



## Master Services Agreement

**THIS Master Services Agreement ("Agreement")** is agreed to by and between CivicPlus, Inc., d/b/a CivicPlus ("CivicPlus") and the City of Foley, AL ("Client") (jointly, "Parties") and shall be effective as of the later date of signing indicated at the end of this Agreement ("Effective Date").

### RECITALS

**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;

**WHEREAS**, Client wishes to engage in a relationship with CivicPlus for such services and/or license for use of proprietary software developed and owned by CivicPlus;

**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. The term of this agreement shall be the later of 1 year from the Effective Date or the termination or expiration of any associated Statement of Work ("SOW").
2. Either Party may terminate this Agreement or any associated SOW at the end of the Agreement term by providing the other Party with 60 days' written notice prior to the contract renewal date.
3. Unless terminated by either Party pursuant to Section 2, this Agreement will renew another 1-year term.
4. Notwithstanding the above, in the event this Agreement or any SOW is terminated, any outstanding invoices for Project Development shall become due in full and any outstanding Annual Services shall be prorated from the beginning of the renewal term to the date of termination.

### Statements of Work

5. CivicPlus agrees to perform services and/or produce deliverables in accordance with the Statement(s) of Work in consideration of the fees described in the same Statement(s) of Work. Multiple and successive Statement(s) of Work may be entered into hereto. Such Statement(s) of Work are incorporated into this Agreement by reference and subject to the terms & conditions contained herein pursuant to Section 22.

### Invoicing & Payment Terms

6. Invoices shall be sent electronically in the manner described in the relevant Statement of Work. Upon request CivicPlus will mail invoices and the Client will be charged a \$5.00 convenience fee.
7. Payment shall be due 30 days from date of invoice. Unless otherwise limited by law, a finance charge of 2.9 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 a client change in timeline causes CivicPlus to incur additional expenses (i.e. airline change fees), Client agrees to reimburse CivicPlus for those fees. Not to exceed \$1,000 per CivicPlus resource per trip.

### Ownership & Content Responsibility

9. Upon full and complete payment of submitted invoices for any SOW Project Development Fees, Client will own the Customer Content (defined as any 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).
10. 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.
11. 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.



### **Intellectual Property & Ownership**

12. 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.
13. Client shall not (i) license, sublicense, sell, resell, 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.

### **Indemnification**

14. To the extent permitted by the law of Client's state, Client and CivicPlus shall defend, indemnify and hold the other Party harmless, its partners, employees, and agents 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, in connection with the operations of and installation of software contemplated by this Agreement, or otherwise arising out of or in any way connected with the CivicPlus provision of service and performance under this Agreement. This section shall not apply to the extent that any loss or damage is caused by the gross negligence or willful misconduct on the part of either party.

### **Liabilities**

15. CivicPlus will not be liable for any act, omission of act, negligence or defect in the quality of service of any underlying carrier or other service provider whose facilities or services are used in furnishing any portion of the service received by the Client.
16. 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.
17. 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.
18. 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 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.
19. Client shall comply with all applicable local, state, and federal laws, treaties, regulations, and conventions in connection with its use of any CivicPlus Property.

### **Force Majeure**

20. 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 Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

### **Taxes**

21. 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 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

22. The following are to be attached to and made part of this Contract:
- a. Exhibit A - Statement(s) of Work.
23. In the case of any conflict between the terms of this Agreement and any incorporated documents, such conflicts shall be resolved with the incorporated documents taking the following order of precedence:
- a. This Master Services Agreement;
  - b. Exhibit A - Statement(s) of Work in descending order of execution (for example, the most recent SOW will control over other in the event of a conflict in terms).

#### Interlocal Purchasing Consent

24. This Agreement and any attached SOWs may be extended to any public entity in the State of Alabama to purchase at SOW prices in accordance with the terms stated herein.

#### Miscellaneous Provisions

25. 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.
26. No amendment or change to this Agreement or any included SOW shall be effective unless by a written instrument executed by each of the Parties.

#### Acceptance

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

\_\_\_\_\_  
Client

\_\_\_\_\_  
Date

\_\_\_\_\_  
CivicPlus

\_\_\_\_\_  
Date

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

[Contracts@CivicPlus.com](mailto:Contracts@CivicPlus.com)

We will e-mail a counter-signed copy of the contract back to you so we can 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. 4<sup>th</sup> Street, Suite 500

Manhattan, KS 66502

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



**Exhibit A.1 – Statement of Work #1: CivicHR Subscription Applicant Tracking and Onboarding**

Annual Services Include the Following:		
<b>Hosting</b> Web/SQL Server Data Backup On-site security 24x365 Monitor Bandwidth-Router Traffic Fire Protection and Suppression Cooling AC power delivery via distributed redundant UPS systems Intrusion Detection & Prevention Antivirus Protection Upgrade Hardware	<b>Application &amp; Modules</b> Install Service Patches for OS Upgrades Enhancements Fixes Improvements Development Testing Usage License Data & File Retention Standard Reporting	<b>Support</b> 7:00am – 7:00pm Central, Mon-Fri, excluding holidays, for authorized contact(s) Usability improvements Integrate new & upgraded services Proactive support for updates & fixes Training Resources, CivicPlus Connection access
Premium Package	First Year Investment	Annual Renewal
<b>Applicant Tracking Subscription</b> + Up to 3 customized online applications + Job & Candidate Routing + Requisition Approval Workflow + Complimentary Indeed Integration + Job Alerts + Supplemental Questions & Base Minimum Qualifiers + Email Templating + Multiple User Roles (Permission Based) + Unlimited number of Admin Users and Hiring Manager Users + Standard Reporting	\$3,000.00	\$3,000.00
<b>Applicant Tracking Implementation</b>	Included	n/a
<b>Employee Onboarding Subscription</b> + Up to 5 customized onboarding forms + Standard Federal and State Tax Forms + Task Assignment + Organization Wide Templates + Job Specific Templates + Form & Video Manager + Employee Portal + Unlimited number of Admin Users and Hires	\$2000.00	\$2,000.00
<b>Employee Onboarding Implementation</b>	Included	n/a
<b>Virtual Training</b> – Custom dedicated training for organization employees via web-based conferencing. Onsite system training is available at an additional cost.	9 hours for each module	4 hours each year of renewal
<b>Webinars and Online Resources</b> – Online group training via video demo or webinar. Sessions include but are not limited to; new feature roll-out review, industry topics and refreshers.	Unlimited	Unlimited
<b>Support – Q&amp;A, troubleshooting and user assistance</b>	Unlimited	Unlimited
<b>Total</b>	\$5,000.00	\$5,000.00



## Subscription Terms & Conditions

### Client Deliverable

1. Performance and payment under this SOW shall be subject to the terms & conditions of the Agreement by and between the City of Foley, AL ("Client") and CivicPlus, to which this SOW #1 is hereby attached.
2. This SOW #1 shall remain in effect for an initial term of one year (12 months) ("the SOW #1 Initial Term") from signing. In the event that neither party gives 60 days' notice to terminate prior to the end of the initial or any subsequent renewal term, this Agreement will automatically renew for an additional 1-year Renewal Term.
3. Invoicing shall begin upon the date of signing of this SOW #1.
4. Renewal Term Annual Services shall be invoiced on the date of signature of relevant calendar years. Annual services, including but not limited to hosting, support and maintenance services, shall be provisioned in accordance with Addendum 4 to this SOW #1 and shall be subject to up to a 5% annual increase beginning in Year 5 of service.
5. Customer shall provide accurate, current and complete information on Customer's legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change.
6. This Agreement and attached SOW #1 is not a sale of the CivicHR or its associated applications and modules. CivicPlus owns the CivicHR and provides a right of use to the Client during the period of this Agreement. Rights are non-transferable. Upon full and complete payment of submitted invoices for the Project Development and launch of the website, Client will own the Customer Content. Client will not own the CivicHR software or its associated applications and modules.
7. Customer shall comply with all applicable local, state, and federal laws, treaties, regulations, and conventions in connection with its use of the Service.

### Support

8. CivicPlus will provide unlimited telephone support Monday-Friday, 7:00 am – 7:00 pm (Central Time) excluding holidays, for authorized callers. Client is responsible for providing CivicPlus with authorized caller contact updates.
9. Support includes providing technical support of the CivicHR software and technical maintenance of Client's Career Portal website. Following initial setup, additional setup support may be contracted separately for an additional fee.
10. During the period of this agreement and subsequent annual renewals, CivicPlus warrants that it will, without additional charge to the Client, take action to correct any problems or defects discovered in the CivicHR software and reported to CivicPlus by the Client, such warranty to include ongoing maintenance upgrades and technical error correction.

### Marketing

11. Client permits CivicPlus to include an example of the Client's Career Portal page and a link to the Client's website on the CivicPlus corporate website.
12. 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.

### Acceptance

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

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Client

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Date

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CivicPlus

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Date