DAN MORIARTY DESIGN
Web Design + Online Strategy

5416 Aldrich Ave. S., Minneapolis, MN 55419   **email** webdesign@danmoriarty.com   **phone** 612-466-0020   **url** www.danmoriarty.com

Hosting Agreement

Date: 08/28/12   **Proposal #: 082812-01**

To: Michael Hahm
              City of Saint Paul - Parks and Recreation
              25 4th St E, Suite 400
              Saint Paul MN 55102

URL(s) to be hosted: http://sprocketssaintpaul.org

This Website Hosting Agreement (the "Agreement") is entered into as of <u>July 23, 2012</u> (the "Effective Date") by and between Pixelary LLC, a limited liability corporation (the "Host"), and the City of St. Paul, MN. (the "Client," and together with the Host, the "Parties").

1. Your Hosting Plan

The following is our most popular configuration for Drupal web hosting. Contact us if you require a custom plan, or additional hosting options, such as SSL Certificates.

☐   *Managed Drupal Hosting*

Fully managed website hosting for your Drupal site, including updates to your Drupal install and all Drupal modules currently used by your site. Also includes ongoing security audits and patches, daily backups, and critical infrastructure support (24x7).

Cost: $50/month

☐   *Ongoing Support and Maintenance*

Up to 2 hours of premium Drupal support per month, through our online Case Tracker system. Unlimited tickets/issues, phone and email support during business hours, and minimum response time of 24 hours. Additional hours available at $150/hr.

Cost: $200/month

2. Email Services

Please note that the Host does not provide email services for the Client. Many clients already maintain and manage an email server. Should you require email services, we recommend Google Apps. Free and low-cost accounts, including email services, are available at http://google.com/a.

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3. Payment Schedule:

Payments shall be made by the Client with one of the following plans:

☐   Monthly payments (*requires auto-billing and credit card, due every month on the same day as service activation)

☐   Quarterly payments (* due every 13 weeks from the date of service activation)

☐   Yearly payments (* due annually from the date of service activation)

4. Terms of Hosting Agreement

1. Purpose

The Client hereby engages the Host, and the Host hereby accepts such engagement, to perform the services described in Exhibit A 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 Exhibit A. Payments shall be made according to the payment schedule set forth in Exhibit A.

3. Term

This Agreement shall continue in force from the Effective Date, unless otherwise terminated in accordance with the provisions of Section 4, for a period of 12 month[s] (the "Term"). Agreement will renew automatically every 12 months thereafter unless either Party provides thirty (30) days' written notice of its intent not to renew.

4. Termination of Agreement and Cancellation Policy

a. Types of Termination

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 ten (10) days of receipt of written notice thereof.

iii. By the Client in accordance with the provisions set forth in Sections 6(a) and (b).

iv. By the Client at any time and without prior notice, if the Host fails or refuses to comply with the written policies or reasonable directives of the Client, 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 Client shall promptly pay the Host according to the terms of Exhibit A for Services rendered before the effective date of the termination (the "Termination Date"). The Host acknowledges and agrees that no other compensation for hosting shall be required following the termination of this Agreement. The Host shall return to the Client all materials and information the Client has provided to the Host in connection with this Agreement, including a complete electronic copy of the then-current Website, no later than ten (10) days after the Termination Date.

c. Suspension of Account

Hosting accounts may be suspended if the Client has any outstanding debts to Host over 60 days past due, until payment is received.

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5. Responsibilities

    a.   **The Host agrees to do each of the following:**

        i. Host the Website as detailed in Exhibit A to this Agreement.

        ii. Devote as much productive time, energy, and ability to the performance of its duties 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 Client and take steps to ensure the Website remains up and running and that any time the Website is off-line is kept to a minimum.

    b.   **The Client agrees to do each of the following:**

        i. Engage the Host as the host of its Website as further detailed in Exhibit A 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 ten (10) days 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. Warranties

The Host must use reasonable efforts to insure that the Website is available on the Web, except during scheduled maintenance as set forth on Exhibit A hereto.

    a. Routine Maintenance Disruptions. If the cumulative downtime of the Website resulting from scheduled maintenance as set forth on Exhibit A exceeds three (3) hours during any thirty (30) day period (unless such downtime is approved in advance by the Client), the Client 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 Client.

    b. Unforeseen Hosting Disruptions. The Host shall inform the Client 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 Client 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 Client 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 Client.

    c. Website Back up. The Host will back up the Website as set forth on Exhibit A hereto. All reasonable efforts to maintain backups will be applied; however backups are not fail safe and clients are encouraged to backup their own data periodically using the supplied Backup and Migrate module.

    d. Security. The Host must take commercially reasonable steps to prevent unauthorized access to the Website and to any of the Client's Confidential Information stored on the Host's servers, including, but not limited to, any data collected on the Website.

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7. 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 Client. The Client shall not be responsible for withholding taxes with respect to the Host's compensation hereunder. The Host shall have no claim against the Client 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 Client by Host**. The Client 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 Client 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 Client's payroll and employed as an employee of the Client.

8. No Conflict of Interest; Other Activities

The Host hereby warrants to the Client 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.

9. Indemnification

a. **Of Client by Host.** The Host shall indemnify and hold harmless the Client 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 Client**. The Client 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 Client's Website in connection with the carrying out of its duties under this Agreement or (ii) the Client's breach of any of its obligations, agreements, or duties under this Agreement.

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10. 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 Client 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 Client. The Client 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 Client, or that the Client 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 Client. The Client 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 Client has no ownership or other intellectual property rights in or to such items.

d. Client Property Rights. All text, graphics, photos, designs, trademarks, hyperlinks, or other content on the Website are the property of the Client, and the Host has no ownership or other intellectual property rights in or to such items.

e. Nature of Website Content. The Client represents that the content of the Website is not defamatory or obscene, does not constitute false advertising, and does not violate any applicable laws or regulations. The Host has the right, but not the duty, to review and monitor all Website content submitted for hosting and to reject or remove any Website content it believes in good faith breaches the Client's representations made under this Agreement. The Host does not accept responsibility or liability for any errors, inaccuracies or unsuitable content on the Website.

11. Laws Affecting Electronic Commerce

From time to time, governments enact laws and levy taxes and tariffs affecting Internet electronic commerce. The Client 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 Client's exercise of Internet electronic commerce.

12. Amendments

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

13. Force Majeure

A Party shall be 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.

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14. Governing Law

This Agreement shall be governed by the laws of the state of Minnesota. 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.

15. 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, email, or other electronic medium shall have the same force and effect as an original signature.

16. Code of Conduct

Host explicitly reserves the right to terminate a Client's account without refund if it comes to the Host's attention that the Client is using hosting to participate in objectionable activities, which include, but are not limited to, the following: sending unsolicited email or spam; activities designed to defame, embarrass, harm, abuse, threaten, slander or harass third parties; activities prohibited by the laws of the United States and/or foreign territories in which the Client lives or accesses the Internet; activities designed to encourage unlawful behavior by others, such as hate crimes, terrorism and child pornography; activities that are tortious, vulgar, obscene, invasive of the privacy of a third party, racially, ethnically, or otherwise objectionable; activities designed to impersonate the identity of a third party; or activities designed to harm minors in any way.

17. 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.

18. 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.

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EXHIBIT A: DUTIES, SPECIFICATIONS, AND COMPENSATION

A. SERVICES

In exchange for the Hosting Fee, as defined in Section B below, the Host will provide the following Services:

- Publish the Website to the Web no later than ten (10) days after the Effective Date.
- Once published, make the Website available to Internet users at all times, except during scheduled maintenance downtimes.
- Storage of 1GB of disk space on Host's server for the Website and any data files associated with the Website.
- Provide 10 GB of bandwidth per month for the transfer of data.
- Maintain a high-speed, reliable Internet connection capable of handling the Website's content and supporting concurrent visitors to the Website.
- Perform any routine maintenance services or repairs reasonably necessary to maintain the operation of the Website on the Web.
- Back up the Website at least one (1) time(s) each day and store the back-up materials in a secure location suitable for such materials.
- Provide the Client with two (2) hours of Drupal and website technical support relating to the Website each month.
- Unlimited support tickets/phone contact (within 2 hour limit)
- One day response time with "best effort" resolution times.
- Standard business hours
- Monthly Drupal module and security updates

B. COMPENSATION

As compensation for the Services, the Client agrees to pay the Host $50 per month since the initial date of launch (04-27-12) and $250 per month (the "Hosting Fee") after the current project completion. The Hosting Fee will not increase for a period of twelve (12) months from the date of this Agreement.

C. PAYMENT SCHEDULE

The Host will invoice the Client the Hosting Fee as specified in #3, Payment Schedule. Invoices will be due on receipt. Each invoice will include any Additional Fee(s), as defined in Section D below, if applicable.

D. ADDITIONAL HOSTING FEES

For the additional fee set forth below (each, an "Additional Hosting Fee"), the Client may purchase the following additional services from the Host:

- Additional disk space on a monthly basis at a rate of $5 per GB.
- Excess bandwidth at a monthly at a rate of $2 per GB.
- Additional technical support at a rate of $125 per hour as needed and depending on Client availability.

5. OTHER

Other paid, third party services, such as mailing list hosting, are not covered directly under this agreement.

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CLIENT APPROVAL:
Please sign below and return this document to webdesign@danmoriarty.com. Or you may mail it to the address below.

_____   _____

Client Signature   Date

_____   08-28-12
                                                                          _____
Preparer's Signature   Date

Please make checks payable to: **Dan Moriarty,** and mail to 5416 Aldrich Ave. South, Minneapolis, MN 55419. Please contact me with any of your questions. Thank you for your business!

Dan Moriarty Design is part of Pixelary LLC, a limited liability Client owned and operated by Dan Moriarty.