# Event Approvals, Inc. Service Agreement

This Service Agreement ("SA"), including the General Terms and all applicable Service Descriptions, constitutes the complete agreement between Event Approvals, Inc. ("EPROVAL") and the City of Aurora, IL ("Customer") for the Services (as defined below). Customer agrees to subscribe to the following Services for the term and fees set forth below.

**SUMMARY OF SERVICE FEES (all fees in USD and do not include applicable taxes)**

| Service Name | Quantity | Term | Cost | Total Fee |
|---|---|---|---|---|
| eproval ePremium License with an unlimited number of Users, up to 5 different application types and workflows | 1 | 3 years | $45,000 ($135,000) | $45,000 |
| Implementation, Configuration, Training | 1 | 3 years | $1,000 | $1,000 |
| Azure Cloud Hosting & Support | 1 | 3 years | 0 | 0 |
| Add-on Modules: | | | | |
| Scheduled Email Notification | 1 | 3 years | 0 | 0 |
| Calendar | 1 | 3 years | 0 | 0 |
| Permit Generator Tool | 1 | 3 years | 0 | 0 |
| Invoice and Payment | 1 | 3 years | 0 | 0 |
| Custom Development | - | - | $225/hr | - |
| | | | Service fee | **$46,000** |

Both parties have read and agreed to the terms and conditions of this Agreement:

**Event Approvals, Inc.**
#304 - 343 Railway Street
Vancouver, BC, Canada
V6A 1A4

**Customer:** City of Aurora
44 E Downer Place
Second Floor
Aurora, IL
60507

Authorized
Signatory: _____

Name: _____

Date: _____

Authorized
Signatory: _____

Name: _____

Date: _____

**EPROVAL - SERVICE AGREEMENT - TERMS AND CONDITIONS**

A.  EPROVAL provides an application known as eproval which is an application for managing and administering events approvals and permitting as a service delivered over the Internet ("Services") to its Customers as more particularly described in Schedule A. The application underlying the Services is proprietary to EPROVAL.

B.  In conjunction with such Services, EPROVAL also provides Support to its Customers to allow them to use the Service.

C.  Customer desires to obtain such Services from EPROVAL.

**1.      DEFINITIONS**

1.1 "Confidential Information" means any proprietary information relating to the business and technology of either party which is not generally available to third parties and which is treated by the parties, in accordance with their policies and applicable law, as confidential information or a trade secret and specifically includes the Services, either parties business processes, information about either parties customers or users in any manner, shape or form or other like information. For the purposes of this Agreement, a party disclosing Confidential Information is a Discloser and the party receiving Confidential Information is a Recipient. Confidential Information includes but is not limited to Input Data and the nature of the Services for the purposes of this Agreement but does not include information which is:

(a)  at the time of disclosure, or thereafter becomes part of the public domain without any violation of this Agreement by the Recipient;

(b)  already in the Recipient's possession before disclosure of such information to the Recipient by the Discloser;

(c)  following the Effective Date is furnished to the Recipient by a third party without that third party being in breach directly or indirectly of an obligation to the Discloser to keep such information secret confidential and secret;

(d)  developed independently by the Recipient without use of Discloser's Confidential Information as evidenced by reasonably detailed written records;

(e)  considered "public records" under the Illinois Freedom of Information Act (5 ILCS 140/1); and

(f)  disclosed as required by law.

1.2      "Customer" means City of **Aurora, IL**.

1.3      "Effective Date" is the date that the Agreement is signed.  It will be the latter date of the signature by EPROVAL or the Customer.

1.4      "Go Live Date" is a date mutually agreed by the Customer and EPROVAL when the Service is used in a live production environment.

1.5      "Input Data" means data inputted by Customer or Users into the Services via the Portal.

1.6      "Portal" means the online permitting website application in which the Services are provided.

1.7      "Renewal Date" is the date for yearly license renewals in subsequent years of the Agreement. It will be the day and month based on the Effective Date.

1.8      "Support" means technical support provided by EPROVAL to Customer relating to Customer's use of the Services, on a remote basis by telephone or e-mail or other electronic means, and optionally at the Customer's site, and is subject to the availability of support personnel and facility infrastructure

services. Such support includes problem diagnosis, consultation, dial-in diagnosis services, and problem resolution with the Support levels defined in Schedule B.

1.9      "Users" means the user of the Services as authorized by Customer or who create accounts so they can use the Services.

## 2.      SERVICES

2.1      EPROVAL will provide the Services to Customer in accordance with applicable laws and regulation. EPROVAL will use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for:

   (a) planned downtime (and EPROVAL will give Customer at least 72 hours notice of such downtime and will attempt to schedule such downtime to the extent practicable during weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), or

   (b) any unavailability caused by circumstances beyond EPROVAL's reasonable control.

2.2      EPROVAL will maintain the Services at EPROVAL's in accordance with EPROVAL's development methodology.   Additionally, Customer will receive access to EPROVAL regular technology bulletin updates, access to an on-line knowledge base and may participate in training webinars.

2.3      Under no circumstances can Customer allow other commercial entities to access the Services except to the extent commercial entities use the Services as Users. Customer is prohibited from providing or repurposing the Services to other parties in any manner, including as a service bureau or application service provider.

2.4      Customer can make the Services available to as many users as it deems necessary.

 2.5      The Customer agrees to not engage in any activity within its control that threatens the security of the Services.  It is Customer's own responsibility to:

   (a) provide for its own access to the Internet, arrange for secure Internet access therefore and pay any service fees associated with such access;

   (b) be responsible for the accuracy, quality, integrity and legality of data inputted by Customer which is processed using the Services, including any Confidential Information;

   (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services to the extent reasonably within Customer's control, and notify EPROVAL promptly of any unauthorized access or use of which it has actual knowledge;

   (d) use the Services only in accordance with any documentation and applicable laws and regulations.

2.6      No other services are provided with the Service unless agreed to otherwise by EPROVAL and the Customer.  The Services are provided on a software-as-a-services basis and accordingly as the Standard Offering set out in Schedule A.   Any other service (including modifications, improvements, alterations or changes to the Standard Offering) shall be provided in connection with the terms set out in Schedule A and may be provided by written agreement or purchase order.

2.7      Violation of any of the terms of this Agreement or use of the Services in a way that breaches applicable law or regulation in any way entitles either party to terminate this Agreement. In the event of a breach, the non-breaching party will give the other party written notice of such breach.  If such breach is not corrected in 30 days the non-breaching party may terminate this Agreement. PLEASE NOTE THAT BOTH PARTIES STRICTLY ENFORCE THIS POLICY AND MAY PROSECUTE ANY VIOLATION OF

THIS AGREEMENT TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

**3.      WARRANTY AND LIMITATION OF LIABILITY**

3.1      EPROVAL will exercise due care in providing the Services, and will, at no extra charge to Customer, correct all errors where such errors are due solely to negligence on the part of employees of EPROVAL or deficiencies in the provision of Services. Customer shall make best efforts to call to notify EPROVAL of such errors within a reasonable timeframe.

3.2      EPROVAL will provide to Customer acceptable formats for the information to be inputted by Customer into the Service as Input Data.

3.3      EPROVAL will be responsible for general maintenance of the database underlying the Service (but not for the accuracy or completeness of the Input Data).

3.4      EPROVAL shall maintain backups of its database(s) in a commercially reasonable manner that will allow recovery of data in the event of data loss, damage, or destruction.  The Customer will be responsible to maintain, under its care, adequate backup materials that will enable the regeneration of Input Data in the event of loss, damage or destruction thereof (including for example, all records required to be kept by regulation).

3.5          SPECIFIC EXCLUSION OF OTHER WARRANTIES - THE SERVICES ARE PROVIDED "AS IS, WHERE IS". OTHER THAN AS SET OUT SPECIFICALLY AS A WARRANTY IN THIS SECTION 3. EPROVAL DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, DURABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY IS LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OR LOSS OF PROFITS RESULTING FROM THE SERVICES (OR ANY THIRD PARTY GOODS OR SERVICES) EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF EITHER PARTY IS LIABLE TO THE OTHER IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF A PARTY TO THE OTHER EXCEED THE FEES PAID BY THE CUSTOMER TO EAI IN THE 90 DAY PERIOD PRECEDING THE DATE OF A CLAIM.

3.6      Warranty of Title and Ownership - EPROVAL warrants, for the sole benefit of Customer, that it has all rights necessary to provide the Services to Customer. All proprietary and intellectual property rights, title and interest including copyright and trade secret rights in and to anything associated with the Services remains that of EPROVAL.  EPROVAL warrants, for the sole benefit of Customer, that the Services do not infringe on third-party rights including intellectual property rights.  If there is a breach of this warranty then EPROVAL shall indemnify and hold Customer (and its affiliates and each their elected officials, respective directors, officers, employees and agents) harmless against any claims, damages, expenses, suits and actions arising from or relating to the infringement of intellectual property and proprietary rights of third parties relating to the Services.

**4.      OWNERSHIP CONFIDENTIALITY AND USE LIMITATION**

4.1      Ownership

   (a) Subject to the limited rights expressly granted under this Agreement, EPROVAL reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Customer under this Agreement other than as expressly set forth with respect to limited rights to use the Services.  EPROVAL shall have no ownership interest in Input Data and Customer Confidential Information.  EPROVAL shall promptly return all Input Data and Customer Confidential Information to Customer, or its designee, in a format usable by Customer.

(b) Customer shall not (i) permit any third party to access the Services except as expressly permitted, (ii) create derivate works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Customer's own internal non-publicly accessible networks or otherwise for Customer's own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

(c) As between EPROVAL and Customer, Customer exclusively owns all rights, title and interest in and to all of Input data or Customer Confidential Information.

4.2    Confidentiality - The following terms apply to Confidential Information and the ownership thereof.

(a) All Confidential Information is owned by the respective parties.   EPROVAL agrees not to use Input Data except when specifically authorized by Customer, and to treat all Customer data as confidential.  Customer agrees to maintain the confidentiality of proprietary information identified as such by EPROVAL to the extent allowed by law.

(b) Except to the extent required by law, neither party will, at any time whether before or after the termination of this Agreement, disclose, furnish, or make accessible to anyone any Confidential Information or permit the occurrence of any of the foregoing.

(c) Except to the extent required by law, each party will hold in confidence and not disclose any Confidential Information of the other party. All Confidential Information will be maintained in confidence by the Recipient, will not be disclosed to any person or entity in any way except as provided in this Agreement, and will be protected with the same degree of care the Recipient normally uses in the protection of its own confidential and proprietary information, but in no case with any less degree than reasonable care.

(d) The Confidential Information may be disclosed by the Recipient only to those employees, directors, officers, auditors or consultants of the Recipient having the need to receive such Confidential Information for the purposes of this Agreement, provided the recipients of such Confidential Information are already bound by written confidentiality and non-disclosure obligations similar to those undertaken by the Recipient under this Agreement. The Recipient shall immediately give notice to the Discloser of any unauthorized use or disclosure of the Confidential Information. The Recipient agrees to assist the Discloser in remedying any such unauthorized use or disclosure of Confidential Information.

To the extent the Recipient is required to disclose any Confidential Information pursuant to a valid subpoena or other applicable order by a governmental agency or judicial body or by operation of law, the Recipient will promptly notify the Discloser in writing of the existence, terms and circumstances surrounding such disclosure (except as prohibited by law) so that the Discloser may seek a protective order or other appropriate remedy from the proper authority. The Recipient agrees to reasonably cooperate with the Discloser in seeking such order or remedy at Disclosure's cost and expense. The Recipient further agrees that if the Recipient is required to disclose any Confidential Information, the Recipient will furnish only that portion of the Confidential Information that is legally required and will reasonably cooperate with Disclosure's efforts to obtain reliable, written assurances that confidential and legally compliant treatment will be accorded to such Confidential Information.

(e) The obligations of confidence contained herein will survive termination or expiry of this Agreement.

4.3      References - Customer agrees that the fact of its use of the Services may be disclosed to others.

## 5.      REPRESENTATION AND INDEMNIFICATION

5.1      Indemnification by EPROVAL - EPROVAL has the right and all necessary permissions to provide the Services to the Customer. EPROVAL shall defend Customer, and its employees, agents, and elected and appointed officials, against any claim, demand, suit, or proceeding ("Claim") made or brought against Customer, its elected officials, employees, or agents, by a third party alleging that the use of the Services infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Customer, its elected officials, employees, and agents  for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with any such Claim; provided, that Customer (a) promptly gives EPROVAL written notice of the Claim; (b) cooperates with EPROVAL's defense and settlement of the Claim; and (c) provides to EPROVAL all reasonable assistance, at EPROVAL's expense.

## 6.      TERM

6.1      Term – This Agreement is for 3 years, commencing upon the execution of this Agreement. At the option of Customer, it may renew for successive three (3) year terms on mutual written agreement.

6.2      Termination - Customer shall have the right to terminate this Agreement upon giving thirty (30) days' notice to EPROVAL.

6.3      Default and Remedies.  In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default thereof.  In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (14) days within which to cure said default.  In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity.  If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

6.4      Refund for Termination of Agreement for cause – If this Agreement is terminated   for cause by Customer, then EPROVAL shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. In the event of early termination by Customer for cause, EPROVAL shall be paid for Services rendered to the date of termination, subject only to the satisfactory performance of EPROVAL's obligations under this Agreement.  Such payment shall be EPROVAL's sole right and remedy for such termination.

6.5      Input Data - Following termination of the Agreement, EPROVAL will provide read-only access to Input Data in a format usable by Customer for a period of one month without charge. After such period, EPROVAL shall have no obligation to maintain or provide any of Input Data and may, unless legally prohibited, delete all of Input Data in EPROVAL's systems or otherwise in EPROVAL's possession or control.

**7. PAYMENTS**

7.1     Invoicing - EPROVAL will invoice Customer on the Effective Date for year 1 of this Agreement which shall be payable in accordance with the terms of the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, et. seq., "the Act").  EPROVAL will invoice Customer 30 days in advance of the Renewal Date for subsequent years of this Agreement and are payable in accordance with the Act.

7.2     Disputed Invoices - In the event of a disputed invoice, Customer may withhold payment and EPROVAL will continue to perform during the pendency of the good faith dispute.

7.3     Penalty for Non-Payment Any late payments may accrue interest in accordance with the Act.

**8. GENERAL**

8.1     This Agreement contains the whole agreement between EPROVAL and the Customer relating to the Services.

8.2     EPROVAL may assign this Agreement only after written consent from Customer, which shall not be unreasonably withheld.

8.3     Upon 30 days' notice to Customer and upon written consent by Customer, EPROVAL reserves the right at all times to vary the conditions of this Agreement or change the operation of the Services. The Services may change in the normal course of business in the same manner as all SAAS implementations are changed, improved or modified in a developer's standard development cycle; provided, the Services shall provide substantially similar functionality to the Customer.  If Customer does not agree to such variation or changes, Customer may terminate this Agreement without penalty to either party.

8.4     EPROVAL reserves the right to suspend the Services for repair, maintenance, and/or upgrade work. Unless EPROVAL cannot do so for security or other reasons beyond our reasonable control, EPROVAL will give Customer reasonable notice of such suspension a minimum of 72 hours prior to the suspension of Services.

8.5     This Agreement is governed by the laws of the State of Illinois and the City of Aurora.  The venue for actions arising out of the Agreement is the Circuit Court of Kane County, Illinois.

8.6     The parties acknowledge that each is an independent contractor and nothing in this Agreement constitutes a joint venture or partnership and neither party has the right to bind nor act for the other as agent or in any other capacity.

8.7     The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.

8.8     This Agreement may not be modified, altered, or amended except by written instrument duly executed by both parties.

8.9     If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute, court decision or rule of law, it is to that extent to be deemed omitted.  The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

8.10    All provisions of this Agreement that by their nature would reasonably be expected to continue after the termination of this Agreement will survive the termination of this Agreement.

8.11    INTERLOCAL COOPERATIVE CONTRACTING: Other governmental entities within the State of Georgia may be extended the opportunity to purchase off of the City's solicitation, with the consent and agreement of the successful vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in vendor's response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of,

partner to, or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that may arise out of such independently-negotiated "piggyback" procurements.

**SCHEDULE A - ePremium Implementation**

**1.  Features**

The following tasks & deliverables will be part of the eproval Service for the Customer ("Standard Offering") and will be implemented before the Go Live Date.

a)  Access to Version 4 of the eproval Portal

- Availability: Access to the Portal will be available on a 24/7 basis.

- URL: A custom URL will be set up to access the Portal.

- User Licenses: An unlimited number of Users can access the Portal.

- Compatibility: The Portal will consist of a fully responsive design compatible with most browsers on computers, mobile phones and tablets.  The only requirement is an active Internet connection.

- Sandbox: A sandbox Portal will be set up for the purposes of testing and training.

- Hosting: Portal Hosting will be with the Microsoft Azure cloud hosting platform at the West Central US Data Center in Wyoming.

- Support portal & help documentation.

b)  Implementation, Configuration and Training

- Implementation:

  o  Version 4 of the Portal will be implemented as a standalone version on dedicated Azure resources.

  o  There will be isolated development and production environments.

- Branding:

  o  The font, button and background colors in the header, title bar and footer.

  o  A logo provided by the Customer.

  o  Email template design provided by the Customer.

- System configuration:

  o  Wording on all pages of the Portal.

  o  Wording in all auto-generated emails.

  o  Initial setup of all application questions for Film and Special Event Permit

applications.

- o Initial setup of all survey questions.

- o Initial setup of all Administrators and Stakeholder Agencies.

- o Initial setup of all email notifications.

- o Initial setup of fields that are copied when an application is duplicated.

- o Configuration system email to relay with Customer's SMTP mail server.

- o Production URL.

- o Security certificate for the production URL.

- Training:
  - o All training sessions will be accomplished online using GoToMeeting.
  - o Training will include all systems and tools for Administrators and Approvers.

c) Add-on Modules include the following:

- Scheduled Email Notification
- Calendar
- Permit Generator tool
- Invoice and Payment

**2. Additional items beyond eproval Service scope**

Any services in connection with customizing, modifying or changing the Services beyond as set out in Standard Offering features will be provided on a time and materials basis at EPROVAL's rate of $225/hour.

**Schedule B – Support Level Definition**

All Customer requests for Support shall be managed as described below. The degree of EPROVAL's responsiveness ("Severity") shall be based on the nature of the initial Customer Support request. The Customer will always make every effort to respond in a timely fashion to requests from EPROVAL for assistance in providing Support.

**1.    Normal Support Hours**

EPROVAL will provide phone and email support Monday to Friday between the hours of 7am and 5pm (Pacific Time).

EPROVAL will provide email support outside of normal business hours, 7 days per week.

**2.    Response Times**

EPROVAL will make commercially reasonable efforts to respond to and provide updates according to the priority of the support request as defined by the Customer shown in the table below.

| Priority | Criteria | Response Times | Status Updates |
|---|---|---|---|
| Critical | A Customer detected critical Services error that renders the entire live EPROVAL production system, or an essential part of it, inoperable or "down". | One (1) business hour. | Every two business hours until the closure of the support request. |
| Medium | A Customer detected non-critical Services error in a module of the live EPROVAL production system, which impairs system operation but does not render it "down". Non-critical Services errors exclude cosmetic, documentation, or reporting problems, and also questions regarding the operation of the Services, its installation or training. | Four (4) business hours. | Every business day until the closure of the support request. |
| Routine | All other Support requests not described above. | Two (2) business days. | Every two business days until the closure of the support request. |

**3.    Chargeable Service**

If the Critical support service is used by the Customer for non-critical support then the service is chargeable at EPROVAL's hourly support service rate of $225/hour USD.