

**FIRST AMENDMENT
TO
HOSTING RENEWAL CONTRACT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
CIVICPLUS, INC.**

THIS FIRST AMENDMENT TO HOSTING RENEWAL CONTRACT (this "First Amendment") is entered into effective September 22, 2018, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and CivicPlus, Inc., d/b/a CivicPlus, a Kansas corporation (the "Contractor").

RECITALS

A. The Town and the Contractor's predecessor-in-interest entered into a Hosting Renewal Agreement, dated 9/23/18, as modified by that Addendum to Hosting Renewal Contract, dated September 29, 2017 (collectively, the "Agreement"), for the Contractor to provide the Town with website support, maintenance and hosting services (the "Services").

B. All capitalized terms not otherwise defined in this First Amendment have the same meanings as contained in the Agreement.

C. The Town has determined that additional Services from the Contractor are necessary (the "Additional Services"), as described in the Statement of Work attached hereto as Exhibit A.

D. The Town and the Contractor desire to enter into this First Amendment to extend the term of the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of the Agreement. Notwithstanding any provision to the contrary, the Agreement shall remain in full force and effect until September 22, 2019, unless terminated as otherwise provided pursuant to the terms and conditions of the Agreement.

2. Compensation. The Town shall pay Contractor \$7,348.61 for the Additional Services, resulting in an increase of the aggregate not-to-exceed compensation from \$7,014.50 to \$14,363.11.

3. Effect of Amendment. In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

4. Non-Default. By executing this First Amendment, the Contractor affirmatively asserts that (i) the Town is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this First Amendment are forever waived.

5. Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

6. Conflict of Interest. This First Amendment and the Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

7. Notices and Requests. Communications directed to the Town shall be sent to the Town at the addresses listed below.

If to the Town: Town of Fountain Hills
 16705 East Avenue of the Fountains
 Fountain Hills, Arizona 85268
 Attn: Grady E. Miller, Town Manager

With copy to: Town of Fountain Hills
 16705 East Avenue of the Fountains
 Fountain Hills, Arizona 85268
 Attn: Town Attorney

8. Public Records. Contractor acknowledges that the Town is a public entity, subject to Arizona's public records law (A.R.S. § 39-121 et seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request, subpoena, or other judicial process.

8.01 Trade Secrets Statement. If Contractor believes documents related to its work pursuant to the Agreement contain trade secrets or other proprietary data, Contractor must provide notice to the Town at the time the documents are provided to the Town, and include with the notification a statement that explains and supports Contractor's claim. Contractor also must specifically identify the trade secrets or other proprietary data that Contractor believes should remain confidential.

8.02 Notice of Records Request. In the event the Town determines it is legally required to disclose any documents subject to a Trade Secrets Statement as defined in section 8.01, the Town, to the extent possible in its sole and absolute discretion, will provide Contractor with prompt written notice by fax, email, or certified mail so that Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The written notice will include a time period for Contractor to seek court ordered protection or other legal remedies. If Contractor does not obtain such court ordered protection by the expiration of the time period, the Town may release the documents subject to the Trade Secrets Statement without further notice to Contractor.

[SIGNATURES ON FOLLOWING PAGES]

EXHIBIT A
TO
FIRST AMENDMENT TO
HOSTING RENEWAL AGREEMENT

[See following pages]



Exhibit A.1 - CivicPlus Statement of Work #1

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

Effective September 23, 2018 – September 22, 2019)

Subject to 5% annual increase

Does not include any applicable taxes

\$7,348.61

1. Performance and payment under this SOW shall be subject to the terms & conditions of the Agreement by and between Client and CivicPlus, to which this Statement of Work #1 (SOW #1) is hereby attached as Exhibit A.1.
2. Annual Services shall be invoiced on September 23 of relevant calendar years. Annual services, including but not limited to hosting, support and maintenance services, shall be provisioned in accordance with Addendum 3 to this SOW #1 and shall be subject to a 5% annual increase.
3. Client is additionally entitled to a no-cost redesign, details noted in Addendum 2. 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.
4. 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.
5. 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: Grant E. Miller

By: Brian Rempke

Name: Grant E. Miller

Name: Brian Rempke

Title: Town Manager

Title: President / CEO

Date: 10/15/2018

Date: 10/2/18



Addendum 1 to Exhibit A.1 - Project Development Division of Work

<p>Kick-Off</p> <p><u>Deliverable</u> Project Timeline, training jump start information, online forms, kick-off meeting</p>	
<p>CivicPlus will:</p> <ul style="list-style-type: none"> • assign a project manager to this project • conduct a Project Kick-off to review awarded contract • establish communication plan for the duration of the project effort • work with Client to identify all key internal and external project stakeholders • develop project timeline • provide access to CivicPlus University (online training manuals, videos and other resources) for the Client staff 	<p>Client will:</p> <ul style="list-style-type: none"> • complete the following prior to Phase 1: Website Optimization Form, Content Form, and DNS Worksheet • review and approve of project timeline within 5 business days • attend a kick-off meeting with key stakeholders or decision makers • if modifications are required after the review of the initial project timeline, Client has 10 business days to address the modifications and come to a consensus • approve the project timeline (limited to two reviews) prior to proceeding with the project • update the current primary live website content and delete any pages from the website that are no longer wanted or needed
<p>Phase 1: Website Optimization</p> <p><u>Deliverable</u> Website Optimization Meeting</p>	
<p>CivicPlus will:</p> <ul style="list-style-type: none"> • communicate status to Client, key stakeholders and personnel via emails or phone calls as needed • review the goals and expectations submitted on the forms Client completed to ensure Client needs are clearly understood • gather preliminary design data for use 	<p>Client will provide:</p> <ul style="list-style-type: none"> • statistics from the current website from the past 12 months (optional) • pictures to be used in the overall design of the new website • a list of all divisions and/or departments within the organization • a list of third-party and in-house developed applications presently being utilized on the current website • a site map or outline of the current website's navigational structure if possible • a list of any content on the current primary website that must remain as is (verbatim) because of legal requirements
<p>Phase 2: Design Presentation</p> <p><u>Deliverable</u> Website grayscale layout and mood board color pallet presentation</p>	
<p>CivicPlus will:</p> <ul style="list-style-type: none"> • present one custom layout in grayscale form and one mood board color palette based on the goals determined in the previous phase. The presented layout will show the placement of the navigation, graphic button and feature areas. The mood board will reflect the color and imagery that will represent the tone of the design • begin development of the website design upon layout and mood board approval 	<p>Client will:</p> <ul style="list-style-type: none"> • approve one layout and the mood board • review marketing packet material and guidelines • Website Layout billing milestone complete



<p>Phase 3: Website Reveal</p> <p><u>Deliverable:</u> Website design and production website.</p>	
<p>CivicPlus will:</p> <ul style="list-style-type: none"> • present a functional website on a production URL • migrate content pages to the production URL as described in Exhibit A.1 Statement of Work. • conduct a quality review of the website to ensure the functionality and usability standards are met • work with Client to prepare for training • migrate Agendas & Minutes in Microsoft Word DOC or Adobe PDF format as described in Exhibit A.1 Statement of Work. 	<p>Client will:</p> <ul style="list-style-type: none"> • evaluate the website design and content and provide CivicPlus with feedback • collaborate with CivicPlus on proposed changes • revise the design according to the approved timeline • if revised design changes are requested after the design approval timeline date, the project's Go Live date will be adjusted out (training and billing milestones will remain as per approved timeline) • provide CivicPlus will all the necessary DNS items identified for the website
<p>Phase 4: Website Review & Training (See Exhibit A.1 Statement of Work for details)</p> <p><u>Deliverable:</u> Train System Administrator(s) on GCMS® Administration, permissions, setting up groups and users, module administration. Basic User training on pages, module entries, applying modules to pages. Applied use and usability consulting to result in effective communication through your website.</p>	
<p>CivicPlus will:</p> <ul style="list-style-type: none"> • provide training to Client before the website goes live • train staff members based on internal daily tasks and workflow • train staff members on how to use the GCMS®, update content pages and modules 	<p>Client will:</p> <ul style="list-style-type: none"> • provide a location for training in Client with internet access • provide computers for staff to be trained on • Phase 4: Training billing milestone complete
<p>Phase 5: Go Live</p> <p><u>Deliverable:</u> Custom website launched to the public.</p>	
<p>CivicPlus will:</p> <ul style="list-style-type: none"> • address system issues and bugs that Client finds • redirect the domain name to the newly developed website as per approved timeline 	<p>Client will:</p> <ul style="list-style-type: none"> • test and update the final site as per approved timeline • notify CivicPlus on any system issues or bugs found in the website



Addendum 2 to Exhibit A.1 - Redesign Details

**CivicPlus Project Development Services & Scope of Services for
CP Redesign**

- New design for all items originally contracted for (main site, department headers and subsites)
- Redevelop navigation method (may choose top drop-down or other options)
- Design setup - wireframe
- Redevelop graphic elements of website (Newsflash, FAQs, Calendar, etc.)
- Project Management
- Testing
- Review
- Content Migration – Includes retouching of all existing published pages to ensure proper formatting, and application of new site styles. Note: Content will **not** be rewritten, reformatted or pages broken up (shortened or re-sectioned)
- Site styles and page layouts will be touched so all pages match the new design and migrate cleanly
- Spelling and broken links will be checked and reported if unable to correct

Addendum 3 to Exhibit A.1 – Hosting, Support and Service Level Agreement

Hosting Details

Data Center	<ul style="list-style-type: none"> • Highly Reliable Data Center • Managed Network Infrastructure • On-Site Power Backup & Generators • Multiple telecom/network providers • Fully redundant Network • Highly Secure Facility • 24/7/365 System Monitoring
Hosting	<ul style="list-style-type: none"> • Automated GCMS® Software Updates • Server Management & Monitoring • Multi-tiered Software Architecture • Server software updates & security patches • Database server updates & security patches • Antivirus management & updates • Server-class hardware from nationally recognized provider • Redundant firewall solutions • High performance SAN with N+2 reliability
Bandwidth	<ul style="list-style-type: none"> • Multiple network providers in place • Unlimited bandwidth usage for normal business operations (does not apply in the event of a cyber attack) • 22 Gb/s burst bandwidth
Disaster Recovery	<ul style="list-style-type: none"> • Emergency After-hours support, live agent (24/7) • On-line status monitor at data center • Event notification emails • Guaranteed recovery TIME objective (RTO) of 8 hours • Guaranteed recovery POINT objective (RPO) of 24 hours • Pre-emptive monitoring for disaster situations • Multiple data centers • Geographically diverse data centers
DDoS Mitigation	<ul style="list-style-type: none"> • Defined DDoS Attack Process <ul style="list-style-type: none"> • Identify attack source • Identify type of attack • Monitor attack for threshold engagement

Support and Maintenance

Support Services

CivicPlus' on-site support team is available from 7:00 am to 7:00 pm CT to assist clients with any questions, concerns or suggestions regarding the functionality and usage of CivicPlus' GCMS® and associated applications. The support team is available during these hours via CivicPlus' toll-free support number and e-mail. Support personnel will respond to calls as they arrive (under normal circumstances, if all lines are busy, messages will be returned within four hours; action will be taken on e-mails within four hours), and if Client's customer support liaison is unable to assist, the service escalation process will begin.

Emergency support is available 24-hours-a-day for designated, named Client points-of-contact, with members of both CivicPlus' project management and support teams available for urgent requests. Emergency support is provided free-of-charge for true emergencies (ie: website is down, applications are malfunctioning, etc.), though Client may incur support charges for non-emergency requests during off hours (ie: basic functionality / usage requests regarding system operation and management). The current discounted rate is \$175/hour.

CivicPlus maintains a customer support website that is accessible 24-hours-a-day with an approved client username and password.

Service Escalation Processes

In the event that CivicPlus' support team is unable to assist Client with a request, question or concern, the issue is reported to the appropriate CivicPlus department.

Client requests for additional provided services are forwarded to CivicPlus' Client Care personnel.

Client concerns/questions regarding GCMS® or associated application errors are reported to CivicPlus' technical team through CivicPlus' issue tracking and management system to be addressed in a priority order to be determined by CivicPlus' technical team.

All other requests that do not meet these criteria will be forwarded to appropriate personnel within CivicPlus' organization at the discretion of the customer support liaison.

Included Services:	
Support	Maintenance of CivicPlus GCMS®
7 a.m. – 7 p.m. (CST) Monday – Friday (excluding holidays)	Install Service Patches for OS
24/7 Emergency Support	System Enhancements
Dedicated Support Personnel	Fixes
Usability Improvements	Improvements
Integration of System Enhancements	Integration
Proactive Support for Updates & Fixes	Testing
Online Training Manuals	Development
Monthly Newsletters	Usage License
Routine Follow-up Check-ins	
CivicPlus Connection	

CivicPlus Service Level Agreement

CivicPlus will use commercially reasonable efforts to make the GCMS® available with a Monthly Uptime Percentage (defined below) of at least 99.9%, in each case during any monthly billing cycle (the "Service Commitment"). In the event CivicPlus does not meet the Service Commitment, you will be eligible to receive a Service Credit as described below.

Definitions

- "Monthly Uptime Percentage" is calculated by subtracting from 100% the percentage of minutes during the month in which the GCMS, was "Unavailable." Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any Exclusion (defined below).
- "Unavailable" and "Unavailability" mean:
 - The HTML of the home page of the site is not delivered in 10 seconds or less 3 times in a row when tested from inside our network and returns a status of 200.
 - The Main page of the site returns a status other than 200 or 302 3 times in a row.
- A "Service Credit" is a dollar credit, calculated as set forth below, that we may credit back to an eligible account.

Service Commitments and Service Credits

Service Credits are calculated as a percentage of the total charges paid by you (excluding one-time payments such as upfront payments) for the month, beginning with the first full month of service, in accordance with the schedule below.

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.9%	1% of one month's fee

We will apply any Service Credits only against future payments otherwise due from you. Service Credits will not entitle you to any refund or other payment from CivicPlus. A Service Credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than one dollar (\$1 USD). Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Client Agreement, your sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide the service is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.

Credit Request and Payment Procedures

To receive a Service Credit, you must submit a claim by opening a case with Support. To be eligible, the credit request must be received by us by the end of the second billing cycle after which the incident occurred and must include:

1. the words "SLA Credit Request" in the subject line;
2. the dates and times of each Unavailability incident that you are claiming;
3. the affected Site domains; and
4. Any documentation that corroborate your claimed outage.

If the Monthly Uptime Percentage of such request is confirmed by us and is less than the Service Commitment, then we will issue the Service Credit to you within one billing cycle following the month in which your request is confirmed by us. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

SLA Exclusions

The Service Commitment does not apply to any unavailability, suspension or termination of GCMS®, or any other GCMS® performance issues: (i) that result from a suspension; (ii) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of CivicPlus; (iii) that result from any actions or inactions of you or any third party; (iv) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); (v) that result from any maintenance as provided for pursuant to the Client Agreement; or (vi) arising from our suspension and termination of your right to use the GCMS® in accordance with the Client Agreement (collectively, the "SLA Exclusions"). If availability is impacted by factors other than those used in our Monthly Uptime Percentage calculation, then we may issue a Service Credit considering such factors at our discretion.

Disaster Recovery Feature Service Commitment

CivicPlus will use commercially reasonable efforts to insure that in the event of a disaster that makes the Primary data center unavailable (defined below) Client site will be brought back online at a secondary data center (the "Service Commitment"). In the event CivicPlus does not meet the Service Commitment, you will be eligible to receive a Service Credit as described below.

Definitions

- "Datacenter availability" is determined by inability to provide or restore functions necessary to support the Service. Examples of necessary functions include but are not limited Cooling, Electrical, Sufficient Internet Access, Physical space, and Physical access.
- A "Service Credit" is a dollar credit, calculated as set forth below, that we may credit back to an eligible account.
- Recovery Time Objective (RTO) is the most anticipated time it will take to bring the service back online in the event of a data center event.
- Recovery Point Objective (RPO) the amount of data lost that is considered acceptable.

Service Commitments and Service Credits

Service Credits are calculated as a percentage of the total charges paid by you (excluding one-time payments such as upfront payments) for the month accordance with the schedule below.

Recovery Time Objective

8 Hours

Recovery Point Objective

24 Hours

Service Credit Percentage

10% of one month's fee

Service Credit Percentage

10% of one month's fee



Master Services Agreement

THIS Master Services Agreement ("Agreement") is agreed to by and between CivicPlus, Inc., d/b/a CivicPlus ("CivicPlus") and Fountain Hills, Arizona ("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 September 23, 2018 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 **Fountain Hills, AZ**

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

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Master Services Agreement for Fountain Hills, AZ

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. Exhibit A - Statement(s) of Work;
 - b. Service Agreement Sales Forms;
 - c. Service Agreements previously executed between the Parties; and
 - d. Custom Development / Retainer Agreement

28. In the event of conflict with an attachment to this Agreement, this 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.
33. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such



Master Services Agreement for **Fountain Hills, AZ**

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: <u>Grady E. Miller</u>	By: <u>Brian Rempel</u>
Name: <u>Grady E. Miller</u>	Name: <u>Brian Rempel</u>
Title: <u>Town Manager</u>	Title: <u>President / CEO</u>
Date: <u>10/15/2018</u>	Date: <u>10/2/18</u>

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.