

CLERK'S CONTRACT and AGREEMENT COVER PAGE

Legistar File ID#: Innoprise Contract #: C15-0010

Year: 2015 **Amount:** \$4,000.00

Department: Public Info - Nabeha Zegar

Contract Type: Vendor Agmnt

Contractors Name: 1776 Productions dba GoLocalApps

Contract Description: Mobile Application (iPhone, iPad, Android)







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C U S T O M S O F T W A R E D E V E L O P M E N T A G R E E M E N T

1. Identification of the Parties: This Agreement is made between Village of Orland Park (the "Customer") with a principal place of business at 14700 S. Ravinia ~~Orland Park~~ ^{IL 60450} and 1776 Productions LLC (the "Developer") with a principal place of business at 1722 J St, Suite 9, Sacramento, CA 95811.
2. Purpose of Agreement: Customer desires to retain Developer as an independent contractor to develop the computer software (the "App") described in the Scope of Work contained in Exhibit A (attached to, and made part of, this Agreement). Developer is ready, willing, and able to undertake the development of the App and agrees to do so under the terms and conditions set forth in this Agreement. Accordingly, the parties agree as follows:
 - (a) Developer will produce a customized iPhone app using Developer's existing app structure for Customer, using the categories, logos, fonts, and database that Customer provides to Developer. Developer will submit the app to Apple and any other app marketplace for approval and host the database and app for Customer. Customer will be responsible for marketing and promoting the app. Developer will maintain current programming needs, updates and hosting for Customer as outlined in the payment schedule.
 - (b) Payment:

The total contract price shall be set forth in the Scope of Work (Exhibit A). Customer shall pay the Developer the sum of \$4,000.00 - (as per Exhibit A Scope of Work) upon execution of this Agreement. Maintenance, Support, and Hosting fees will be billed as specified in Section 9. Additional optional fees and charges are outlined in Additional and Optional Features (Exhibit B).
3. Payment of Developer's Costs:

Customer shall reimburse Developer for additional expenses incurred by Developer in performing services under this Agreement, agreed upon by Customer prior to Developer beginning additional work. Such expenses include, but are not limited, to:

 - (a) Extra customization or programming beyond the Scope of Work
 - (b) Costs for providing conversion services for converting Customer's database or updating existing database
 - (c) Travel and meals if required on site development
 - (d) Travel expenses, other than normal commuting, including airfares, rental vehicles, and highway mileage in company or personal vehicles at \$0.50 cents per mile
 - (e) Other expenses resulting from the work performed under this Agreement, if approved in advance by the Customer. Developer shall submit an itemized statement of Developer's expenses, as approved in advance by the Customer. Customer shall pay Developer for approved expenses per the Local Government Prompt Payment Act (50 ILCS 505/).
4. Late Fees:

Late payments by Customer shall be subject to late penalty fees of 1% per the Local Government Prompt Payment Act (50 ILCS 505/).
5. Materials

Customer shall make available to Developer, at Customer's expense, the following materials, facilities and equipment:

- (a) List of categories for businesses and items to be included in the app
- (b) Images or direction of images to be used as icons for the app categories
- (c) Logo, colors and fonts to be used within the app
- (d) Database of businesses, events, specials and other items to be included in the app as needed to complete the specified categories

These items will be provided to Customer before Developer begins work.

6. Delays:

- (a) Developer shall use all reasonable efforts to deliver the App on schedule. However, at its option, Developer can extend the due date for any Deliverable by giving written notice to Customer. The total of all such extensions shall not exceed 30 days.
- (b) Any delay or nonperformance of any provision of this Agreement caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, provided that the delayed party has taken reasonable measures to notify the other of the delay in writing. The delayed party's time for performance shall be deemed to be extended for a period equal to the duration of the conditions beyond its control.
- (c) Conditions beyond a party's reasonable control include, but are not limited to, natural disasters, acts of government after the date of the Agreement, power failure, fire, flood, acts of God, labor disputes, riots, acts of war and epidemics. Failure of subcontractors and inability to obtain materials shall not be considered a condition beyond a party's reasonable control.

7. Acceptance Testing of App:

- (a) Immediately upon completion of the initial development phase, Developer shall provide Customer a beta install for Customer to download to an iPhone for testing. Customer shall have 10 business days from the delivery of the App to inspect, test, and evaluate it to determine whether the App satisfies the Scope of Work (Exhibit A) and approved by Customer prior to testing. Customer will be responsible for providing the iPhone for testing, and the UDID code of the iPhone for Developer to provide downloadable code for the iPhone.
- (b) If the App does not satisfy the Scope of Work (Exhibit A), Customer shall give Developer written notice stating why the App is unacceptable. Developer shall have 30 days from the receipt of such notice to correct the deficiencies. Customer shall then have 30 days to inspect, test and reevaluate the App. If the App still does not satisfy the Scope of Work (Exhibit A), Customer shall have the option of either: (1) repeating the procedure set forth above, or (2) terminating this Agreement pursuant to the section of this Agreement entitled "Termination." If Customer does not give written notice to Developer within the initial 30-day inspection, testing and evaluation period or any extension of that period, that the App does not satisfy the Scope of Work (Exhibit A), Customer shall be deemed to have accepted the App upon expiration of such period.
- (c) If and when the acceptance tests establish the App delivered upon completion of any phase of development complies with the Scope of Work (Exhibit A), Customer shall promptly notify Developer that it accepts the delivered App, and Developer will submit App to Apple for approval.

8. Maintenance of App: Beginning on the first day of the first month following expiration of the warranty period set forth in the section of this Agreement entitled "Warranties," Developer shall provide the following error-correction and support services:

- (a) Telephone hot-line support during Developer's normal days and hours of business operation. Such support shall include consultation on the operation and utilization of the App. Customer shall be responsible for all telephone equipment and communication charges related to such support; and
- (b) Error correction services, consisting of Developer using all reasonable efforts to design, code and implement programming changes to the App, and modifications to the documentation, to correct reproducible errors therein so that the App is brought into substantial conformance with the Specifications.

9. Timeliness of Incident Resolution

Developer shall use reasonable effort to provide modifications or additions to correct errors in the software reported by Customer. Upon receipt of notice of an error, Developer will assign a priority level as determined by the Customer to the error according to the following criteria:

- (a) Priority A – An error that results in the software being substantially or completely nonfunctional or inoperative.
- (b) Priority B – An error that results in the software operating or performing other than as represented in the Documentation, but which does not have a material adverse impact on the performance of the software.

Developer will make reasonable efforts to correct the error or provide a work-around solution for each priority level and, if a work-around is the immediate solution, will make reasonable efforts to provide a final resolution of the error. Reasonable effort will be made to respond to the incident within the following time frames after receiving notice and sufficient information and support from the Customer:

Priority Level	Correction or Work-Around	If Work-Around, Final Resolution
A	7 business days*	15 business days*
B	15 business days*	30 business days*

** Includes Apple approval or Google resubmit, if necessary.*

10. Payment for Maintenance, Support, and Hosting: Customer shall pay Developer for error-correction, support services, and hosting, a \$100 a month or \$1000 annual fee, due upon approval of app by Apple and Google for general release. App will not be released for download prior to payment of Maintenance, Support and Hosting Fee.

- (a) Customer's Role in Maintenance: Customer chooses to manage and update Customer's database. Developer will set up and train customer on managing the database. (Option: the Customer can opt to have Developer do bulk updates at a rate of \$100.00 per batch of updates.)
- (b) Term of Support: Subject to timely payment by Customer of the maintenance fees and for the product delivered, the Developer shall offer the maintenance described above for the initial product or updated products for a minimum of 3 years after completion of the development work under this Agreement.
- (c) Customer Termination of Maintenance: Customer may discontinue the maintenance services described above upon not less than 90 days written notice to Developer.
- (d) Developer Termination of Maintenance: In the event Developer ends maintaining or developing App, Developer will provide 90 days written notice and provide Customer with replacement hosting and maintenance services acceptable to the Customer, at costs agreed within this contract.

11. Ownership of App:

- (a) Developer shall retain all copyright, patent, trade secret, and other intellectual property rights Developer may have in anything created or developed by Developer for Customer under this Agreement ("Work Product"). Subject to payment of all compensation due under this Agreement, Developer grants Customer a nonexclusive, nontransferable, royalty-free license to use the Work Product.
- (b) Ownership of Database: Customer shall retain all copyright, patent, trade secret, and other intellectual property rights to all information and data supplied by Customer for inclusion in App. Customer asserts that they have permission or ownership of all information, images, or data supplied for inclusion in the App.

12. Ownership of Background Technology: Customer acknowledges that Developer owns or holds a license to use and sublicense various preexisting development tools, routines, subroutines, and other programs, data and materials that Developer may include in the App developed under this Agreement. This material shall be referred to as "Background Technology."

(a) Developer retains all right, title, and interest, including all copyright, patent rights and trade secret rights in the Background Technology. Subject to full payment of the consulting fees due under this Agreement, Developer grants Customer a nonexclusive, perpetual worldwide license to use the Background Technology in the App developed for and delivered to Customer under this Agreement, and all updates and revisions thereto. However, Customer shall make no other commercial use of the Background Technology without Developer's written consent.

13. Warranties:

(a) **Warranty of App Performance:** Developer warrants that following acceptance of the App by Customer, the App will be free from material reproducible programming errors and defects in workmanship and materials, and will substantially conform to the Specifications in the Scope of Work (Exhibit A) when maintained and operated in accordance with Developer's instructions. If material reproducible programming errors are discovered during the warranty period, Developer shall promptly remedy them at no additional expense to Customer. This warranty to Customer shall be null and void if Customer is in default under this Agreement or if the nonconformance is due to:

- i. hardware failures due to defects, power problems, environmental problems or any cause other than the App itself;
- ii. modification of the App operating systems or computer hardware by any party other than Developer; or
- iii. misuse, errors or negligence of Customer, its employees or agents in operating the App.

(b) **Warranty of Title:** Developer owns, and has the right to license or convey title, to the App and documentation covered by this Agreement. Developer will not grant any rights or licenses to any intellectual property or technology that would conflict with Developer's obligations under this Agreement.

(c) **Warranty Against Disablement:** Developer expressly warrants that no portion of the App contains, or will contain, any protection feature designed to prevent its use. This includes, without limitation, any computer virus, worm, software lock, drop dead device, Trojan-horse routine, trap door, time bomb or any other codes or instructions that may be used to access, modify, delete, damage or disable Customer's App or computer system. Developer further warrants that it will not impair the operation of the App in any way other than by order of a court of law.

(d) **Warranty of Compatibility:** Developer warrants that the App shall be compatible with the Customer's hardware and software as set forth in the Scope of Work (Exhibit A).

14. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES GRANTED BY DEVELOPER. DEVELOPER DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY.

15. Intellectual Property Infringement Claims:

(a) Developer warrants that Developer will not knowingly infringe on the copyright or trade secrets of any third party in performing services under this Agreement. To the extent any material used by Developer contains matter proprietary to a third party, Developer shall obtain a license from the owner permitting the use of such matter and granting Developer the right to sub-license its use. Developer will not knowingly infringe upon any existing patents of third parties in the performance of services required by this Agreement, but Developer MAKES NO WARRANTY OF NON-INFRINGEMENT of any United States or foreign patent.

(b) If any third party brings a lawsuit or proceeding against Customer based upon a claim that the App breaches the third party's patent, copyright or trade secrets rights, and it is determined that such infringement has occurred, Developer shall hold Customer harmless against any loss, damage, expense or cost, including reasonable attorney fees, arising from the claim. The indemnification obligation shall be effective only if:

- i. The third party intellectual property rights involved were known to Developer prior to delivery of the App
- ii. Customer has made all payments required by this Agreement
- iii. Customer has given prompt notice of the claim and permitted Developer to defend, and
- iv. The claim does not result from Customer's modification of the App.
- v. To reduce or mitigate damages, Developer may at its own expense replace the App with a noninfringing product.

16. Limitation of Developer's Liability to Customer:

- (a) In no event shall Developer be liable to Customer for lost profits of Customer, or special or consequential damages, even if Developer has been advised of the possibility of such damages.
- (b) Developer's total liability under this Agreement for damages, costs and expenses, regardless of cause, shall not exceed the total amount of fees paid to Developer by Customer under this Agreement.
- (c) Developer shall not be liable for any claim or demand made against Customer by any third party except to the extent such claim or demand relates to copyright, trade secret or other proprietary rights, and then only as provided in the section of this Agreement entitled Intellectual Property Infringement Claims.

17. Confidentiality: During the term of this Agreement and for 3 years afterward, Developer will use reasonable care to prevent the unauthorized use or dissemination of Customer's confidential information. Reasonable care means at least the same degree of care Developer uses to protect its own confidential information from unauthorized disclosure.

18. Confidential information is limited to information clearly marked as confidential, or disclosed orally that is treated as confidential when disclosed and summarized and identified as confidential in a writing delivered to Consultant within 15 days of disclosure.

19. Confidential information does not include information that:

- (a) the Developer knew before Customer disclosed it
- (b) is or becomes public knowledge through no fault of Developer
- (c) Developer obtains from sources other than Customer who owe no duty of confidentiality to Customer, or
- (d) Developer independently develops.
- (e) Customer acknowledges that the App is Developer's sole and exclusive property. Customer shall treat the App on a confidential basis and shall not, at any time, disclose the trade secrets embodied in the App or supporting documentation to any other person, firm, organization or employee who does not need to obtain access thereto consistent with Customer's rights under this Agreement. Under no circumstances may Customer modify, reverse compile or reverse assemble the object code contained in the App. Customer shall devote its reasonable best efforts to ensure that all persons afforded access to the App and supporting documentation protect Developer's trade secrets against unauthorized use, dissemination or disclosure.

20. Term of Agreement: This Agreement commences on the date it is executed ("Effective Date") and shall continue with full performance by both parties, or until/unless terminated by one party under the terms of this Agreement as per Section 21.

21. Termination of Agreement: Each party shall have the right to terminate this Agreement by written notice to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of 30 days after written notice of such breach is sent to the other party.

- (a) If Developer terminates this Agreement because of Customer's default, all of the following shall apply:
 - i. Customer shall immediately cease use of the App.
 - ii. Customer shall, within 10 days of such termination, deliver to Developer all copies and portions of the App and related materials and documentation in its possession furnished by Developer under this Agreement.

- iii. All amounts payable or accrued to Developer under this Agreement shall become immediately due and payable.
- iv. All rights and licenses granted to Customer under this Agreement shall immediately terminate.

(b) This Agreement may be terminated by Customer for its convenience upon ninety (90) days prior written notice to Developer. Upon such termination, all amounts owed to Developer under this Agreement for accepted work shall immediately become due and payable and all rights and licenses granted by Developer to Customer under this Agreement shall immediately terminate.

(c) In the event Developer terminates contract or ends business, Developer will provide Customer alternate hosting and maintenance with an acceptable third-party at the contracted hosting and maintenance fees. Developer will provide Customer 30 day written notice of termination and alternate hosting and maintenance contract.

22. Taxes: The charges included here do not include taxes. If Developer is required to pay any federal, state or local sales, use, property, or value added taxes based on the services provided under this Agreement, the taxes shall be separately billed to Customer. Developer shall not pay any interest or penalties incurred due to late payment or nonpayment of such taxes by Customer.

23. Developer an Independent Contractor:

- (a) Developer is an independent contractor, and neither Developer nor Developer's staff is, or shall be deemed, Client's employees. In its capacity as an independent contractor, Developer agrees and represents, and Customer agrees, as follows:
- (b) Developer has the right to perform services for others during the term of this Agreement subject to noncompetition provisions set out in this Agreement, if any.
- (c) Developer has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- (d) Developer has the right to perform the services required by this Agreement at any place or location and at such times as Developer may determine.
- (e) Developer will furnish all equipment and materials used to provide the services required by this Agreement, except to the extent that Consultant's work must be performed on or with Customer's computer or existing software.
- (f) The services required by this Agreement shall be performed by Developer, or Developer's staff, and Customer shall not be required to hire, supervise or pay any assistants to help Developer.
- (g) Developer is responsible for paying all ordinary and necessary expenses of its staff.
- (h) Neither Developer nor Developer's staff shall receive any training from Customer in the professional skills necessary to perform the services required by this Agreement.
- (i) Neither Developer nor Developer's staff shall be required to devote full-time to the performance of the services required by this Agreement.
 - i. Customer shall not provide insurance coverage of any kind for Developer or Developer's staff.
 - ii. Customer shall not withhold from Developer's compensation any amount that would normally be withheld from an employee's pay.

24. Non-Solicitation of Developer's Employees: Customer agrees not to knowingly hire or solicit Developer's employees during performance of this Agreement and for a period of two years after termination of this Agreement without Developer's written consent.

25. Mediation: If a dispute arises under this Agreement, the parties agree to attempt to resolve the dispute, prior to taking any formal legal action, using the services of a mutually agreed-upon mediator in a mutually agreeable location. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties.

26. Attorney Fees: If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

27. General Provisions:

- (a) Complete Agreement: This Agreement together with all exhibits, appendices or other attachments, which are incorporated herein by reference, is the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices or other materials, the Agreement shall take precedence.
- (b) Modifications to Agreement: Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.
- (c) Applicable law: This Agreement will be governed by the laws of the State of California.
- (d) Notices: All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:
 - i. When delivered personally to the recipient's address as appearing in the introductory paragraph to this Agreement;
 - ii. Three days after being deposited in the United States mails, postage prepaid to the recipient's address as appearing in the introductory paragraph to this Agreement, or
 - iii. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail, or the recipient delivers a written confirmation of receipt.

28. Any party may change its address appearing in the introductory paragraph to this Agreement by giving notice of the change in accordance with this paragraph.

- (a) No Agency: Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.
- (b) Assignment: The rights and obligations under this Agreement are assignable by either party pending written approval. Customer shall retain the obligation to pay if the assignee fails to pay as required by this Agreement.

29. Signatures: Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

Customer:

By: _____



Paul Grimes
(signature)

Village Manager

(typed or printed name)

Developer: 1776 PRODUCTIONS, LLC

By: _____



Heidi Komlofske-Rojek
(signature)

Title: _____

Title: President & CEO

Date: _____

Date: 2/3/2015

E X H I B I T A

iPhone Directory App Development

Scope of Work

Basic App development for \$4,000.00 includes the below standard features:

iPhone App will include the following options and capabilities for Customer:

1. Location-based directory of businesses or locations
2. Time-organized event listings
3. Business directory organized by categories and sub-categories as specified by Customer
4. Social networking features allowing users share from the app.
5. Social networking links and business information fields to be designated by client (Facebook, Twitter, Open Table, hours, etc.)
6. Online CMS accessible by client.
7. Automatic updates from CMS to user devices
8. Push Messaging
9. In app form for reporting non-emergencies, collects user GPS location at time of the report - \$250
10. Native tablet version - \$500
11. In app email registration popup - \$250

Developer will submit App to Apple for approval as part of the development contract. In the event of non-approval of App from Apple, Developer will modify and resubmit App until approved, unless App is disallowed due to content provided from Customer. In that event, Customer will be required to submit additional or updated content for approval from Apple.

Developer will maintain the App programming to stay current with Apple, Twitter and Facebook OS and API requirements. Developer will provide new updates and capabilities to App without additional cost to Customer unless previously contracted prior to update development.

Customer will provide initial database in format specified by Developer or contract with Developer to organize and update Customer's database in the format needed by Developer. Customer will provide to Developer primary, and any secondary categories desired, at the time of initial development. Changes in category and sub-category structure after App has been approved will be billed at the Extra Development programming charges.

Developer will provide a preliminary design for icon, loading screen and main screen based on Customer's direction and supplied artwork. Developer will provide one design edit for each element based on feedback from Customer. Any further edits on each element will be billed at the below design rates.

Android Development – Due to Android device and OS fragmentation, it is impossible to maintain the same design and feature set on every combination. Developer will maintain Android apps at a point that as many possible device and OS combinations working at a native level.

Training and Support - Initial Development fee and monthly Maintenance, Support and Hosting fees include 2 hours of initial training on designing and maintaining the App and database. Two hours of phone and email support is included in the monthly Maintenance, Support and Hosting fees. On-site training or support will be billed at the Extra Development fees, in addition to any travel expenses needed. Training and support only available during regular business hours.

Extra development and design services:

- Design - \$75/hour
- Programming - \$125/hour

EXHIBIT B

Additional and Optional Features:

Tablet Development – Creating a native iPad/Android Tablet version of App, will incur an additional charge of \$500.00.

White label store listing – Placing the app into the iOS and Google play stores in client's account will incur an additional one time charge of \$500. Client will be responsible for creating and maintaining the developer accounts with both services.

Review Nag Screen – Inclusion of app popup to remind active users to review the app in the related app store - \$250

Web Plug-in Development – Creating a web plug-in using the app database as web content. Customer is responsible for purchasing any required html themes needed for their specific needs, or can have Developer customize existing themes for Customer. - \$500

In app registration – Initial popup screen on initial launch requesting users register their email for contests, updates and email newsletters - \$250

Passport/Checkin Tracking – Allow users to check into locations and earn badges for completing milestones. - \$1000 + \$100 per milestone badge.

Wine Cellar – Allow users to add and track wine bottles, tasting notes, etc - \$1000