

AGREEMENT TO PARTICIPATE IN ENJOYWA ADVERTISING PROGRAM
County

WHEREAS, Youra, Incorporated, a Washington State corporation, (hereinafter "Service Provider"), is willing to provide advertising and promotional services in the EnjoyWA media campaign via the internet and other means of mobile content delivery to certain compatible mobile devices and web pages (the "Service"), such that prospective beneficiaries of the Service opt-in to the Service via the Internet or wireless access from mobile cell phones, and, where offered, from Internet web browsers on the beneficiaries' computers, where the beneficiaries have access to the Internet; and

WHEREAS, the county of _____, a political subdivision of the State of Washington, (hereinafter "_____ " or "The County") desires to contract with the service provider to provide such services for and on its behalf, as set forth with more particularity hereinafter; now, therefore,

IT IS HEREBY AGREED AS FOLLOWS:

I. DESCRIPTION OF SERVICES

A. Advertising and Promotion: the Service Provider agrees to provide the following advertising and promotion:

1. EnjoyWA.com Marketing Campaign

EnjoyWA.com is an integrated advertising and promotional campaign on web, video and wireless media for businesses, cities and other organizations to communicate with travelers to increase awareness of their products and services, and, whereby, travelers can purchase, respond to or take advantage of the County's products and services. Travelers are given the chance to view, interact with or opt-in to the EnjoyWA services via an integrated marketing program on the web, on video and on wireless mobile phones, whereby travelers can receive periodic exclusive and non-exclusive content from the County on their computers and/or mobile phones, including:

- News and Informational Updates from County
- County Alerts
- Content Downloads from County
- Prizes and Promotions from Countys

2. Mobile Web - GoEnjoyWA

GoEnjoyWA gives the County access to promote its products and services on the mobile web to allow travelers and cell phone users to Subscribe to receive information about the County on their cell phones' mobile web browsers for those cell phones capable of accessing mobile web services.

3. SMS Text Messaging with Keyword

EnjoyWA's SMS or text messaging system provides the County a keyword to enable communication with end-users to send a text message to EnjoyWA's common short code to enter to win a prize, and in certain cases they are charged a small fee for entering via Premium SMS. Text-to-Win campaigns can be run in conjunction with existing sweepstakes promotions, or as a standalone campaign. County is responsible for adhering to Official Rules requirements and other facets of wireless sweepstakes operations, including disclosures, alternative entry methods, bonding & prize insurance where applicable, and other professional services. The parties agree that in any jurisdiction in which the elements of Text2Win are prohibited by any municipal, state, or federal law, Text2Win will not be offered by County

4. Content Downloads

Content Downloads include:

Videos

Ringtones/Music

Graphics/Photos

The service provider can offer premium or non premium downloads, based of County's needs. Premium Content is specific to a County and is negotiated on a case by case basis with the County.

5. Manner and Frequency of Provision of the Service

The Service described hereinabove shall be provided in the following manner, with frequency described therein:

The Service Provider will promote EnjoyWA on web pages and mobile messages in the form of "TEXT KEYWORD TO SHORTCODE." (For example, "Text _____ To 23907") via multimedia services, including County's web sites, wherever hosted, via print media, posters, newsletter, concert marquees, television, radio; wherever and whenever opportunities exist for County to promote the Service. While it is not possible to specify all possible manners and frequencies of providing and promoting the Service, it is the intention of the parties to exert best and good faith efforts to create the revenues described herein below, by providing and promoting the Service whenever and wherever reasonably possible, on as regular and consistent a basis as is reasonable possible.

6. Only Lawful Content, for Lawful Purposes, On Opt-In Basis

The service provider will not provide, and County agrees not to use the Service to provide downloadable mobile content that is not based in customer opt-in where a customer chooses to receive information, or material that is unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or may otherwise constitute a criminal offense, give rise to civil liability or otherwise objectionable material of any kind or nature or that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law, regulation or court order.

The service provider takes a zero tolerance stance against sending of unsolicited downloadable mobile content, commonly known as spam. All downloadable mobile content, provided by the service provider or County, will comply with all applicable federal, state or local laws. The service provider reserves the right to require changes or disable as necessary any component of the Service that does not comply with this policy, at their sole discretion, and reserve the right to make any such modifications in an emergency at our sole discretion.

In the event that any element of the Service is under the discretion, direction or control of County, the service provider has the right to reasonably monitor the Service electronically at any time and to disclose any information as necessary to satisfy the law, or to protect itself, its agents, employees, and any other clients or customers. The service provider

undesirable, or in violation of this agreement. The service provider also reserves the right to refuse refunds of payments made by County, or by any other party on County's behalf, in cases where the service provider believes abuse has taken place. The service provider reserves the right to monitor any and all communications through or with its facilities. It is agreed and acknowledged by the parties that the service provider is not considered a "secure communications medium" for the purposes of the ECPA, and that no expectation of privacy is afforded in the event that such service is monitored and/or disclosed.

B. Carriers the service provider agrees to provide or sub-contract with telecommunication service providers (hereinafter "Carriers") for telecommunication carriage and transmission of all mobile content to be delivered hereunder.

C. Promotion by County As set forth in paragraph "A" hereinabove, Sponsor agrees to promote the Service, including Premium subscriptions, ring tones, wall papers, and Text2Win campaigns entered into with the service provider, as a condition precedent to the service provider's obligations to perform according to the terms and conditions of the Agreement.

II. TERM AND EXCLUSIVITY OF AGREEMENT.

A. The initial term of this Agreement shall be one (1) year, during which County agrees that the service provider will be the sole and exclusive provider of services similar to, or the equivalent of, the Service as described hereinabove. After the initial term this Agreement will automatically renew in terms of 1 (one) year unless cancelled 30 days prior the end of the ongoing term.

III. PRICE AND TERMS OF PAYMENT

A. Payment by County to the service provider, for the Service, shall be accomplished as follows: The Service Provider and the County agree that the amount paid by the County to the Service Provider shall be _____, based upon a cost of the service to be \$50,000 per year, which can be discounted according to the following schedule:

- \$50,000 per year with 1 year commitment
- \$48,000 per year with 2 year commitment
- \$46,000 per year with 3 year commitment
- \$44,000 per year with 4 year commitment
- \$42,000 per year with 5 year commitment

III. PRICE AND TERMS OF PAYMENT

A. Service Provider agrees that only ten categories for Countyship are available for EnjoyWA program:

Sponsorship Categories:

1. Beverage Company	2. Beer Company
3. Computer Hardware Company	4. Computer Software Company
5. Financial Institution	6. Insurance Company
7. Internet Company	8. Media Company
9. Outdoor Recreation Company	10. Transportation Company

B. and that the County is granted exclusivity of this Category: _____.

IV. TERMINATION

Either party may terminate this agreement with or without cause, in writing, delivered to the other party at the address of the registered agent for the respective party. Delivery may be by personal service or by placing said notice in the U.S. Mail, postage prepaid. Notice by mail shall be deemed completed upon the 3rd (third) day following mailing.

V. RELATIONSHIP OF THE PARTIES.

Nothing contained in this Agreement shall be construed as creating any agency, legal representative, partnership, any manner whatsoever.

VI. DISCLAIMER OF WARRANTIES/LIMITATION OF LIABILITY

THE SERVICE PROVIDED BY YOURA IS PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE SERVICES PROVIDER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE SERVICE WILL BE ERROR-FREE, TIMELY, SECURE OR UNINTERRUPTED. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY THE SERVICE PROVIDER,

THEIR EMPLOYEES, LICENSORS OR AGENTS WILL CREATE A WARRANTY; NOR MAY YOU RELY ON ANY SUCH INFORMATION OR ADVICE.

UNDER REASONABLE CIRCUMSTANCES THE SERVICE PROVIDER OR ITS AFFILIATES WILL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SERVICE, INCLUDING BUT NOT LIMITED TO RELIANCE ON ANY INFORMATION OBTAINED VIA THE SERVICE; OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR E-MAIL, LOSS OF OR DAMAGE TO DATA, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT LIMITED TO ACTS OF GOD, COMMUNICATION FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO THE SERVICE PROVIDER'S RECORDS, PROGRAMS OR SERVICES. YOU HEREBY ACKNOWLEDGE THAT THIS PROVISION WILL APPLY WHETHER OR NOT THE SERVICE PROVIDER IS GIVEN NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND THAT THIS PROVISION WILL APPLY TO ALL SERVICES AVAILABLE FROM THE SERVICE PROVIDER AND ITS AFFILIATES.

UNDER NO CIRCUMSTANCES, UNDER THE TERMS OF THIS AGREEMENT, SHALL DAMAGES INCLUDE LOSS OF BUSINESS, OR LOSS OF PROFITS, WHETHER BASED ON BREACH OF AGREEMENT, BREACH OF WARRANTY, PRODUCT LIABILITY, OR OTHERWISE, TO ANY PARTY IN PRIVY TO THIS AGREEMENT, OR ANY THIRD PARTY NOT SO SITUATED.

THE TERMS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.

VII. COPYRIGHT AND TRADEMARKS

All elements of the Service and/or its suppliers are protected under Copyright. All rights are reserved. The service provider reserves any rights not expressly granted herein. County acknowledges that County does not presently know the special skills, techniques or business policies, nor does County have access to the service provider's body of knowledge, and as such, such information is deemed confidential and a trade secret, as such term is defined within the meaning of relevant State and Federal law.

VIII. FORCE MAJEURE

If by reason of failures of telecommunications or internet service providers, labor disputes, riots, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions or other causes beyond the control of the service provider and the service provider is unable to perform in whole or in part their obligations as set forth in this Agreement, then the service provider, shall be relieved of those obligations to the extent they are so unable to perform and such inability to perform shall not make the service provider liable to _____ or other third parties.

IX. GOVERNING LAW; JURISDICTION; VENUE

Maryland law shall govern this Agreement, and any dispute arising from the relationship between the parties to this Agreement, excluding any laws that direct the application of another jurisdiction's laws. The parties consent to the exclusive jurisdiction and venue of the courts of the State of Maryland or to any Federal Court located within the State of Maryland.

X. ATTORNEYS FEES AND COSTS

In the event legal action is required to enforce the terms of this agreement, the prevailing party shall be entitled to reimbursement for attorney fees and costs of suit, including any appeal.

XII. SEVERABILITY AND SURVIVABILITY

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

B. Survivability. The terms of this Agreement apply to those obligations that survive any cancellation, termina-

tion, or rescission, namely – warranty, indemnification, liability and limits thereon, rights and obligations upon and following termination and assignment.

XIII. INDEMNIFICATION

A.) County agrees to defend, indemnify and hold harmless The Service Provider against any and all claims, losses, penalties, causes of action, damages, liability, costs, expenses (including but not limited to attorneys’ fees and costs) or claims caused by or resulting indirectly from County’s use of the Service, without limitation or exception, including County’s violation of any third-party’s rights, (including, without limitation, infringement of any copy right trademark, service mark, trade secrets, right of privacy or publiCounty or any other third party right). The terms of this section shall survive the termination of County’s relationship with the service provider.

B.) Service Provider agrees to defend, indemnify and hold harmless The Service provider against any and all claims, losses, penalties, causes of action, damages, liability, costs, expenses (including but not limited to attorneys’ fees and costs) or claims caused by or resulting indirectly from Service Provider’s use of the Service, without limitation or exception, including Service Provider’s violation of any third-party’s rights, (including, without limitation, infringement of any copy right trademark, service mark, trade secrets, right of privacy or publiCounty or any other third party right). The terms of this section shall survive the termination of Service Provider’s relationship with County.

XIV. REMEDY

County agrees the remedy to any issues relating to the Service is any remedy available to it by law including, but not limited to discontinuing the use of the Service.

XV. ASSIGNMENT

In the event of a merger or consolidation of the service provider, the surviving or new corporation and any subsidiaries are similarly subject to the rights and obligations of this Agreement.

XVI. ENTIRE AGREEMENT

This Agreement constitutes the complete and exclusive statement of the Agreement between the parties regarding the products and services provided hereunder, and supercedes any prior Agreements between the parties with respect thereto.

XVII. WAIVER

The failure of the service provider to enforce a provision of this Agreement shall not be construed as a waiver or limitation of the service provider’s right to subsequently enforce and compel strict compliance with every provision of this Agreement.

AGREEMENT ENTERED INTO BY AND BETWEEN THE PARTIES this day of, 20.....

SERVICE PROVIDER

County

YOURA, INCORPORATED,
a Washington corporation,

by.....

Dan Youra, President and CEO

by.....

_____ , _____

Title