

WEBSITE SERVICES AGREEMENT

This Website Services Agreement (hereinafter, the “Agreement”) is made and entered into as of this _____ day of _____, 20____ (the “Effective Date”), by and between the City of Manor, Texas, a Texas home rule municipality (hereinafter, the “City” or “Client”) and CivicPlus, LLC, a Kansas limited liability company (hereinafter the “Consultant” or “CivicPlus”), collectively, the Parties.

That, for and in consideration of the mutual terms, conditions and covenants of this Agreement and the accompanying document set forth therein, the Client and Consultant agree to the following:

I. Project and Employment.

- a. Client agrees to employ Consultant to perform website redesign, hosting, and support services (hereinafter, the “Project”). Specifically, Consultant will provide the Ultimate Design package with a Hosting and Support Annual Fee of \$4,700.00 and a One-Time Implementation cost of “No Fee.” In addition, Consultant will provide the following Optional Enhancements: (1) Parks Directory at \$350.00 per year and (2) Properties Directory at \$350.00 per year (“Services”).

The Parties acknowledge and agree, should the City sign this Agreement before December 31, 2022 a discount shall be applied to the Year 1 and Year 2 total amounts.

- i. Total Investment – Year 1 – \$4,085.00 (with discount applied);
- ii. Total Investment – Year 2 – \$4,320.00 (with discount applied);
- iii. Total Investment – Year 3 – \$4,536.00

Subsequent Hosting and Support Annual Fees for renewal years shall be subject to a 5% annual increase beginning in year 3 of service.

The services of the Project are described in greater detail in the CivicPlus Master Services Agreement (MSA) and the Statement of Work (SOW) attached thereto) provided in Exhibit A and incorporated by reference herein. Should any term or condition in Exhibit A conflict with any term or condition in this Agreement, the terms and conditions in this Agreement shall control.

- b. Notwithstanding anything to the contrary contained in this Agreement, Client and Consultant agree and acknowledge that Client is entering into this Agreement in reliance on Consultant’s special and unique abilities. Consultant accepts the relationship of trust and confidence established between it and Client by this Agreement. Consultant acknowledges that Consultant shall be solely responsible for determining the methods for performing the services and Statement of Work described in Exhibit A. Consultant covenants with Client to use its reasonable best efforts, skill, judgment, and abilities to perform the work required by this Agreement and to further the interests of Client in accordance with Client’s requirements, in compliance with applicable federal, state, and local laws, regulations, codes, and orders and with those orders of any other body having jurisdiction. Consultant warrants, represents, covenants, and agrees that all of the work to be performed by Consultant under or pursuant to this Agreement shall be done (i) with the skill and care ordinarily provided by competent professionals practicing under the same or similar circumstances; and (ii) as expeditiously as is prudent.

Website Services Agreement

- c. The Consultant will be responsible for supplying all tools, supplies, and equipment necessary for the Consultant to provide the services set forth in this Agreement and in Exhibit A.
- d. Client may, from time to time require changes in the scope of services of the Consultant to be performed hereunder. Such changes agreed upon by and between the Client and the Consultant, shall be incorporated in written amendment to this Agreement.

II. Work Product

- a. Upon full and complete payment of amounts owed for the Project, 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 the 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.
- b. 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.
- c. At any time during the term of this Agreement, 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 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. During the thirty (30) day period following termination, regardless of the reason for its termination, Client will not have access to the services.
- d. Intellectual Property in the software or other original works created by or licensed to CivicPlus, including all 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;

Website Services Agreement

- (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 source code to all or any portion of the services; or
- (v) access any CivicPlus Property in order to:
 - (1) build a competitive product or service,
 - (2) build a product using similar ideas, features, functions or graphics of any CivicPlus Property, or
 - (3) 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.

- e. Provided Client complies with the terms and conditions herein, and license restrictions set forth in this section, CivicPlus hereby grants Client a limited, nontransferable, nonexclusive, license to access and use the CivicPlus Property associated with this Agreement for the term of this Agreement.

III. Term of Agreement and Payment

- a. This Agreement will begin on the Effective Date and shall remain in effect for a period of 12 months. This Agreement shall renew automatically, for an addition 12 month period (“Renewal Term”) upon the expiration of the initial, or any subsequent renewal, term unless terminated by either Party with thirty (30) days’ advance written notice before the end of the current term.
- b. The Consultant will perform the tasks described in the scope of work as described in Exhibit A. In performing the services under this Agreement, the Consultant is acting as an independent contractor. No term or provision herein will be construed as making the Consultant the agent, servant, or employee of the Client or as creating a partnership or joint venture relationship between the Client and the Consultant.
- c. The cost of the first year of the Project will not exceed \$5,400.00, unless additional services are obtained through written amendment to this Agreement signed by both Parties. The Client shall be invoiced for the Total Investment – Year 1 fees upon signing and submission of this agreement. Subsequent annual fees shall be invoiced on the start date of each Renewal Term, and shall be subject to a 5% annual increase beginning in year 2 of service. Invoices will be payable in accordance with the provisions of the Texas Prompt Payment Act, Government Code Chapter 2252.
- d. Any additional professional services or other expenses must be approved by the Client and those amounts amended to this Agreement.

Website Services Agreement

- e. The Consultant will begin work on the Project on the Effective Date or on a date acceptable to the parties.

IV. Termination

- a. Client may terminate this Agreement for convenience upon thirty (30) days advance written notice to Consultant prior to the end of the current term.
- b. This Agreement may be terminated by either Party upon thirty (30) days written notice to the other Party in the event that the Project is abandoned or indefinitely postponed in which event, Consultant shall be compensated for all services performed to termination date.
- c. Client may terminate the whole or any part of this Agreement for cause in the following circumstances:
 - (i). If Consultant fails to perform services by the agreed upon time or any extension thereof granted by Client in writing;
 - (ii) If Consultant materially breaches any of the terms or conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to Client's reasonable satisfaction within a period of thirty (30) calendar days after receipt of notice from Client specifying such breach or failure.
- d. Upon termination of this Agreement, Client shall compensate Consultant for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to Client. Consultant's final invoice for said services will be presented to Client in the same manner set forth in Section 2 above.
- e. If Client terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.
- f. If Client terminates this agreement for cause, Client shall be entitled a pro-rated refund of any pre-paid fees covering the remainder of the term after the date of termination.

V. Insurance.

- a. Prior to commencement of the services, Consultant shall furnish Client with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to Client. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by Client. Consultant shall maintain such insurance coverage from the time services commence until services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of services. Consultant shall obtain such insurance written on an Occurrence form from such companies licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - (i) Workers' Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance are not allowed.
 - (ii) Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident.

Website Services Agreement

- (iii) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 - (iv) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
 - (v) Cyber Liability insurance for errors and omissions with a limit of not less than \$1,000,000 each occurrence and \$1,000,000 in the annual aggregate.
- b. Client shall be named as additional insured to all required coverage except for Workers' Compensation and Cyber Liability (if required). All Liability policies written on behalf of Consultant shall contain a waiver of subrogation in favor of Client.
- c. If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract.
- d. Consultant shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Client.
- e. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Client.
- f. Approval of the insurance by Client shall not relieve or decrease the liability of Consultant.

VI. Responsibilities and Liability

- a. 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.
- b. 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.
- c. 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.
- d. 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.

Website Services Agreement

- e. CivicPlus shall, at all times, comply with the terms and conditions of its Privacy Policy (the “Privacy Policy” found at <https://www.civicplus.com/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. CivicPlus’ liability arising out of or related to this Agreement will not exceed the Annual Recurring Services amounts paid by Client in the year prior to such claim of liability.
- f. 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.

VII. Statutory Verifications.

- a. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2271.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the Consultant represents that neither the Consultant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.
- b. To the extent the Agreement constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Governmental Code, as amended, solely for the purposes of compliance with Chapter 2252 of the Texas Governmental Code, and except to the extent otherwise required by applicable federal law, Consultant represents that the Consultant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant is a company listed by the Texas Comptroller Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.
- c. The Consultant hereby verifies that it and its parent company, wholly or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such section is not inconsistent, to comply with a governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing or investment of funds. As used in the foregoing verification, “boycott energy company” means, without an ordinary

Website Services Agreement

business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil-based energy and does not commit or pledge to meet environmental standards beyond federal and state law: or (B) does business with a company described as by the preceding statement in (A).

- d. The Consultant hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.
- e. Form 1295. Texas law and the Client requires that business entities, as defined in Texas Government Code, Section 2252.908, who contract with the Client complete the on-line Form 1295 "Certificate of Interested Parties" as promulgated by the Texas Ethics Commission (<https://www.ethics.state.tx.us/filinginfo/1295/>). Form 1295 is also required for any and all contract amendments, extensions or renewals. Prior to any payment to Consultant hereunder, Consultant shall provide proof of submission to the City Secretary that the appropriate Form 1295 documentation has been submitted.

VIII. General Provisions

- a. **Choice of Law.** It is contemplated that this Agreement shall be performed in Travis County, Texas, and the venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Travis County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- b. **Indemnification.** Consultant hereby expressly agrees to indemnify, protect and hold harmless the Client, its officials and employees and its agents and agents' employees, from and against all third party claims, suits, demands, costs, causes of action, loss, damage and liability of every kind and nature, including reasonable attorney's fees, costs and expenses (including, but not limited to expenses related to expert witnesses) of any kind whatsoever, to the extent that is caused by or results from any act of

Website Services Agreement

negligence, intentional tort, intellectual property infringement, failure to pay a subprofessional, or supplier, error or omission of Consultant or any of its subconsultants and/or subcontractors in connection with the performance of services under this Agreement, or failure to pay a subcontractor or supplier committed by Consultant or Consultant's agent, subconsultant under contract, or another entity over which Consultant exercises control; provided, however, Consultant shall not be responsible for the negligence of any other party, other than its subconsultants and/or subcontractors. The Consultant's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained under this Agreement. This Section (Indemnification) shall survive termination and/or completion of this Agreement.

- c. Notices. Any and all notices under this Agreement shall be in writing and shall be delivered to the party entitled to receive the same by electronic mail, national courier services or U.S. Certified Mail, return receipt requested, addressed as follows (or as amended in writing in the future), or by other commercially reasonable means.

Notice to Client:

City of Manor
Attn: Scott Moore
105 E. Eggleston St.
Manor, TX 78653

With a copy to :
The Knight Law Firm, LLP
Attn: Paige Saenz
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

Notice to Consultant:

CivicPlus, LLC
Attn: _____
302 S. 4th St. Ste. 500
Manhattan, KS 66502

With a copy to:

- d. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Client and Consultant and their respective successors, executors, administrators, and assigns. Neither the Client nor Consultant may assign, sublet, or transfer the parties' interest in or obligations under this Agreement without prior written consent of the other party hereto. Notwithstanding the foregoing, CivicPlus may assign and transfer all of its rights under this Agreement by a sale of all of its assets or merger. However, within 10 days of such asset sale or merger, CivicPlus shall notify the City of the transaction.
- e. Compliance with Laws. Consultant shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Workers' Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Consultant shall furnish the Client with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
- f. This Agreement and exhibits represent the entire and integrated Agreement between the Client and Consultant and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the Client and Consultant. NO OFFICIAL, EMPLOYEE, AGENT, OR

Website Services Agreement

REPRESENTATIVE OF CLIENT HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE CLIENT'S GOVERNING BODY, THE MANOR CITY COUNCIL.

- g. Entity Status. By the signature below, Consultant certifies that it is a Kansas limited liability corporation duly authorized to transact and do business in the State of Texas, and the individual executing this agreement on behalf of the Consultant is vested with the authority to bind the Consultant to this Agreement.
- h. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- i. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.
- j. Counterparts. This Agreement may be executed in any number of counterparts, including, without limitation, facsimile counterparts, with the same effect as if the parties had signed the same document, and all counterparts will constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

Website Services Agreement

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement as of the Effective Date.

CITY OF MANOR,
a Texas municipal corporation

By: _____
Dr. Christopher Harvey, Mayor

Attest:

By: _____
Lluvia T. Almaraz, City Secretary

CIVICPLUS, LLC:
a Kansas limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

CivicPlus Master Services Agreement

and

**Statement of Work
(12/8/2022)**