

**DELIVERABLES-BASED INFORMATION TECHNOLOGY SERVICES CONTRACT
BETWEEN
THE OFFICE OF THE GOVERNOR
AND
TRADEMARK MEDIA CORPORATION DBA MIGHTY CITIZEN**

ExpressionEngine Upgrade

This Deliverables-Based Information Technology Services Contract ("Contract") is entered into by and between the Office of the Governor ("OOG" or "Customer") and Trademark Media Corporation DBA Mighty Citizen ("Vendor") pursuant to the terms of Department of Information Resources ("DIR") Contract No. DIR-TSO-4216. The OOG and the Customer are hereinafter referred to either individually as the "Party" or collectively as the "Parties."

SECTION 1. PURPOSE. Vendor is a current provider of web development and managed services under DIR Contract No. DIR-TSO-4216. By and through this Contract, Vendor has agreed to provide services to the OOG for the purpose of upgrading the ExpressionEngine content management system, as further described herein and in the Statement of Work attached hereto as Attachment A.

SECTION 2. LEGAL AUTHORITY. This Contract is authorized by and entered into pursuant to Texas Government Code, Chapter 2157.068.

SECTION 3. CONTRACT TERM.

A. TERM OF CONTRACT. This Contract will commence on January 14, 2019, and will terminate on March 15, 2019 or upon the completion of Vendor's work, whichever occurs first, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract.

B. RENEWAL AND EXTENTION OPTIONS. The OOG shall have the right to extend the primary term of the Contract for any period of months in order to ensure successful completion of the project. The OOG shall provide the Vendor with written notice of its intention to extend the term of the Contract in writing at least ten (10) days prior to the Contract termination date. The primary term plus the optional extended term(s), if any, shall constitute the "Contract Term."

SECTION 4. MAXIMUM LIABILITY OF THE OOG. The Parties stipulate and agree that the OOG's total liability to Vendor in relation to this Contract or the services to be provided pursuant to this Contract, including consideration for the full, satisfactory, and timely performance of all duties, responsibilities, and obligations, and for reimbursement of all expenses, if any, as set forth in this Contract, will not exceed **NINE THOUSAND FOUR HUNDRED FORTY-NINE AND NO/100 (\$9,449.00) DOLLARS**. The Parties stipulate and agree that any act, action or representation by either Party, or their agents or employees, that purports to increase the liability of the OOG is voidable by the OOG unless this Contract is amended in writing and signed by both Parties to specifically modify the limitation of liability as set forth in this Section.

SECTION 5. ACCEPTANCE OF WORK PERFORMED. Approval of payment for each deliverable is conditioned upon the OOG's acceptance of the work performed by the Vendor. The OOG will strive to complete a review of each submitted deliverable within five (5) or fewer business days after the date of receipt, and the OOG's acceptance of work shall not be unreasonably withheld. Acceptance shall be based upon Vendor's compliance with all Contract requirements. The OOG will not pay for work which is of poor quality and/or fails to fully comply with the Contract requirements. Should the OOG determine, in its sole discretion, that the Vendor's work is of poor quality and/or Vendor fails to perform services in compliance with the Contract requirements, the OOG may require the Vendor to promptly deliver the services in conformity with the Contract requirements at no additional cost to the OOG, or the OOG may reject payment of invoices for Vendor's work without penalty or further obligation to the Vendor. If, after acceptance and payment, the OOG discovers work that is either unauthorized or below OOG's previously-discussed and written standards for the deliverables, then the OOG will provide the Vendor with notice and a reasonable opportunity to cure the defective performance. If such defects cannot be reasonably cured within the timeframe required for project completion, then the OOG may require the Vendor to return or offset the portion of payments attributable to such non-performance or delay as compensation for failure to comply with the Contract requirements.

SECTION 6. INVOICING AND PAYMENT. As a prerequisite to the OOG's ability to process any payments to Vendor under this Contract, Vendor shall provide the OOG with required tax and payee identification information in the form of a completed "Application for Texas Identification Number" (information is available on the Texas Comptroller of Public Accounts' website at: https://fmx.cpa.texas.gov/fmx/payment/resources/svpr_all.php).

If Vendor has previously completed the required documentation to obtain a Texas Identification Number (TIN) prior to the effective date of this Contract, Vendor may satisfy this requirement by providing the OOG with Vendor's current TIN, name, and address to permit the OOG to verify registration in the TIN System with the Texas Comptroller of Public Accounts.

Each invoice presented must include: (1) the OOG's Purchase Order number; (2) the Vendor's TIN; (3) the name and division of the OOG contact; (4) a statement of the services provided under this Contract; (5) description of each deliverable completed and accepted by the OOG during the invoice period and the dollar amount attributable to each; and (6) the name of the entity or individual to which each service/expense is attributable. Upon the request of the OOG, the Vendor must submit to the OOG any additional documentation or explanation the OOG may reasonably require to support or document the requested payment under this Contract.

All invoices and payment inquiries shall be submitted directed to:

ap@gov.texas.gov or by mail to:
Office of the Governor
Accounts Payable
P.O. Box 12878
Austin, Texas 78711-2878

By submission of the invoices, Vendor is warranting the following: (1) its invoices have been carefully reviewed to ensure that all invoiced services have been performed or delivered; (2) the services have been performed in compliance with all terms of the Contract; (3) the charges and expenses shown on the invoice are allowable costs that are reasonable and necessary, and such costs do not exceed the amounts provided for in this Contract; and (4) that all supporting documentation is attached.

OOG receipt and approval of an acceptable invoice is required under this section. Payment on a properly prepared and submitted invoice will be made to Vendor only in accordance with Chapter 2251 of the Texas Government Code (the Prompt Payment Act), applicable State of Texas purchasing policies and procedures, and the fiscal management policies of the Texas Comptroller of Public Accounts.

SECTION 7. CONTRACT REPRESENTATIVES AND NOTICE. The following will act as the representative authorized to administer activities under this Contract on behalf of their respective Party. Any notice required or permitted to be given under this Contract by either Party shall be in writing and shall be delivered by regular first class mail, by email, and/or by a common carrier's overnight delivery with signature required. Any such notice shall be deemed to have been given on the date of attempted or actual delivery to the recipient if addressed to the receiving Party at the address specified in this section:

Office of the Governor

Computer Services Division

Attn: Jeffrey Smith

P.O. Box 12428

Austin, Texas 78711

Email: jeffrey.smith@gov.texas.gov

Phone: 512-936-0117

Vendor

Carly Hohl, VP Client Services

Mighty Citizen

2400 Webberville Road, Building B

Austin, TX 78702

Email: chohl@mightycitizen.com

Phone: 512-960-8058

SECTION 8. CONTRACT DOCUMENTS INCORPORATED BY REFERENCE. The following are hereby incorporated herein by reference:

ATTACHMENT A – OOG Statement of Work

DIR CONTRACT NO. DIR-TSO-4216, including:

- APPENDIX A – DIR Standard Terms and Conditions for Services Contracts
- APPENDIX B – Vendor's Historically Underutilized Businesses Subcontracting Plan
- APPENDIX C – Pricing Index
- APPENDIX D – Statement of Work
- Vendor's Response to RFO DIR-TSO-TMP-423

SECTION 9. OOG EXCEPTIONS TO DIR CONTRACT NO. DIR-TSO-4216. The following provisions shall supersede and take precedence over any conflicting items in the DIR Standard Terms and Conditions for Services Contracts as set forth in DIR-TSO-4216 - APPENDIX A:

A. DISPUTE RESOLUTION. The Parties' representatives will meet as needed to implement the terms of this Contract and will make a good faith attempt to informally resolve any disputes. If the dispute resolution process provided for in Chapter 2260 of the Texas Government Code is applicable, it shall be used as the sole and exclusive process to resolve any claim for breach of this Contract made by Vendor.

B. APPLICABLE LAW AND VENUE. This Contract is made and entered into in the State of Texas. This Contract and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

Venue for any Vendor-initiated action, suit or litigation arising out of or in any way relating to this Contract shall be exclusively in the Travis County District Court or the United States District Court, Western District of Texas - Austin Division. Venue for any OOG-initiated action, suit, litigation or other proceeding arising out of or in any way relating to this Contract may be in a Texas state district court or a United States District Court in Texas selected by the OOG in its sole discretion.

The Vendor hereby irrevocably and unconditionally consents to the jurisdiction of the courts referenced above for the purpose of prosecuting and/or defending any such litigation. The Vendor hereby waives and agrees not to assert as a defense, or otherwise, in any suit, action or proceeding, any claim that the Vendor is not subject to the jurisdiction of the above-named courts; the suit, action or proceeding is brought in an inconvenient forum; and/or the venue is otherwise improper.

C. NO WAIVER OF IMMUNITY. OOG is immune from suit and from liability. No part of this Contract, nor the conduct or statement of any person, will be construed as a waiver of sovereign immunity or official immunity, or of any of the privileges, rights, defenses, remedies, or immunities available to the OOG, and/or the State of Texas, or their officers, employees, or agents as provided by law.

SECTION 10. ORDER OR PRECEDENCE. In the event of conflicts or inconsistencies between the terms within this Contract and any exhibits or attachments to this Contract, or any documents incorporated by reference into this Contract, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) this executed Contract, (2) Attachment A, and (3) DIR CONTRACT NO. DIR-TSO-4216, including its appendices and related documents described above.

[SIGNATURE PAGE FOLLOWS]

THIS CONTRACT AND ITS ATTACHMENTS AND INCORPORATED CONTRACT DOCUMENTS CONSTITUTE THE ENTIRE LEGAL AND BINDING AGREEMENT BETWEEN THE PARTIES, WHO HAVE DULY AUTHORIZED, EXECUTED, AND DELIVERED THIS CONTRACT IN ACCORDANCE WITH ITS TERMS. THE UNDERSIGNED REPRESENTATIVES HAVE THE AUTHORITY TO EXECUTE AND AGREE TO THIS CONTRACT ON BEHALF OF THEIR RESPECTIVE REPRESENTED PARTY.

OFFICE OF THE GOVERNOR

**TRADEMARK MEDIA CORPORATION DBA
MIGHTY CITIZEN**

Matt Husick
Chief of Staff or Designee

Carly Hohl
Carly Hohl, VP Client Services

Date: 1/7/19

Date: 1/4/2019

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ExpressionEngine Upgrade

ATTACHMENT A – STATEMENT OF WORK

1. INTRODUCTION

This Statement of Work (“SOW”) is for the purchase of services relating to the upgrade of the ExpressionEngine content management system. The Vendor shall be expected to complete the services listed below.

2. SCOPE OF SERVICES

Services set forth that contain the words “must,” “will,” or “shall” are mandatory and must be provided as specified with no alteration, modification, or exception. Services set forth that contain the words “may” or “can” allow Vendor to offer alternatives to the manner in which the services are provided. Services shall include, but are not limited to, the following:

A. Upgrade the ExpressionEngine content management system to version 5

Vendor shall upgrade the ExpressionEngine content management system from version 3 to version 5, which is the latest version.

B. Upgrade the Low Events add-on and existing modules

Vendor shall upgrade the Low Events add-on and all existing modules to function properly on the updated version of the ExpressionEngine. Vendor shall maintain all existing features of the OOG’s website.

C. Integrate and troubleshoot the client hosting environment

Vendor shall integrate and troubleshoot the client hosting environment to function properly with the updated version 5 of ExpressionEngine and development of the OOG’s Tourism Division microsite.

3. VENDOR STAFFING REQUIREMENTS

The Vendor shall dedicate qualified professional staff who have demonstrated experience in the ExpressionEngine content management system to provide the services required under the Contract. The Vendor must dedicate a U.S.-based project manager to oversee all activities and services performed and provided under the Contract, including responsibility for the management of the

entire contract, billing, and reporting. The project manager shall be the OOG's primary day-to-day contact.

4. VENDOR REPORTING REQUIREMENTS

Throughout the course of the project, the Vendor shall be responsible for maintaining regular communication with the OOG contract manager. The Vendor's account team, in coordination with the OOG's designated representative, shall compile and maintain an ongoing online project management system, containing project information such as name, anticipated date of completion, and date received, along with pertinent deadlines and contact information. The Vendor is required to provide the OOG's contract manager with weekly status reports each week throughout the duration of project. The status reports shall summarize all work performed and completed during the week for which the report is provided and shall summarize the work to be performed during the subsequent week. Status reports will refer to the online project management system for access to the complete details of completed and forthcoming work. The status report shall identify any problems encountered or still outstanding with a brief explanation of the cause and resolution of the problem or how the problem will be resolved.

5. SCHEDULE FOR PERFORMANCE OF SERVICES BY VENDOR

Time is of the essence in the rendering of services required by this Contract. The OOG may require Vendor to perform tasks or services according to a date sensitive schedule. The OOG and the Vendor shall determine projected timelines for the completion of project deliverables at the onset of individual projects. Every effort should be made to produce any required materials well-ahead of the determined deadlines. Proofs of designs and other deliverables shall be submitted to OOG in a timely manner so that adequate time for review and editing is implemented, approval given, and deadlines met. Every effort should be made by the OOG and the Vendor to respond in a timely manner to requests for information and to secure review and approval of work completed.

6. GENERAL WEB DESIGN REQUIREMENTS

A. Browser Compatibility

All development will use modern coding standards and the website shall be compatible with the latest version of each of the following browsers: Internet Explorer (PC), Microsoft Edge (PC), Firefox (PC & Mac), Google Chrome (PC & Mac), and Safari (Mac), as well as the default browser on the latest versions of the iOS, Android, and Windows mobile operating systems. Vendor is not required to ensure compatibility with additional browsers or operating systems.

B. Accessibility

All code created will adhere to WCAG AA and Section 508 guidelines. Vendor is not responsible for conducting accessibility testing or remediation of code developed for the OOG, third-party code, or existing content imported into the new site.

7. IMPLEMENTATION PLAN AND SCHEDULE

Notwithstanding the term of the Contract as stated therein, the implementation plan contemplates the completion and deployment of all website enhancements on or before February 14, 2019, unless an extension is granted by the OOG. If the implementation plan cannot be executed within the scheduled time frame, the Vendor is required to contact the OOG contract manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project. A request for a revised schedule must be reviewed and approved by the OOG before placed in effect.

The implementation plan shall be completed according to the following project schedule:

A. Module Review

Vendor will review and test all of the current modules for compatibility with the ExpressionEngine upgrade. Vendor shall make arrangements with the OOG to upgrade existing modules or replace with new modules as necessary to maintain current functionality.

B. ExpressionEngine Upgrade

Vendor will upgrade the ExpressionEngine content management system to version 5, which is the latest version, and will upgrade the necessary modules and replace the necessary modules with new modules to maintain compatibility with ExpressionEngine version 5.

C. Final Site Review

Vendor and OOG will complete a final site review in which all page content and site functionality shall be reviewed and tested. OOG will submit a consolidated list of revisions, and Vendor will complete all revisions that fall within this SOW.

D. Project Launch

After the website is upgraded and approved in the development environment, OOG will make all necessary preparations and move the website from the temporary development site to the permanent production site. Vendor will assist with this phase but does not have access to the production environment. At this point, the site will be live and viewable by the public.

E. Client Hosting Environment Integration & Troubleshooting

Vendor will work with the OOG development team to ensure integration of a new site is set up properly on the existing hosting environment.

8. COST SCHEDULE

Vendor's compensation for completion of all deliverables set forth herein is based on the following cost schedule:

<u>Deliverable</u>	<u>Cost</u>
Upgrade the ExpressionEngine content management system to version 5	\$7,200
Upgrade the Low Events add-on	\$49
Integrate and troubleshoot the client hosting environment	\$2,200
Total	\$9,449.00

