

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

RESOLUTION NO. 2016-05

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CONTRACTS; APPROVING THE CONTRACT WITH CIVICPLUS FOR PROFESSIONAL WEBSITE DESIGN AND IMPLEMENTATION SERVICES, INCLUDING THE MOBILE APP FEATURE; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE A FOUR-YEAR AGREEMENT WITH SAID COMPANY FOR \$47,076; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Village of Palmetto Bay Procurement Division prepared a Request for Proposal (RFP) to solicit proposals from web firms for the selection of a qualified professional company with expertise in web design and implementation; and,

WHEREAS, the firm selected pursuant to the competitive process was CivicPlus, which selection was approved by the Village Council on November 2, 2015 via Resolution No. 2015-90; and,

WHEREAS, the Village desires to enter into a four-year contract with CivicPlus to provide web design and implementation services, inclusive of a Mobile App feature for a total contract cost of \$47,076.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The contract between the Village of Palmetto Bay and CivicPlus for website design and implementation services, inclusive of the mobile app feature, is hereby approved.

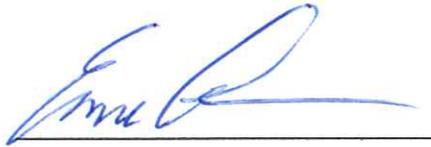
Section 2. The Village Manager is authorized to enter into a four-year contract on behalf of the Village for a total contractual cost of \$47,076.

Section 3. This Resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 4th day of January, 2016.

Attest:


Meighan Alexander
Village Clerk


Eugene Flinn
Mayor

44 APPROVED AS TO FORM:

45

46

47



48 Dexter W. Lehtinen

49 Village Attorney

50

51

52

53 FINAL VOTE AT ADOPTION:

54

55 Council Member Karyn Cunningham YES

56

57 Council Member Tim Schaffer YES

58

59 Council Member Larissa Siegel Lara YES

60

61 Vice-Mayor John DuBois YES

62

63 Mayor Eugene Flinn YES



**CONTRACT AGREEMENT
BETWEEN
VILLAGE OF PALMETTO BAY AND CIVICPLUS
FOR
WEBSITE REDESIGN AND IMPLEMENTATION WITH THE
MOBILE APP FEATURE**

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the **Village of Palmetto Bay**, a Florida municipal corporation (hereinafter referred to as "Village"), and **CivicPlus** authorized to do business in the State of Florida, (hereinafter referred to as "Consultant" and jointly referred to as the Parties.

WHEREAS, the Village advertised a Request for Proposals ("RFP") on July 20th 2015, and

WHEREAS, Consultant submitted a Proposal dated August 19th 2015 in response to the Village's request, and

WHEREAS, at a meeting held on November 2nd 2015, the Village Council awarded the Consultant and agreed to enter into an Agreement with Consultant to perform the services described in the RFP and Consultant's Proposal submitted in response to the RFP ("Services"),

NOW THEREFORE, in consideration of the promises and the mutual covenants herein named, the parties hereto agree as follows:

Article 1 **Incorporation by Reference.** The entire contract consists of 27 pages.

The following document is hereby incorporated by reference and made part of this Agreement (as part of the 27 pages):

- (i) Exhibit 1 – Agreement with CivicMobile App.

All exhibits may also be collectively referred to as the "Document". In the event of any conflict between the Document or any ambiguity or missing specifications or instructions, the following priority is established.

A. This Agreement

B. Exhibit 1

In the event that there is a conflict between (i) this agreement excluding Exhibit 1 and (ii) Exhibit 1, the Agreement excluding Exhibit 1 controls.

Article 2 Scope of Work

A. Consultant agrees to provide the Services (hereinafter inclusively referred to as the "Services") as specifically described, and under the terms and conditions set forth in Exhibit 1.

B. Consultant represents and warrants to the Village that: (i) it possesses all qualifications, licenses and expertise required for the performance of the Services; (ii) it is not delinquent in the payment of any sums due the Village; (iii) all personnel assigned to perform the Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) the Services will be performed in the manner described in Exhibit 1 and the RFP scope of work.

Article 3 Qualifications

Consultant and the individual executing this Agreement on behalf of the Consultant warrant to the Village that the Consultant is a Kansas corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Consultant possesses all of the required licenses and certificates of competency required by the State of Florida, Miami Dade County, and the Village to perform the work herein described. Consultant acknowledges that due to the nature of this contract, that Consultant must take all necessary precautions to avoid accidents and shall comply with all local, state and federal regulations that apply. Consultant shall be solely responsible for the payment of any fines or penalties incurred as a result of its actions.

Article 4 Payment and/or Fees

The Consultant shall submit invoices in accordance with the terms laid out in Exhibit 1. Please note that failure to provide a detailed invoice could result in delay of payment and include termination of any agreement. Invoices, unless otherwise indicated, must show purchase order numbers and shall be submitted in DUPLICATE to the Village of Palmetto Bay, Manager's Office, 9705 E Hibiscus Street, Palmetto Bay, FL 33157. The Village agrees to comply with payment and fee provisions detailed on Exhibit 1, utilizing a 4 year payment plan, in so far as Exhibit 1 is not inconsistent with any provision of pages 1 through 14 herein.

Article 5 Reports

A. Prior to commencement of operations under this Agreement, the Consultant shall secure in writing from the Village approval of all records to be used for the purpose of temporarily or permanently recording the operations of the Consultant under this Agreement.

B. For the purposes of the administration of this Agreement, the following shall apply: The Village Manager or his designee is hereby designated as the Contract Administrator for this Agreement. Reports and information as the Village may reasonably require regarding the administration of this Contract should be addressed to the Village Manager.

Article 6 Termination

A. Termination/Cancellation of Contract without Cause

Either Party may terminate this Contract without cause upon thirty (30) days prior written notice to the other party. Termination or cancellation of the contract will not relieve the Consultant of any deliverables and work product due prior to the termination of the Contract (this will include but not be limited to reports, statements of accounts, payments due the Village and any other records requested by the Village prior to the termination of the Contract, or after termination in the Village's discretion if needed for a post contract audit of money due on Consultant's performance). Termination or cancellation of the contract will not relieve the Consultant of any obligations or liabilities resulting from any acts committed by the Consultant prior to the termination of the contract.

B. Termination Because of Default

Without waiving the right to terminate without cause on thirty (30) days' notice, a party may issue a written notice to the other claiming that the other party is in breach of contract and giving the other party ten (10) calendar days to cure the default. If the alleged breach of contract is not cured, then the party serving the notice may terminate the Contract and be excused from further performance following termination. However, termination of the Contract will not relieve the Consultant of any deliverables and work product due prior to the termination of the Contract (this will include but not be limited to reports, statements of

accounts, payments due the Village and any other records requested by the Village prior to the termination of the Contract.)

Article 7 Hold Harmless and Indemnification of the Village

The Village shall not be liable for any damages or claims of any type including but not limited to lost profits, special damages, consequential damages or business interruption on account of the Village's decision to terminate this Contract. Additionally, the Consultant agrees that in the event this Contract is terminated for the Village's breach, the damages that Consultant may have against the Village shall be limited to actual damages for a period of thirty (30) days given the fact that this Contract may be terminated by the Village without cause on thirty (30) days' notice.

Article 8 Term

- a) Notwithstanding any payment terms and schedules in Exhibit 1, the payment terms and schedule for this entire Agreement is as follows:

Contract Cost Detail- Option 2 (includes Mobile App.)					
Initial Investment	Hosting Year 1	Hosting Year 2	Hosting Year 3	Hosting Year 4	Total Contract Cost
\$ 0.00	\$ 11,769.00	\$ 11,769.00	\$11,769.00	\$ 11,769.00	\$ 47,076.00

- b) The term of this Agreement shall commence upon the date of execution hereof and shall remain in effect for a period of six (6) months subject to renewal by the Village to a total period of four (4) years, or until terminated by the Village as herein set forth. Continuation of this Agreement beyond the initial six (6) month period is at the discretion of the Village Manager, and not a right of the Consultant. This option will only be exercised by the Village Manager when such continuation is clearly in the best interest of the Village. Should the Village Manager exercise his option to continue this Agreement, it shall be only for the Services (as defined within) agreed to in Agreement. If the Village Manager extends the contract for three (3) consecutive periods, any extension by the Village thereafter must be approved by the Village Council.

Article 9 Audit and Inspection Rights

The Village may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by the Consultant under this Agreement, audit, or cause to be audited, those books and records of Consultant which are related to Consultant's performance under this Agreement. Consultant agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement. The Village may, at reasonable times during the term hereof, inspect Consultant's facilities and perform such inspections, as the Village deems reasonably necessary, to determine whether the services required to be provided by Consultant under this Agreement conform to the terms hereof and/or the terms of the Solicitation Documents, if applicable. Consultant shall make available to the Village all reasonable facilities and assistance to facilitate the performance of inspections by the Village's representatives. All inspections shall be subject to, and made in accordance with, the provisions of the Village Code as same may be amended or supplemented, from time to time

Article 10 Federal and State Tax

The Village is exempt from payment of Florida State Sales and Use Taxes. The Village will sign an exemption certificate submitted by the Consultant. The Consultant shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the Village, nor is the Consultant authorized to use the Village's Tax Exemption Number in securing such materials.

The Consultant shall be responsible for payment of its own and its share of its employee taxes and Social Security benefits.

Article 11 Indemnification

Consultant shall indemnify and hold harmless the Village and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Village or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Consultant or its employees, agents, servants, partners, principals or sub-

Consultants. Consultant shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Village, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Consultant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Village or its officers, employees, agents and instrumentalities as herein provided. 1% of the contract amount shall represent the consideration to be provided for this indemnification. Nothing contained herein shall be deemed a waiver of sovereign immunity.

Article 12 Insurance

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) calendar days after Village notification to Consultant. Certificates of Insurance must be submitted to the Procurement Division, Certificates of Insurance that indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- Comprehensive General Liability - \$1,000,000 combined single limit for each occurrence for bodily injury and property damage - designating the Village as Additional Insured
- Workers Compensation - Statutory Limits
- Automobile Liability - \$1,000,000 per occurrence for all claims arising out of bodily injuries or death and property damages.
- errors and omissions or Consultant liability insurance - \$1,000,000

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B+" as to management and no less than "Class V" as to strength by the latest edition of Best's Insurance guide, published by A.M. Best Company, Olwick, New Jersey, or its equivalent, or the companies must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to do Business in Florida," issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Consultant

hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the Village.

Compliance with the foregoing requirements shall not relieve the Consultant of this liability and obligation under this section or under any other section in the Agreement.

If the insurance certificate is received within the specified time frame but not in the manner prescribed in the Agreement, the Consultant shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the Village. If the Consultant fails to submit the required insurance documents in the manner prescribed in the Agreement within fifteen (15) calendar days after Village notification to comply, the Consultant shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the Village.

The Consultant shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the Village. If insurance certificates are scheduled to expire during the contractual period, the Consultant shall be responsible for submitting new or renewed insurance certificates to the Village at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Village shall suspend the Contract until such time as the new or renewed certificates are received by the Village in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the Village may, at its sole discretion, terminate this contract.

Article 13 Modification/Amendment

This writing and exhibits contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed in writing with the same formality as this Document. No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

Article 14 Severability

If any term or provision of this Agreement shall to any extent be held invalid or illegal by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

Article 15 Governing Law

This Agreement shall be construed in accordance with and governing by the laws of the State of Florida. Exclusive venue for any litigation shall be in Miami-Dade County, Florida.

Article 16 Waiver

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct. No waiver by the Village of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by Consultant of the same, or any other provision or the enforcement thereof. The Village's consent to or approval of any act by Consultant requiring the Village's consent or approval shall not be deemed to render unnecessary the obtaining of the Village's consent to or approval of any subsequent consent or approval of Consultant, whether or not similar to the act so consented to or approved.

Article 17 Notices/Authorized Representatives

Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered mail with postage prepaid return receipt delivery, by registered or certified mail with postage prepaid return receipt requested, or by Federal Express addressed to the parties at the following address:

Village:

Edward Silva, Village Manager
Village of Palmetto Bay
9705 E. Hibiscus Street
Palmetto Bay, FL 33157

Consultant:

Tim Grant, Director of Sales
CivicPlus
302 S. 4th Street, Suite 500
Manhattan, KS 66502

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions herein.

Article 17 **Independent Consultant**

Consultant is and shall remain an independent Consultant and is not an employee or agent of the Village. Services provided by Consultant shall be by employees of Consultant and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the Village. Consultant shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Consultant. The rights granted to Consultant hereunder are nonexclusive, and the Village reserves the right to enter into agreements with other persons or Consultants to perform services including those hereunder.

Article 18 **Assignment**

The Consultant shall not assign, transfer, convey, sublet or otherwise dispose of this Contract, including any or all of its right, title or interest therein, or his or its power to execute such Contract to any person, company or corporation without prior written consent of the Village. The Consultant shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Consultant from the Village under this Contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Consultant to the Village. None of the work or services under this Contract shall be subcontracted unless the Consultant obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of this Contract and the Consultant shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

Article 19 **Prohibition Against Contingent Fees**

Consultant warrants that it has no employees or retained any Consultant or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s),

Consultant, corporation, individual or Consultant, other than a bond fide employee working solely for Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

Article 20 Attorneys Fees

Should any dispute arise hereunder, the Village shall be entitled to recover against the Consultant all costs, expenses and attorney's fees incurred by the Village in such dispute, whether or not suit be brought, and such right shall include all of such costs, expenses and attorney's fees through all appeals or other actions. Neither party shall be entitled to prejudgment interest.

Article 21 Conflict of Interest

Consultant agrees to adhere to and be governed by the Village's Conflict of Interest Ordinance 2-121, et seq, which is incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

Article 22 Binding Effect

All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

Article 23 Entire Agreement

No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

Article 24 Captions and Paragraph Headings

Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

Article 25 Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Agreement be construed liberally to achieve its intent.

Article 26 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Article 27 Exhibits are Inclusionary

All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

Article 28 Jurisdiction And Venue

For the purposes of this contract, Florida law shall govern the terms of this contract. Venue shall be in Miami-Dade County, Florida.

Article 29 Sovereign Immunity And Attorney's Fees.

The Village does not waive sovereign immunity under 768.28, Florida Statutes, for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court and appellate court proceedings. In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

Article 30 Permits, Licenses and Filing Fees

The Consultant shall procure all permits and licenses, pay all charges and fees, and file all notices as they pertain to the completion of the Consultant's work.

Article 31 Safety Provisions

The Consultant shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.

Article 32 Public and Employee Safety

Whenever the Consultant's operations create a condition hazardous to the public or Village employees, it shall, at its expense and without cost to the Village, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.

Article 33 Preservation of Village Property

The Consultant shall provide and install suitable safeguards, approved by the Village, to protect Village property from injury or damage. If Village property is injured or damaged resulting from the Consultant's operations, it shall be replaced or restored at the Consultant's expense. The facilities shall be replaced or restored to a condition as good as when the Consultant began work.

Article 34 Immigration Act of 1986

The Consultant warrants on behalf of itself and all sub-consultants engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

Article 35 Consultant Non-Discrimination

In the award of subcontracts or in performance of this work, the Consultant agrees that it will not engage in, nor permit such sub-consultants as it may employ, to engage in discrimination in employment of persons on any basis prohibited by State or Federal law.

Article 36 Accuracy of Specifications

The specifications for this project are believed by the Village to be accurate and to contain no affirmative misrepresentation or any concealment of fact. Consultants are cautioned to undertake an independent analysis of any test results in the specifications, as Village does not guaranty the accuracy of its interpretation of test results contained in the specifications package. In preparing its proposal, the Consultant and all sub-consultants named in its proposal shall bear sole responsibility for proposal preparation errors resulting from any misstatements or omissions in the specifications that could easily have been ascertained by examining either the project site or accurate test data in the Village's possession. Although the effect of ambiguities or defects in the specifications will be as determined by law, any patent ambiguity or defect shall give rise to a duty of Consultant to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the Consultant. An ambiguity or defect shall be considered patent if it is of such a nature that the Consultant, assuming reasonable skill, ability and diligence on its part, knew or should have known of the existence of the ambiguity or defect. Furthermore, failure of the Consultant or sub-consultants to notify Village in writing of specification defects or ambiguities prior to proposal submittal shall waive any right to assert said defects or ambiguities subsequent to submittal of the proposal.

To the extent that these specifications constitute performance specifications, the Village shall not be liable for costs incurred by the successful Consultant to achieve the project's objective or standard beyond the amounts provided therefore in the proposal.

In the event that, after awarding the contract, any dispute arises as a result of any actual or alleged ambiguity or defect in the specifications, or any other matter whatsoever, Consultant shall immediately notify the Village in writing, and the Consultant and all sub-consultants shall continue to perform, irrespective of whether or not the ambiguity or defect is major, material, minor or trivial, and irrespective of whether or not a change order, time extension, or additional compensation has been granted by Village. Failure to provide the hereinbefore described written notice within one (1) working day of Consultant's becoming aware of the facts giving rise to the dispute shall constitute a waiver of the right to assert the causative role of the defect or ambiguity in the plans or specifications concerning the dispute.

Article 37 Warranty Of Authority

The signatories to this contract warrant that they are duly authorized by action of their respective Village Council, board of directors or other authority to execute

this contract and to bind the parties to the promises, terms, conditions and warranties contained in this contract.

Article 38 Miscellaneous Provision

In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated above.

OWNER

CONSULTANT

Village of Palmetto Bay

CivicPlus

ADDRESS

ADDRESS

9705 E. Hibiscus Street
Palmetto Bay, FL 33157

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

BY _____

BY _____

Edward Silva
Print Name

Tim Grant
Print Name

Village Manager
Title

Director of Sales
Title

ATTEST

Meighan J. Alexander
Village Clerk

Witness

APPROVED AS TO FORM BY

Print Name

Village Attorney



EXHIBIT "1"

Contact Information

WITH MOBILE APP.

Organization Village of Palmetto Bay

URL www.palmettobay-fl.gov

Street Address 9705 E. Hibiscus Street

Address 2

City Palmetto Bay

State FL

Postal Code 33157

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

ST

Postal Code

Tax ID #

Sales Tax Exempt #

Billing Terms Annual

Account Rep

Solomon Grover

Info Required on Invoice (PO or Job #)

Contract Contact

Email

Phone

Ext.

Fax

Project Contact

Email

Phone

Ext.

Fax



CivicPlus Advantage Contract Terms and Conditions

CivicPlus Advantage Invoicing & Payment Terms

The following agreement terms apply to the CivicPlus Advantage Plan – whereby the initial project development fees and recurring fees are paid equally over a four (4) year period. See Exhibit A for complete details and fee options.

1. Billing for the CivicPlus Advantage Plan begins upon contract signing.
2. The CivicPlus Advantage Plan provides a fixed fee for an Agreement term of 48 months from the first date of billing. At 48 months, Client has the following options:
 - a. Contract for 12 months of standard Annual Services with CivicPlus. Base rate of \$6,246 is subject to a technology investment and benefit fee of 5 percent (%) of the total Annual Services costs beginning the fifth year of consecutive service.
 - i. After forty-eight (48) months of continuous service, Client is entitled to a no-cost redesign, details noted in Exhibit B. 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.
 - b. Terminate services with CivicPlus by providing written notice as noted in Term 6.
3. Payment is 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).
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 agreement assumes such perpetual permission.
5. 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.

Agreement Renewal

6. Either party may terminate this Agreement at the end of the contract term by providing the other party with 60 days written notice, prior to the contract renewal date. The Contract Renewal Date is forty-eight (48) months after the original contract was signed by the Client. Renewal Options are listed in Term 2 of this Agreement.
7. In the event of early termination of the Agreement by the Client within the first twelve (12) months of the Agreement, full payment of the remainder of the total First Year fees are due within 15 days of termination.
8. In the event of early termination of the Agreement by the Client after twelve (12) months, but before the expiration of the Agreement, Annual Services fees for year(s) two (2), three (3) and four (4) will be prorated and Client will be charged only for the time it remains as a Client of CivicPlus. Full payment of the remainder of the total First Year fees and prorated fees are due within 15 days of termination.
9. This contract may be extended to any municipality in the State of Florida to purchase at contract prices in accordance with the terms stated herein.

Ownership & Content Responsibility

10. Upon full and complete payment of submitted invoices for the Project Development and launch of the website, Client will own the Customer Content (defined as website graphic designs, the page content, all module content, all importable/exportable data, and all archived information).
11. Upon completion of the development of the site, Client will assume full responsibility for website content maintenance and content 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.



Intellectual Property

12. Intellectual Property of the CivicPlus Government Content Management System (GCMS®) 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 the GCMS® software in any way; (ii) modify or make derivative works based upon the GCMS® software; (iii) create Internet "links" to the GCMS® software or "frame" or "mirror" any GCMS® administrative access on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the GCMS® software in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the GCMS® software, or (c) copy any ideas, features, functions or graphics of the GCMS® software. The CivicPlus name, the CivicPlus logo, and the product and module names associated with the GCMS® software are trademarks of CivicPlus, and no right or license is granted to use them.

Indemnification

14. 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 the website. 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.



Service & License Agreement for **Palmetto Bay, FL**

Acceptance

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

Client

Date

CivicPlus

Date

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

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. 4th Street, Suite 500
Manhattan, KS 66502

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

--Remainder of this page left intentionally blank--



Exhibit A - CivicPlus Project Deliverables

All Quotes are in US Dollars and Valid for 30 Days from November 16, 2015.

Project Development and Deployment	
<i>Initial GCMS® upgrades, maintenance, support and hosting – no additional cost</i>	Included
<i>Server Storage not to exceed 20 GB</i>	
<i>3 Days of Webinar Training</i>	
Project Enhancements	Included
CivicSend	
CivicMobile App	
Total First Year Fee	\$28,338

Annual Services (Continuing GCMS® Upgrades, Maintenance, Support and Hosting)	\$6,246
<i>Subject to annual 5% increase starting year 5 and beyond.</i>	

At the request of the Village of Palmetto Bay, Florida, CivicPlus agrees to redistribute their standardized pricing as follows:

CivicPlus Advantage Annual Investment Payments	1 st Year	2 nd Year	3 rd Year	4 th Year
	\$11,769	\$11,769	\$11,769	\$11,769
Client may terminate contract at the end of 48 months or select from options available in Term 2 of the Terms & Conditions				

--Remainder of this page left intentionally blank--



Exhibit A.1 Project Development Scope of Work

<p>Kick-Off <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 the Village 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 Village staff 	<p>Village of Palmetto Bay will:</p> <ul style="list-style-type: none"> • complete the following prior to Phase 1: Functionality and Design Form, Web Team Form and Content Form, Roles and Responsibilities Form and DNS Form • 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, the Village 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 <u>Deliverable:</u> Website Optimization Meeting</p>	
<p>CivicPlus will:</p> <ul style="list-style-type: none"> • communicate status to the Village, key stakeholders and personnel via emails or phone calls as needed • review the goals and expectations submitted on the forms the Village completed to ensure all needs are clearly understood • gather preliminary design data for use 	<p>Village of Palmetto Bay 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: Website Layout <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>Village of Palmetto Bay 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 <u>Deliverable:</u> Website design and production website.</p>	
<p>CivicPlus will:</p> <ul style="list-style-type: none"> • present a fully functional website on a production URL • migrate 240 content pages from www.palmettobay-fl.gov to the production URL • conduct a quality review of the website to ensure the functionality and usability standards are met • work with the Village to adjust design and content changes • work with the Village to prepare for training • migrate current plus the past three years Agendas & Minutes in Microsoft Word.DOC or Adobe PDF format 	<p>Village of Palmetto Bay 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 <ul style="list-style-type: none"> • http://www.palmettobay-fl.gov/
<p>Phase 4: 3 Days of Customized Interactive Webinar Training for up to 6 Employees <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"> • provided training to the Village before the website goes live • train up to 6 staff members based on internal daily tasks and workflow • train staff members on how to use the GCMS®, update content pages and modules 	<p>Village of Palmetto Bay will:</p> <ul style="list-style-type: none"> • provide a location for training in the Village with internet access • provide computers for staff to be trained on • Phase 4: Training billing milestone complete
<p>Phase 5: Go Live <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 the Village finds • redirect the domain name to the newly developed website as per approved timeline 	<p>Village of Palmetto Bay 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
<p>Project Enhancements: CivicSend CivicMobile App</p>	



Project Development and Deployment Includes the Following:

Modules	Functionality
<ul style="list-style-type: none"> • Agenda Center • Alerts Center & Emergency Alert Notification • Archive Center • Bid Postings • Blog • Business/Resource Directory • Calendar • Citizen Request Tracker™ (5 users) • Community Connection • Community Voice™ • Document Center • ePayment Center • Facilities & Reservations • Frequently Asked Questions • Forms Center • Intranet • Job Postings • My Dashboard • News Flash • Notify Me® email and 500 SMS subscribers • Photo Gallery • Quick Links • Real Estate Locator • Spotlight • Staff Directory 	<ul style="list-style-type: none"> • Action Items Queue • Audit Trail / History Log • Automated PDF Converter • Automatic Content Archiving • Dynamic Breadcrumbs • Dynamic Sitemap • Expiring Items Library • Graphic Link Administration • Links Redirect • Menu Management • Mouse-over Menu Structure • Online Editor for Editing and Page Creation (WYSIWYG) • Online Web Statistics • Printer Friendly/Email Page • RSS • Site Layout Options • Site Search & Entry Log • Slideshow • Social Media Integration (Facebook, Twitter, Instagram) • User & Group Administration Rights • Web Page Upload Utility • Website Administrative Log



Exhibit B – Basic Redesign of Website

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

- New design for all items originally contracted for (main site, department headers and subsites)
- Redevelop banner
- 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



Exhibit C - Premium Included Hosting

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



Exhibit D - 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 two 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	

Exhibit E - 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 99.7%, 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 accordance with the schedule below.

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.7%	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 make insure that in the event of a disaster that make 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	Service Credit Percentage
8 Hours	10% of one month's fee
Recovery Point Objective	Service Credit Percentage
24 Hours	10% of one month's fee