

## PROJECT MASTER AGREEMENT

THIS AGREEMENT, made and entered into by and between:

**Swaelu LLC**  
**(Swaelu Media)**  
85717<sup>th</sup> Street, STE 200  
Des Moines, IA 50314

and

**City of Windsor Heights**  
1145 66th Street Suite 1  
Windsor Heights, IA 50324  
(Client)

1. **Purpose.** Client has engaged Swaelu LLC (“Contractor”) to perform certain services for Client as set forth on the Work Order attached hereto. This Agreement shall serve as the master agreement governing the parties in connection with the performance of work and services by Swaelu LLC for Client and shall eliminate the necessity of a separate agreement for the work and services to be performed by Swaelu LLC for Client as set forth in each Work Order. As used herein, the term “Services” shall mean the work and services to be performed or as performed by Swaelu LLC for Client as set forth on the attached Work Order and any future Work Orders approved and accepted by Swaelu LLC and Client.
2. **Fees and Expenses.** Client agrees to pay for the Services rendered by Swaelu LLC, its employees and representatives in accordance with the fees outlined in the Work Order. Production schedules and fees assume reasonable access to Client personnel and responses to Swaelu LLC requests. All **authorized and applicable** out-of-pocket expenses incurred by Swaelu LLC, its employees or representatives, shall be billed to and paid by Client, including travel expenses, meeting materials, lodging, meals, conferencing services and all taxes (including sales tax) imposed as a result of the Services rendered by Swaelu LLC. All expenses will be reported to Client for authorization before they are incurred.
3. **Material Changes.** A material change is one specified by Client outside the scope of the original Work Order. A change which requires more than 3 hours of work but does not affect the entire project will be billed at \$100.00 per hour. A change that requires modification to the entire project will be billed at 1/3 of the original project cost. Material changes may be incorporated into the product, but only upon mutually agreed upon contract modification and associated price increase. Material changes may include but are not limited to an expedited production schedule, increased functionality, increased system data, design and content modifications, increased system traffic and higher complexity than originally specified and changes in printing specification or delivery methods.

4. **Payment.** Swaelu LLC shall invoice Client on a monthly basis, **unless otherwise agreed on the Work Order.** Client agrees to pay for all fees in full upon receipt of invoice or as outlined in the Work Order, without deduction or offset for any reason. Any invoice of Swaelu LLC not paid within thirty (30) days of receipt shall be subject to an interest charge of the lesser of 15% month per annum or the maximum amount permitted by law.
5. **Approvals.** Approval of product, in both preliminary and final form, shall indicate Client acceptance of all responsibility for the accuracy of all written and visual elements of the product. Swaelu LLC will allow two (2) business days to review and request changes to the product.
6. **Default and Opportunity to Cure.** Failure of the Contractor **or Client** to comply with a material term, condition or provision of this Contract and subsequent Work Orders shall constitute default by the Contractor **or Client.** The Contractor **or Client** shall notify the party of default in writing of the nature of the default. The Contractor **or Client** shall have thirty (30) calendar days, unless otherwise notified, after such notice to correct the problem(s) that resulted in the default notice. If the default is not corrected to the satisfaction of the complainant within the specified time, the complainant may issue a notice of immediate termination and/or assess a penalty of \$100 per day past the time specified in the default notice. All work done and penalties assessed prior to termination will be billed accordingly to Client at time of dissolution.

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible by an act of God or during continuance of the act of God. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. If delay results from the Contractor or Client's conduct, negligence or failure to perform, the Contractor **or Client** shall not be excused from compliance with the terms and obligations of the Contract. This Subsection shall not become operative until the party whose performance is delayed or made impossible notifies the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of services not being performed due to the act of God.

7. **Hold Harmless.** Client is solely responsible for the content and accuracy of source information provided to Swaelu LLC for inclusion in product. Client shall hold Swaelu LLC harmless for any errors in content provided to Swaelu LLC by the client.
8. **Personnel: Control and Supervision.** Swaelu LLC reserves the sole right to determine the personnel of Swaelu LLC designated to perform specific services for Client, and, when necessary, to subcontract those services to any person or entity it believes to be competent to perform such services. All Swaelu LLC employees, representatives, and subcontractors performing services for Client shall be subject to the direction and control of Swaelu LLC.
9. **Swaelu LLC Employee Compensation.** The obligation of Client shall only be to pay for invoiced services on a timely basis and Swaelu LLC shall be solely responsible for the payment of compensation (withholding of income taxes, social security and other employment taxes), worker's compensation, and any benefits to its employees and representatives, and any compensation to subcontractors.
10. **Ownership and Title.** A) Client represents and warrants that it has good and complete title to or full authority to utilize, whether owned directly or pursuant to license, all information, data, graphical images, forms and other items of material (Client Material) provided by Client to Swaelu LLC for the product to be developed by Swaelu LLC pursuant to the Work Order. Client shall retain all right, title and interest to all such

Client

Material provided by Client to Swaelu LLC and Swaelu LLC is granted hereby only a limited license for the purpose of converting such Client Material into digital form or as otherwise necessary to implement the visualization or functionality thereof pursuant to the specifications of the Work Order.

B) Swaelu LLC represents and warrants that it has good and complete title to or full authority to utilize, whether owned directly or pursuant to license, all software, documentation and other material to be used, or developed for use, in the performance of the services required by the Work Order, except such software as set forth in the Work Order or otherwise acquired by Client from third parties.

C) Swaelu LLC retains the rights to the project design, concepts, and content through completion of project development and receipt of full payment for services rendered. Swaelu LLC has the right to stop usage by the client of all products produced by Swaelu LLC if full payment is not received per the Work Order.

D) Swaelu LLC reserves the right to use any work done for the Client in all Swaelu LLC promotional material as well as place a small logo link to [www.Swaelu LLC.com](http://www.Swaelu LLC.com) on completed and applicable client projects for promotional purposes.

11. **Confidentiality.** Each party acknowledges and agrees that a duty is owed to the other party to maintain the confidentiality of any confidential or proprietary information provided by the other party or obtained from the other party in connection with this Agreement. Confidential or proprietary information shall include any information of either party which is not generally known or does not become known to the public, including, without limitation, any development plans, operations, techniques, methods, business plans, trade secrets, or the identity of any clients and users, or information regarding either party's business or how either party does business (collectively, Confidential Information). Confidential Information shall not include any information that (i) is generally known to the public on an unrestricted basis through no fault of the party to whom such information was disclosed; (ii) is required to be disclosed by court order; or (iii) already known to the recipient or is independently developed by the recipient. The provisions of this Paragraph 11 shall survive the termination or expiration of this Agreement.
12. **Employee Solicitation.** Client shall not, directly or indirectly, employ or offer employment to (or utilize as an independent contractor) any employee of Swaelu LLC, who performed Services pursuant to this Agreement. Such prohibition shall be effective during the twelve (12) months following the termination of any such employee's employment with Swaelu LLC. Swaelu LLC shall not, within a like period, employ or offer employment to any employee of Client employed at the Client location where Swaelu LLC performed Services and whom Swaelu LLC became aware of in connection with its performance of Services hereunder.
13. **Warranty.** Swaelu LLC warrants that the Services will be performed in a professional manner in accordance with general industry standards. In the event of breach of the foregoing warranty, Swaelu LLC shall perform again the Services in respect of which the warranty has been breached to bring them into compliance with such warranty. Any claim for breach of the foregoing warranty must be made by written notice to Swaelu LLC within two (2) weeks of completion of the project in respect of which the claim is made.
14. **EXCEPT AS PROVIDED IN THIS SECTION 13, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, ORAL OR WRITTEN STATEMENTS OF SWAELU LLC, ITS AGENTS OR SUBCONTRACTORS OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY SUPERSEDED, EXCLUDED, AND DISCLAIMED.**

15. **Remedy Limitations.** In no event shall Swaelu LLC or its employees, subcontractors, or representatives be liable for any consequential, indirect, punitive, incidental, or special damages, whether foreseeable or unforeseeable, whether based upon lost goodwill, lost profits, loss of use of money, loss of data or interruption in its use or availability, stoppage of work, impairment of assets or otherwise arising out of breach or any express or implied warranty, breach of contract, negligence, misrepresentation, strict liability in tort or otherwise, and whether based on this Agreement, any transaction performed or undertaken under or in connection with this Agreement or otherwise. Swaelu LLC and its subcontractors', employees', and representatives' liability for damages, regardless of the form of action, shall in any event be limited to the aggregate amount paid by Client to Swaelu LLC for Services performed by Swaelu LLC in respect of the relevant Work Order. No action, regardless of form, arising out of any Services may be brought by either party more than one year after the causes of action have occurred except that an action of nonpayment for Services may be brought within two (2) years after the date of last payment or date of last Services performed, whichever shall occur last.
16. **Termination.** This Agreement may be terminated (i) by either party, with or without cause, upon thirty (30) days prior written notice to the other party or (ii) immediately upon written notice to Client in the event of the possibility of an assignment by Client for the benefit of its creditors, the inability of Client to pay its debts as they fall due, the appointment of a receiver for or any execution levied upon all or substantially of Client's business or assets, the filing of any petition for voluntary or involuntary bankruptcy or similar proceeding against Client or Client's dissolution or liquidation. In addition, this Agreement may be terminated by Swaelu LLC immediately upon written notice in the event Client fails to perform its obligation for payment of invoices pursuant to this Agreement. All work done prior to termination will be billed accordingly to client at time of dissolution.
17. **Arbitration.** Any disputes that arise between the parties to the performance of this Agreement shall be submitted to binding arbitration by the American Arbitration Association, to be determined and resolved by said Association under its rules and procedures in effect at the time of submission and the parties hereby agree to share equally in the costs of said arbitration.
18. **Notice.** Any notices pursuant to this Agreement shall be given in writing by personal delivery or prepaid registered or certified mail addressed to the other party at the address first set forth above in this Agreement, or such other address as either party shall notify the other party by written notice given in the same manner.
19. **Independent Contractor.** In making and performing this Agreement, the parties act and shall act at all times as independent contractors, and at no time shall either party make any commitments or incur any charges or expenses for or in the name of the other party.
20. **Assignment.** This Agreement is personal to Client and neither this Agreement nor any of Client's rights or duties hereunder shall be assigned or otherwise transferred by Client without Swaelu LLC's prior, express, written consent.
21. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Iowa.
22. **Amendment.** No amendment of this Agreement or waiver of any rights hereunder shall be effective unless in writing and signed by both parties. This Agreement contains the entire agreement and understanding of the subject matter hereof and merges and supersedes all prior discussions and agreements with respect thereto.

The duly authorized representative of Swaelu LLC and Client have executed this Agreement as of the date set forth below.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.

**PROJECT MASTER AGREEMENT**

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**FOR SWAELU LLC:**

SIGNED: \_\_\_\_\_  \_\_\_\_\_

PRINTED: \_\_\_\_\_ **Kathryn Dickel** \_\_\_\_\_

TITLE: \_\_\_\_\_ **Partner/CEO** \_\_\_\_\_

DATE: \_\_\_\_\_ **6/18/2015** \_\_\_\_\_

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**FOR CLIENT:** City of Windsor Heights

SIGNED: \_\_\_\_\_

PRINTED: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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