

VILLAGE OF BIG ROCK
ORDINANCE NO. 2015- 15

**AN ORDINANCE APPROVING A TEXT MARKETING RENEWAL AGREEMENT
WITH AMERICAN MARKETING & PUBLISHING, LLC**

ADOPTED BY THE BOARD OF TRUSTEES
OF THE VILLAGE OF BIG ROCK
THIS 28TH DAY OF JULY, 2015

Published in pamphlet form by the authority of the Board of Trustees of the
Village of Big Rock, Kane County, Illinois
this 28th day of July, 2015

ORDINANCE NO. 2015- 15
AN ORDINANCE APPROVING A TEXT MARKETING RENEWAL AGREEMENT
WITH AMERICAN MARKETING & PUBLISHING, LLC

WHEREAS, the Village of Big Rock is a municipal corporation duly organized and operating pursuant to the laws of the State of Illinois; and

WHEREAS, American Marketing & Publishing, LLC owns or leases certain software and hardware systems and bandwidth which third parties may purchase for the purpose of using and managing opt-in text message lists and sending text messages to subscribing parties; and

WHEREAS, in Year 2014, the Village of Big Rock entered into a Text Marketing Agreement with American Marketing & Publishing, LLC in order to communicate via text messages public information and emergency information to members of the public who opt-in to receive such text messages; and

WHEREAS, based on the success of utilizing this program, the Village desires to enter into a Text Marketing Renewal Agreement with American Marketing & Publishing, LLC for an additional one year period; and

WHEREAS, the Village of Big Rock Board of Trustees finds that this Text Marketing Renewal Agreement will serve and protect the public interest and welfare.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Big Rock, Kane County, Illinois, as follows:

Section 1: The above-stated Recitals are hereby restated and incorporated into this Section 1 as though fully set forth herein.

Section 2: The Text Marketing Renewal Agreement between the Village of Big Rock and American Marketing & Publishing, LLC, a copy of which is attached hereto as Exhibit "A" as modified by the Village Attorney, is hereby approved.

Section 3: The Village President is authorized and directed to execute said Agreement, as modified, on behalf of the Village.

Section 4: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of the conflict.

Section 5: This ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form as provided by law.

PRESENTED to the Board of Trustees of the Village of Big Rock, Kane County, Illinois on this 28th day of July, 2015.

Trustee Hanninen Y

Trustee Metzger Y

Trustee Lynch Y

Trustee McCannon Y

Trustee Walsh Y

Trustee Shimkus Y

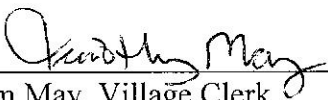
PASSED by the Board of Trustees of the Village of Big Rock, Kane County, Illinois, this 28th day of July, 2015.

SIGNED by the President of the Board of Trustees of the Village of Big Rock, Kane County, Illinois, this 28th day of July, 2015.



Dean Hummell, President
Village of Big Rock, Illinois

ATTEST:



Tim May, Village Clerk
Village of Big Rock, Illinois

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

CLERK'S CERTIFICATE

I, Tim May, certify that I am the Village Clerk of the Village of Big Rock, Kane County, Illinois, and as such officer I am the keeper of the records, files and proceedings of the corporate authorities of said municipality.

I further certify that:

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was adopted by the President and Board of Trustees of the Village of Big Rock at a meeting held on July 28, 2015 and approved by the Village President on July 28, 2015. I do further certify that a quorum of said Board of Trustees was present at said meeting, and that the Board complied with all the requirements of the Illinois Open Meeting Act.

I do further certify that the ordinance, of which the attached is a true and correct copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of same.

IN WITNESS WHEREOF, I have hereunto affixed my official hand and the seal of the municipality this 28th day of July 2015.

(SEAL)

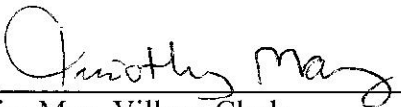

Tim May, Village Clerk
Village of Big Rock, Illinois

EXHIBIT "A"

**TEXT MARKETING RENEWAL AGREEMENT WITH
AMERICAN MARKETING & PUBLISHING, LLC**

HOME PAGESSM



AMERICAN MARKETING & PUBLISHING, L.L.C.



915 E. Lincoln Hwy. P.O. Box 801 DeKalb, Illinois 60115 Phone: (800) 807-6870 Fax: (815) 756-1821

TEXT MARKETING RENEWAL AGREEMENT

BUSINESS INFORMATION:

BUSINESS NAME Village of Big Rock

AUTHORIZED CONTACT Tim May/Dean Hummell

MAILING ADDRESS 7S405 Madison Street

Big Rock, IL. 60511

PHONE 630-556-4365

CONTACT PHONE _____

EMAIL ADDRESS (REQUIRED) admin@villageofbigrock.us; dean.hummell@villageofbigrock.us; bigrocktownship@gmail.com

FAX _____

SELECT YOUR PAYMENT OPTION:

☐ _____
INITIALS

Monthly Paymens

\$96/Month

Platform Highlights Include:

- Unlimited Messaging
- Phone Coaching and Support Calls from a Dedicated Text Marketing Account Specialist

- OR -

☒ AMD013
INITIALS

Prepaid Annual

\$995 Per Year (Meaningful Savings) • After First Year \$96/Month

Platform Highlights Include:

- Unlimited Messaging
- Phone Coaching and Support Calls from a Dedicated Text Marketing Account Specialist
- Customized Marketing Materials

SELECT COMPLIMENTARY STARTER MATERIALS:

CHOOSE ONE

☒ Signs or ☐ Stickers Initials: AMD013

(with Prepaid Annual)

OFFICE USE

GENERAL AVAILABILITY: Best # to Call: _____

MONDAY

TUESDAY

WEDNESDAY

THURSDAY

FRIDAY

Contract #: 1444891

Customer #: 79629

Rep: AMD013

This HOME PAGESSM Text Marketing Agreement, including all of the General Terms & Conditions on the reverse side and those terms and conditions incorporated by reference, together represent a BINDING CONTRACT between the party named above ("Advertiser") and American Marketing & Publishing, LLC ("Publisher"), and upon signings is NONCANCELABLE by Advertiser, except as expressly provided herein. Publisher owns or leases certain software and hardware systems and bandwidth ("Platform") and Advertiser wishes to utilize the Platform to build and manage opt-in subscriber text messaging lists so that Advertiser can send offers or other information to such subscribing third parties via Short Message Service, commonly referred to as commercial text marketing. Advertiser is purchasing access to Publisher's Platform to enable the Advertiser's development of a text marketing list, and to facilitate the sending of commercial text messages to consumers who opt-in to receive Advertiser's messages. Publisher will assign Advertiser a unique keyword and access to a shared short code that will be used by consumers ("Subscribers") to opt in to receive texts containing offers or other information provided by Advertiser to Subscribers.

SIGNATURES

Amanda Daniels

AMERICAN MARKETING & PUBLISHING, L.L.C.

DATE: 7/28/15

TIME: _____

AM/PM

Amount Paid \$ Needs an invoice

☐ Credit Card ☒ Check No. _____

RENEWAL DATE: 8/20/2015

Please make checks payable to
American Marketing & Publishing, LLC

GENERAL TERMS & CONDITIONS

PLEASE READ THIS AGREEMENT CAREFULLY, AS IT IS A LEGALLY BINDING AGREEMENT BETWEEN AMERICAN MARKETING & PUBLISHING, L.L.C. ("Publisher") AND THE ADVERTISER NAMED ON REVERSE SIDE ("Advertiser"). ADVERTISER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS ON THE FRONT OF THIS AGREEMENT AND HEREIN, AND BY ALL TERMS, CONDITIONS, POLICIES AND GUIDELINES INCORPORATED INTO THIS AGREEMENT BY REFERENCE. PUBLISHER RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO MODIFY OR CHANGE THE TERMS OF USE, ACCEPTABLE USE POLICY, PRIVACY POLICY, AND OTHER CONDITIONS TO UTILIZE PUBLISHER'S COMMERCIAL TEXT AND MOBILE MARKETING SERVICES, AND ADVERTISER'S CONTINUING USE OF THE SERVICES AFTER NOTICE OF ANY MODIFICATION IS DEEMED ITS AGREEMENT TO THE MOST CURRENT TERMS, CONDITIONS, AND POLICIES. This contract may be assigned by Publisher upon notice to Advertiser and the assignee will be subject to the terms and conditions of this agreement as of the date of assignment. Advertiser may not assign this agreement.

1. **PURCHASE AND PAYMENTS:** Advertiser agrees to purchase access to Publisher's commercial text messaging Platform subject to the terms hereof for either an annual period or for a monthly period, as indicated on the front of the agreement. The start of the term, whether monthly or annually, will begin on the date that Advertiser is assigned a keyword by Publisher. Access to the Platform provides Advertiser with messaging to an unlimited number of Subscribers, but for multi-location businesses, or broadcast or internet based businesses, limits the total number of messages to be sent to opt-in Subscribers annually through the Platform to 100,000 messages. For purposes of this agreement, messages are tabulated according to the number of recipients receiving them, such that any message sent to a single Subscriber constitutes one message, and if the same message is sent to a second Subscriber it will count as two messages; a message sent to 150 Subscribers for example would be counted as 150 messages. In the event that the Advertiser has a current unpaid balance from a previously published advertisement or if Advertiser contracts with Publisher for advertising in several publications, any amounts paid by Advertiser upon execution of this agreement or subsequently may be applied by Publisher in its sole discretion to the balance outstanding, including finance charges and late fees, or may be applied to contracted-for directory or other advertising items that will publish subsequently, including the last of the directories or ads to publish. Payment by check represents Advertiser's express authorization that returned checks may be electronically re-presented and that Publisher may draw a check on or electronically debit Advertiser's account for the lesser of a return fee of \$25 or the state allowed maximum fee. In the event that Advertiser is or becomes past due and fails to fully pay any undisputed amount owed to Publisher for any goods or services provided by Publisher to Advertiser on a timely basis, access to the Platform may be denied or restricted at Publisher's sole discretion until the delinquency is cured. In the event that Publisher agrees to invoice Advertiser the unpaid balance for the Annual Program, Publisher shall add to all amounts still outstanding after 30 days a monthly interest charge of the lower of the highest lawful interest rate or 1.5% (18% per annum) through the end of the next billing cycle in addition to a \$15 late fee. Advertiser agrees to pay these charges. In the event Publisher refers Advertiser's account to a collection agency or attorney due to non-payment, Advertiser will be liable for all of Publisher's costs and expenses incurred in connection with the recovery of Advertiser's account, including without limitation, court costs and reasonable collection or attorneys fees. Advertiser may dispute a debt by notifying the Publisher in conformance with the notice provisions of this agreement, and may verify a debt by phoning Publisher at the number on the face of this agreement.

2. **ADDITIONAL OR SUBSEQUENT PURCHASES:** Advertiser may purchase additional key words, vanity key words, other print or digital advertising services or products or premium support programs directly through its dedicated Text Marketing Specialist, who will be assigned by Publisher. Advertiser and Publisher agree that in the case of any such subsequent purchases or in any other instance where a typed written agreement is not signed by the Advertiser and Publisher but an agreement is made orally and recorded by Publisher, Advertiser and Publisher intend that the General Terms & Conditions contained in this agreement, including those incorporated by reference as they are modified from time to time, shall apply.

3. **AUTOMATIC RENEWAL:** In order to ensure continued and uninterrupted Advertiser and Subscriber access to the Platform, Advertiser's access to the Platform will be AUTOMATICALLY RENEWED by Publisher. If Advertiser has purchased the Monthly Program, Advertiser will be automatically renewed on a month to month basis based on the date Advertiser was first assigned a keyword. If Advertiser has purchased the Annual Program, Advertiser will be automatically renewed on a month to month basis for each month at \$66 per month beginning on the 12 month anniversary of the date the Advertiser was first assigned a keyword. (In either case, the renewal will occur on the first business day following the applicable renewal date if the renewal date is not a standard business day). Advertiser and Publisher agree that payment for such renewal shall be made in the sole discretion of Publisher by ACH debit as described below by traditional invoicing and timely payment, or by charging the credit card provided by Advertiser at the time of purchase for the initial contract period or within four weeks of the anniversary renewal date. In order to prevent automatic renewal, Advertiser may provide Publisher notice of non-renewal consistent with Section 9 "Notice" below in any timely and published manner to advertiser@closebymarketing.com at least 30 days prior to the next automatic renewal date, or in other case clearly stating the Advertiser's intention not to be automatically renewed and stating the name of the business and the name of the person authorized to cancel the automatic renewal.

4. **AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS (ACH DEBITS):** Advertiser authorizes Publisher from time to time to recover payments from Advertiser for (a) the amount of returned checks and returned check fees, (b) other amounts owing to Publisher that are the subject of this or any contract between Publisher and Advertiser, and (c) amounts periodically due from Advertiser to Publisher to automatically renew and continue Platform access as described above. In order to authorize Publisher may initiate ACH debits to debit action to any of Advertiser's accounts identified on any checks and other items issued by Advertiser to Publisher for any services, and by debiting such amounts from such accounts, Advertiser represents to Publisher and agrees that all such accounts are and shall be used primarily for business purposes. Advertiser may revoke this authorization only by notifying Publisher in a notice that complies with Section 9 "Notice" below. A revocation notice is not effective until it is received by Publisher and Publisher has a reasonable opportunity to act on the revocation. Advertiser agrees to be bound by the operating rules of the National Automated Clearing House Association (NACHA) and in effect from time to time.

5. **INTELLECTUAL PROPERTY AND ACCEPTABLE USE:** Advertiser agrees that Publisher retains all right, title, and interest in and to the Platform, including all intellectual property and other proprietary rights therein, and that Publisher owns the Subscriber telephone numbers and any other Subscriber opt-in data. In order to remain safely within the privacy expectations of Subscribers and to prevent potential violations of industry guidelines, Publisher shall not allow Advertiser to upload Subscriber opt-ins nor shall Publisher allow Advertiser to export Subscriber telephone numbers or other Subscriber data out of the Platform. Advertiser agrees to abide and be bound by, and to conduct its business operations consistent with, the terms of Publisher's Terms of Use for Text Marketing, the full text of which can be found at <http://www.closebymarketing.com/index.php/terms-and-conditions/>, and Publisher's Privacy Policy, the full text of which can be found at <http://www.closebymarketing.com/index.php/privacy-policy/>, both of which are hereby incorporated by reference. Advertiser grants Publisher a royalty-free, worldwide, perpetual, and irrevocable right and license to freely copy, modify, display, transmit, use and share (i) message content, Advertiser feedback, list size and other data related to results of their text marketing efforts for any lawful purpose; and (ii) Advertiser's name, logo, likeness, testimonials, endorsements and other feedback as part of Publisher's advertisements, trainings, marketing and other publicity efforts. Advertiser agrees to follow the most recent versions of the Mobile Marketing Association's U.S. Consumer Best Practices and Global Code of Conduct and understands that violation of these rules and guidelines may result in immediate suspension of all services provided by Publisher without refund.

- Publisher has a zero tolerance policy for unsolicited commercial texting. Advertiser agrees to utilize Publisher's Text Marketing Platform only to send messages to recipients who have opted to receive them. Advertiser agrees not to sell, license, trade, or share opt-in lists or to allow access to the Platform to or with any entity not a party to this agreement. Advertiser agrees not to send a message on behalf of or to promote the interests of a third party (including an independently owned business or other entity) to Advertiser's opt-in Subscribers unless the sending of such a message on behalf of a third party explicitly is approved by Publisher in writing in advance and purposefully facilitated by Publisher.
- Advertiser agrees to comply with Publisher's instructions for clearly identifying the name of the sending entity, to comply with Publisher's requirement to periodically inform Subscribers of STOP instructions and policies which allow the recipient to remove themselves from Advertiser's list of opt-in Subscribers, and to comply with Publisher's requirements for periodically notifying Subscribers accurately of the anticipated frequency of messages to be sent by Advertiser.
- Advertiser agrees to utilize the Platform only for lawful purposes, and to refrain from sending messages that are not appropriate for children under 18 years of age. Advertiser and Publisher agree that the Platform shall not be utilized to send message content that is libelous, scandalous, threatening, harmful, or offensive, or that otherwise violates or infringes the rights of any third party. Publisher reserves the right to reject any advertising which Publisher in its sole judgment deems objectionable for any reason.

6. **TERMINATION, INDEMNITY, LIABILITY AND DISPUTES:** Publisher reserves the right to cancel for convenience the services contracted for herein upon written notification to the Advertiser and Sales Agent, and Publisher agrees in such a case to waive charges or return collected but unused fees for a ratable period of service spanning the unexpired original or renewed term of this agreement. In the event that Publisher suspends or cancels services or utilization of the Platform due to Advertiser noncompliance with the terms of this agreement, such cancellation shall not thereby relieve Advertiser of payment or other contractual obligations herein. This agreement is not intended to benefit any third party. IN NO EVENT WILL PUBLISHER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, LOSS OF PROFITS, OR LOSS OF BUSINESS OPPORTUNITY, ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF PUBLISHER HAS BEEN ADVISED OF, KNEW OF, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, IN THE CASE OF ANY ERRORS OR OMISSIONS OF THE PUBLISHER (including those of any Sales Agent, telecommunications carriers, aggregators, application providers, data storage vendors, software developers, and other technology or telecom infrastructure vendors and any other partner, supplier, provider, vendor, or agent of Publisher). ADVERTISER AGREES THAT THE TOTAL AMOUNT OF DAMAGES THAT ADVERTISER MAY RECOVER SHALL NOT EXCEED THE AMOUNT ADVERTISER HAS PAID TO PUBLISHER FOR SERVICES OR GOODS THAT ARE THE SUBJECT OF THIS AGREEMENT DURING THE ANNUAL PERIOD IN WHICH THE ERROR(S) OR OMISSION(S) OCCURRED. Advertiser agrees to defend, indemnify and hold harmless Publisher, and its business partners, third party suppliers and providers (including without limitation the Sales Agent, telecommunications carriers, aggregators, application providers, data storage vendors, software developers, and other technology or telecom infrastructure vendors), licensors, officers, directors, employees, distributors and sales agencies from and against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorney's fees) in connection with any claim or action that (i) arises from any alleged or actual breach of this agreement (ii) arises from the content or effects of any messages Advertiser distributes using the Platform or (iii) otherwise arises from or relates to Advertiser's use of the Platform. In the event of any action arising out of or concerning this agreement brought by Advertiser or Publisher, the action will be governed by the laws of the State of Illinois (notwithstanding its conflicts of law rules or principles). Any dispute arising out of or relating to this agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be settled by binding arbitration administered by JAMS in accordance with its Streamlined Arbitration Rules and Procedures. The arbitration shall be heard by a single arbitrator, and shall be conducted in DeKalb County, Illinois. Each party shall bear its own costs relating to such arbitration, and the parties shall equally share the arbitrator's fees. Judgment on any award resulting from such arbitration may be entered in any court having jurisdiction. This clause shall not preclude Publisher from seeking injunctive relief in aid of arbitration, or pending the outcome of arbitration, from a court of competent jurisdiction. If this arbitration provision is deemed invalid, the parties agree that the court of proper and exclusive jurisdiction to resolve any action arising out of this agreement shall be the 16th Judicial Circuit Court in DeKalb County, Illinois. Each party hereby waives any right it may have to participate in any class actions or class arbitrations.

7. **PERSONAL GUARANTEE:** The individual signing this agreement on behalf of Advertiser agrees that he/she has the authority and is signing this agreement (i) in his or her own individual capacity, (ii) as an authorized representative of the Advertiser, and (iii) as a representative of the entity for whose benefit the service is being purchased (if such entity is not the same as the Advertiser). By further execution of this agreement, the signer personally and individually undertakes and assumes jointly and severally with the Advertiser, the full performance of this agreement, including payment of amounts due hereunder.

8. **WARRANTY DISCLAIMER:** Advertiser's use of the Platform and any reliance by Advertiser upon the Platform, including any action taken by Advertiser because of such use or reliance, is at Advertiser's sole risk. The Platform and the associated services are provided by Publisher on an "AS-IS" and "AS-AVAILABLE" basis. Publisher does not warrant that the Platform or any associated service provided by Publisher will be uninterrupted or error free, or that Advertiser's use of the Platform or associated advertising will result in a positive customer response. Publisher is excused from any non-performance to the extent caused by circumstances beyond its control, including, but not limited to, acts of God, war, civil disturbance, labor disputes, telecommunications or other utility outages, or any law or order of any governmental agency or authority. PUBLISHER DISCLAIMS ALL WARRANTIES OR OBLIGATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

9. **NOTICE, ETC.:** Other than notices to prevent automatic renewals, any notice required to be given by Publisher or Advertiser to the other shall be in writing and shall be deemed to have been properly made only if sent by certified or first class mail to the Publisher's or Advertiser's address shown on the face of this agreement. This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement. If any provision of this agreement is, for any reason, deemed unenforceable or in violation of law, such unenforceability or violation will not affect the remaining provisions of this agreement, which will continue in full force and effect and be binding upon the parties hereto.