

01.27.2023

SAUK COUNTY

Website Hosting Agreement

Prepared by

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Director of Web Development

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859-967-3555



Service Order: Website Hosting

| | |
|---------------|--|
| Company _____ | MG Contact <u>Jordan Moize</u> |
| Contact _____ | Address <u>1954 Commerce St</u> |
| Address _____ | <u>Dallas, TX 75201</u> |
| _____ | Phone <u>972-640-8959</u> |
| Phone _____ | Fax _____ |
| Email _____ | Email <u>webdev@mediumgiant.co</u> |
| Website _____ | Start Date <u>04/01/2023</u> |
| Notes _____ | Term <u>9 months for 2023, auto-renewal for 2024 will be a 12 month term</u> |

Requirements + Agreement Assumptions

- Medium Giant will maintain admin access to the website
- Medium Giant requires the licensing of WordFence Premium (\$99/year), a WordPress plugin, which will be billed directly to Sauk County and is not included in this hosting fee
- Medium Giant will have access to the domain registrar and ability to make DNS updates
- New development requests will require an additional service order
- This agreement will auto-renew at the end of the specified 9 month service term, unless Medium Giant is provided notification of cancellation at least 30 days, but not more than 60 days prior to expiration of the then existing service term. The following renewal for 2024 will be a 12 month term to align with Sauk County's fiscal year.

| WEBSITE HOSTING | MRR |
|---|--------------|
| <p>Monthly Fee</p> <p>Services Include:</p> <ul style="list-style-type: none"> • Hosting one (1) WordPress based website inside of our managed hosting environment • Server maintenance & updates • WordPress core updates • WordPress plugin updates • Three (3) environments <ul style="list-style-type: none"> ○ Development/Testing ○ Staging ○ Production (live website) • DNS updates • Monitoring for uptime/server errors <ul style="list-style-type: none"> ○ During business hours (8 AM CST - 5 PM CST) - <ul style="list-style-type: none"> ■ Medium Giant will notify client via email within 2 hours that the site is down. ■ Medium Giant will resolve server issue within 4 hours from time of outage. Resolution time lasting longer than 4 hours will be communicated to the client. ■ Medium Giant will deliver a resolution recap to client via email within 48 business hours. ○ After business hours (After 5 PM CST, Weekends and Medium Giant Holidays) - <ul style="list-style-type: none"> ■ Medium Giant will notify client via email within 12 hours that the site is down. ■ Medium Giant will resolve server issue within 24 hours from time of outage. Resolution time lasting longer than 24 hours will be communicated to the client. ■ Medium Giant will deliver a resolution recap to client via email within 48 business hours. | \$225 |

- Security
 - Login monitoring
 - 2 Factor Authentication
- Bandwidth & Storage
 - Up to 100,000 visitors/mo
 - 20 GB storage
 - 200 GB bandwidth/mo

Not included in this contract:

- Code changes due to plugin or core updates
- Plugin fees & licenses (i.e. WordFence)
 - All plugin fees & licenses will be billed directly to Sauk County from plugin vendors and are not included in the price of this contract.
- Changes to functionality
- Theme updates
- Email services
- FTP/SFTP access
- SSH access
- Domain registration
- Overages (Bandwidth, Local or CDN Storage, and API Usage)

ADDITIONAL FEES: Overages (Bandwidth, Local or CDN Storage, and API Usage)

Any overages will be billed in the month following the month when the overage occurred

- In the event that actual usage exceeds the initial quantity ordered, that overage will be billed in the following month.
 - Bandwidth: \$0.15/GB
 - Storage: \$5.00/GB

9-MONTH TOTAL

\$2,025*

**plus any applicable fees + taxes*

This Statement of Work and Services Agreement (the "Agreement") shall govern the provisioning of hosting services to Sauk County by Medium Giant Company, Inc, d/b/a Medium Giant ("MG"). This Agreement specifically describes the Services and Deliverables sought, indicates the quantity to be purchased, sets forth the delivery schedule and/or term, sets the agreed price, and the terms of service. A signature constitutes the approval for purchase of the Agreement. Work will not commence until the signed Agreement has been received and executed by an authorized representative.

Accepted by:

Name _____
 Signature _____
 Title _____
 Date _____

Approved By:

Name _____
 Signature _____
 Title _____
 Date _____

Terms of Service

1. Purchase Terms. Pursuant to this Statement of Work and Services Agreement (this "Agreement"), Medium Giant Company, Inc., (the "Company") shall provide and you (the "Purchaser") shall purchase certain goods and services (the "Goods and Services"). This Agreement more specifically describes the Goods and Services sought, indicates the quantity to be purchased, sets forth the delivery schedule and/or term for each of the Goods and Services purchased and sets the purchase price.

2. Disclaimer of Warranties. The Company has made no affirmation of fact or promise relating to the Goods and Services identified for purchase that has become any basis of this bargain. Further, the Company has made no affirmation of fact or promise relating to the Goods and Services being sold that created or amounted to an express warranty that the Goods and Services would conform to any such affirmation or promise. Any description of the Goods and Services in this Agreement is for the sole purpose of identifying the Goods and Services, and the description of the Goods and Services has not been made part of the basis of the bargain and has not created an express warranty that the Goods and Services would conform to any description made by the Company other than what is stated in the Statement of Work contained within this Agreement ("SOW"). It is specifically agreed that the Goods and Services sold by the Company are sold without any implied warranty, including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose or noninfringement. The Goods and Services are sold on an "As Is" basis. Notwithstanding any provision of this Agreement to the contrary, Purchaser acknowledges and agrees that Purchaser (and not Company or any Company personnel) shall be solely responsible for compliance by Purchaser's website(s) with all applicable laws and regulatory requirements, including but not limited to consumer or end-user privacy or accessibility rights under the California Consumer Privacy Act, the European Union General Data Protection Regulation, the American with Disabilities Act and analogous laws and regulatory requirements of any local, state, federal or foreign jurisdiction.

3. Limitation of Liability. The Company shall have no liability with respect to its obligations under this Agreement for consequential, punitive, exemplary or incidental damages including, but not limited to damages for loss of business profits, business interruption, loss of business information or any other pecuniary loss, even if it has been advised of the possibility of such damages. The Company's aggregate liability for any cause of action asserted with respect to its provision of the Goods and Services or its obligations under this Agreement shall not exceed 2x of the 12 month contract value notified immediately preceding the date on which the facts creating such liability arise. In addition, the Company shall not be liable for any damage caused by any interruption of Internet or telecommunication service or any breach of Internet security beyond the reasonable control of the Company. The parties hereby agree that this paragraph represents a reasonable allocation of risk and that the Company would not provide the Goods and Services on the terms set forth herein but for such allocation of risk.

4. Payment. Purchaser shall pay all setup fees upon submission of this sales order. Invoices are generated on a monthly basis and sent to the billing contact on file:

Brent Miller
Sauk County Administrator
Brent.miller@saukcountywi.gov
608.355.3273
505 Broadway, Room 309
Baraboo, WI 53913

ALL ACCOUNTS MORE THAN 60 DAYS PAST DUE SHALL INCUR A DELINQUENCY CHARGE EQUAL TO ONE AND ONE-HALF PERCENT (1-1/2%) PER MONTH OF THE OUTSTANDING BALANCE, OR THE HIGHEST LAWFUL RATE PERMITTED BY APPLICABLE STATE LAW, WHICHEVER IS LESS. The total sales order price, delinquency charges and applicable taxes for the Goods and Services (the "Full Purchase Amount") shall be payable as indicated on this Agreement. The Company reserves the right, in addition to and without limitation on any other remedies to which it may be entitled by Agreement or law. If Purchaser has not paid the Full Purchase Amount when payment is due, the Company may at its option, and in addition to any other remedies to which it may be entitled, without limitation on such remedies, terminate this Agreement in its sole discretion and retake possession of or discontinue Purchaser's access to the Goods and Services. In such an event, the Purchaser will forfeit any sums previously paid for the Goods and Services and shall be liable to the Company for all expenses associated therewith, including applicable shipping and handling charges, collection expenses and attorneys' fees. The Purchaser shall receive written notice from the Company at least three (3) calendar days before such forfeiture and retaking so that the Purchaser may pay the outstanding balance within such three (3) day period in order to prevent such forfeiture and retaking. Upon full payment by Purchaser of the full Purchase Amount, Purchaser shall receive a license to use the Goods and Services as set forth in Section 6. The Purchaser shall provide the Company with a copy of any tax exemption certificate for the "Ship To" location, if any exemption from sales or use taxes is claimed by the Purchaser. Credit Card Fee: All payments made by credit card will be assessed a 3% processing fee, and charged at the time of processing.

5. Risk of Loss. Purchaser bears the risk of loss upon the earlier of receipt of the Goods and Services by the Purchaser or shipment of the Goods and Services by the Company to a third party courier for delivery to the Purchaser.

6. License. Upon full payment to Company (pursuant to Section 4) for the Goods and Services, Purchaser, for no additional or separate license cost, will receive a non-transferable, non-assessable, royalty-free, license to use the Goods and Services (subject to any term therefore as set forth herein), operating on Purchaser's platform/system for Purchaser's personnel. Purchaser shall not, at any time, reverse engineer, reproduce, create derivative works, transfer, assign, distribute, service bureau, sell, resell, or sublicense all or any portion of the Goods and/or Services or any portion thereof or allow any third party to do the same.

7. Representations, Warranties and Indemnification. The Purchaser and the Company represents and warrants that it is the owner or has the full licensing rights and all other necessary authority to use all content and materials (including, without limitation, copyrights, trademarks and other intellectual property rights) provided to the Company or the Purchaser for use as content in the Goods and Services, and that such use does not violate any copyright, trademark or other intellectual property rights of any other person or entity. The Purchaser and the Company agrees that the Company and the Purchaser may identify the Purchaser as a client in any of its

advertising or other promotional materials or activities. The Purchaser hereby agrees to indemnify and hold harmless the Company (and its officers, directors, employees and agents) from any and all losses, damages, fees, costs, fines and expenses (including without limitation, legal fees and expenses) (collectively, "Damages") that the Company may incur as a result of: (i) the Purchaser's breach of any covenant or representation or warranty contained herein, (ii) any infringement of any patent, copyright, trademark, trade secrets or other intellectual property right of any third party resulting from the Company's use of information provided by the Purchaser, or (iii) the violation of any laws or regulations, including without limitation any "anti-spam" laws or regulations, by the Purchaser in connection with its use of the Goods and Services. The Purchaser further agrees to pay such Damages as they come due to the Company. The representations, warranties and right to indemnification provided by this Paragraph shall survive the termination of this Agreement.

8. Non-solicitation of the Company's Employees. During the term of this Agreement, and for a period of 12 months after this Agreement is terminated by either party hereto, the Purchaser shall not solicit the employment of, employ, or Agreement with, any of the Company's then-current personnel with whom Purchaser had contact under this Agreement.

9. No Waiver. No failure or delay by the Company in exercising any right, power or privilege given by any provision of this Agreement shall operate as a waiver of the provision. Additionally, no single or partial exercise of any right, power or privilege shall preclude any other or further exercise of that or any other right, power or privilege.

10. Governing Law. The law of the State of Wisconsin shall govern this Agreement, without giving effect to any choice of law or conflict of law principles that would result in the application of the law of another jurisdiction. The state or federal courts for Dane County, Wisconsin shall have exclusive jurisdiction over any dispute arising under or relating to this Agreement, and the Company and the Purchaser agrees to and shall be subject to service of process and personal jurisdiction therein.

11. Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by hand; sent by certified U.S. mail, cable, telex, telegram, facsimile transmission or electronic mail; or delivered by overnight or similar delivery service, fees prepaid, to the party to whom such notice is to be given. All legal notices shall be sent to Sauk County Clerk, 505 Broadway, Baraboo, WI 53913. All notices given under this Agreement shall be deemed received three (3) calendar days after deposit in the United States mail if sent via certified mail, on the date of actual delivery if sent via overnight courier, and on the date of actual transmission or delivery if sent via cable, telex, telegram, facsimile transmission or electronic mail or if delivered personally. Notices to the Purchaser and the Company shall be given at the respective addresses set forth in this Agreement. A party may change its addresses for notice by informing the other of the change in writing.

12. Force Majeure. Neither party shall be liable for any delays or failure to perform any of its obligations hereunder due to any causes or contingencies beyond each such non-performing party's control including without limitation, fires, accidents, Acts of God, war, strikes or other labor disputes, governmental actions, orders, or regulations, and any and all other similar matters beyond the control of the parties, except that nothing in this Paragraph eliminates the obligation or extends the due date for payments for Goods and Services due to the Company under this Agreement.

13. Remedies. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and in addition to every other remedy given hereunder, now or hereafter existing at law or equity or by statute or otherwise. THE PURCHASER HEREBY AGREES THAT MONETARY DAMAGES MAY NOT BE ADEQUATE TO REMEDY BREACHES OF THIS AGREEMENT AND EXPRESSLY AGREES THAT THE COMPANY MAY OBTAIN AN INJUNCTION OR OTHER EQUITABLE REMEDY TO PROTECT ITS RIGHTS HEREUNDER.

14. Entire Agreement. The Purchaser acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Further, the Purchaser agrees that this Agreement constitute the complete and exclusive agreement between the parties with respect to the matters contained herein, and that such Agreement supersedes and replaces all other documents including, without limitation, oral or written agreements and all other communications between the parties relating to the Goods and Services.

15. Severability. If any part of this Agreement is found to be prohibited by law, the remainder shall remain valid and enforceable.

16. Counterpart Execution. This Agreement may be executed in multiple counterparts, which shall have the same force and effect as an original. Telecopied, electronic, or faxed copies of signatures shall be effective and shall bind the party signing in that manner.

17. Successors and Assigns. This Agreement shall be binding on, and shall insure to the benefit of the parties' respective heirs, successors and assigns, if any. The Purchaser may not assign its rights under this Agreement without first obtaining the written consent of the Company, such consent not to be unreasonably withheld.

18. Construction of Agreement. Each party has participated fully in the drafting, review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

19. Term and Termination. This Agreement may be terminated (i) by either party upon 30 days written notice with our standard cancellation policy and penalty; (ii) by either party for any material breach of this Agreement that is not cured within 15 days of the breaching party's receipt of notice specifying the breach; (iii) by the Company immediately upon notice that the Purchaser is or may be insolvent or bankrupt; or (iv) by the Company immediately upon the Purchaser's failure to make any payment required under this

Agreement.

20. Travel. The Purchaser agrees to reimburse the Company for reasonable travel expenses, pre-approved in writing, incurred in support of this Digital Marketing Agreement. Reasonable travel expenses may include, but are not limited to, airfare, unbundled air services and airport charges, hotel/lodging, transportation, mileage, parking, tolls and meals. The Company will provide estimated travel costs to the Purchaser for written approval prior to costs being incurred; actual costs may be within +/- 10% of estimate. Related receipts will be provided to the Purchaser upon request.

21. Third-party Fees. Quoted prices in this Agreement include all of the Company's services plus any third-party costs indicated in this Agreement. While the Company does not anticipate any costs outside those in this Agreement, items not included are photography (stock or custom), travel, photocopies, file storage/devices, express mail, other courier services, third-party fees, etc., unless specifically indicated as a line item in this Agreement. All work outside of the scope of this Agreement will require an approved estimate by Purchaser before work commences.

22. Expenses. Purchaser will reimburse the Company for pre-approved expenses arising from this Agreement, including the payment of any sales or use taxes due on the Goods and Services provided under this Agreement.