

City of Fayetteville Staff Review Form

2021-0028

Legistar File ID

2/16/2021

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Keith Macedo

1/13/2021

INFORMATION TECHNOLOGY (170)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approving the attached CivicPlus Master Services Agreement and Statement of Work for an initial one (1) year term with the option to renew for four (4) additional years, for website content management system (CMS) services, in the annual amount of \$23,268.54, with a 5% annual escalation, and a \$5,000 annual contingency.

Budget Impact:

1010.170.1710.5315.00	General Fund																								
Account Number	Fund																								
Project Number	Project Title																								
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Budgeted Item?</td> <td style="width: 15%;"><u>Yes</u></td> <td style="width: 30%;">Current Budget</td> <td style="width: 25%; text-align: right;">\$ 46,000.00</td> </tr> <tr> <td></td> <td></td> <td>Funds Obligated</td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td></td> <td></td> <td style="border-top: 1px solid black;">Current Balance</td> <td style="border-top: 1px solid black; text-align: right;">\$ 46,000.00</td> </tr> <tr> <td>Does item have a cost?</td> <td><u>Yes</u></td> <td>Item Cost</td> <td style="text-align: right;">\$ 23,268.54</td> </tr> <tr> <td>Budget Adjustment Attached?</td> <td><u>NA</u></td> <td>Budget Adjustment</td> <td></td> </tr> <tr> <td></td> <td></td> <td style="border-top: 1px solid black;">Remaining Budget</td> <td style="border-top: 1px solid black; text-align: right;">\$ 22,731.46</td> </tr> </table>	Budgeted Item?	<u>Yes</u>	Current Budget	\$ 46,000.00			Funds Obligated	\$ -			Current Balance	\$ 46,000.00	Does item have a cost?	<u>Yes</u>	Item Cost	\$ 23,268.54	Budget Adjustment Attached?	<u>NA</u>	Budget Adjustment				Remaining Budget	\$ 22,731.46	
Budgeted Item?	<u>Yes</u>	Current Budget	\$ 46,000.00																						
		Funds Obligated	\$ -																						
		Current Balance	\$ 46,000.00																						
Does item have a cost?	<u>Yes</u>	Item Cost	\$ 23,268.54																						
Budget Adjustment Attached?	<u>NA</u>	Budget Adjustment																							
		Remaining Budget	\$ 22,731.46																						

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # 143-16,153-14,105-18

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



TO: Mayor Lioneld Jordan

THRU: Susan Norton, Chief of Staff

FROM: Keith Macedo, Director of Information Technology
Lisa Thurber, Director of Communication and Marketing

DATE: January 13, 2021

SUBJECT: Staff recommends approving the attached CivicPlus Master Services Agreement and Statement of Work for an initial one (1) year term with the option to renew for four (4) additional years, for website content management system (CMS) services, in the annual amount of \$23,268.54, with a 5% annual escalation, and a \$5,000 annual contingency.

RECOMMENDATION:

Staff recommends approving the attached CivicPlus Master Services Agreement and Statement of Work for an initial one (1) year term with the option to renew for four (4) additional years, for website content management system (CMS) services, in the annual amount of \$23,268.54, with a 5% annual escalation, and a \$5,000 annual contingency.

BACKGROUND:

On August 19, 2014, City Council awarded a contract with CivicPlus, through RFP 14-07, to replace its existing website system. The contract was in the amount of \$65,714.00, plus a project contingency of \$6,571.00, for website redesign and hosting of fayetteville-ar.gov and the City intranet website. Annual maintenance for the existing system is \$10,146.00.

Since these sites were developed, the City has made significant enhancements to its website content, including organizational changes based on analytics, design modifications, an increased focus on readability of content by reducing technical jargon, and a focus on Section 508 and Web Content Accessibility Guidelines (WCAG) compliance, which sets standards for optimizing web accessibility for people with disabilities. Additionally, the Communications Department has made increased efforts to create a cohesive, familiar brand, and it will continue to do so as part of the City's economic development plan.

On June 9, 2016, staff approved a contract addendum to expedite the City's website redesign for a one-time fee of \$4,200.00. Staff is in the early stages of planning for the redesign and recently discussed needed enhancements for the new site with CivicPlus. The City currently uses CivicPlus' Design Essentials system, but in order to design and maintain a dynamic, multimedia website, an upgrade to CivicPlus' Design Center Pro system is needed. Staff is recommending to approve the addition of Design Center Pro to our existing CMS, which will increase our annual maintenance in the amount of \$8,000. In addition to the annual contracted amount, staff is requesting \$5,000 per year in contingency to fund additional modules, programming, or design work with CivicPlus in an effort to continually improve our websites..

DISCUSSION:

It is the goal of the Communications and Information Technology Departments to create a website that serves, both visually and content-wise, as an impressive front door for our City and can compete with the best of the best.

BUDGET/STAFF IMPACT:

The attached agreement and statement of work will provide website content management system (CMS) services in the annual amount of \$23,268.54, with a 5% annual escalation, and a \$5,000.00 annual contingency. Annual hosting fees to be funded from the General Fund Information Technology operating budget.

Attachments: Staff Review Form, Staff Review Memo, CivicPlus



Master Services Agreement

THIS Master Services Agreement (“Agreement”) is agreed to by and between CivicPlus, LLC d/b/a CivicPlus (“CivicPlus”) and Fayetteville, Arkansas (“Client”) (referred to individually as “Party” and jointly as “Parties”) and shall be effective as of the later date of signing indicated at the end of this Agreement (“Effective Date”).

RECITALS

- I. **WHEREAS**, CivicPlus is engaged in the business of developing, marketing and selling custom community engagement and government management platforms and services that include but are not limited to web sites, web interfaces and portals and proprietary software systems and associated modules; in addition to project development, design, implementation, support and hosting services for same;
- II. **WHEREAS**, Client wishes to engage in a relationship with CivicPlus for such services and/or license for the development and use of proprietary software developed and owned by CivicPlus;
- III. **WHEREAS**, Client and CivicPlus have agreed to certain terms as set forth in this Agreement by this written instrument duly executed by the Parties;

NOW, THEREFORE, Client and CivicPlus agree as follows:

Term & Termination

1. This Agreement shall commence on the date set forth below and shall remain in full force and effect during the term of any associated or attached Statement of Work (“SOW”) between CivicPlus and Client. This Agreement and any associated or attached SOW will continue under the conditions set forth herein until terminated by either Party as specifically authorized herein.
2. Either Party may terminate this Agreement or any associated SOW at the end of the SOW term by providing the other Party with 60 days’ written notice prior to the SOW renewal date.
3. Upon termination of this Agreement or any associated or attached SOW, the licenses granted for such relevant SOW by Section 15, below, will terminate; Client shall cease all use of the CivicPlus Property (as defined herein) associated with the terminated SOW.
4. Notwithstanding the above, in the event this Agreement or any SOW is terminated, for any reason, prior to payment in full being made by Client for work completed by CivicPlus, any outstanding invoices or future planned billing for the development of Client’s chosen government management platform and/or services, as defined in the SOW (“Project Development”), shall immediately become due in full.

Statements of Work

5. CivicPlus agrees to perform services and/or produce deliverables in accordance with the SOW in consideration of the fees owed by Client in described in the same SOW. Multiple and successive SOW may be entered into and shall be attached hereto. Such SOWs are incorporated into this Agreement by reference and subject to the terms & conditions contained herein pursuant to Section 27.

Invoicing & Payment Terms

6. Invoices shall be sent electronically to the individual/entity designated in the SOW’s contact sheet, to be filled out and submitted by Client. Client shall provide accurate, current and complete information of Client’s legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change. Upon request CivicPlus will mail invoices, and the Client will be charged a \$5.00 convenience fee.
7. Payment is due 30 days from date of invoice. Unless otherwise limited by law, a finance charge of 1.5 percent (%) per month or \$5.00, whichever is greater, will be added to past due accounts. Payments received will be applied first to finance charges, then to the oldest outstanding invoice(s).
8. If the Client’s account exceeds 60 days past due, support will be discontinued until the Client’s account is made current. If the Client’s account exceeds 90 days past due, Annual Services will be discontinued, and the Client website, modules, interfaces or portals will no longer be active until the Client’s account is made current. Client will be given 30 days’ notice prior to discontinuation of services for non-payment.
9. If the Client requests a change in the timeline set forth and agreed upon at the beginning of the services, and such change causes CivicPlus to incur additional expenses (i.e. airline change fees, consultant fees), Client agrees to reimburse CivicPlus for those fees. Not to exceed \$1,000 per CivicPlus resource per trip. CivicPlus shall notify



Master Services Agreement for **Fayetteville, AR**

Client prior to incurring such expenses and shall only incur those expenses which are approved by Client.

Ownership & Content Responsibility

10. Upon full and complete payment of submitted invoices for any SOW Project Development Fees, Client will own the website graphic designs, webpage or software content, module content, importable/exportable data, and archived information as created by CivicPlus on behalf of Client pursuant to this Agreement ("Customer Content").
11. Upon completion of any SOW Project Development, Client will assume full responsibility for website, software or module content maintenance and administration. Client, not CivicPlus, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Content.
12. Client agrees that CivicPlus shall not migrate, convert, or port content or information that could reasonably be construed to be time-sensitive, such as calendar or blog content, in any Project Development.
13. Client will make a reasonable attempt to work with CivicPlus, if requested, to create a news item to be released in conjunction with their project Go-Live date. Client will provide CivicPlus with contact information for local and regional media outlets. CivicPlus may use the press release in any marketing materials as desired throughout the term of this Agreement.

Intellectual Property & Ownership

14. Intellectual Property of any software or other original works created by CivicPlus prior to the execution of this Agreement ("CivicPlus Property") will remain the property of CivicPlus. Client shall not (i) license, sublicense, sell, resell, reproduce, transfer, assign, distribute or otherwise commercially exploit or make available to any third party any CivicPlus Property in any way; (ii) modify or make derivative works based upon any CivicPlus Property; (iii) create Internet "links" to the CivicPlus Property software or "frame" or "mirror" any CivicPlus Property administrative access on any other server or wireless or Internet-based device; or (iv) reverse engineer or access any CivicPlus Property in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of any CivicPlus Property, or (c) copy any ideas, features, functions or graphics of any CivicPlus Property. The CivicPlus name, the CivicPlus logo, and the product and module names associated with any CivicPlus Property are trademarks of CivicPlus, and no right or license is granted to use them.
15. Provided Client complies with the terms and conditions herein, the relevant SOW, and license restrictions set forth in Section 14, CivicPlus hereby grants Client a limited, nontransferable, nonexclusive, license to access and use the CivicPlus Property associated with any valid and effective SOW associated with this Agreement, for the term of the respective SOW.

Indemnification

16. To the extent permitted by the law of Client's state, Client and CivicPlus shall defend, indemnify and hold the other Party, its partners, employees, and agents harmless from and against any and all lawsuits, claims, demands, penalties, losses, fines, liabilities, damages, and expenses including attorney's fees of any kind, without limitation, arising out of the negligent actions and omissions, or intentionally malicious actions or omissions of the indemnifying Party or its partners, employees, and agents, directly associated with this Agreement and the operations and installation of software contemplated by this Agreement. This section shall not apply to the extent that any lawsuits, claims, demands, penalties, losses, fines, liabilities, damages, and expenses is caused by the negligence or willful misconduct on the part of the other Party.

Client Responsibilities

17. CivicPlus will not be liable for any act, omission of act, negligence or defect in the quality of service of any underlying carrier, licensor or other third-party service provider whose facilities or services are used in furnishing any portion of the service received by the Client.
18. CivicPlus will not be liable for any failure of performance that is caused by or the result of any act or omission by Client or any entity employed/contracted on the Client's behalf.
19. Client agrees that it is solely responsible for any solicitation, collection, storage, or other use of end-users' personal data on any website or online service provided by CivicPlus. Client further agrees that CivicPlus has no responsibility for the use or storage of end-users' personal data in connection with the website or the consequences of the solicitation, collection, storage, or other use by Client or by any third party of personal data.
20. To the extent it may apply to any service or deliverable of any SOW, user logins are for designated individuals chosen by Client ("Users") and cannot be shared or used by more than one User. Client will be responsible for the confidentiality and use of User's passwords and User names. Client will also be responsible for all electronic communications, including those containing business information, account registration, account holder information, financial information, Client data, and all other data of any kind contained within emails or otherwise entered electronically through any CivicPlus Property or under



Master Services Agreement for **Fayetteville, AR**

Client's account. CivicPlus will act as though Client will have sent any electronic communications it receives under Client's passwords, user name, and/or account number. Client shall use commercially reasonable efforts to prevent unauthorized access to or use of any CivicPlus Property and shall promptly notify CivicPlus of any unauthorized access or use of any CivicPlus Property and any loss or theft or unauthorized use of any User's password or name and/or user personal information.

21. Client shall comply with all applicable local, state, and federal laws, treaties, regulations, and conventions in connection with its use of any of the services or CivicPlus Property.

Limitation of Liability

22. CivicPlus' liability arising out of or related to this Agreement, or any associated SOW, will not exceed the Annual Services Fee paid by Client in the year prior to such claim of liability.
23. In no event will CivicPlus be liable to Client for any consequential, indirect, special, incidental, or punitive damages arising out of or related to this Agreement.
24. The liabilities limited by Section 22 and 23 apply: (a) to liability for negligence; (b) regardless of the form of action, whether in contract, tort, strict product liability, or otherwise; (c) even if Client is advised in advance of the possibility of the damages in question and even if such damages were foreseeable; and (d) even if Client's remedies fail of their essential purposes. If applicable law limits the application of the provisions of this Limitation of Liability section, CivicPlus' liability will be limited to the maximum extent permissible.

Force Majeure

25. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civic disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

Taxes

26. It is CivicPlus' policy to pass through sales tax in those jurisdictions where such tax is required. If the Client is tax-exempt, the Client must provide CivicPlus proof of their tax-exempt status, within fifteen (15) days of contract signing, and the fees owed by Client under this Agreement will not be taxed. If the Client's state taxation laws change, the Client will begin to be charged sales tax in accordance with their jurisdiction's tax requirements and CivicPlus has the right to collect payment from the Client for past due taxes.

Other Documents

27. The following, if applicable, are to be attached to and made part of this Agreement:
 - a. Any Addendum and/or Amendment to this Agreement signed by both Parties;
 - b. Exhibit A - Statement(s) of Work;
 - c. Service Agreement Sales Forms;
 - d. Service Agreements previously executed between the Parties; and
 - e. Custom Development / Retainer Agreement

28. In the event of conflict with an attachment to this Agreement, any addendum and/or amendment made to the main body of this Agreement will govern. Notwithstanding the foregoing, no SOW or other attachment incorporated into this Agreement after execution of this main body of this Agreement will be construed to amend this main body unless it specifically states its intent to do so and cites the section or sections amended.

29. This Agreement and all attachments hereto sets forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter.

Interlocal Purchasing Consent

30. With the prior approval of CivicPlus, which may be withheld for any or no reason within CivicPlus' sole discretion, this Agreement and any attached SOWs may be extended to any public entity in Client's home-state to purchase at the SOW prices and specifications in accordance with the terms stated herein.

Miscellaneous Provisions

31. The invalidity, in whole or in part, of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
32. No amendment, assignment or change to this Agreement or any included SOW shall be effective unless by a written instrument executed by each of the Parties.



Master Services Agreement for **Fayetteville, AR**

- 33. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 34. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

Acceptance

We, the undersigned, agreeing to the conditions specified in this document, understand and consent to the terms & conditions of this Agreement.

Client

CivicPlus

By:

By:

Name:

Name: Amy Vikander

Title:

Title: Vice President of Client Services

Date:

Date: 1/13/2021

Sign and E-mail the entire contract with exhibits to:

Contracts@CivicPlus.com

Signature pages sent without the entire contract attached will not be accepted. We will e-mail a counter-signed copy of the contract back to you once we begin your project.

CivicPlus does not require a physical copy of the contract, however, if you would like a physical copy of the contract, mail one (1) copy of the contract with original signature to:

CivicPlus Contract Manager
302 S. 4th Street, Suite 500
Manhattan, KS 66502

Upon receipt of signed original, we will counter-sign and return the copy for your files.



**Master Service Agreement and Statement of Work
Addendum**

THIS Master Services Agreement and Statement of Work Addendum (“Addendum”) hereby sets forth the (i) additional terms and conditions applicable to the Master Services Agreement, found at: <https://www.civicplus.com/master-services-agreement>, and/or Statement of Work (“Agreements”) and/or (ii) amendments to specific provisions of the terms and conditions which exist in the Agreements (collectively, the “Special Terms”), as described below, as agreed upon by CivicPlus and Clinton Township, Michigan (Client). The Special Terms shall be deemed to amend, modify, supplement, replace and/or supersede (as applicable) any inconsistent provisions of the Agreements, to the extent of the inconsistency.

ALL TERMS AND CONDITIONS OF THE AGREEMENTS NOT EXPRESSLEY MODIFIED HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.

Capitalized terms used and not defined herein shall have the meanings assigned to them in the Agreements (to which this Addendum is attached and incorporated).

1. AMENDMENTS

The terms and conditions of the Agreement are hereby amended as follows:

Document and Section	Amended Language
MSA #7	Payment is due 30 days from date of invoice.

Acceptance

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their duly authorized representatives as of the dates below.

Client

CivicPlus

By: _____

By: 

Name: _____

Name: Amy Vikander

Title: _____

Title: Vice President of Client Services

Date: _____

Date: 1/13/2021



Exhibit A.1 - CivicPlus Statement of Work #1

Annual Services (Continuing GCMS® Enhancements, Maintenance, Support and Hosting)

Includes:

- Website Hosting, Maintenance and Support
- 1x Intranet Subsite
- ADFS
- SSL Certificate
- CivicSend
- Design Center Pro
- Recurring Website Redesign (details in section 4)

Included

2021 Annual Services

\$23,268.54

1. Performance and payment under this SOW shall be subject to the terms & conditions of the Agreement by and between Taylor, MI ("Client") and CivicPlus, to which this Statement of Work #1 (SOW #1) is hereby attached as Exhibit A.1.
2. This SOW #1 shall remain in effect for an initial term of 1 year (12 months) from March 1, 2021 and renewable up to 4 additional 1 year (12 months) terms.
3. Annual Services shall be invoiced on or about March 1 on relevant calendar years, beginning March 1, 2021 and every 12 months thereafter. Annual services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase.
4. Presuming continuous services under this SOW, Client shall be entitled to receive a redesign at no additional cost. Client may initiate such redesign any time after 48 months of continuous service. Upon the initiation of an eligible redesign project, Client may begin accumulating eligibility towards a subsequent redesign after another 48 months of continuous service. Redesigns that include additional features not available on the original website may be subject to additional charges. Additional features include, but are not limited to, additional modules and integration of third-party software.
5. Client allows CivicPlus to display a "Government Websites by CivicPlus" insignia, and web link at the bottom of their web pages. Client understands that the pricing and any related discount structure provided under this SOW #1 assumes such perpetual permission.
6. The Client will be invoiced electronically through email. Upon request CivicPlus will mail invoices and the Client will be charged a \$5.00 convenience fee.



Acceptance

We, the undersigned, agreeing to the conditions specified in this document, understand and authorize the provision of services outlined in this Agreement.

Client

CivicPlus

By: _____

By: *Amy Vikander*

Name: _____

Name: Amy Vikander

Title: _____

Title: Vice President of Client Services

Date: _____

Date: 1/13/2021