

WEBSITE HOSTING AGREEMENT

This Website Hosting Agreement (the “Agreement”) is entered into as of _____, 20____ (the “Effective Date”) by and between Mid West Coast Media LLC, (the “Host”), and the Whitestown Parks Department, a municipality in the state of Indiana (the “Town,” and together with the Host, the “Parties”).

RECITALS

WHEREAS, the Town offers nature, parks, programs, and recreational activities to the citizens of Whitestown; and

WHEREAS, the Host is engaged in the business of hosting, storing, and transferring data over the World Wide Web (the “Web”); and

WHEREAS, the Town wishes to engage the Host as an independent contractor for the Town for the purpose of hosting the Town’s websites across a variety of domain names (the “Website”) so that it is available on the Web on the terms and conditions set forth below; and

WHEREAS, the Host wishes to host the Website and agrees to do so under the terms and conditions of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

1. PURPOSE.

The Town hereby engages the Host, and the Host hereby accepts such engagement, to perform the services described in the Overview attached hereto and made a part hereof, in connection with the hosting of the Website (the “Services”).

2. COMPENSATION.

The total compensation for the Services shall be as set forth in the Overview hereto. Payments shall be made according to the payment schedule set forth in the Overview hereto.

3. TERM.

This Agreement is effective as of the Effective Date and shall continue in force, unless otherwise terminated in accordance with the provisions of Section 4 of this Agreement, for a period of 12 months (the “Term”). The Agreement will renew automatically on an annual basis thereafter unless either Party provides forty-five (45) days’ written notice of its intent not to renew.

4. TERMINATION.

- (a) Types of Termination. This Agreement may be terminated:

- (i) By either Party on provision of thirty (30) days written notice to the other Party.
 - (ii) By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within thirty (30) days of receipt of written notice thereof.
 - (iii) By the Town in accordance with the provisions set forth in Sections 8(a) and (b).
 - (iv) By the Town at any time and without prior notice, if the Host is convicted of any felony crime or offense, fails or refuses to comply with the written policies or reasonable directives of the Town, or is guilty of serious misconduct in connection with performance under this Agreement.
- (b) Responsibilities after Termination. Following the termination of this Agreement for any reason, the Town shall promptly pay the Host according to the terms of the Overview for Services rendered before the effective date of the termination (the "Termination Date"). The Host acknowledges and agrees that no other compensation, of any nature or type, shall be payable hereunder following the termination of this Agreement. The Host shall return to the Town, at no cost, all materials and information the Town has provided to the Host in connection with this Agreement, including a complete electronic copy of the then-current Website, no later than fifteen (15) days after the Termination Date; provided, however, that the Host shall maintain one complete electronic copy of the Website, including all underlying code, until the Town informs the Host in writing that all returned files are complete, at which time the Host shall delete this copy of the Website from all of its computers and media.

5. **RESPONSIBILITIES.**

- (a) Of the Host. The Host agrees to do each of the following:
- (i) Host the Website as detailed in the Overview to this Agreement.
 - (ii) Devote as much productive time, energy, and ability to the performance of its duties hereunder as may be necessary to provide the required Services in a timely and productive manner.
 - (iii) Perform the Services in a workmanlike manner and with professional diligence and skill, using fully-trained, skilled, competent, and experienced personnel.
 - (iv) Provide Services that are satisfactory and acceptable to the Town and take every step to ensure the Website remains up and running and that any time the Website is off-line is kept to a minimum.
- (b) Of the Town. The Town agrees to do each of the following:
- (i) Engage the Host as the host of its Website as further detailed in the Overview to this Agreement.

- (ii) Provide all assistance and cooperation to the Host in order to enable the Host to ensure the Website remains up and running and that any time the Website is off-line is kept to a minimum.
- (iii) Provide initial information and supply all materials comprising the Website within thirty (30) days of the Effective Date.
- (iv) Maintain password secrecy and notify the Host immediately of any loss or theft of passwords, or if the confidentiality of any password has been compromised.

6. CONFIDENTIAL INFORMATION.

The Host agrees, during the Term thereafter, to hold in strictest confidence and not to use, except for the benefit of the Town or as required by law, or to disclose to any person, firm, or corporation without the prior written authorization of the Town, any Confidential Information of the Town. "Confidential Information" means any of the Town's proprietary information, technical data, trade secrets, or know-how, including, but not limited to, research, product plans, products, services, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other business information disclosed to the Host by the Town either directly or indirectly. The Host may use the Confidential Information to the extent necessary for negotiations, discussions, and consultations with the Town's personnel or authorized representatives or for any other purpose the Town may hereafter authorize in writing. At the request of the Town, the Host must promptly return all copies of Confidential Information received from the Town, and must promptly destroy all other Confidential Information prepared by the Host, including, without limitation, any notes, reports, or other documents.

7. PARTIES' REPRESENTATIONS AND WARRANTIES.

- (a) The Parties each represent and warrant as follows:
 - (i) Each Party has full power, authority, and right to perform its obligations under the Agreement.
 - (ii) This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally and equitable remedies).
 - (iii) Entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a party.
- (b) The Host hereby represents and warrants as follows:
 - (i) The Host has the sole right to control and direct the means, details, manner, and method by which the Services required by this Agreement will be performed.
 - (ii) The Host has the experience and ability to perform the Services required by this Agreement.

- (iii) The Host has the right to perform the Services required by this Agreement at any place or location, and at such times as the Host shall determine.
 - (iv) The Services shall be performed in accordance with and shall not violate any applicable laws, rules, or regulations, and the Host shall obtain all permits or permissions required to comply with such laws, rules, or regulations.
 - (v) The Services required by this Agreement shall be performed by the Host or the Host's staff, and the Town shall not be required to hire, supervise, or pay any assistants to help the Host perform such Services.
 - (vi) The Host is responsible for paying all ordinary and necessary expenses of its staff.
- (c) The Town hereby represents and warrants as follows:
- (i) The Town will make timely payments of amounts earned by the Host under this Agreement and as detailed in the Overview hereto.
 - (ii) The Town shall notify the Host of any changes to its procedures affecting the Host's obligations under this Agreement at least thirty (30) days before implementing such changes.
 - (iii) The Town shall provide such other assistance to the Host as it deems reasonable and appropriate.

8. HOSTING SERVICE LEVELS.

The Host must use commercially reasonable efforts to insure that the Website is available on the Web except during necessary maintenance as set forth on the Overview hereto.

- (a) Routine Maintenance Disruptions. If the cumulative downtime of the Website resulting from scheduled maintenance as set forth on Exhibit A hereto exceeds twelve (12) hours during any thirty (30) day period (unless such downtime is approved in advance by the Town), the Town may, in its sole discretion, terminate the agreement immediately by giving written notice to the Host; provided, however, that such immediate termination may issue only if the disruption or disruptions do not arise from any action or inaction of the Town.
- (b) Unforeseen Hosting Disruptions. The Host shall inform the Town immediately of any unforeseen disruption of the Services arising from causes that are beyond the Host's control, including, but not limited to, actions or failures of third parties, and of any remedial actions being taken to minimize the effects and length of any such disruption. The Host will not be liable for damages to the Town resulting from the disruption of the Services that are beyond its reasonable control. Notwithstanding the foregoing, if the Website's availability is disrupted for a reason other than scheduled maintenance for (i) twenty-four (24) consecutive hours, the Town may, in its sole discretion, terminate the Agreement immediately by giving written notice to the Host; provided, however, that such immediate termination may issue only if the disruption or disruptions do not arise from any action or inaction of the Town.

- (c) Website Back up. The Host must back up the Website as set forth on the Overview hereto.
- (d) Security. The Host must take commercially reasonable steps to prevent unauthorized access to the Website and to any of the Town's Confidential Information stored on the Host's servers, including, but not limited to, any data collected on the Website.

9. NATURE OF RELATIONSHIP.

- (a) Independent Contractor Status. The Host agrees to perform the Services hereunder solely as an independent contractor. The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. The Host is and will remain an independent contractor in its relationship to the Town. The Town shall not be responsible for withholding taxes with respect to the Host's compensation hereunder. The Host shall have no claim against the Town hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Nothing in this Agreement shall create any obligation between either Party and a third party.
- (b) Indemnification of Town by Host. The Town has entered into this Agreement in reliance on information provided by the Host, including the Host's express representation that it is an independent contractor and in compliance with all applicable laws related to work as an independent contractor. If any regulatory body or court of competent jurisdiction finds that the Host is not an independent contractor and/or is not in compliance with applicable laws related to work as an independent contractor, based on the Host's own actions, the Host shall assume full responsibility and liability for all taxes, assessments, and penalties imposed on or against the Host and/or the Town resulting from such contrary interpretation, including but not limited to taxes, assessments, and penalties that would have been deducted from the Host's earnings had the Host been on the Town's payroll and employed as an employee of the Town.

10. NO CONFLICT OF INTEREST; OTHER ACTIVITIES.

The Host hereby warrants to the Town that, to the best of its knowledge, it is not currently obliged under any existing contract or other duty that conflicts with or is inconsistent with this Agreement. During the Term, the Host is free to engage in other website hosting activities; provided, however, the Host shall not accept work, enter into contracts, or accept obligations inconsistent or incompatible with the Host's obligations or the scope of Services to be rendered for the Town pursuant to this Agreement.

11. INDEMNIFICATION.

- (a) Of Town by Host. The Host shall indemnify and hold harmless the Town and its officers, members, managers, employees, agents, contractors, sublicensees, affiliates, subsidiaries, successors, and assigns from and against any and all

damages, liabilities, costs, expenses, claims, and/or judgments, including, without limitation, reasonable attorneys' fees and disbursements (collectively, the "Claims") that any of them may suffer from or incur and that arise or result primarily from (i) any gross negligence or willful misconduct of the Host arising from or connected with the Host's carrying out of its duties under this Agreement, or (ii) the Host's breach of any of its obligations, agreements, or duties under this Agreement.

- (b) Of Host by Town. The Town shall indemnify and hold harmless the Host from and against all Claims that it may suffer from or incur and that arise or result primarily from (i) its hosting or usage of the Town's Website in connection with the carrying out of its duties under this Agreement or (ii) the Town's breach of any of its obligations, agreements, or duties under this Agreement; provided, however, none of the foregoing result from or arise out of the actions or inactions of the Host.

12. INTELLECTUAL PROPERTY.

- (a) No Intellectual Property Infringement by Host. The Host hereby represents and warrants that the use and proposed use of any software, programs, or applications by the Town or any third party to access the Website does not and shall not infringe, and the Host has not received any notice, complaint, threat, or claim alleging infringement of, any trademark, copyright, patent, trade secrets, industrial design, or other rights of any third party. To the extent the software, programs, or applications used to access the Website infringe on the rights of any such third party, the Host shall obtain a license or consent from such third party permitting the use of such items.
- (b) No Intellectual Property Infringement by Town. The Town represents to the Host and unconditionally guarantees that all text, graphics, photos, designs, trademarks, hyperlinks, or other content on the Website are owned by the Town, or that the Town has permission from the rightful owner to use each of these elements, and will hold harmless, protect, indemnify, and defend the Host and its subcontractors from any liability (including attorneys' fees and court costs), including any claim or suit, threatened or actual, arising from the use of such elements furnished by the Town. The Town further represents to the Host that its domain names or URL listings do not infringe, dilute, or otherwise violate third-party rights or trademarks.
- (c) Host Property Rights. All tools, know-how, and technology leased or licensed to the Host with respect to the hosting of the Website are the sole property of the Host, and the Town has no ownership or other intellectual property rights in or to such items.
- (d) Town Property Rights. All text, graphics, photos, designs, trademarks, hyperlinks, or other content on the Website are the property of the Town, and the Host has no ownership or other intellectual property rights in or to such items.

13. LAWS AFFECTING ELECTRONIC COMMERCE.

From time to time, governments enact laws and levy taxes and tariffs affecting Internet electronic commerce. The Town agrees that it is solely responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect, and defend the Host and its subcontractors from any claim, suit, penalty, tax, or tariff arising from the Town's exercise of Internet electronic commerce.

14. AMENDMENTS.

No amendment, change, or modification of this Agreement shall be valid unless in writing and signed by both Parties.

15. ASSIGNMENT.

The Town may assign this Agreement freely, in whole or in part. The Host may not, without the written consent of the Town, assign, subcontract, or delegate its obligations under this Agreement; provided, however, that the Host may transfer its right to receive amounts payable for Services under this Agreement, which transfer will be effective only after receipt by the Town of written notice thereof.

16. SUCCESSORS AND ASSIGNS.

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

17. FORCE MAJEURE.

A Party shall not be considered in breach of or in default under this Agreement on account of, and shall not be liable to the other Party for, any delay or failure to perform its obligations hereunder by reason of fire, earthquake, flood, explosion, strike, riot, war, terrorism, or similar event beyond that Party's reasonable control (each a "Force Majeure Event"); provided, however, if a Force Majeure Event occurs, the affected Party shall, as soon as practicable:

- (a) notify the other Party of the Force Majeure Event and its impact on performance under this Agreement; and
- (b) use reasonable efforts to resolve any issues resulting from the Force Majeure Event and perform its obligations hereunder.

18. NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

19. NOTICE.

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) to the respective Parties as follows:

If to the Town:
Whitestown Parks Department
6210 Veterans Drive
Whitestown, IN 46075

If to the Host:
MidWest Coast Media
309 W. Marion Street
South Bend, IN 46601

20. GOVERNING LAW.

This Agreement shall be governed by the laws of the state of Indiana. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

21. COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

22. SEVERABILITY.

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

23. ENTIRE AGREEMENT.

This Agreement, together with Exhibit A hereto, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

24. HEADINGS.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

TOWN

Town of Whitestown Parks Department

By: _____
Name:
Title:

HOST

Mid West Coast Media

By: _____
Name:
Title: