

RESOLUTION NO. 03-136

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE AGREEMENTS BETWEEN THE TOWN OF MIAMI LAKES AND 2ADVANCED STUDIOS TO PERFORM WEB SERVICES AND WEB HOSTING; AUTHORIZING THE TOWN MANAGER TO FINALIZE THE TERMS OF THE AGREEMENTS; AUTHORIZING TOWN OFFICIALS TO TAKE ALL STEPS NECESSARY TO IMPLEMENT THE TERMS OF THE AGREEMENTS; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes (the "Town") website has previously been administered by 2Advanced Studios, LLC ("2Advanced") through an agreement with Severn-Trent Services-Moyer ("Severn-Trent"); and

WHEREAS, the Town will be terminating the web hosting element of its contract with Severn-Trent on May 31, 2003; and

WHEREAS, the Town would like to enter into an agreement directly with 2Advanced for web hosting and web services.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing Recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Agreements. The agreements for web services and web hosting between the Town of Miami Lakes and 2Advanced Studios, LLC (the "Agreements"), copies of which are attached as Exhibits "A" and "B" respectively, together with such non-material changes as may be acceptable to the Town Manager and approved as to form and

legality by the Town Attorney, are approved.

Section 3. Authorization of Town Officials. The Town Manager and Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Agreements.

Section 4. Authorization of Fund Expenditure. The Town Manager is authorized to expend budgeted funds, up to the amount of the Agreements, to implement the terms and conditions of the Agreements.

Section 5. Execution of Agreement. The Mayor is authorized to execute the Agreements on behalf of the Town.

Section 6. Effective Date. This Resolution shall take effect on May 31, 2003.

PASSED AND ADOPTED this 13th day of May, 2003.

Wayne Slaton
Wayne Slaton
MAYOR

ATTEST:

Beatris M. Arguelles
Beatris M. Arguelles, CMC
TOWN CLERK

Approved as to form and legality for the use and benefit of the Town of Miami Lakes only:

W. Serota
Weiss, Serota, Helfman, Pastoriza, Guedes,
Cole & Boneski, P.A.
TOWN ATTORNEY

Council voted _____ as follows:	
Mayor Wayne Slaton	_____
Vice Mayor Roberto Alonso	_____
Councilmember Mary Collins	_____
Councilmember Robert Meador	_____
Councilmember Michael Pizzi	_____
Councilmember Nancy Simon	_____
Councilmember Peter Thomson	_____

// CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") is entered into and made effective as of this ___th day of May, 2003 (the "Effective Date"), by and between 2Advanced Studios, LLC, a Limited Liability Company, with its principal place of business at 65 Enterprise, Suite #450, Aliso Viejo, CA 92656 ("2Advanced") and the Town of Miami Lakes, Florida, a municipality, with its offices at 6853 Main Street, Miami Lakes, FL 33014 ("Client" or "Town"). (A party to this Agreement may be referred to individually as "Party." The parties to this Agreement may be referred to collectively as the "Parties.")

RECITALS

2Advanced is engaged in the design and development of multimedia enhanced solutions, World Wide Web sites, managed hosting services, custom software applications and backend development.

Client is in the business of operating and managing the Town of Miami Lakes, Florida.

The Parties hereto have agreed upon the terms and conditions pursuant to which 2Advanced will provide the services set forth and described in Schedule A to this Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Services.** Client hereby engages 2Advanced as an independent contractor to perform the services set forth and described in Schedule A to this Agreement (the "Services") pursuant to the compensation terms, delivery date terms and payment terms contained therein, which may be amended from time to time in writing by mutual agreement of the Parties.
2. **Ownership of Work Product; License.**
 - (a). The Services and all inventions, discoveries, developments, expressions, and innovations created or conceived by 2Advanced or their contractors while performing the Services (the "Work Product") shall be the property of Client hereto, and Client shall retain legal title to the Work Product. Client hereby agrees that 2Advanced shall be free to use and employ its general skills, know-how, methods, techniques, or skills gained or learned during the course of performing the Services, so long as it acquires and applies such information without disclosure of any confidential or proprietary information of Client and without any unauthorized use or disclosure of information and data generated in the performance of, or delivered Services, under this Agreement.
 - (b). It is expressly understood by the Parties that 2Advanced will be the sole provider of the Services throughout the duration of this Agreement, and that no third parties will be required to upgrade or modify the Work Product, prior to final delivery.
 - (c). 2Advanced does not reserve any rights to obtain copies of the Work Product following the Termination Date of this Agreement. Ownership may be assigned by Client without the prior written approval of 2Advanced (Provided 2Advanced shall maintain all rights set forth in Section 2(a) above). The rights granted in Section 2(a) to 2Advanced may be assigned by 2Advanced with written approval of Client which shall not be unreasonably withheld by Client.
 - (d). All rights and licenses hereunder shall remain in full effect in the event of an assignment or transfer of ownership of the Work Product by either Party. Further, the license granted to 2Advanced will continue in perpetuity beyond the Termination Date of this Agreement. Notwithstanding the above, in the event that 2Advanced terminates this Agreement due to a material breach of the Client as described in Section 12.1 hereto, all rights of ownership of Work Product shall revert to 2Advanced.
 - (e). Accept for a termination based on a material breach by the Client as described in Section 12.1 hereto, 2Advanced assigns to Client the entire right, title and interest, worldwide, in any invention or patent thereon conceived or first actually reduced to practice in performing this Agreement, and 2Advanced grants Client a royalty free, non exclusive worldwide irrevocable right and license to make, have made, use, distribute, sell, offer for sale, import or export any Client products incorporating or embodying the invention which is conceived or first actually reduced to practice in performing the Services.
3. **Client Acceptance.** Following delivery of Work Product deliverable, Client shall reserve the right, within five (5) business days after delivery from 2Advanced, to test and evaluate such deliverable to determine whether the deliverables conform in all respects to the applicable Statement of Work described in Schedule A hereto. In the event that the Work Product is found by Client to be defective or otherwise not in conformity with the requirements of the Statement of Work, Client will provide reasonable written notice, in accordance with Section 15 of this Agreement, to 2Advanced and allow for ten (10) business days to cure the Work Product defects or nonconformities described within that notice. If no notice of any deficiency is provided within five (5) days of any delivery, the Work Product will be

deemed accepted. It is understood that any corrections shall be performed at the expense of 2Advanced. Promptly upon receiving such notice of any deficiency, 2Advanced will exert commercially reasonable efforts to (a) correct any deficiencies so that the deliverable substantially conforms to the Statement of Work, and (b) submit the applicable Work Product or deliverable for further acceptance testing within a reasonable time after of receiving the deficiency notice. It is understood by the Parties that any action by Client to modify, enhance, change, adapt, repair, publish, post, upload or use the Work Product, in whole or in part, for its intended purpose shall be deemed as Client's acceptance of the Work Product. Prior to payment, the Town Manager or his designee shall review the Work Product in a test environment before going to production.

4. **Confidentiality.** 2Advanced acknowledges that during its performance of the Services, it will have access to and become acquainted with various trade secrets, inventions, innovations, processes, information, records and specifications owned or licensed by Client and/or used by Client in connection with the operation of its business ("Client Information"). 2Advanced agrees that it will not disclose to any third party, other than 2Advanced authorized contractors, who shall have agreed to be bound by the terms of this Section 4 of the Agreement, any Client Information, directly or indirectly, or use it in any manner, either during the term of this Agreement or at any time thereafter, except as required in the course of providing the Services to the Client, or as may be required by law. Except as provided elsewhere herein, upon the Termination Date (or an earlier termination) of this Agreement, 2Advanced shall immediately deliver to Client, or destroy, all Client Information in its possession. Client Information shall not include: (a) information generally available to the public, through no fault of 2Advanced and its employees and authorized contractors and without breach of this Agreement; (b) information already in the possession of 2Advanced without restriction prior to any disclosure by Client in connection with 2Advanced Services under this Agreement, (c) information lawfully disclosed to 2Advanced by a third party without an obligation of confidentiality upon 2Advanced; or (d) information independently developed by 2Advanced without use of Client Information disclosed to 2Advanced by Client, except for information provided by the Client to facilitate the 2Advanced initial review of Client in contemplation of the drafting of this Agreement.

5. **Mutual Limited Warranty.** The Parties hereto represent and warrant:

- (a). That to the best of each Party's knowledge, the Services, Licensed Materials or Deliverables as delivered to the receiving Party will not infringe any copyright, patent, trademark, trade secret, mask work, or other proprietary right held by any third party;
- (b). That the Services will meet the Statement of Work listed in Schedule A;
- (c). That the Parties have acquired from third parties, including but not limited to its employees, vendors and contractors, such rights as may be necessary to allow it to pass to the receiving Party the rights conveyed under this Agreement;
- (d). That the Parties are free to enter into this Agreement, and that each Party has full legal power and authority to enter into this Agreement;
- (e). That the Services provided hereunder shall be performed in a professional manner and shall be of a high grade, nature, and quality;
- (f). That the Parties' employees and subcontractors shall, while on the other Party's property or conducting any mutual business activities, comply with all applicable, local, state and federal laws, including without limitation, any laws relating to immigration or the engagement of individuals who are not US citizens; and
- (g). Unless specified herein this Section 5, all other express or implied conditions, representations and warranties, including any implied warranty of merchantability, fitness for a particular purpose, or non-infringement, are disclaimed, except to the extent that such disclaimers are held to be legally invalid.

6. **Limitation of Liability.** Except for obligations under Sections 7 and 10, and to the extent not prohibited by law:

- (a). Any liability on the part of 2Advanced (exclusive of any liability for attorneys' fees and costs provided for in Section 8 of this Agreement) arising out of the terms of, or related to, this Agreement, its interpretation, and services performed hereunder, shall be limited to and capped at the total amount of compensation actually paid by Client to 2Advanced prior to the time such liability arises.
- (b). Any liability on the part of Client (exclusive of any liability for attorneys fees and costs provided for in Section 8 of this Agreement) arising out of the terms of this Agreement or its interpretation shall be limited to and capped at the agreed compensation set forth in Schedule A hereto, including any additional compensation contracted for in connection with any Change Order or Addendum to Schedule A, as provided for under Schedule A.
- (c). Neither Party will be liable for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement (including loss of business, lost revenue, lost profits, loss of use, loss of data or loss of other economic advantage), however it arises, whether such liability is for breach of contract, tort, or any other legal wrongdoing, unless the Party alleged to have caused such damage has been previously advised of the possibility or likelihood of such damage.

7. Mutual Indemnification.

- (a). **Indemnification of 2Advanced By Client.** To the extent permitted by Florida law, Client shall indemnify 2Advanced for all claims, liabilities and costs, including reasonable attorneys fees, of defending any third-party claim or suit arising out of the use of the Work Product, other than for intellectual property rights infringements resulting from design decisions (e.g. design of databases, graphics, programs, etc.) made by 2Advanced in its performance of the Services pursuant to this Agreement. An intellectual property right infringement is not caused by 2Advanced where, for example, infringing Work Product or other material was provided to 2Advanced directly or indirectly by Client or its agent. 2Advanced shall promptly notify Client in writing of any third-party claim or suit and Client shall have the right to fully control the defense and any settlement of such claim or suit. Client shall reimburse 2Advanced for any costs, including reasonable attorneys fees, that 2Advanced incurs in connection with any such claim or suit prior to that time at which 2Advanced is able to turn over the defense of such claim or suit to Client.
- (b). **Indemnification of Client By 2Advanced.** 2Advanced shall indemnify Client for all claims, liabilities and costs, including reasonable attorneys fees of defending any third-party claim or suit arising out of intellectual property infringement resulting from design decisions, errors and omissions (e.g. design of databases, graphics, programs, etc.) made by 2Advanced in its performance of the Services pursuant to this Agreement. Client shall properly notify 2Advanced in writing of any third party claim or suit. 2Advanced shall have the right to fully control the defense in a settlement of such claim or suit. 2Advanced shall reimburse Client for any costs, including reasonable attorneys fees, that Client incurs in connection with any such claim or suit prior to that time at which Client is able to turn over the defense of such claim or suit to 2Advanced.

8. Arbitration.

- (a). In the event of any disputes or controversies arising out of, connected with, or related in any way to this Agreement, the Parties agree to work together in good faith to resolve such disputes or controversies without the need for the involvement of any third party or court; provided, however, that the Parties shall not be obligated to do so for more than fifteen (15) days.
- (b). If the Parties are unable to resolve such disputes during such period, the Parties may elect, but are not required, to proceed to mediation for no more than thirty (30) days.
- (c). If the Parties are unable through good faith efforts, to resolve any applicable disputes during the periods set forth above, if it proves impossible to arrive at a mutually satisfactory solution through the Parties' good faith efforts, the Parties agree to submit their dispute to binding arbitration, before a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except reasonable discovery shall be permitted pursuant to California Code of Civil Procedure §1283.05, and the judgment upon the award may be entered in any court having jurisdiction thereof. The arbitration shall take place in Dallas, Texas. The prevailing Party in the arbitration proceedings shall be awarded reasonable attorneys' fees, expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings, unless the arbitrators shall on good cause shown determine that such an award is not appropriate. The arbitrators shall determine who is a prevailing Party for the purpose of awarding fees, costs and expenses based on the claims (and any counterclaims) advanced, the relief sought and the relief awarded.
- (d). Notwithstanding the above, 2Advanced retains the right to bring actions for the collection of its fees in a court of competent jurisdiction and Client retains the right to bring actions for matters relating to Intellectual Property Rights or Confidentiality in a court of competent jurisdiction. Also notwithstanding the above, in the event that 2Advanced or Client terminates this Agreement pursuant to Section 12, 2Advanced and Client retains the right to proceed to a court of competent jurisdiction to seek injunctive relief to enforce and effectuate 2Advanced and Client rights set forth in Section 6, 7 and 12 of this Agreement.

- 9. Taxes.** In the event that the Services are not tax exempt, Client shall be responsible for payment of all taxes in connection with work performed or products delivered under this Agreement except for all of 2Advanced income taxes, employment taxes, and franchise taxes.

- 10. Relationship of the Parties.** The Parties acknowledge that 2Advanced will perform the Services hereunder as an independent contractor. The manner and method of performing such Services will be under 2Advanced sole control and direction. It is also expressly understood that 2Advanced's employees and agents, if any, are not Client's employees or agents, and neither Party has the authority to bind the other by contract or otherwise. Nothing herein will be deemed to create a partnership or joint venture, or to create a relationship of agency or employment between the Parties. The Parties agree not to solicit any of the other Party's employees for employment with the soliciting Party or any third-party for a period of two years from the effective date of this Agreement. However, 2Advanced's performance of the Services contemplated by this Agreement shall be through the direction of the Town Manager or his designee.

11. Delays.

- (a). Delivery Schedule. 2Advanced shall deliver the Services to Client in compliance with the targeted due dates for Services set forth in Schedule A (the "Delivery Schedule"). 2Advanced shall inform Client at its earliest opportunity of any anticipated delays in the Delivery Schedule and of the actions being taken to assure completion of the Services within a time period acceptable to Client. Further, Client acknowledges that 2Advanced is a production sensitive business and will use best efforts to provide Client Deliverables within the time set forth by the Delivery Schedule. In the event that Final Delivery as set forth by the Delivery Schedule is surpassed by a period of thirty (30) days, this event may constitute a Material Breach by 2Advanced and the Parties will continue as defined in Section 12.
- (b). Uncontrollable Delays; Force Majure. Any delay or nonperformance of any provision of this Agreement caused by conditions beyond the reasonable control of 2Advanced (other than delays caused by Client) shall not constitute a breach of this Agreement, provided that it has taken reasonable measures to notify Client of the delay. 2Advanced's time for performance of the Services shall be deemed to be extended for a period acceptable to the Town Manager. Conditions beyond 2Advanced's control include, but are not limited to, natural disasters, acts of government after the date of this Agreement, power failure, fire, flood, acts of God, labor disputes, as well as riots, acts of war and epidemics directly affecting 2Advanced.

12. Termination.

- 12.1 Termination for Material Breach. Except for breach of confidentiality, wherein such case termination shall be solely at the discretion of the non-breaching Party and shall not require a notice, each Party shall have the right to terminate this Agreement by written notice to the other Party if the other Party has materially breached this Agreement and such breach remains uncured by the breaching Party for a period of fifteen (15) days after written notice of such breach is received by the breaching Party. Such notice must comply with Section 15 of this Agreement to be valid.

Material breach shall be defined as follows:

- (1) Client shall be in material breach if a payment due to 2Advanced is not received by 2Advanced within fifteen (15) days of the date on which it is due.
 - (2) 2Advanced shall be in material breach if it does not provide the Client with timely services as described in Schedule A.
 - (3) 2Advanced shall be in material breach if it or its employees violates the Confidentiality in Section 4 herein; provided that 2Advanced fails to take appropriate action upon receipt of notification of any such violation to enforce the terms and conditions of that agreement including, but not limited to, legal action and/or injunctive relief.
 - (4) Either party ceases or discontinues to transact/do business.
- 12.2 Procedures for Termination upon Bankruptcy. In the event that either Party files for bankruptcy or provides sufficient evidence, through reasonable documentation, that the Party is financially insolvent and unable to continue, the procedure thereafter shall be in accordance with the provisions of Section 12.3 of this Agreement.
- 12.3 Procedures upon Termination Other Than For Material Breach. In the event that a termination event occurs, other than for material breach as set forth in Section 12.1 herein, the following shall apply:
- (1) This Agreement shall immediately terminate except for Section 4 herein ("Confidentiality") which shall remain in effect; provided that 2Advanced's rights shall remain in effect as set forth in Section 2(a) herein;
 - (2) 2Advanced shall immediately cease to provide the Services;
 - (3) All amounts payable or accrued to 2Advanced, that have been approved by Client, for work performed and expenses incurred under this Agreement shall become immediately due and payable. In the event that Client is unable to fully reimburse 2Advanced for monies owed within fifteen (15) business days of such termination, the portion of the Services developed by 2Advanced and which remains unpaid by Client and all rights and licenses associated with that portion of the Services shall become the sole property of 2Advanced.
 - (4) Either Party may terminate this Agreement with or without cause upon thirty (30) days written notice to the other Party in accordance with Section 15.
- 12.5 Transfer of Services. In the event of termination, 2Advanced shall transfer all necessary electronic data and files required by another web hosting consultant to continue to provide like services to Client.

13. **Waiver.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.

14. **Assignment.** Neither Party shall assign any of its rights under this Agreement, or delegate the performance of any of its duties hereunder, except for where otherwise explicitly noted in this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notice of such approval must conform to the requirements set forth in Section 15 of this Agreement in order to be valid. Events constituting an assignment or delegation shall include, but not be limited to, acquisition of Client by another entity, or merger of Client with another entity, whether or not Client is the surviving company in such a merger. The terms of this Agreement shall bind the Parties' successors and/or assignees.

15. **Notices.** In order to be effective, certain specified notices, demands, or other communications required or desired to be given hereunder by any Party shall be in writing and shall be validly given or made to another Party only if hand delivered, sent by private postal service, or sent by certified or registered United States mail, postage prepaid, return receipt requested. If such notice or demand is hand delivered, notice shall be deemed constructively received at the time of such service to the agent described below or his designee. If such notice, demand or other communication is given by mail, such notice, demand or other communication is to be given as follows:

If to 2Advanced:
2Advanced Studios
65 Enterprise
Aliso Viejo, CA 92656
Attn: Antony Novak

If to Client:
Town of Miami Lakes
6853 Main Street
Miami Lakes, FL 33014
Attn: Alex Rey, Town Manager

Either Party may change its address for purposes of this Section by written notice given in the manner provided within this Section 15.

16. **Survival.** Rights and obligations under Sections 2, 4, 6, 7, 8, 11, 12 16 and 19 of this Agreement, shall survive and will remain in effect after termination or expiration hereof.

17. **Unenforceability of Provisions; Severability.** If any provision of this Agreement is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

18. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless made in a writing signed by the Parties hereto.

19. **Governing Law.** The laws of the State of Texas shall govern this Agreement and any disputes arising hereunder. Venue shall lie within Dallas County, Texas. **Entire Understanding.** This document, and any schedules attached, constitute the entire understanding and agreement of the Parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

21. **Attorney's Fees.** In the event that either Party to this Agreement is required to retain legal counsel to enforce any of its rights under this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party together with court costs incurred in any litigation at any trial and appellate proceedings.

22. **Access to Public Records.** 2Advanced shall comply with the applicable provisions of Chapter 119, Florida Statutes (the Public Records law). Client shall have the right to immediately terminate this Agreement for the refusal by 2Advanced to comply with Chapter 119, Florida Statutes. 2Advanced shall retain, or return to the Town if directed by the Town Manager, all records associated with this Agreement for a period of three (3) years from the date of Termination or expiration.

23. **Insurance.** 2Advanced shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the Town Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the Town Manager, the insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. The insurance coverage shall include a minimum of:

23.1 **Worker's Compensation and Employer's Liability Insurance.** If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

23.2 Certificates of Insurance shall be provided to Client at the time of the execution of this Agreement and certified copies provided if requested. Each policy shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to Client before any policy coverage is cancelled or restricted.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the Effective Date. The Parties hereto agree that facsimile signatures shall be as effective as if originals.

2Advanced Studios

Client

By: _____

By: Wayne Slaton

Name: Antony Novak

Name: Wayne Slaton

Title: Chief Operating Officer

Title: Mayor

Date: May, 2003

Date: May, 2003

// SCHEDULE A

1. **Statement of Work.** 2Advanced and Client have mutually agreed that this Schedule A has been executed and attached to the Consulting Agreement between the Parties dated May ____, 2003, and that the following services shall be performed for Client:

- (a). 2Advanced will provide Client with ongoing website maintenance, technical support, updates and enhancements as directed by Client on an hourly basis.
- (b). Actual work engagement will begin May 15, 2003.

Assumptions:

- (a). If stock imagery for graphics are required to be purchased, this will carry an additional cost to client, not to exceed \$300. All images will be approved by Client prior to actual purchase.
- (b). 2Advanced Studios will work with an internet service provider chosen by Client and Client IT Personnel to ensure smooth delivery and integration at every phase within the process. All fees associated with the internet service provider will be the responsibility of Client.
- (c). If third party software is to be integrated into the Website, all costs associated with the software packages will be the responsibility of Client. All third party software packages are to be expressly approved by Client prior to actual purchase or integration.
- (d). Any errors or omissions will be repaired by 2Advanced, at the cost of 2Advanced for a full thirty (30) days following Final Delivery of website.
- (e). All copy delivered to 2Advanced is considered final. Subsequent changes will be completed using the change order process described below.

2. **Compensation; Terms.** Client and 2Advanced agree to the following compensation and payment terms for the performance of the Services as set forth and described in Section 1, hereto this Schedule A:

- (a). Total initial contracted fees for this project are \$2,160. Payment is due in full at the signing of this Agreement. Additional hours beyond the initial 20 hours will be purchased in blocks of 20 hours at the hourly rates described in Section 4 below.
- (b). **Travel Reimbursement.** If 2Advanced's employee(s) is required to travel to Client, upon approval of such travel by Client, all reasonable and customary travel expenses incurred during that travel will be reimbursable upon submission of documented receipts at such time that corresponds to billing phases stated above, pursuant to Florida law.
- (c). Client will pay 2Advanced Studios a retainer fee amounting to 20 hours of ongoing services.
- (d). 2Advanced agrees to maintain pricing for Client at the rates specified herein for one (1) year or 80 hours of ongoing services, whichever is occurs later.
- (c). It is understood by the Parties hereto that there is no time expiration for the hours being purchased and that 2Advanced will provide monthly activity statements to Client indicating the balance of time remaining as well as a description of work performed.

3. **Change Orders; Supplements.** The entire scope of the 2Advanced Services to be performed, and the technologies and features it will employ, utilize and provide, are set forth above and in the Statement of Work. In the event that the Parties should desire to have 2Advanced provide additional or modified Services; or employ, utilize or provide different or additional technologies or features, then the Parties may execute and date a document describing such change in services and/or materials to be provided, and the additional compensation, if any, to be paid to 2Advanced for such change ("Change Order"). Such Change Orders shall become a part of the Agreement and shall be governed by its terms.

4. **Schedule of Hourly Rates.** Client Services beyond the scope of this contract will be provided based upon the following discounted schedule of hourly rates:

Task or Function:	Hourly Rate:
HTML/Web Design/Graphic Design	\$108
Macromedia Flash/Director/Animation/Audio Production	\$108
Java/C & C++/Visual Basic Development	\$108
Other Development (ASP, JavaScript, CGI, Perl)	\$108
Database (Oracle 8i & MS SQL 7) Development/Architecture	\$108
Project Management	\$108

Information Architecture (Site Map, Site Plan, Strategy, Etc.)	\$108
Corporate Identity/Logo Design	\$108

IN WITNESS WHEREOF the undersigned have executed this Schedule A as of the Effective Date of the Agreement it is attached hereto. The Parties hereto agree that facsimile signatures shall be as effective as if originals.

2Advanced Studios

Client

By: _____

By: Wayne Slaton

Name: Antony Novak

Name: Wayne Slaton

Title: Chief Operating Officer

Title: Mayor

Date: May , 2003

Date: May , 2003



// ONLINE HOSTING AGREEMENT

THIS MASTER HOSTING AGREEMENT (the "**Agreement**") between the Town of Miami Lakes (the "Town") and 2Advanced Studios LLC ("2Advanced") governs the Town's purchase and use of all Web site hosting services, including the Dedicated Hosting Services, Virtual Private Server Hosting Services, Shared Hosting Services, Term Hosting Services, Managed Hosting Services and Add-On Services (collectively, the "**Services**"), as accepted by 2Advanced through its subsidiary 2Advanced.net ("**2ANet**").

1.1.

1. **Term and Payment for Services.**

1.1. **Term.** This Agreement will be for an "**Initial Term**" of either: (a) thirty (30) days if Town register for monthly services payments, (b) as otherwise chosen by Town in the Electronic Order Form, located on the Site, at the time Town register for the Services, or (c) as otherwise chosen by Town on the Order Form and Term Services, executed in writing or by facsimile, at the time Town register for the Services directly with 2ANet or a 2ANet representative. This Agreement will be automatically renewed (the "**Renewal Term**") at the end of the Initial Term for the same period as the Initial Term, unless Town provide 2ANet with notice of termination either: (a) at least seven (7) days before the end of the Initial Term or the Renewal Term, whichever is then applicable, if Town registered for and are receiving Services on a monthly basis, or (b) at least thirty (30) days before the end of the Initial Term or Renewal Term, whichever is then applicable, if Town registered for and are receiving Services or have pre-paid for Services on either a quarterly, semi-annually, annually or greater basis.

1.2. **Termination Policy.**

1.2.1. **Voluntary Termination By Town.** If Town terminates the Services before the end of the Initial Term or the Renewal Term, the Town shall only be responsible to pay for services rendered to the Town, provided the Town provides thirty (30) days written notice of termination. Town must submit the termination request for the Services in accordance with the following manners: (a) Town may send the Town's notice of termination in writing by regular mail to 2Advanced Studios, LLC, 65 Enterprise, Aliso Viejo, CA 92656, Attention: Hosting Account Cancellations, or (b) Fax the Town's written notice of termination to 2Advanced Studios, LLC at 949-330-7581, Attention: Hosting Account Cancellations. All account cancellations MUST BE received on Town letterhead, and be signed by the Town Manager in order to be deemed valid. Due to the secure nature of Services, cancellations by phone, e-mail, or without adequate demonstration of right to cancel will be deemed invalid.

1.2.2. **Voluntary Termination By 2ANet.** 2ANet may terminate this Agreement at any time and for any reason by providing to Town thirty (30) days prior written notice of termination. If 2ANet terminates this Agreement, 2ANet will refund to Town the pro-rata portion of pre-paid fees attributable to Services not yet rendered as of the date of termination, unless otherwise expressly provided in this Agreement.

1.2.3. **Termination For Violation or Breach.** 2ANet may, upon thirty (30) days written notice, terminate this Agreement upon a violation by Town of 2ANet's **Acceptable Use and Service Policies**; and 2ANet may terminate this Agreement immediately if, after thirty (30) days prior notice to Town, Town have failed to correct any breach of this Agreement.

1.2.4. **Procedures Upon Termination.** Upon any termination in accordance with Section 1.2.1, 1.2.2, or 1.2.3, 2ANet shall permit Town thirty (30) days to download or otherwise copy any of the Town's information and data residing on 2ANet's facilities prior to removing such information and data from 2ANet's facilities.

1.3. **Liability and Obligations on Termination.** If the Agreement expires or is terminated by fault of the Town, 2ANet is not liable to Town because of the expiration or termination for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with the Town's business, or for any other reason whatsoever flowing from the termination or expiration. If Town terminate this Agreement, 2ANet will not relieve Town of any obligations to pay fees and costs accrued before the termination date or any other amounts Town owe to 2ANet under this Agreement. In cases where 2ANet has provided equipment to Town, Town must, at the Town's own expense, return all 2ANet equipment within thirty (30) days of the date of notification of termination. Otherwise Town will be financially responsible for the cost of new replacement equipment. 2ANet shall invoice Town for such equipment, and payment will be due within thirty (30) days of invoice date.



- 1.4. **Charges.** Town will pay all charges for the Town's use of the Services at the then prices in the price schedule attached as Exhibit "B", which will be exclusive of any applicable taxes. Such fees and charges shall include, without limitation, the fees for connectivity, design services, and charges by any and all third parties whose materials are included as part of the Services. 2ANet reserves the right to change the amount of, or basis for determining, any fees or charges and institute new fees and charges upon prior notice to Town. When not exempt, Town is responsible for paying all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the Services, other than taxes based on 2ANet's net income.
- 1.5. **Payment.** Town will pay all charges for Services in advance. When registering for Dedicated Hosting Services, Town must pay for the Services upon the Town's receipt and approval of an invoice

2ANet will send an invoice to Town for the Services for the period for which Town has registered for the Services. 2ANet may also send periodic invoices to Town for any applicable Supplemental Charges associated with the Town's use of the Services. Town will pay to 2ANet the amount indicated in each invoice, provided it is approved by the Town Manager, by the due date reflected on the invoice. Each Service shall be billed with an initial invoice for the first and second month of service including any applicable installation charges. Payment for all services shall be billed thirty (30) days in advance and are due within thirty (30) days from invoice date. If Town fails to pay any fees and taxes within thirty (30) days from the applicable due date for invoice payments, 2ANet will assess late charges equal to the lesser of 1.5% per month or the maximum allowable under applicable law.

2. Use of Services.

- 2.1. **Applicable Policies and Guidelines.** The 2ANet Acceptable Use and Service Policy (the "AUP"), attached herein as Exhibit "A," governs the general policies and procedures for use of the Services. 2ANet's Privacy Policy governs how 2ANet collects, stores, processes and uses information associated with the Town's use of the Services. The Privacy Policy is posted on the Site at <http://www.2advanced.net/policies/privacy/> and may be updated from time-to-time.
- 2.2. **Material and Product Requirements.** Town must ensure that all material and data placed on 2ANet's equipment is in a condition that is "server-ready," which is in a form requiring no additional manipulation by 2ANet. 2ANet will make no effort to validate any of this information for content, correctness or usability. If the Town's material is not "server-ready", 2ANet may reject this material. 2ANet will notify Town of its refusal of the material and afford Town the opportunity to modify the material to satisfy 2ANet's requirements. Use of the Services requires a certain level of knowledge in the use of Internet languages, protocols and software. This level of knowledge varies depending on the anticipated use and desired content of the Town's Web site. Town must have the necessary knowledge to create and maintain a Web site.
- 2.3. **Bandwidth, Storage, and E-Mail Usage.** For Services, Town will not exceed the bandwidth, data storage, database and E-mail usage limits specified at the time Town registered for the Services. If Town use any bandwidth, database or data storage space in excess of the agreed upon number of megabytes per month or if Town exceeds E-Mail storage and attachment size limitations, 2ANet may, at its sole discretion, assess Town with additional charges, suspend the Service, or terminate this Agreement. The Town's use of the Town's account and access to it is the Town's responsibility. Town is responsible for any unauthorized access to the Town's account resulting in bandwidth, storage and/or E-mail usage exceeding the limits in the Order Form and resultant charges.
- 2.4. **Domain Names.** As part of the Services, Town will provide 2ANet with a registered domain name or names. Town will promptly pay 2ANet for any fees associated with Domain Name registration, not already paid by initial domain registration through Severn-Trent Services. The Town's request for and/or acceptance of a domain name obtained by 2ANet shall in all cases constitute the Town's waiver of any and all claims which Town may have, or which may later arise, against 2ANet or its third party providers, for any and all damages, losses, claims or expenses arising out of or related to the acquisition, registration and/or use of the domain name. Any cost incurred by 2ANet to obtain and/or maintain the domain name on the Town's behalf shall be charged to Town, with prior consent of the Town. Request for and acceptance of a domain name requires 2ANet to supply the domain name to a contracted registrar, which in turn supplies the domain name to third parties.

If any dispute or cause of action arises out of or is related to the Town's domain name used in connection with the Services, then upon the Town's request, 2ANet will attempt to register with a contracted registrar an alternative domain name Town shall choose. Upon registering the Town's domain name, Town are bound by the terms of contract registrar's then current domain name policy and the policies of the national



DNS registration authorities. 2ANet will not refund any fees Town paid with respect to the registration of a domain name Town are unable to use.

In the event that Town elects to have 2ANet act as the Town's managing agent for DNS, Town agrees to designate 2ANet's administrators as the Technical Contact on the Domain Registration Record for the duration of time that 2ANet is responsible for ongoing DNS management. If Town elects to perform DNS management through another responsible party or on the Town's own, Town is not required to specify 2ANet as the Technical Contact on the Domain Registration Record.

2ANet's DNS Registration Information is currently as follows:

2advanced.net Record Handle:	SOZNTXMQQO
2advanced.net DNS E-Mail:	dnsadmin@2advanced.net
Primary Nameserver:	ns1.2advanced.net
Primary Nameserver IP Address:	12.106.77.31
Secondary Nameserver:	ns2.2advanced.net
Secondary Nameserver IP Address:	12.106.77.32

- 2.5. **Security.** Unless otherwise specified by Managed Hosting Services, Town is solely responsible for any security breaches affecting servers or accounts under the Town's control. If the Town's server or website is responsible for or involved in an attack on or unauthorized access into another server or system, 2ANet will shut it down with immediate notification to the Town Manager. Town will incur any charges resulting from the cost to correct security breaches affecting 2ANet or any of its other clients caused by the negligence of the Town.
- 2.6. **Commercial Advertisements via E-Mail.** Town will not use 2ANet Services, the Town's account or server to send or facilitate in any way the transmission of unsolicited commercial email. 2ANet will enforce substantial penalties, including charging Town for related network costs and terminating the Town's account, for any violations of this Section 2.6.

3. **Intellectual Property Rights.**

- 3.1. **2ANet License Grant to Town.** During the term of this Agreement, 2ANet grants to Town a non-exclusive non-transferable license to access and use the 2ANet Services solely on and as part of 2ANet's World Wide Web site and servers. 2ANet may modify the 2ANet Services at any time for any reason and may provide modified versions of the 2ANet Services to Town.
- 3.2. **The Town's License Grant to 2ANet.** Town grants to 2ANet a non-exclusive, worldwide, and royalty-free license for the Initial Term and the Renewal Term, if applicable, to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use the Town's content as necessary for the purposes of rendering and operating the Services to Town under this Agreement. Town expressly: (a) grants to 2ANet a license to cache materials distributed or made available for distribution via the Services, including content supplied by third parties, and (b) agrees that this caching is not an infringement of any of the Town's intellectual property rights or any third party's intellectual property rights.
- 3.3. **The Town's Warranties and Representations to 2ANet.** Town warrant, represent, and covenant to 2ANet that: (a) Town possess the legal right and ability to enter into this Agreement; (b) Town will use the Services only for lawful purposes and in accordance with this Agreement and all applicable policies and guidelines; (c) Town will be financially responsible for the use of the Town's account; (d) Town has acquired or will acquire all authorization(s) necessary for hypertext links to third-party Web sites or other content; (e) Town has verified or will verify the accuracy of materials distributed or made available for distribution via the Services, including the Town's content, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted, and (f) the Town's content does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.
- 3.4. **2ANet Materials and Intellectual Property.** All materials, including any computer software (in object code and source code form), data or information that 2ANet or its suppliers or agents develop or provide under this Agreement, and any know-how, methodologies, equipment, or processes 2ANet uses to provide the Services to Town, including all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto will remain 2ANet's or its suppliers' sole and exclusive property. Town further agrees not to translate, decompile, reverse engineer, disassemble, modify, reproduce, rent, lease, lend, sublicense, distribute, remarket or otherwise dispose of any portion of the 2ANet Services. Town hereby acknowledge that, if 2ANet at any time or from time to time performs any customizations or modifications to 2ANet Services, all rights and interests to such customizations or modifications shall be the sole property of 2ANet. 2ANet will also maintain and control ownership of all Internet protocol ("IP") numbers and addresses that 2ANet may assign to Town. 2ANet may, in its sole discretion, change or remove any and all IP numbers and addresses.



4. **Enforcement.**

4.1. **Investigation of Violations.** 2ANet may investigate any reported violation of this Agreement, or its policies or any complaints and take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, clients or third parties. 2ANet will not access or review the contents of any e-mail or similar stored electronic communications except as required or permitted by applicable law or legal process.

4.2. **Actions.** 2ANet may restrict or remove from its servers any content that violates this Agreement or related policies or guidelines, or is otherwise objectionable or infringing on any third party's rights or that potentially violates any laws. If 2ANet becomes aware that Town has possibly violated this Agreement, any related policies or guidelines, third party rights or laws, 2ANet may immediately take corrective action, including: (a) issuing warnings, (b) suspending or terminating the Service after at least two (2) warnings have been issued, (c) restricting or prohibiting any and all uses of content hosted on 2ANet's systems, and (d) disabling or removing any hypertext links to third-party Web sites, any of the Town's content distributed or made available for distribution via the Services, or other content not supplied by 2ANet that, in 2ANet's sole discretion, may violate or infringe any law or third-party rights or that otherwise exposes or potentially exposes 2ANet to civil or criminal liability. It is 2ANet's policy to terminate repeat infringers. These rights of action, however, do not obligate 2ANet to monitor or exert editorial control over the information made available for distribution via the Services.

4.3. **Disclosure Rights.** To comply with applicable laws and lawful governmental requests, to protect 2ANet's systems and clients, or to ensure the integrity and operation of 2ANet's business and systems, 2ANet may access and disclose any information it considers necessary or appropriate, including, user profile information (i.e., name, e-mail address, etc.), IP addresses and traffic information, usage history, and content residing on 2ANet's servers and systems. 2ANet may report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. To the extent any inconsistency exists between any terms of 2ANet's Privacy Policy and 2ANet's right to disclose under this section, 2ANet's right to disclose under this section will control.

5. **Disclaimed Warranties.** 2ANet exercises no control over, and accepts no responsibility for, the content of the information passing through 2ANet's host computers, network hubs and points of presence, or the Internet. ALL SERVICES PERFORMED UNDER THIS AGREEMENT ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE NOT AT THE CONTROL OF 2ANET INCLUDING, ANY FAILURE BECAUSE OF COMPUTER HARDWARE OR COMMUNICATION SYSTEMS.

6. **Limitation and Exclusion of Liability.**

6.1. **Limitations.** IN NO EVENT WILL 2ANET OR ITS SUPPLIERS HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES THROUGH FRAUDULENT MEANS OR DEVICES. NEITHER 2ANET NOR ITS SUPPLIERS WILL HAVE LIABILITY WITH RESPECT TO 2ANET'S OBLIGATIONS UNDER THIS AGREEMENT, OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF 2ANET HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THE LIABILITY OF 2ANET AND ITS SUPPLIERS TO TOWN FOR ANY REASON AND UPON ANY CAUSE OF ACTION IS LIMITED TO THE AMOUNT TOWN ACTUALLY PAID TO 2ANET UNDER THIS AGREEMENT DURING THE 3 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY 2ANET UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. ACCORDINGLY, TOWN RELEASES 2ANET AND ITS SUPPLIERS FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THE LIMITATION STATED IN THIS SECTION 6.1.

Except for certain products and services specifically identified as being offered by 2ANet, 2ANet does not control any materials, information, products, or services on the Internet. The Internet contains unedited materials, some of which are sexually explicit or may be offensive to Town. 2ANet has no control over and accepts no responsibility for such materials. Town assumes full responsibility and risk for use of the services and the Internet and are solely responsible for evaluating the accuracy, completeness, and usefulness of all services, products, and other information, and the quality and merchantability of all merchandise provided by to 2ANet by the Town through the service or the Internet.

6.2. **Interruption of Service or Loss of Data.** While 2ANet makes reasonable efforts to maintain the 2ANet service, many factors are not within 2ANet's control. Therefore, 2ANet does not warrant, and is not



responsible for (even if caused by the negligence of 2ANet) any loss of data, delays, non-delivery or mis-delivery of information, lack of access, slows response time, or service interruptions or errors not caused by 2ANet. The Town's data is defined as any data held by 2ANet and includes account information, web hosting data, email and domain name services. This disclaimer and waiver shall apply equally to any and all third party providers. 2ANet provides no warranty to client regarding the accuracy of usage statistics, which 2ANet may provide in its discretion. Further, no advice or information given by a 2ANet representative shall create a warranty or serve as an amendment to this agreement.

7. **Indemnification.** Town releases and holds harmless, and agrees to indemnify, 2ANet and its affiliates, parent and suppliers (and their respective employees, directors and representatives) against any and all claims, demands, actions, proceedings, suits, liabilities, damages, settlements, judgments, penalties, fines, costs or expenses (including, reasonable attorneys' fees and other litigation expenses) incurred by 2ANet or its suppliers, arising out of or relating to: (a) the Town's or the Town's agent's or customer's violation or breach of any term, condition, representation or warranty of this Agreement, or any applicable policy or guideline; (b) the Town's improper act or omission or illegal use of the Services; or (c) the Town's violation, alleged violation, or misappropriation of any intellectual property right (including trademark, copyright, patent, trade secrets) or non-proprietary right of a third party (including defamation, libel, violation of privacy or publicity).

2ANet releases and holds harmless, and agrees to indemnify, the Town and its officials, agents and employees against any and all claims, demands, actions, proceedings, suits, liabilities, damages, settlements, judgments, penalties, fines, costs or expenses (including, reasonable attorneys' fees and other litigation expenses) incurred by the Town, its officials, agents or employees, arising out of or relating to: (a) 2ANet's violation or breach of any term, condition, representation or warranty of this Agreement, or any applicable policy or guideline; (b) 2ANet's improper act or omission relating to the Services; or (c) 2ANet's violation, alleged violation, or misappropriation of any intellectual property right (including trademark, copyright, patent, trade secrets) or non-proprietary right of a third party (including defamation, libel, violation of privacy or publicity).

8. **Miscellaneous Provisions.**

- 8.1. **Entire Agreement.** This Agreement, in conjunction with all policies and guidelines incorporated by reference, constitutes the entire agreement between Town and 2ANet with respect to the subject matter of the Agreement, it supersedes any proposal or prior agreement, oral or written, and any other communication relating to the subject matter of the Agreement, and there are no representations, understandings or agreements that are not fully expressed in this Agreement and the related policies and guidelines.
- 8.2. **No Fiduciary Relationship; No Third-Party Beneficiaries.** 2ANet is not the agent, fiduciary, trustee or other representative of Town. Except for the rights of 2ANet's suppliers under sections 2.4, 6 and 7, nothing expressed or mentioned in or implied from this Agreement is intended or will be construed to give to any person (other than the parties to this Agreement) any legal or equitable right, remedy or claim under or in respect to this Agreement. This Agreement and all of its representations, warranties, covenants, conditions and provisions are intended to be and are for the sole and exclusive benefit of the parties to this Agreement.
- 8.3. **Amendments.** Except as expressly provided in this Agreement, no amendment, change, waiver, or discharge of this Agreement is valid unless in writing and signed by the parties.
- 8.4. **Choice of Law and Forum, Litigation Costs.** THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE UNITED STATES AND THE STATE OF TEXAS, WITHOUT REFERENCE TO RULES GOVERNING CHOICE OF LAWS. ANY ACTION RELATING TO THIS AGREEMENT MUST BE BROUGHT IN THE FEDERAL OR STATE COURTS LOCATED IN DALLAS, TEXAS. In the event any litigation or other proceeding is brought by either party in connection with this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to recover from the other party all costs, attorneys' fees and other expenses incurred by such prevailing party in such litigation.
- 8.5. **Compliance with Laws.** Town and 2ANet shall comply with all applicable laws and regulations and will indemnify and save the other party harmless from failure to so comply. 2ANet will not have to perform any obligations set forth in this Agreement if the performance would violate any present or future law, regulation or policy of any applicable government.
- 8.6. **Non-Assignment and Subcontracting.** Town may not assign this Agreement or any right or obligation under this Agreement, by operation of law or otherwise, without 2ANet's prior written consent, and any attempted assignment or delegation without consent will be void. 2ANet may assign its rights and obligations under this Agreement, and may utilize affiliates and agents in performing its duties and exercising its rights with the consent of the Town. This Agreement is binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns. 2ANet may subcontract any work, obligations or other performance required of 2ANet under this Agreement.



- 8.7. **No Waiver.** 2ANet's failure to enforce the strict performance of any provision of this Agreement does not constitute a waiver of 2ANet's right to subsequently enforce the provision or any other provisions of this Agreement.
- 8.8. **Severability.** If any term or provision of this Agreement is deemed invalid, void or unenforceable either in its entirety or in a particular application, the remainder of this Agreement, if applicable, will remain in full force and effect and, if the subject term or provision is deemed to be invalid, void or unenforceable only with respect to a particular application, the term or provision will remain in full force and effect with respect to all other applications.
- 8.9. **Headings.** The section headings used in this Agreement are for reference and convenience only and will not enter into the interpretation of the Agreement.
- 8.10. **Assignment.** This Agreement shall be binding to both parties and their respective successors and assigns. 2ANet reserves the right to assign any rights or obligations under this Agreement with prior written notice to Town. Town shall not transfer or assign any rights or obligations under this Agreement without the prior written consent of 2ANet, which consent shall not be unreasonably withheld.
- 8.11. **Survival.** All provisions of this Agreement relating to the Town's warranties, intellectual property rights, limitation and exclusion of liability, confidentiality, the Town's indemnification obligations and payment obligations and the miscellaneous provisions will survive the termination or expiration of the Agreement.
- 8.12. **Copyright.** Town acknowledge the validity and 2Advanced's exclusive ownership of all right, title, and interest in and to all 2Advanced Studios, 2advanced.com and 2advanced.net logos and link logo marks (the "Marks") and, during or after the term of this Agreement, will not contest, or help others to contest, the ownership or the validity of any registrations or rights of 2Advanced Studios, 2advanced.com and 2advanced.net now owned or obtained relating to the Marks. Town will not use any names, marks, terms, graphics, or other materials on its Web page or Site that are likely to cause confusion with or dilute the distinctiveness of the Marks or to damage the reputation or commercial image of 2Advanced Studios, 2Advanced.com and 2Advanced.net or any of their products, without the express written permission of 2Advanced Studios, LLC.
- 8.13. **Confidentiality.** Town acknowledges that by reason of the Town's relationship with 2ANet, Town may have access to certain information and materials relating to 2ANet's business, clients, methodology, software technology and marketing which 2ANet treats as confidential (collectively "**Confidential Information**"). Town shall: (a) hold in confidence, and not disclose or reveal to any person or entity, any Confidential Information without the clear and express prior written consent of a duly authorized representative of 2ANet; and (b) not use or disclose any of the Confidential Information for any purpose at any time, other than for the limited purpose of performance under this Agreement. These obligations shall continue indefinitely for so long as the Confidential Information is a trade secret under applicable law and shall continue for two (2) years following termination of this Agreement with respect to Confidential Information, which does not rise to the level of a trade secret.
- 8.14. **Export Control.** Town agree not to export or re-export any portion of the 2ANet Service outside of the United States. Town further agree to comply with all United States and other applicable laws, rules and regulations relating to the export, re-export or transshipment of the 2ANet Services.
- 8.15. **Force Majeure.** Either party shall be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, earthquake, labor disputes and strikes, riots, terrorist acts, war, and governmental requirements directly affecting 2ANet. The obligations and rights of the party so excused shall be extended by a period acceptable to the Town Manager.
- 8.16. **California Consumer Protection.** Under California Civil Code Section 1789.3, California subscribers are entitled to the following specific consumer rights information: the complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 1020 N. Street, #501, Sacramento, CA 95814 or by telephone at 1-916-445-1254.
- 8.17. **California Privacy Protection.** Pursuant to California Civil Code Section 1798.82, effective July 1, 2003, anyone hosting web sites, or storing user information for their web site is required to disclose any breach of the security of the system following discovery or notification of the breach in the security to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Town agree to cooperate with 2ANet in making the disclosure to users of the Town's site that may have been affected in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. Town agree to notify the owner or licensee of the information of any breach of the security of the data stored for the Town's web site immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.
- 8.18. **Dispute Resolution.** The parties shall first attempt in good faith to resolve any dispute through open negotiation. Any dispute which remains unresolved for thirty (30) days shall be settled by binding



arbitration in Dallas, Texas, in accordance with the then current rules of the American Arbitration Association, before one (1) independent and impartial arbitrator, mutually designated by both parties and selected by the American Arbitration Association if the parties cannot agree on an arbitrator. The prevailing party shall be entitled to recover reasonable attorney fees and costs.

8.19. Independent Contractor. It is expressly agreed and understood that 2Anet shall be in all respects and independent contractor and that 2Anet is in no respect an agent, servant or employee of the Town. Accordingly, 2Anet shall not attain, nor be entitled to, any rights or benefits of the Town, nor any rights generally afforded classified or unclassified employees. 2ANet further understands that Florida Worker's Compensation benefits available to employees of the Town are not available to employees of 2ANet, and agrees to provide worker's compensation insurance for any employee or agent of 2ANet rendering services to the Town under this Agreement.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the Effective Date. The Parties hereto agree that facsimile signatures shall be as effective as if originals.

2Advanced Studios

Client

By: _____

By: Wayne Slaton

Name: Antony Novak

Name: Wayne Slaton

Title: Chief Operating Officer

Title: Mayor

Date: May , 2003

Date: May , 2003

2Advanced.net Acceptable Use and Service Policy

Last Updated April 4, 2003

1. GENERAL

2Advanced.net and 2Advanced Studios, LLC ("2Advanced") have created this Acceptable Use and Service Policy ("AUP") to outline our policies for accessing the Internet from our servers. All users of 2Advanced's hosting services (the "Services"), including clients and non-clients, must comply with this AUP. 2Advanced attempts to advance the free flow of ideas and information over the Internet and does not, as a normal practice, proactively monitor use of the Services. Nor do we edit or control the content of any material available through the Services, with the exception of our proprietary websites. Yet, we may remove any materials that, in our judgment, may be illegal, create liability, or violate this AUP. 2Advanced may cooperate with legal authorities and others in the investigation of any suspected crime or wrongdoing. You acknowledge that 2Advanced may preserve and disclose the content of a Website if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to comply with legal process, enforce our agreements or policies, respond to claims that the content violates the rights of third parties, or protect the rights, property or personal safety of 2Advanced, our users and the general public. You further agree that you must evaluate, and bear all risks associated with the use of any Internet content, including any reliance on the accuracy, completeness and usefulness of such content. Violations of this AUP may result in actions including the suspension or termination of your account. This AUP is incorporated in our hosting agreements and other policies. This AUP is a guideline and is not an inclusive listing of prohibited conduct.

2. PROHIBITIONS UNDER 2ADVANCED'S ACCEPTABLE USE AND SERVICE POLICY

You agree not to use or attempt to use 2Advanced's Services to:

a. Violate, intentionally or unintentionally, any applicable local, state, national or international law, or any rules or regulations promulgated thereunder. Prohibited activities include, but are not limited to: transmitting obscene materials; intentionally spreading computer viruses; gaining unauthorized access to private networks; engaging in the transmission of pirated software; conducting or participating in illegal gambling, or soliciting for illegal pyramid schemes through electronic mail or postings.

b. Violate any regulations promulgated by the U.S. Securities and Exchange Commission, or any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law.

c. Harm minors in any way.

d. Threaten or incite bodily harm or damage to property.

e. Stalk or otherwise harass another.

f. Make fraudulent offers to buy or sell products or services or to promote any financial scam such as "pyramid schemes," "Ponzi schemes," and "chain letters."

g. Attempt to access other's accounts or to pierce security measures of computer software or hardware, electronic communications systems, or telecommunications systems, even if there is no loss of data or damage.

h. Add, remove or change identifying network header information in an effort to mislead or attempt to impersonate any person by use of forged headers or other identifying information. Using anonymous remailers or nicknames is not prohibited. Using purposely misleading headers ("munging" headers) in order to avoid spam email address collectors is also allowed.

i. "Spam" or send any unsolicited commercial email or unsolicited bulk email or aid in sending such unsolicited email, even if that email is not commercial. In response to a complaint, we have the discretion to determine, from all of the evidence we receive, whether the intended recipients were from an "opt-in" email list. You are also prohibited from sending the same or substantially similar unsolicited email message, whether commercial or not, to 50 or more recipients.

j. Publish, submit, copy, upload, post, transmit, reproduce, take, infringe on, or distribute information, software, or other material that is protected by copyright, trademark, patent, trade secret, any other type of intellectual property rights, trademark laws (by rights of privacy or publicity) or other proprietary right of any party unless you own or control the rights or have obtained consent to do so. This includes using any material that you do not have a right to make available under any law, contractual or fiduciary relationship (including inside information, proprietary and confidential information learned as part of employment relationships or under other nondisclosure agreements). This prohibition also includes the use of any material or information including images or photos that are made available through a 2Advanced Service, digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorized transmittal of copyrighted software.

k. Accumulate personal information about others without their knowledge or authorization.

l. Resell, or exploit the Services for any commercial purpose without 2Advanced's approval.

m. Adversely affect the ability of others to use 2Advanced Services or the Internet. This includes making available material that contains software viruses or other code, files or programs designed to interfere with the functionality of computer software, hardware or telecommunications equipment. Also prohibited are attempts to disrupt the normal flow

) of dialogue, cause a screen to “scroll” faster than others can type, or repeatedly entering either meaningless characters, three or more repeated blank lines, the same text three or more times, or consistently repeating text in a Chat room.. You may not otherwise interfere with real time exchanges or use denial of service attacks against others. Similarly, you must not disrupt the Services, servers, networks or disobey procedures and requirements relating to the Services. You are prohibited from allowing use of the network for illegal or inappropriate actions or a configuration that allows others to use their network improperly.

n. Continue posting off-topic articles, generally including commercial advertisements in most newsgroups. We reserve the right not to accept postings from newsgroups where we have actual knowledge that the content of the newsgroup violates this AUP.

) o. Abuse chat rooms. Such abuse includes, but is not limited to, scrolling , posting the same or a substantially similar unsolicited note, whether commercial or not, to a newsgroup, bulletin board, or message board 10 or more times a day.

p. Cancel messages other than your own messages, unless the post is forged in your name. We may cancel any postings that violate this AUP.

q. Use a personal account for high volume or commercial use, maintain a connection by remaining on standby or inactive basis, or “ping.” We may terminate your connection after extended inactivity.

r. Use “robots” or otherwise collect email addresses in order to send unsolicited or unauthorized material.

s. Exceed the maximum monthly traffic allotment for your website. You agree that we have no responsibility for the deletion or failure to store communications and content that exceeds these limits.

1
/

3. SECURITY

General

We rely on you to ensure the security of your network. Ensuring that your customers and users use the Services appropriately is your responsibility. You must take all necessary steps to manage the use of the Services obtained from 2Advanced in order to minimize any network abuse.

Criminal and civil liability may result if system or network security is violated. Incidents involving such violations will be investigated and 2Advanced will cooperate with law enforcement if a crime is suspected.

Security violations include, but are not limited to:

- a. Failing to secure your system. You are expected to configure and secure your services to prevent the disruption of service to other clients. If unknown persons utilize your Services at any time to illegally distribute licensed software, you will be liable. Monitoring these services is your responsibility. Examples of unsecured services include use of SMTP relay, incorrect configuration of Proxy or SOCKS services, PC Anywhere, SNMP Broadcaster, or FTP server. You must take corrective actions on vulnerable or exploited systems to stop continued abuse. You must insure that your network and/or computer are securely configured. You may not, through action or inaction, allow others to use your network inappropriately or in violation of this AUP or the 2Advanced hosting agreement for the Service(s) you purchased.
- b. Utilizing any software or device to stay logged on while you are not actively using the 2Advanced Service or using your account to operate a server.

- c. Utilizing or spreading files that contain viruses, Trojan horses, worms, time bombs, cancel bots, corrupted files, or any other programs capable of harming another's computer operation or property.
- d. Hacking - breaking the security on another's computer network or accessing another's account. Such acts would include, but not be limited to, unauthorized access to, or use of, data, systems or networks, including any attempt to probe, scan, or test the vulnerability of a system or network or to breach security or authentication measures without the owner's express approval;
- e. Monitoring of data or traffic on any network or system without the owner's express approval, including use of sniffers or SNMP tools.

Harmful Acts

You may not engage in other activities, illegal or not, that are harmful to our clients, operations, reputation, or customer relations, as 2Advanced determines in our sole discretion.

Password Security

We rely on you to keep your password secure. Any and all access to or use of the Services through your account is your responsibility. No one may attempt to obtain another user's account password.

Prohibited Affiliations

You represent and warrant that you are not a resident of any country or affiliated with any other organization that is prohibited from doing business within the United States as defined and set forth at: <http://www.treas.gov/ofac> and <http://www.bxa.doc.gov/DPL/denialist.html>.

4. CONTACTING 2ADVANCED

Contact information

We require that you make information publicly available about how to contact you, and that you respond in a timely manner to any of our complaints of abuse of the Services. If you fail to responsibly manage the use of the Services obtained from 2Advanced, we may terminate Services to you.

Reporting Abuse

If you wish to report a violation of this AUP, you may contact us via email at 2Advanced.net/abuse. Any one wishing to send us a Notification of Claimed Infringement pursuant to the Digital Millennium Copyright Act of 1998 ("DMCA") must send such notification to 2Advanced.net/copyright.

To be most effective, please provide the following information on the alleged violation:

- An email with full header information or syslog files, or
- The IP address used with the date and time (including the time zone) and
- Evidence of what happened

5. REVISIONS TO THIS ACCEPTABLE USE AND SERVICE POLICY

We reserve the right to revise this AUP, our Privacy Policy, our hosting service agreements and our other policies and agreements at any time and in any manner. We will post any revisions to this AUP, together with a revision date at our website at www.2Advanced.net.