

## **TextCaster License Agreement**

### **Terms & Conditions**

This agreement, (hereafter, "Agreement") is by and between Mobile Media Technologies, LLC and City of Waukesha, Wisconsin (hereafter, "Licensee").

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In consideration of the mutual promises set forth herein, the parties hereby agree as follows:

#### **I. Term**

- A) The effective date of this Agreement is June 7, 2017.
- B) The term of this Agreement shall be for a period of twelve (12) months from the effective date.
- C) This Agreement shall automatically renew unless either party notifies the other party of its intention to cancel in writing thirty (30) days prior to the expiration of the aforementioned term.

#### **II. Scope of License**

- A) Licensee warrants that the City of Waukesha Parks & Recreation Department will use the TextCaster system to send only non-commercial content such as news and other information of value to subscribers. Any additional usage or uses of the TextCaster system shall exceed the scope of the license granted, and may result in suspension or termination.
- B) During the term of this Agreement, Mobile Media Technologies shall:
  - 1) Provide TextCaster mass notification text and email system to Licensee as described in Appendix A; and
  - 2) Provide customer service and support to Licensee.
- C) During the term of this Agreement, Licensee shall:
  - 1) Place and maintain a link to the TextCaster sign-up page in a primary and/or conspicuous location of the Licensee's web page; and/or facilitate a web-based process that affords subscribers and others the ability to opt-in, opt-out, or change messaging preferences as necessary; and
  - 2) Comply with all requests to display all legal and carrier-required instructions and terminology as necessary and instructed by Mobile Media Technologies, LLC.

**III. Payment.**

The City shall pay \$1,000.00 annually for the services provided as and as set forth in Appendix A attached to this agreement plus an additional \$200.00 one-time for system setup as set forth in Appendix A. The City shall remit payment to Mobile Media Technologies, LLC within thirty (30) days of receipt of an invoice.

**IV. Confidentiality/Ownership of Content**

Subject to the limitations described at Sections II, V(D), and V(F) of this Agreement, Licensee shall be solely responsible for the content sent to its subscribers, and for the sending of that content to its subscribers, using the TextCaster system. Mobile Media Technologies, LLC agrees that all content and subscriber information provided by and used by Licensee in connection with this Agreement are and shall remain the exclusive property of Licensee. Mobile Media Technologies, LLC shall keep this information private and confidential, and shall not share said information unless mandated to do so by a court of law. Mobile Media Technologies, LLC, shall not sell to a third party or otherwise utilize subscriber information for any purpose other than providing the services required in this agreement. All content and subscriber information obtained by Mobile Media Technologies, LLC, shall be retained during the term of this agreement for a period of two (2) years subsequent to the termination of this agreement.

**V. Suspension & Termination**

Mobile Media Technologies, LLC may, at its sole discretion, suspend Licensee's use of TextCaster and/or nullify this Agreement at any time in the event that:

- A) Any changes in law, including the establishment of new taxes and fees imposed by governing authorities, that prohibit or make prohibitively expensive the use of Mobile Media Technologies, LLC's systems;
- B) Mobile Media Technologies, LLC is obligated or advised to comply with an order, instruction, directive, or request of a governmental body which necessitates that it do so;
- C) Licensee fails to comply with the published standards, guidelines, and best practices of the Cellular Telecommunications Industry Association (CTIA-The Wireless Association) and Mobile Marketing Association (MMA);
- D) Licensee uses the TextCaster System to send offensive or vulgar content, or any other material that Mobile Media Technologies, LLC deems harmful to its reputation and good standing;
- E) Any changes in carrier regulations and/or related costs that make prohibitively expensive or legally untenable the operations of Mobile Media Technologies, LLC; or

- F) Licensee uses the TextCaster System to send commercial content; defined as content that promotes the commercial availability of a product or service, its price, makes reference to the respective quality of a product or service, or states a call to action regarding said product or service.

**VI. Warranties**

- A) Mobile Media Technologies, LLC warrants that its services and deliverables will be performed in a professional and workmanlike manner at least to industry standards.
- B) Licensee warrants and represents that it has the ability to enter into this Agreement, and its signatory further warrants and represents that they have the authority to contract with Mobile Media Technologies, LLC on behalf of Licensee.

**VII. Indemnification**

- A) Mobile Media Technologies, LLC must, on occasion, perform scheduled maintenance on its systems that may limit or prevent access by Licensee. As a result, Licensee shall hold harmless Mobile Media Technologies, LLC for any problems, disruptions, damages, or losses incurred by Licensee as a result of such maintenance. Mobile Media Technologies, LLC, will provide Licensee with a minimum of 24-hour notice of any scheduled maintenance.
- B) Mobile Media Technologies LLC will indemnify, defend and hold harmless Licensee, its Affiliates, and the officers, directors, employees, agents, successors and assigns of each (“Licensee Indemnitees”), from and against any and all liabilities, losses, claims, damages, demands, costs and expenses (including reasonable attorneys’ fees, including to enforce this indemnity) arising from or related to any third party claim, action, suit, demand, investigation or proceeding arising from or related to (a) any allegation that Service Provider failed to comply with federal or state law regarding transmission of text messages where the alleged failure is the product of Service Provider’s intentional or negligent acts and not the intentional or negligent acts of Licensee, a User or a cell phone service carrier; (b) any allegation of misappropriation of Confidential Information as that term is defined in Section IV of this Agreement; or (c) any allegation of violation of third party intellectual or proprietary rights or licenses related to the TextCaster System, the Documentation, any other Service Provider Property and/or any Services provided by Service Provider under this Agreement.
- C) Mobile Media Technologies, LLC is not responsible for the enactment of any new laws, regulations, or levy of taxes that may affect the use of its systems. Licensee agrees that it is responsible to comply with any such new laws, regulations or taxes, and shall indemnify and hold Mobile Media Technologies, LLC harmless for any such failure to comply.

- D) Licensee agrees to indemnify and hold Mobile Media Technologies, LLC harmless from any complaint or lawsuit that may arise from Licensee's use of the TextCaster System or failure to comply with carrier, CTIA, or MMA guidelines that govern messaging.
- E) If Licensee chooses to import subscribers into the TextCaster system from another messaging provider, information system, database, or any other source of records or information, Licensee warrants that it has received written consent from all subscribers to receive content from Licensee, and shall indemnify and hold Mobile Media Technologies, LLC harmless from any action or claim based on Licensee's use of the TextCaster System asserted by a person or entity who has not affirmatively opted in to the Licensee's TextCaster account through the Licensee's TextCaster sign-up page, or who has attempted to opt out by a means other than through the Licensee's TextCaster sign-up page.

**VIII. Insurance**

Mobile Media Technologies, LLC, at its own expense, shall purchase, maintain and keep in force during the term of the Agreement a policy of commercial general liability (CGL) insurance. The limits of the CGL policy shall be \$1,000,000 per occurrence, \$2,000,000 aggregate. The CGL policy shall be written by a company duly authorized to transact CGL policies in the State of Wisconsin and the policy shall name the City of Waukesha as an additional insured. A certificate of insurance shall be provided to the City of Waukesha as proof of the insurance is in full force and effect as of the date of this Agreement.

**IX. Governmental Immunities and Notice Requirement Preservation**

Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by section 893.80, Wis. State, or any other law.

**X. Entire Agreement**

This Agreement, along with Appendix A and all other appendices attached hereto, constitute the entire agreement and understanding of the parties to this Agreement. This Agreement also supersedes all prior agreements and understandings, whether oral or written. No modification of any of the provisions herein shall be valid unless made in writing and signed by the parties to this Agreement.

**XI. Amendments**

No amendments, additions, or changes of any kind to this Agreement will be valid unless in writing and signed by all of the Parties to this Agreement.

**XII. Severability**

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this



*Your Audience, Your Message, Their Terms.*

Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**XIII. Transfer of Rights**

This agreement shall be binding on any successors of the parties. Neither party shall have the right to assign its interests in this Agreement to any other party, unless the prior written consent of the other party is obtained.

**XIV. Applicable Law**

The provisions of this Agreement shall be governed by the laws of the State of Wisconsin. Any disputes arising under this Agreement shall be resolved in the circuit court of Waukesha County, Wisconsin.

**XV. Notices**

All notices, legal or otherwise, shall be sent to the following:

If to Mobile Media Technologies, LLC:

Attn: Office Manager  
P.O. Box 12003  
Kansas City, MO 64152

If to Licensee:

Attn: Waukesha City Attorney's Office  
201 Delafield Street, Room 206  
Waukesha, WI 53188

**XVI. Billing**

Mobile Media Technologies, LLC shall send its invoices to:

Billing Contact Name: Gina L. Kozlik, City Clerk  
Billing Address: 201 Delafield Street, Room 104  
Waukesha, WI 53188  
Billing Email Address: clerktreas@waukesha-wi-gov  
Billing Phone Number: 262-524-3550

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the effective date mentioned above.

**Mobile Media Technologies, LLC**

By: Robert J. Sweeney, CEO

\_\_\_\_\_

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

**City of Waukesha, Wisconsin**

By: Shawn N. Reilly, Mayor

\_\_\_\_\_

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

By: Gina L. Kozlik, City Clerk

\_\_\_\_\_

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

**To certify that funds are provided for payment:**

By: Richard Abbott, Director of Finance

\_\_\_\_\_

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



## **APPENDIX A**

### **Mobile Media Technologies, LLC Program Fee Schedule**

**Text (Wireless) Information Delivery** - Non-commercial text messages. Unlimited use.

Fee: \$ 1000.00 annually

**Email (Web) Information Delivery** - Non-commercial messaging. Unlimited use.

Fee: Included in Text Information Delivery Price

**Administration** – one-time set-up and implementation fee.

Fee: \$ 200.00 one-time

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