

15) **Agreement for the Purchase of a Replacement Website Design and Hosting Software**

Approve and Authorize the City Manager to enter into a contract with CivicPlus for \$39,717.00 to design and host the City's website.



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor or Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Jason Simpson, City Manager

**Date:** December 13, 2022

**Subject:** **Agreement for the Purchase of a Replacement Website Design and Hosting Software**

### **Recommendation**

Approve and Authorize the City Manager to enter into a contract with CivicPlus for \$39,717.00 to design and host the City's website.

### **Background**

Since the launch of the City's current website in 2015, government website options have advanced significantly, offering robust ways to engage with the community, greater ease of use and navigation, and simplified back-end management. Currently, the City's aging website has faced an increasing number of issues with compatibility, accessibility, and functionality. The rapid move to offer services via the Internet to accommodate the needs of citizens and civic partners during the COVID-19 Pandemic has further underscored the need for the City to enhance its online presence further. The City needs a website that is intuitive, easy to navigate, and able to serve up the information that members of the public are seeking while built upon a Content Management System (CMS) that provides City staff the flexibility they need to create compelling content.

On March 3, 2022, the City published a request for a proposal for a comprehensive redesign of the City's website.

### **Discussion**

On April 29, 2022, the City received nineteen responses to the RFP. On May 12, 2022, City staff began reviewing each submitted proposal. It evaluated them based on their professionalism, responsiveness to each of the criteria outlined within the City's RFP, experience working with municipal agencies, and the overall technical capability of the proposed solution. The City received proposals from 19 software vendors: Advanced Solutions, CivicPlus, Granicus, Aardony, LLC., Paramount Software Solutions, Revize, 360 Civic, GHD, Numeric Technologies,

10X Digital, Flexsin, KP Soft, Planetaria Media, ProIT, LLC., WMRG, eWay Corp, Excisor, LLC., Org Central Labs, and SELK.

On August 16, 2022, staff concluded the extensive review process and invited the top three responding vendors to demonstrate their proposed solution. After conducting this round of interviews with the top three respondents, staff concluded that the solution proposed by CivicPlus best met the needs of the City. This conclusion was finalized on October 27, 2022, based on the following key points:

1. Completeness of the proposed solution to the criteria outlined within the RFP.
2. Ease of use of the Civic Engage platform from the standpoint of the general public and city staff.
3. CivicPlus's experience working with cities such as Lake Elsinore (including many of our neighbors).
4. The City's use of existing CivicPlus products (i.e., CivicRec and SeeClickFix, aka Alert LE) and the ability of these products to have enhanced integration with the City's website.
5. The overall cost of ownership of the Civic Engage platform versus features offered compared to the other submitted solutions.

Given the City's current information technology infrastructure, the advantages of selecting a modern, scalable system are numerous. They will better serve the City in the long term by providing staff tools to increase the City's efficiency and effectiveness.

The City will save considerable time and resources, as a modern, scalable system will be able to offer robust features, improve internal controls that the current system is unable to provide.

### **Fiscal Impact**

In year one, the cost to design, migrate, and train staff is \$39,717.00, allocated in the FY22-23 Internal Service Fund budget. The remaining three years will cost \$12,750.00 per year to cover recurring website hosting services and technical support.

### **Attachments**

Attachment 1- Scope of Work

Attachment 2 - Agreement

**CivicPlus**

302 South 4th St. Suite 500  
Manhattan, KS 66502  
US

**Quote #:**

Q-23782-1

**Date:**

3/26/2022 9:21 PM

**Expires On:**

12/30/2022

**Client:**

LAKE ELSINORE, CALIFORNIA

**Bill To:**

LAKE ELSINORE, CALIFORNIA

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Solomon Grover	x7852224856	grover@civicplus.com		Net 30

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	Annual - CivicEngage Central	Annual - CivicEngage Central	Renewable
1.00	Hosting & Security Annual Fee - CivicEngage Central	Hosting & Security Annual Fee - CivicEngage Central	Renewable
1.00	SSL Management – CP Provided Only	SSL Management – CP Provided Only 1 per domain (Annually Renews): <a href="http://www.lake-elsinore.org">http://www.lake-elsinore.org</a>	Renewable
1.00	DNS and Domain Hosting Setup ( <a href="http://URL">http://URL</a> )	DNS and Domain Hosting Setup: <a href="http://www.lake-elsinore.org">http://www.lake-elsinore.org</a>	One-time
1.00	DNS and Domain Hosting Annual Fee ( <a href="http://URL">http://URL</a> )	DNS and Domain Hosting Annual Fee: <a href="http://www.lake-elsinore.org">http://www.lake-elsinore.org</a>	Renewable
1.00	Ultimate Implementation - CivicEngage Central	Ultimate Implementation - CivicEngage Central	One-time
1.00	4yr Redesign Ultimate Annual - CivicEngage	4yr Redesign Ultimate Annual - CivicEngage	Renewable
400.00	Content Development - 1 Page - CivicEngage	Content Development - 1 Page - CivicEngage	One-time
6.00	System Training (4h, virtual) - CivicEngage	CivicEngage System Training - Virtual, Half Day Block	One-time
1.00	Agendas & Minutes Migration - PDF - 100 Meetings - CivicEngage	Content Migration : Agendas & Minutes - Per 100 Meetings (Approx. 1 year)	One-time
1.00	Alignment Virtual Consulting	Up to 2 days virtual consult. Recommended group 8 or less.	One-time
1.00	Launch Assistance - CivicEngage	Launch Assistance is the process in which our Content Editors assist you in updating your content as you prepare to launch your new CivicEngage Central website.	One-time

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
4.00	Virtual Content Consulting - CivicEngage	Virtual Content Consulting 1/2 day block - CivicEngage	One-time
1.00	CivicEngage Custom IdP Integration Package	Custom IdP Integration Package Custom IdP Integration Annual Fee Custom IdP Integration Implementation Fee	Renewable
1.00	CivicEngage Custom IdP Integration Annual Fee	Custom IdP Integration Annual Fee	Renewable
1.00	CivicEngage Custom IdP Integration Implementation Fee	Custom IdP Integration Implementation Fee	One-time
1.00	CivicPlus Chatbot Subscription	Powered by AI technology, the Frase Answer Engine for Local Government uses website content to answer citizen questions. This solution includes dashboard analytics and language translation.	Renewable

List Price - Year 1 Total	USD 68,158.32
Total Investment - Year 1	USD 39,717.00
Annual Recurring Services - Year 2	USD 12,750.00

Total Days of Quote:365

1. This Statement of Work ("SOW") shall be subject to the terms and conditions of the CivicPlus Master Services Agreement located at <https://www.civicplus.com/master-services-agreement> ("MSA"), to which this SOW is hereby attached as the Statement of Work. By signing this SOW, Client expressly agrees to the terms and conditions of the MSA throughout the Term of this SOW.
2. This SOW shall remain in effect for an initial term equal to 365 days from the date of signing ("Initial Term"). In the event that neither party gives 60 days' notice to terminate prior to the end of the Initial Term, or any subsequent Renewal Term, this SOW will automatically renew for an additional 1-year renewal term ("Renewal Term"). The Initial Term and all Renewal Terms are collectively referred to as the "Term".
3. The Total Investment - Year 1 will be invoiced as follows:
  - a. Upon signing this SOW, thirty percent (30%) of the Total Investment Year 1 Fees;
  - b. The earlier of 6 months from signing or upon completion of Implementation, the remaining seventy percent (70%) of the Total Investment Year 1.
4. Annual Recurring Services shall be invoiced on the start date of each Renewal Term. Annual Recurring Services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase beginning in year 3 of service. Client will pay all invoices within 30 days of the date of such invoice.
5. Client agrees that CivicPlus shall not migrate, convert, or port content or information that could reasonably be construed as time sensitive, such as calendar or blog content, during the Project Development.
6. If a Recurring Redesign line item is included with the Client's quote in this SOW, starting after a period of months (36, 48, or 60 months as determined by the number of years in the redesign line item on this SOW) of continuous service under this SOW (the "Redesign Term"), Client shall be entitled to receive a redesign at

no additional cost. Client may initiate such redesign any time after continuous service during the Redesign Term. Upon the initiation of an eligible redesign project, Client may begin accumulating eligibility towards a subsequent redesign after continuous service during a subsequent Redesign Term. 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. Recurring Redesigns are eligible for the website, subsite, and department headers included in this SOW only. Any subsequently purchased website, subsite, and department header shall not be included in a redesign hereunder.

7. 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 assumes such perpetual permission.
8. Client understands that the services contracted for herein (the "Services") do not collect, and CivicPlus discourages Client from soliciting and collecting, any personally identifiable information ("PII"), personal health information ("PHI"), payment card industry information ("PCI") or any other financial data from its users. CivicPlus cannot monitor and control Client's actions; therefore, in the event Client solicits and stores any PII, PHI, PCI or other financial data, it is at Client's sole discretion and risk. Client as the data owner, and not CivicPlus, is solely responsible for the applicable laws and regulations regarding any data breach involving such data, including breach notification and credit monitoring requirements.
9. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, CIVICPLUS MAKES NO REPRESENTATION OR EXTENDS ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, TO THE CLIENT WITH RESPECT TO ANY TECHNOLOGY OR OTHER SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO ANY AND ALL OF THE FOREGOING.
10. Client agrees to use the Service in ways that conform to all applicable laws and regulations. Client agrees not to make any attempt to gain unauthorized access to the Services and/or any of CivicPlus' systems or networks. Client agrees that CivicPlus shall not be responsible or liable for the content of messages created by Client, or by those who access Service.
11. Client understands that the Services must crawl over Client's entire site and scrape information for successful performance. Client shall be solely responsible for obtaining permission from any third-party whose content may be crawled and/or scraped by the usage of the Services. In no event shall CivicPlus be liable to Client or any third-party, for any claim, action, liability, or damages, arising out of or related to the Services crawling over and/or scraping any third-party system and/or content. The cost of the Services listed in this SOW is for one domain, limited to ten crawled websites, if Client requires more domains or crawled websites, please reach out to your CivicPlus representative.
12. Notwithstanding anything to the contrary, CivicPlus and/or its partners shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Client data and data derived therefrom), and CivicPlus and/or its partners will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other CivicPlus offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

*Signature Page to Follow.*

## Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the MSA terms and conditions found at: <https://www.civicplus.com/master-services-agreement>.

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

Client

CivicPlus

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

## Contact Information

\*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

### Organization

URL

Street Address

Address 2

City

State

Postal Code

CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays).  
Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for  
ensuring CivicPlus has current updates.

### Emergency Contact & Mobile Phone

### Emergency Contact & Mobile Phone

### Emergency Contact & Mobile Phone

### Billing Contact

E-Mail

Phone

Ext.

Fax

Billing Address

Address 2

City

State

Postal Code

Tax ID #

Sales Tax Exempt #

Billing Terms

Account Rep

Info Required on Invoice (PO or Job #)

Are you utilizing any external funding for your project (ex. FEMA, CARES): Y [ ] or N [ ]

Please list all external sources: \_\_\_\_\_

### Contract Contact

Email

Phone

Ext.

Fax

### Project Contact

Email

Phone

Ext.

Fax





**CivicPlus**

## **Master Services Agreement**

This Master Services Agreement (this “Agreement”) governs all Statements of Work (“SOW”) entered into by and between CivicPlus, LLC (“CivicPlus”) and the client entity identified on the SOW (“Client”). This Agreement governs the use and provision of any Services purchased by Client, as described in any signed SOW, and the effective date of this Agreement shall commence on the date of signature of the SOW (“Effective Date”). If a SOW has not been executed, then the Effective Date shall be determined as the start date of implementation of any software solution or codification services by CivicPlus for Client. CivicPlus and Client referred to herein individually as “Party” and jointly as “Parties”.

### **Recitals**

**I. WHEREAS**, CivicPlus is engaged in the business of developing and providing access to proprietary community engagement and government content management software solutions, platforms and associated services (the “Services”); and

**II. WHEREAS**, Client wishes to engage CivicPlus for the procurement of the Services and/or receive a license subscription for the ongoing use of the Services, as set forth in the SOW;

**NOW, THEREFORE**, Client and CivicPlus agree as follows:

### **Agreement**

#### **Term & Termination**

1. This Agreement shall commence on the Effective Date and shall remain in full force and effect for as long as any SOW is in effect between CivicPlus and Client, or Services are being provided by CivicPlus to Client, unless terminated in accordance with this §1 or as otherwise provided in this Agreement (the “Term”). Either Party may terminate this Agreement or any SOW as set forth in such SOW, or at its discretion, effective immediately upon written notice to the other Party, if the other Party materially breaches any provision of this Agreement and does not substantially cure the breach within thirty (30) days after receiving notice of such breach. A delinquent Client account remaining past due for longer than 90 days is a material breach by Client and is grounds for CivicPlus termination.

2. Upon termination of this Agreement or any SOW for any reason, (a) the licenses granted for such relevant SOW by §11 below will terminate and Client shall cease all use of the CivicPlus Property and Services associated with the terminated SOW and (b) any amounts owed under outstanding invoices or future planned billing for the completed development and implementation of the Client’s Services, as defined in the SOW (“Project Development”), shall immediately become due in full and payable. Sections 7, 8, 10, 14, 15, 18, 29 -31, 39, and 40 will survive any expiration or termination of this Agreement.

3. At any time during the Term, CivicPlus may, immediately upon notice to Client, suspend access to any Service due to a threat to the technical security or technical integrity of the Services.

#### **Invoicing & Payment Terms**

4. Client will pay the amounts owed to CivicPlus for the Project Development, subscription and licensing, and annual hosting, support and maintenance services (“Annual Recurring Services”) in accordance with the payment schedule set forth on the applicable SOW. Invoices shall be sent electronically to the individual/entity designated in the SOW’s contact sheet that is

required to be filled out and submitted by Client (the "Contact Sheet"). Client shall provide accurate, current and complete information of Client's legal business name, address, email address, and phone number in the Contact Sheet upon submission of a signed SOW. Client will maintain and promptly update the Contact Sheet information if it should change. Upon Client's request, CivicPlus will mail hard-copy invoices for a \$5.00 convenience fee.

5. Each SOW will state the amount of days from date of invoice payment is due. Unless otherwise limited by law, a finance charge of 1.5 percent (%) per month or the maximum rate permitted by applicable law, whichever is less, will be added to past due accounts from due date until paid. Payments received will be applied first to finance charges, then to the oldest outstanding invoice(s). 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 Recurring Services will be discontinued, and the Client will no longer have access to the Services until the Client's account is made current. Client will be given 15 days' notice prior to discontinuation of Services for non-payment.

6. During the performance of services during Project Development, if a change that requires repeated efforts to previously approved work product and such change causes CivicPlus to incur additional expenses (i.e. airline change fees, resource hours, consultant fees, Client does not show up for scheduled meetings or trainings), Client agrees to reimburse CivicPlus for such fees, not to exceed \$1,000 per CivicPlus employee. CivicPlus shall notify Client prior to incurring such expenses and shall only incur those expenses which are approved by Client.

### **Ownership & Content Responsibility**

7. Upon full and complete payment of amounts owed for Project Development under the applicable SOW, Client will own the website graphic designs, webpage or Services content, module content, importable/exportable data, and archived information ("Client Content") created by CivicPlus on behalf of Client pursuant to this Agreement. "Client Content" also includes any elements of text, graphics, images, photos, designs, artworks, logos, trademarks, services marks, and other materials or content which Client provides or inputs into any website, software or module in connection with any Services. Client Content excludes any content in the public domain; and any content owned or licensed by CivicPlus, whether in connection with providing Services or otherwise.

8. Upon completion of the Project Development, Client will assume full responsibility for Client 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 Client Content. Client hereby grants CivicPlus a worldwide, non-exclusive right and license to reproduce, distribute and display the Client Content as necessary to provide the Services. Client represents and warrants that Client owns all Client Content or that Client has permission from the rightful owner to use each of the elements of Client Content; and that Client has all rights necessary for CivicPlus to use the Client Content in connection with providing the Services.

9. At any time during the term of the applicable SOW, Client will have the ability to download the Client Content and export the Client data through the Services. Client may request CivicPlus to perform the export of Client data and provide the Client data to Client in a commonly used format at any time, for a fee to be quoted at time of request and approved by Client. Upon termination of the applicable SOW for any reason, whether or not Client has retrieved or requested the Client data, CivicPlus reserves the right to permanently and definitively delete the Client Content and Client data held in the Services thirty (30) days following termination of the applicable SOW. During the thirty (30) day period following termination of the SOW, regardless of the reason for its termination, Client will not have access to the Services.

10. Intellectual Property in the software or other original works created by or licensed to CivicPlus, including all software source code, documents, and materials used in the Services ("CivicPlus Property") will remain the property of CivicPlus. CivicPlus Property specifically excludes Client Content. 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, except as specifically provided in the applicable SOW; (ii) adapt, alter, 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 that may allow third party entities, other than Client, to use the Services; (iv) reverse engineer, decompile, disassemble or otherwise attempt to obtain the software source code to all or any portion of the Services; or (v) 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 outside of the licenses set forth in this Agreement.

11. Provided Client complies with the terms and conditions herein, the relevant SOW, and license restrictions set forth in §10, CivicPlus hereby grants Client a limited, nontransferable, nonexclusive, license to access and use the CivicPlus Property associated with any valid and effective SOW, for the term of the respective SOW.

12. All CivicPlus helpful information and user's guides for the Services ("Documentation") are maintained and updated electronically by CivicPlus and can be accessed through the CivicPlus "Help Center". CivicPlus does not provide paper copies of its Documentation. Client and its Users are granted a limited license to access Documentation as needed. Client shall not copy, download, distribute, or make derivatives of the Documentation.

13. Client acknowledges that CivicPlus may continually develop, alter, deliver, and provide to the Client ongoing innovation to the Services, in the form of new features and functionalities. CivicPlus reserves the right to modify the Services from time to time. Any modifications or improvements to the Services listed on the SOW will be provided to the Client at no additional charge. In the event that CivicPlus creates new products or enhancements to the Services ("New Services"), and Client desires these New Services, then Client will have to pay CivicPlus the appropriate fee for the access to and use of the New Services. If Client disputes any change, then CivicPlus shall use its reasonable best efforts to resolve the dispute.

14. CivicPlus in its sole discretion, may utilize all comments and suggestions, whether written or oral, furnished by Client to CivicPlus in connection with its access to and use of the Services (all reports, comments and suggestions provided by Client hereunder constitute, collectively, the "Feedback"). Client hereby grants to CivicPlus a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback in the CivicPlus products and services.

### **Indemnification**

15. Unless prohibited by the law of Client's state, the Parties shall defend, indemnify and hold the other Party, its partners, employees, and agents harmless from and against any and all third party 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 affiliates, partners, employees, and agents, directly associated with this Agreement and the installation and ongoing operations of Services contemplated by the SOW. 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 indemnified Party.

### **Responsibilities of the Parties**

16. 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.

17. 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. During Project Development, Client will be responsive and cooperative with CivicPlus to ensure the Project Development is completed in a timely manner.

18. Client agrees that it is solely responsible for any solicitation, collection, storage, or other use of end-user's personal data on any 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 Services or the consequences of the solicitation, collection, storage, or other use by Client or by any third party of personal data.

19. Client is responsible for all activity that occurs under Client's accounts by or on behalf of Client. Client agrees to (a) be solely responsible for all designated and authorized individuals chosen by Client ("User") activity, which must be in accordance with this Agreement and the CivicPlus [Terms of Use](#); (b) be solely responsible for Client data; (c) obtain and maintain during the term all necessary consents, agreements and approvals from end-users, individuals or any other third parties for all actual or intended uses of information, data or other content Client will use in connection with the Services; (d) use commercially reasonable efforts to prevent unauthorized access to, or use of, any User's log-in information and the Services, and notify CivicPlus promptly of any known unauthorized access or use of the foregoing; and (e) use the Services only in accordance with applicable laws and regulations.

20. The Parties shall comply with all applicable local, state, and federal laws, treaties, regulations, and conventions in connection with its use and provision of any of the Services or CivicPlus Property.

21. CivicPlus shall not be responsible for any act or omission of any third-party vendor or service provider that Client has selected to integrate any of its Services with.

22. If implementation services, such as consulting or training, are purchased by Client and are not used solely due to the inaction or unresponsiveness of Client during the implementation period, then these services shall expire within 30 days after implementation closeout. The Client may choose to re-schedule any unused implementation services during this 30 day period as mutually agreed upon by the Parties. Any implementation services that have not been used or rescheduled shall be marked complete and closed upon the expiration of the 30 day period.

### **Data Security**

23. CivicPlus shall, at all times, comply with the terms and conditions of its [Privacy Policy](#). CivicPlus will maintain commercially reasonable administrative, physical, and technical safeguards designed to protect the security and confidentiality of Client data. Except (a) in order to provide the Services; (b) to prevent or address service or technical problems in connection with support matters; (c) as expressly permitted in writing by Client; or (d) in compliance with our [Privacy Policy](#), CivicPlus will not modify Client data or disclose Client data, unless specifically directed by Client or compelled by law. Notwithstanding the foregoing, CivicPlus reserves the right to delete known malicious accounts without Client authorization.

24. Client acknowledges and agrees that CivicPlus utilizes third-party service providers to host and provide the Services and store Client data and the protection of such data will be in accordance with such third party's safeguards for the protection and the security and confidentiality of Client's data.

25. CivicPlus may offer Client the ability to use third-party applications in combination with the Services. Any such third-party application will be subject to acceptance by Client. In connection with any such third-party application agreed to by Client, Client acknowledges and agrees that CivicPlus may allow the third-party providers access to Client data as required for the interoperation of such third-party application with the Services. The use of a third-party application with the Services may also require Client to agree to a separate agreement or terms and conditions with the provider of the third-party application, which will govern Client's use of such third-party application.

26. In the event of a security breach at the sole fault of the negligence, malicious actions, omissions, or misconduct of CivicPlus, CivicPlus, as the data custodian, will comply with all remediation efforts as required by applicable federal and state law.

### **CivicPlus Support**

27. CivicPlus will use commercially reasonable efforts to perform the Services in a manner consistent with applicable industry standards, including maintaining Services availability 24 hours a day, 7 days a week. Client will have 24/7 access to the online

CivicPlus Help Center ([civicplus.help](https://www.civicplus.help/hc/en-us/requests/new)) to review use articles, software best practices, receive maintenance release notes, as well as submit and monitor omni-channel support tickets and access solution specific support contact methods (<https://www.civicplus.help/hc/en-us/requests/new>).

28. CivicPlus provides live support engineers based in the domestic United States to respond to basic questions concerning use and configuration, to diagnose software code-related errors, and proactively identify potential systems issues. CivicPlus support engineers serve a preliminary function in the agile development process and escalate defects to software developers or architects for remediation. For security purposes, CivicPlus support engineers are not permitted to modify user accounts, and permissions nor distribute access outside of accounts established by means of a support interaction for testing. Client delegated Users may receive tutorials and guidance on account modifications but will perform the action themselves.

29. CivicPlus support hours span between the hours of 7 am to 7 pm CST, but may vary by product. Client will have 24/7 access to the online CivicPlus Help Center ([civicplus.help](https://www.civicplus.help/hc/en-us/requests/new)) to obtain each product's support hours, review use articles, software best practices, receive maintenance release notes, as well as submit and monitor omni-channel support tickets and access solution specific support contact methods (<https://www.civicplus.help/hc/en-us/requests/new>). After-hours support is available by toll-free phone call only. Non-emergency support requested outside of support hours will be subject to additional fees, such fees will be quoted to Client at the time of the request and will be subject to Client acceptance and invoiced the next business day following the non-emergency support. CivicPlus shall have the sole discretion to determine whether support requests qualify as an emergency, exceed reasonable use or are outside the scope of services outlined in any SOW.

30. If a reported problem cannot be solved during the first support interaction, Client will be provided a ticket number that will be used as communication method throughout ticket escalation until a solution is provided. Support service does not include support for errors caused by third party products or applications for which CivicPlus is not responsible.

## **Marketing**

31. Client hereby authorizes CivicPlus to use Client's name and logo on CivicPlus's website and in sales and marketing presentations. Such authorization may be withdrawn by Client at any time for any reason or no reason at all upon written notice to CivicPlus. Client may publicly refer to itself as a customer of the CivicPlus Services, including on Client's website and in sales presentations. Notwithstanding the foregoing, Each Party hereby grants the other a limited, worldwide, license to use the other's logo in conformance with such Party's trademark usage guidelines and solely for the purpose set forth in this §28. In no event will either party issue a press release publicly announcing this relationship without the approval of the other party, such approval not to be unreasonably withheld.

## **Limitation of Liability**

32. CivicPlus' liability arising out of or related to this Agreement, or any associated SOW, will not exceed the Annual Recurring Services amounts paid by Client in the year prior to such claim of liability.

33. 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.

34. The liabilities limited by Section 32 and 33 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.

## **Warranties and Disclaimer**

35. Each person signing the SOW, or otherwise agreeing to the terms of this Agreement, represents and warrants that he or she is duly authorized and has legal capacity to execute and bind the respective Party to the terms and conditions of the SOW and this Agreement. Each Party represents and warrants to the other that the execution and delivery of the SOW and the performance

of such Party's obligations thereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

36. CivicPlus warrants that the Services will perform substantially in accordance with documentation and marketing proposals, and free of any material defect. CivicPlus warrants to the Client that, upon notice given to CivicPlus of any defect in design or fault or improper workmanship, CivicPlus will remedy any such defect. CivicPlus makes no warranty regarding, and will have no responsibility for, any claim arising out of: (i) a modification of the Services made by anyone other than CivicPlus, even in a situation where CivicPlus approves of such modification in writing; or (ii) use of the Services in combination with a third party service, web hosting service, or server not authorized by CivicPlus.

37. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, CIVICPLUS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A PRIOR COURSE OF DEALING.

38. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY CIVICPLUS TO CLIENT AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT.

### **Force Majeure**

39. 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, pandemic, 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**

40. The amounts owed for the Services exclude, and Client will be responsible for, all sales, use, excise, withholding and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity in connection with the Services (excluding taxes based solely on CivicPlus's income). 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 such exemption certificate is challenged or held invalid by a taxing authority then Client agrees to pay for all resulting fines, penalties and expenses.

### **Other Documents**

41. This Agreement, including all exhibits, amendments, and addenda hereto and all SOWs, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement or any SOW will be effective unless in writing and signed by each Party. However, to the extent of any conflict or inconsistency between the provision in the body of this Agreement and any exhibit, amendment, or addenda hereto or any SOW, the terms of such exhibit, amendment, addenda or SOW will prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Client purchase order or other order documentation (excluding SOWs) will be incorporated into or form any part of this Agreement, all such terms or conditions will be null and void, unless such term is to refer and agree to this Agreement .

### **Interlocal Purchasing Consent/ Cooperative Purchasing**

42. With the prior approval of CivicPlus, which may be withheld for any or no reason within CivicPlus's sole discretion, this Agreement and any SOW 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.

43. To the extent permitted by law, the terms of this Agreement and set forth in one or more SOW(s) may be extended for use by other local government entities upon execution of a separate agreement, SOW, or other duly signed writing by and between CivicPlus and such entity, setting forth all of the terms and conditions for such use, including applicable fees and billing terms.

#### **Miscellaneous Provisions**

44. 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.

45. The Parties negotiated this Agreement with the opportunity to receive the aid of counsel and, accordingly, intend this Agreement to be construed fairly, according to its terms, in plain English, without constructive presumptions against the drafting Party. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

46. The Parties will use reasonable efforts to resolve any dispute between them in good faith prior to initiating legal action.

47. This Agreement and any SOW, to the extent signed and delivered by means of a facsimile machine or electronic mail, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. The Parties agree that an electronic signature is the legal equivalent of its manual signature on this Agreement and any SOW. The Parties agree that no certification authority or other third party verification is necessary to validate its electronic signature and that the lack of such certification of third party verification will not in any way affect the enforceability of the Parties’ electronic signature or any resulting agreement between CivicPlus and Client.

48. Due to the rapidly changing nature of software as a service and digital communications, CivicPlus may unilaterally update this Agreement from time to time. In the event CivicPlus believes such change is a material alteration of the terms herein, CivicPlus will provide Client with written notice describing such change via email or through its website. Client’s continued use of the Services following such updates constitutes Client’s acceptance of the same. In the event Client rejects the update to the terms herein, Client must notify CivicPlus of its objection within ten (10) days receipt of notice of such update.