

**SUBJECT:                   APPROVAL OF PROFESSIONAL SERVICES AGREEMENT FOR  
2024 RESIDENT SURVEY**

**DATE:                      FEBRUARY 20, 2024**

**PRESENTED BY: SAMMA FOX, DEPUTY CITY MANAGER**

**SUMMARY:**

The City has been conducting resident surveys with POLCO (formerly National Research Center (NRC)) every four years since 2004. For the 2020 cycle, the City solicited proposals for consultant services to conduct the resident survey and selected POLCO. For the 2024 cycle staff recommends continuing with POLCO for continuity and valuable trend data used in providing comprehensive feedback on the City's delivery of services and programs. The survey also informs the Key Performance Indicators (KPIs), which measure the City's progress in achieving its goals and objectives.

**BACKGROUND:**

The City's most recent Resident Survey was conducted in 2020 by POLCO. Survey questions focused on quality of life in Louisville, sense of community and appearance, safety, transportation, affordable housing, recreational opportunities, and other policy issues. The 2024 survey is intended to provide updated data regarding community satisfaction with the City and mirrors the prior survey to better show trends. There will be two components to the survey, a scientific sampling and an open response sample. This will allow council and staff to consider a representative sample of the Louisville community while also providing a space for all who are interested to participate.

Staff has worked closely with the Community Development Department to time the survey as best as possible around Comprehensive Plan Engagement and anticipates opening the survey in April and bringing a presentation for council in advance of the anticipated July Budget Retreat.

**FISCAL IMPACT**

The proposed survey will cost \$34,000 and is budgeted for 2024.

**PROGRAM/SUB-PROGRAM IMPACT:**

The objectives for the Governance and Administration Sub-Program focus on a thorough understanding of the community's diverse interests and support for informed policy-making. The Resident Survey aims to solicit input from the community and determine how well the City's programs are meeting goals and addressing the needs of residents, furthering the objectives of the Governance and Administration Sub-Program.

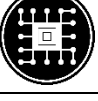
**SUBJECT: PROFESSIONAL SERVICES AGREEMENT FOR RESIDENT SURVEY****DATE: FEBRUARY 20, 2024****PAGE 2 OF 2****RECOMMENDATION:**

Staff recommends approval of the professional services agreement with POLCO for the 2024 Resident Survey and allow staff to make non-material changes if approved by the City Attorney.

**ATTACHMENT(S):**

1. Professional Services Agreement with POLCO

**STRATEGIC PLAN IMPACT:**

|                                     |                                                                                                                                       |                          |                                                                                                                           |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/>            |  <b>Financial Stewardship &amp; Asset Management</b> | <input type="checkbox"/> |  <b>Reliable Core Services</b>           |
| <input type="checkbox"/>            |  <b>Vibrant Economic Climate</b>                     | <input type="checkbox"/> |  <b>Quality Programs &amp; Amenities</b> |
| <input checked="" type="checkbox"/> |  <b>Engaged Community</b>                            | <input type="checkbox"/> |  <b>Healthy Workforce</b>                |
| <input type="checkbox"/>            |  <b>Supportive Technology</b>                       | <input type="checkbox"/> |  <b>Collaborative Regional Partner</b>  |

**AN AGREEMENT BY AND BETWEEN THE CITY OF LOUISVILLE  
AND POLICY CONFLUENCE, INC. (POLCO)  
FOR CONSULTING SERVICES**

**1.0 PARTIES**

This AGREEMENT FOR CONSULTING SERVICES (this “Agreement”) is made and entered into this \_\_\_\_ day of February 2024 (the “Effective Date”), by and between the **City of Louisville**, a Colorado home rule municipal corporation, hereinafter referred to as the “City”, and Policy Confluence, Inc. (Polco), a Delaware corporation hereinafter referred to as the “Consultant”.

**2.0 RECITALS AND PURPOSE**

- 2.1 The City desires to engage the Consultant for the purpose of providing resident surveys, including software service subscription services as further set forth in the Consultant’s Scope of Services (which services are hereinafter referred to as the “Services”).
- 2.2 The Consultant represents that it has the special expertise, qualifications and background necessary to complete the Services.

**3.0 SCOPE OF SERVICES**

The Consultant agrees to provide the City with the specific Services and to perform the specific tasks, duties and responsibilities set forth in Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference.

**4.0 COMPENSATION**

- 4.1 The City shall pay the Consultant for services under this agreement a total not to exceed the amounts set forth in Exhibit “A” attached hereto and incorporated herein by this reference. The City shall not pay mileage and other reimbursable expenses (such as meals, parking, travel expenses, necessary memberships, etc.), unless such expenses are (1) clearly set forth in the Scope of Services, and (2) necessary for performance of the Services (“Pre-Approved Expenses”). The foregoing amounts of compensation shall be inclusive of all costs of whatsoever nature associated with the Consultant’s efforts, including but not limited to salaries, benefits, overhead, administration, profits, expenses, and outside consultant fees. The Scope of Services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No City employee has the authority to bind the City with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.

- 4.2 The Consultant shall submit monthly an invoice to the City for Services rendered and a detailed expense report for Pre-Approved Expenses incurred during the previous month. The invoice shall document the Services provided during the preceding month, identifying by work category and subcategory the work and tasks performed and such other information as may be required by the City. The Consultant shall provide such additional backup documentation as may be required by the City. The City shall pay the invoice within thirty (30) days of receipt unless the Services or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

## **5.0 PROJECT REPRESENTATION**

- 5.1 The City designates Samma Fox, Deputy City Manager as the responsible City staff to provide direction to the Consultant during the conduct of the Services. The Consultant shall comply with the directions given by Samma Fox and such person's designees.
- 5.2 The Consultant designates \_\_\_\_\_ as its project manager and as the principal in charge who shall be providing the Services under this Agreement. Should any of the representatives be replaced, particularly \_\_\_\_\_, and such replacement require the City or the Consultant to undertake additional reevaluations, coordination, orientations, etc., the Consultant shall be fully responsible for all such additional costs and services.

## **6.0 TERM**

- 6.1 The term of this Agreement shall be from the Effective Date to December 31, 2027, unless sooner terminated pursuant to Section 13, below. The Consultant's Services under this Agreement shall commence on January 1, 2024 or as of the date of this signed agreement and Consultant shall proceed with diligence and promptness so that the Services are completed in a timely fashion consistent with the City's requirements.
- 6.2 Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the City under this Agreement are subject to annual budgeting and appropriation by the Louisville City Council, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate effective December 31 of the then-current fiscal year.

## **7.0 INSURANCE**

- 7.1 The Consultant agrees to procure and maintain, at its own cost, the policies of insurance set forth in Subsections 7.1.1 through 7.1.4. The Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. The coverages required below shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder. The required coverages are:
- 7.1.1 Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.
  - 7.1.2 General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall include the City of Louisville, its officers and its employees, as additional insureds, with primary coverage as respects the City of Louisville, its officers and its employees, and shall contain a severability of interests provision.
  - 7.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FOUR HUNDRED THOUSAND DOLLARS (\$400,000) per person in any one occurrence and ONE MILLION DOLLARS (\$1,000,000) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to each of Consultant's owned, hired or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Consultant has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Consultant providing services to the City of Louisville under this Agreement.
  - 7.1.4 Professional Liability coverage with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate.
- 7.2 The Consultant's general liability insurance, automobile liability and physical damage insurance, and professional liability insurance shall be endorsed to include the City, and its elected and appointed officers and employees, as additional insureds, unless the City in its sole discretion waives such requirement. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Consultant. Such policies shall contain a

severability of interests provision. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

- 7.3 Certificates of insurance shall be provided by the Consultant as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. No required coverage shall be cancelled, terminated or materially changed until at least 30 days' prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 7.4 Failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.
- 7.5 The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

## **8.0 INDEMNIFICATION**

To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the City, and its elected and appointed officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if and to the extent such injury, loss, or damage is caused by the negligent act, omission, or other fault of the Consultant or any subcontractor of the Consultant, or any officer, employee, or agent of the Consultant or any subcontractor, or any other person for whom Consultant is responsible. The Consultant shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. The Consultant shall further bear all other costs and expenses incurred by the City or Consultant and related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and attorneys' fees if the court determines that these incurred costs and expenses are related to such negligent acts, errors, and omissions or other fault of the Consultant. [The City shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section 8.0. The Consultant's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

## 9.0 QUALITY OF WORK

Consultant's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of services of a similar nature in the Denver metropolitan area.

## 10.0 INDEPENDENT CONTRACTOR

It is the expressed intent of the parties that the Consultant is an independent contractor and not the agent, employee or servant of the City, and that:

- 10.1. Consultant shall satisfy all tax and other governmentally imposed responsibilities including but not limited to, payment of state, federal, and social security taxes, unemployment taxes, worker's compensation and self-employment taxes. No state, federal or local taxes of any kind shall be withheld or paid by the City.
- 10.2. **Consultant is not entitled to worker's compensation benefits except as may be provided by the Consultant nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the Consultant or some entity other than the City.**
- 10.3. Consultant does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City.
- 10.4. Consultant has and retains control of and supervision over the performance of Consultant's obligations hereunder and control over any persons employed by Consultant for performing the Services hereunder.
- 10.5. The City will not provide training or instruction to Consultant or any of its employees regarding the performance of the Services hereunder.
- 10.6. Neither the Consultant nor any of its officers or employees will receive benefits of any type from the City.
- 10.7. Consultant represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.
- 10.8. All Services are to be performed solely at the risk of Consultant and Consultant shall take all precautions necessary for the proper and sole performance thereof.
- 10.9. Consultant will not combine its business operations in any way with the City's business operations and each party shall maintain their operations as separate

and distinct.

## **11.0 ASSIGNMENT**

Except as provided in section 22.0 hereof, Consultant shall not assign or delegate this Agreement or any portion thereof, or any monies due or to become due hereunder without the City's prior written consent.

## **12.0 DEFAULT**

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

## **13.0 TERMINATION**

13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

13.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least fifteen (15) days in advance of the termination date. In the event of such termination, the Consultant will be paid for the reasonable value of the services rendered to the date of termination, not to exceed a pro-rated daily rate, for the services rendered to the date of termination, and upon such payment, all obligations of the City to the Consultant under this Agreement will cease. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

## **14.0 INSPECTION AND AUDIT**

The City and its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

## **15.0 DOCUMENTS**

All computer input and output, analyses, plans, documents photographic images, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed for the City in performance of the Services are and shall remain the sole and exclusive property of the City. All such materials shall

be promptly provided to the City upon request therefor and at the time of termination of this Agreement, without further charge or expense to the City. Consultant shall not provide copies of any such material to any other party without the prior written consent of the City.

## **16.0 ENFORCEMENT**

- 16.1 In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.
- 16.2 This Agreement shall be deemed entered into in Boulder County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the District Court of Boulder County of the State of Colorado, and in no other court. Consultant hereby waives its right to challenge the personal jurisdiction of the District Court of Boulder County of the State of Colorado over it.

## **17.0 COMPLIANCE WITH LAWS**

- 17.1 Consultant shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.
- 17.2 Consultant acknowledges that the City of Louisville Code of Ethics provides that independent contractors who perform official actions on behalf of the City which involve the use of discretionary authority shall not receive any gifts seeking to influence their official actions on behalf of the City, and that City officers and employees similarly shall not receive such gifts. Consultant agrees to abide by the gift restrictions of the City's Code of Ethics.

## **18.0 INTEGRATION AND AMENDMENT**

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

## **19.0 NOTICES**

All notices required or permitted under this Agreement shall be in writing and shall be given by hand delivery, by United States first class mail, postage prepaid, registered or certified, return receipt requested, by national overnight carrier, or by facsimile transmission, addressed to the party for whom it is intended at the following address:

If to the City:

City of Louisville  
Attn: City Manager  
749 Main Street  
Louisville, Colorado 80027  
Telephone: (303) 335-4533  
Fax: (303) 335-4550

If to the Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any such notice or other communication shall be effective when received as indicated on the delivery receipt, if by hand delivery or overnight carrier; on the United States mail return receipt, if by United States mail; or on facsimile transmission receipt. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

## **20.0 EQUAL OPPORTUNITY EMPLOYER**

- 20.1 Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.
- 20.2 Consultant shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

## **21.0 NO THIRD PARTY BENEFICIARIES**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be

strictly reserved to City and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than City or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

## **22.0 SUBCONTRACTORS**

Consultant may utilize subcontractors identified in its qualifications submittal to assist with non-specialized works as necessary to complete projects. Consultant will submit any proposed subcontractor and the description of its services to the City for approval. The City will not work directly with subcontractors.

## **23.0 AUTHORITY TO BIND**

Each of the persons signing below on behalf of any party hereby represents and warrants that such person is signing with full and complete authority to bind the party on whose behalf of whom such person is signing, to each and every term of this Agreement.

In witness whereof, the parties have executed this Agreement to be effective on the date first above written.

CITY OF LOUISVILLE,  
a Colorado Municipal Corporation

By: \_\_\_\_\_  
Christopher M. Leh, Mayor

Attest: \_\_\_\_\_  
Meredyth Muth, City Clerk

CONSULTANT:

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## Exhibit A – Scope of Services & Fees

### Policy Confluence, Inc. Subscription Services

**Training and Support** - Your subscription includes access to Polco Modules and Support as described below, which includes training materials, as well as access to technical support services for your Authorized Users. You understand that technical support services are for technical product support, and such services are not to be used as a substitute for proper training and education.

**Privacy Policy** - You acknowledge that you have read and understand Polco's Privacy Policy (the "Privacy Policy" found at <https://info.polco.us/privacy>).

**Fees** - The Fees for your Initial Term are outlined below. All Fees are for annual terms (from the commencement of this Agreement) unless otherwise noted.

| Fee Type                      | Description of Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Fee              |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Software Service Subscription | <p>Polco Engage (All) + Custom Survey Development and Programming (5 Page Survey) <i>Louisville Community Survey</i></p> <p>All Polco Engage Features are available to you during your subscription term to engage with your target audiences. The Engage + Custom Assess Module includes 1 custom survey per contract term. Your online report will include demographic and geographic comparisons (if response is sufficient by subgroup). Our customer success team will guide your benchmark survey process to ensure smooth implementation.</p> <p>A representative sample of residents (or other appropriate stakeholders) will be invited to complete the survey to ensure statistically significant response and results. We will use statistically appropriate methodologies to garner community-wide representativeness with approximately a 6% margin of error (4-6% is typical and meets best practices for performance measurement, about 250-450 responses) per local jurisdiction. The invitations will contain an introduction outlining the importance of the survey and instructions for completing it. To supplement this effort, the client will be asked to participate in outreach efforts with guidance on best practices from Polco. Responses will be statistically weighted to ensure the best representation of your community (or stakeholder group, if applicable). There will also be an Open Participation Survey available online.</p> | \$18,000/4-Years |
| Subscription                  | Custom Survey Analysis and Reporting                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | \$13,000/4-Years |

|              |                                                                                                                                                                                                                                                                                                                                            |                                    |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
|              |                                                                                                                                                                                                                                                                                                                                            |                                    |
| Subscription | Remote or Local Presentation of Results<br><br>A senior Polco staff member will make one presentation of survey results to staff, Council, Boards, or other appropriate groups. For this presentation, we use Microsoft® PowerPoint or Google Slides as a visual aid and a copy of the slideshow is left with your staff for internal use. | \$3,000/4-Years                    |
|              |                                                                                                                                                                                                                                                                                                                                            | <b>4 Year Total :<br/>\$34,000</b> |

## EXHIBIT B – Project Timeline

**Initial Term Starting:** January 1, 2024

**Initial Term Ending:** December 31, 2027

The following is a draft timeline for the survey. This can be modified if agreed upon by the Louisville and POLCO project managers.

| Activity                                                            | Date                                 |
|---------------------------------------------------------------------|--------------------------------------|
| Contract execution and project initiation                           | February 29, 2024                    |
| Develop survey instrument and mailing materials (iterative process) | through March 22                     |
| Finalize survey instrument                                          | March 22                             |
| Surveys Open                                                        | First Week of April<br>(open ~6 wks) |
| Data collection, analysis, and report writing                       | through June 7                       |
| Report finalized                                                    | By end of June                       |
| Presentation to Council                                             | July                                 |

**ADDENDUM TO  
AN AGREEMENT BY AND BETWEEN THE CITY OF LOUISVILLE  
AND POLICY CONFLUENCE, INC. (POLCO)  
FOR CONSULTING SERVICES**

This Addendum is attached to and made part of the **AN AGREEMENT BY AND BETWEEN THE CITY OF LOUISVILLE AND POLICY CONFLUENCE, INC. (POLCO) FOR CONSULTING SERVICES** dated February \_\_\_\_, 2024 ("Agreement") between Policy Confluence, Inc. (Polco), a Delaware corporation ("Vendor") and the **City of Louisville, Colorado** ("City").

**WHEREAS**, Vendor and City by this Addendum desire to amend the Agreement as set forth herein;

**NOW THEREFORE**, Vendor and City hereby agree to the following additions to the Agreement, and hereby agree **the provisions of this Addendum shall control in the event of any conflict:**

**1. Service Level.**

A. The products/services provided to City by Vendor shall be available 99.9% of the time, excluding unavailability due to City's inability to maintain internet access or due to any failure in internet access caused by a third-party internet provider, and excluding scheduled downtime, which downtime shall not exceed four (4) hours in duration in any one month period, of which City is notified at least 12 hours in advance and which shall occur outside of normal business hours ("Availability Requirement"). In the event the products/services do not meet the Availability Requirement (a "Service Level Failure") in any calendar month, Vendor shall provide City with a credit on the next monthly invoice equal to the pro-rated charges for one (1) full day of the affected services (i.e., 1/30 of the monthly fee, assuming a 30-day month) for each day during which there was a Service Level Failure in such calendar month (a "Service Credit").

B. Vendor shall back up data provided by City and City customers ("City Data") at an off-site location at least as frequently as follows: for the first seven (7) days after such data has been provided, every fifteen (15) minutes; for the second seven (7) days after such data has been provided, every four (4) hours; and, after fourteen (14) days since such data has been provided, daily. Vendor shall ensure City Data can be restored from such backups in the event of server failure or other failure resulting in data loss. Vendor shall ensure City Data is retained in such backups for the entire term of the Agreement.

**2. Ownership and Confidentiality.**

A. All City Data is and shall remain the sole and exclusive property of City and all right, title, interest in the same is reserved to City. All City Data shall be

capable of export to Microsoft Excel, Word, CSV or fixed-length file formats (each a "Reproducible Format").

B. All City Data is and shall remain the confidential information of City. In fulfilling its obligations under the Agreement, Vendor shall exercise the same degree of care and protection with respect to City Data that it exercises with respect to its own confidential information, but in no event shall Vendor exercise less than a reasonable standard of care. Vendor shall only use, access and disclose City Data as necessary to fulfill its obligations under the Agreement. Except as provided in subsection (C), Vendor shall not directly or indirectly disclose, sell, copy, distribute, republish, market, demonstrate or allow any third party to have access to any City Data.

C. If, in fulfilling its obligations under this Agreement, Vendor should disclose any City Data to any third party or subcontractor, Vendor shall cause such third party or subcontractor, through written agreement, to exercise the same degree of care and protection with respect to City Data as is required of Vendor under this Agreement. Vendor agrees that it is fully responsible to City for the acts and omissions of its subcontractors and of persons directly or indirectly employed by Vendor. Nothing contained herein shall create any contractual relations between City and any subcontractor of Vendor. Vendor shall remain responsible to City for all activities of its subcontractors to the same extent as if such activities had been undertaken by Vendor itself.

D. All domains and domain names used and/or created in connection with the products/services provided under the Agreement to City shall become, and all logos and information provided by City for use in such domains are and shall remain, the sole property of City.

### **3. Personal Identifying Information and Breach.**

A. City Data will include City customer "Personal Identifying Information" (hereinafter referred to as "Personal Information"), as such term is defined in Title 24, Article 73, Part 1 of the Colorado Revised Statutes ("C.R.S."). Vendor shall not directly or indirectly disclose, sell, copy, distribute, republish, market, demonstrate or allow any third party to have access to any Personal Information. In maintaining, storing, and processing of Personal Information, Vendor shall comply with the obligations of a "Third-Party Service Provider" as such term is defined in Section 24-73-102, C.R.S. Such obligations include but are not limited to implementation and maintenance of reasonable security procedures and practices that are: (a) appropriate to the nature of the Personal Information disclosed to Vendor; and (b) reasonably designed to help protect Personal Information from unauthorized access, use, modification, disclosure, or destruction.

B. If Vendor becomes aware that a security breach of Personal Information may have occurred, Vendor shall notify the City within 3 days. Such notice shall at minimum contain (a) the date, estimated date, or estimated date range of the

security breach; and (b) a description of the Personal Information that was acquired or reasonably believed to have been acquired as part of the security breach. The City may request, and upon such request Vendor shall provide, additional information relevant to the security breach; provided that, Vendor shall not be required to disclose confidential business information or trade secrets.

C. Vendor shall, at its sole expense, indemnify, defend and hold harmless City, its elected and appointed officers and its employees (the "Indemnified Parties"), from and against all liability, claims, demands, costs, expenses, claims, damages, court awards, and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties, on account of any injury, loss, or damage, arising out of any third party claim, action or proceeding brought against any of the Indemnified Parties, for any security breach or unauthorized disclosure of Personal Information.

#### **4. Open Records Act Compliance.**

A. City Data will include the names, addresses, and telephone numbers, and personal financial information of past or present users of public utilities, public facilities, or recreational or cultural services that are owned and operated by the City ("User Data"). The parties acknowledge that the Colorado Open Records Act, Section 24-72-201, et seq., C.R.S. ("CORA"), prohibits disclosure of User Data, except to the person in interest. As an independent contractor of City, Vendor shall comply with CORA, as it relates to User Data, as if Vendor were an "official custodian of any public records."

B. Vendor shall not directly or indirectly disclose, sell, copy, distribute, republish, market, demonstrate or allow any third party to have access to any User Data; provided that, Vendor may allow a customer to access such customer's own User Data; and provided, further, that, nothing in this subsection shall be construed to prohibit disclosure of information in an aggregate or statistical form so classified as to prevent the identification, location, or habits of individual customers.

C. If Vendor becomes aware that a security breach of User Data may have occurred, Vendor shall notify City within three (3) days. Such notice shall at minimum contain (a) the date, estimated date, or estimated date range of the security breach; and (b) a description of the User Data that was acquired or reasonably believed to have been acquired as part of the security breach. City may request, and upon such request Vendor shall provide, additional information relevant to the security breach; provided that, Vendor shall not be required to disclose confidential business information or trade secrets.

D. Vendor shall, at its sole expense, indemnify, defend and hold harmless the Indemnified Parties, from and against all liability, claims, demands, costs, expenses, claims, damages, court awards, and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties, on account of any injury,

loss, or damage, arising out of any third party claim, action or proceeding brought against any of the Indemnified Parties for any security breach or unauthorized disclosure of User Data.

## **5. Accessibility.**

A. Vendor represents and warrants that of Vendor's hardware, software, products, content, and services furnished or licensed to the City under the Agreement fully complies with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

B. If Vendor violates this Section 5, the City may either: (1) require Vendor's full compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.; or (2) immediately terminate the Agreement for breach.

C. Vendor shall, at its sole expense, indemnify, defend, and hold harmless the Indemnified Parties, from and against any and all liability, claims, demands, costs, expenses, claims, damages, court awards, and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties, pursuant to § 24-34-802 or otherwise, in relation to Vendor's failure, or the failure of any of Vendor's hardware, software, products, and services, to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

**6. Location of Servers.** The parties agree all Vendor products/services shall be hosted, primarily, on servers located in \_\_\_\_\_ ("Primary Servers"). In the event of a failure in Primary Servers, such products/services shall be rolled over to servers located in \_\_\_\_\_ ("Backup Servers"). Vendor shall provide City with notice within one (1) hour of the rollover of the products/services to the Backup Servers.

**7. Termination.** In addition to City's right to terminate in accordance with Section 5(B), City may terminate the Agreement upon giving 30 days written notice to Vendor. Vendor may terminate this Agreement only if City fails to make a monthly payment in accordance with the Agreement, and fails to cure such failure within 5 days of receiving written notice from Vendor. Within 30 days of termination of the Agreement, Vendor shall provide to City the City Data in the Reproducible Format requested by City. If City does not request a particular Reproducible Format, Vendor shall provide City Data in CSV format. Vendor shall destroy all City Data after, but only after, it provides to the City the City Data in accordance with the requirements of this Section.

**8. Survival.** Each of Vendor's obligations under this Addendum to defend,

indemnify, and hold the City harmless, shall survive termination of the Agreement.

**9. Independent Contractor.** It is the expressed intent of the parties that Vendor is an independent contractor and not the agent, employee or servant of City, and that: **VENDOR SHALL SATISFY ALL TAX OBLIGATIONS ON PAYMENTS MADE TO IT HEREUNDER INCLUDING BUT NOT LIMITED TO, PAYMENT OF STATE AND FEDERAL INCOME AND OTHER TAXES. NO FEDERAL, STATE OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY CITY. VENDOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS EXCEPT AS MAY BE PROVIDED BY THE INDEPENDENT CONTRACTOR NOR TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE INDEPENDENT CONTRACTOR OR SOME ENTITY OTHER THAN CITY.**

**10. Non-Appropriation.** Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of City under this Agreement are subject to annual budgeting and appropriation by the Louisville City Council, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, City shall immediately notify Vendor of such occurrence, and this Agreement shall terminate effective December 31 of the then-current fiscal year.

**11. Insurance; Non-waiver of Governmental Immunity.** Vendor shall carry insurance of the type and in amounts sufficient to cover its indemnification obligations under this Agreement. The parties understand and agree that City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to City, its officers, or its employees.

**THIS ADDENDUM ACCEPTED AND AGREED TO BY:**

**Policy Confluence, Inc. (Polco)**

**City of Louisville, Colorado**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Christopher M. Leh

Title: \_\_\_\_\_

Title: Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_