Client's business for which ECS services are implemented to facilitate.

- b. Remit to ECS charges set forth in the ECS Agreement no later than 31 days of the date of collection. Failure to do so may result in the termination of service for Clients and its citizens.
- c. Maintain the equipment and supplies necessary to complete the services anticipated in this Agreement. This may include, but is not limited to, computer equipment, printers, and internet connectivity.
- d. Process and mail any necessary receipts, permits, licenses, approvals, applications, forms, and paperwork to citizens as required by all governing laws and regulations.
- e. Operate ECS Web Services and other services anticipated in this Agreement as instructed and in accordance with all applicable laws and regulations.

**4. WARRANTY AND INDEMNIFICATION**

- a. ECS hereby warrants that the software provided pursuant to this Agreement shall conform to the specifications incorporated in this Agreement and shall be suited to perform and effectuate the intent of this Agreement. ECS will, without additional charge to the Client, make such timely modifications to the software as may be necessary to correct any defects reported to ECS by the Client.
- b. ECS hereby warrants that it has all necessary intellectual property rights, licenses, and approvals to provide the Client with the software and services set forth in this Agreement and that ECS shall be capable of providing all necessary software and services without violating, or infringing upon, any contract, license, agreement, covenant, copyright, patent, trademark, trade secret, or other proprietary right held by another with regard to the software and services to be provided.
- c. ECS hereby agrees to indemnify, defend, and hold harmless the Client against any and all liabilities, claims, and causes of action, brought by any third-party, either in law or equity, alleging that the Client’s use of the software violates any contract, license, agreement, covenant, copyright, patent, trademark, trade secret, or other proprietary right held by another with regard to the software and services to be provided. ECS’s obligations as set forth in this Paragraph 4(c) shall be limited to the amount of ECS’s insurance coverage.
- d. The Client hereby agrees to indemnify, defend, and hold harmless ECS against any and all liabilities, claims, and causes of action brought by any applicant that used the ECS software or service, either in law or equity, alleging that (1) the Client acted unlawfully in the execution of a statutory obligation with regard to the issuance of any permit, license, or approval or (2) the Client acted unlawfully in failing to send, mail, or provide any receipts, permits, licenses, approvals, and any other document that may be processed and served by ECS software. It is the Clients’ responsibility to make sure all calculations are correct and that the customer receives the necessary documentation in a timely manner. The Client’s obligations as set forth in this Paragraph 4(d) shall be limited to the amount of the Client’s insurance coverage.

**5. TECHNICAL SUPPORT, MAINTENANCE**

Upon notice as provided in Paragraph 9 herein, ECS and IDC shall promptly provide the Client with technical support, maintenance, and upgrades sufficient to allow for the operation of the software and services for their intended purposes or sufficient to allow for the correction of any defects or security vulnerabilities that exist, may become known, or may be exposed with regard to the software and services to be provided pursuant to this Agreement.

**6. TERMINATION**

This Agreement may be terminated by either party upon written notice after the initial Term of Service specified in Schedule A. Notice shall be provided as follows:

**From Client to ECS:**

ECity Systems, LLC  
 9 Thomas Street  
 Windham, NH 03087

**From ECS to Client:**

The Town of Allenstown  
 16 School St.  
 Allenstown, NH 03275

**7. RENEWAL**

This Agreement will automatically renew annually in-perpetuity unless terminated by either party as set forth in section 6.

## **8. OWNERSHIP**

ECS shall retain all rights and all materials developed by ECS and any inventions, creations and improvements whether or not patentable or copyrightable, conceived or made in connection with the performance of its obligations hereunder, even if modifications or enhancements are paid for by the Client, unless a separate Agreement relating to any such software is secured. Any and all software or other intellectual property delivered to the Client per this Agreement shall be subject to the conditions specified within this Agreement and shall be considered the intellectual property of ECS.

The Client hereby agrees and acknowledges that all rights, title and interest, including without limitation all proprietary rights to all patents, copyrights, trademarks, trade secrets and all other intellectual property of any nature, in and to the Licensed Programs in whatever form, including any written documentation and other material explaining in or referring to such Licensed Programs, and including any modifications, enhancements and derivative works of the Licensed Programs made by or for ECS or for the Client shall belong to and remain solely and exclusively the property of ECS.

## **9. NOTICE**

Any notices required or permitted hereunder shall be given in writing, via certified mail, or next day express delivery service, at the address of each party set forth in paragraph 6 of this Agreement, or to such other address as it shall designate by written notice to the other party in the manner contemplated herein, and will be deemed received when delivered or, if delivery is not accomplished by reason of some fault of the addressee, when tendered.

## **10. GOVERNING LAW**

This Agreement shall be construed in accordance with, and its performance and the rights and obligations of the parties hereunder governed by, the laws of the State of New Hampshire.

## **11. MISCELLANEOUS**

No modifications of this Agreement will be effective unless it is in writing and is signed by both parties. This Agreement binds and benefits both parties and any successors and assigns. Time is of the essence of this Agreement. This document, including any attachments, is the entire agreement between the parties, and supercedes any and all prior agreements and understandings pertaining to the subject matter hereof. In executing this Agreement, the Parties represent and acknowledge that they have not relied upon any representations or statements not set forth herein made by the others, or their counsel or representatives, with regard to the subject matter of this Agreement. The undersigned hereby warrant and represent that they are authorized to execute this Agreement on behalf of the respective parties; the Parties shall take such further action as is necessary to make this Agreement binding and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the day and year first written below

[SIGNATURE PAGE TO FOLLOW]

ECity Systems, LLC

By: \_\_\_\_\_  
Shannon Lavoie, Partner/Co-Founder

Date: \_\_\_\_\_

Town of Allenstown

By: \_\_\_\_\_  
Shaun Mulholland, Town Administrator

Date: \_\_\_\_\_

Attachment A - Selected Services  
Date: March 25, 2016



eCitySystems, LLC  
Jeff Bond  
(603) 897-5871  
jeff@ecitysystems.com

Allenstown, NH  
Shaun Mulholland  
603-485-4276  
Customer ID: ATNH

SOLUTION	FEE TYPE	DESCRIPTION	INCLUDES	START DATE	TOTAL
eCS-Online Permit Engine	Monthly	Recurring- <i>discounted as part of EB2Gov promotion</i>	<ul style="list-style-type: none"><li>• Online training</li><li>• Unlimited email support</li><li>• Unlimited users</li><li>• Custom municipal branding</li></ul>	December 14 2015	\$400 \$0
eCS-Online Permit Engine	One-Time	One-time- <i>set up waived for EB2Gov promotion</i>	<ul style="list-style-type: none"><li>• Account setup</li><li>• Unlimited permits uploaded</li></ul>	December 14 2015	<del>\$4033</del> \$0

			<ul style="list-style-type: none"> <li>Up to 2 days of setup and onsite training</li> </ul>	
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**\*\*Note:**

- *Grandfathered agreement*
- The Term of Service shall be from February 24, 2016 or the date of the first transaction using ECS services, whichever shall occur last, through February 24, 2017 or one year from the date of the first transaction using ECS services, whichever shall occur last.
- IDC Payment Types selected:
  - Credit Card Acceptance
    - \$5.00 per permit convenience fee to ECS
    - 2.95% per credit card transaction to EB2Gov/IDC\*  
\*Refer to *Interware Development/EB2Gov agreement*
- Charge backs or returned checks will be billed back to the town.

**SUBTOTAL**  
**LESS**  
**DISCOUNTS**

\$4433

(-) \$4433

**TOTAL**

**\$0**  
*due upon signing agreement*  
**\$0**  
*due upon implementation*

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