

**RESOLUTION 20-132**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH POLICY CONFLUENCE, INC., FOR COMMUNITY SURVEY SERVICES IN THE AMOUNT OF \$21,635; AND APPROVING A BUDGET AMENDMENT TO FULLY FUND THE PURCHASE.**

**BE IT RESOLVED** by the City Council of the City of Panama City Beach, that:

1. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement between the City and National Research Center, Inc., relating to Community Survey Services, in the amount of Twenty-One Thousand, Six Hundred Thirty-Five Dollars (\$21,635), as presented to the Council today.

2. The following budget amendment (#37) is adopted for the fiscal year beginning October 1, 2019 and ending September 30, 2020, to fully fund the purchase, in substantially the form attached as Exhibit A.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 25<sup>th</sup> day of June, 2020.

**CITY OF PANAMA CITY BEACH**

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

Mark Sheldon, Mayor

**ATTEST:**

Jo Smith  
Jo Smith, Interim City Clerk



Policy Confluence, Inc.

(dba Polco & National Research Center, Inc.)

## ENTERPRISE SERVICES AGREEMENT

THIS ENTERPRISE SERVICES AGREEMENT (this "**Agreement**") is effective as of \_\_\_\_\_, 20\_\_ between Policy Confluence, Inc., a Delaware corporation ("**Polco**" or "**Company**"), and the City of Panama City Beach, a Florida municipality ("**Customer**"). This Agreement includes and incorporates the Company's Website Terms of Use (the "**Terms of Use**" found at <https://info.polco.us/eula>) and Survey Product Terms of Use (the "**Terms of Use**" found at <https://www.n-r-c.com/terms-of-use/>) and the Company's privacy policy (the "**Privacy Policy**" found at <https://info.polco.us/privacy> and), which contain, among other things, warranty disclaimers, liability limitations, and use limitations.

WHEREAS, Customer desires to engage Polco to conduct The National Community Survey in the City of Panama City Beach;

WHEREAS, Customer wishes to procure from Polco the services described herein, and Polco wishes to provide such services to Customer, each on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. Definitions.

"**Authorized User**" means each of the individuals authorized to use the Services (defined below in Section 2.1) or Polco Materials pursuant to the terms and conditions of this Agreement, or any additional individuals or Persons authorized to use the Services or Polco Materials as approved solely by Polco, as set forth in **Schedule A**.

"**Customer Data**" means, information, data and other content, other than Resultant Data in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services or that incorporates or is derived from the Processing of such information, data or content by or through the Services.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

"**Polco Materials**" means any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Polco in connection with the Services or otherwise comprise or relate to the Services. For the avoidance of doubt, Polco Materials include Resultant Data and any information, data or other content derived from Polco's monitoring of Customer's access to or use of the Services, but do not include Customer Data.

"**Process**" means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content. "**Processing**" and "**Processed**" have correlative meanings.

**"Representatives"** means, with respect to a party, that party's and its affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers, and legal advisors.

**"Resultant Data"** means information, data and other content that is derived by or through the Services from Processing Customer Data, including, without limitation, statistics and Services analytics, and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.

## **2. Services.**

**2.1. Services.** The Company offers a variety of and products and services accessible through the Company's website <https://polco.us> (the **"Website"**) free of charge including promoting civic engagement by providing tutorials, example questions, sample result dashboards, and a library of best civic engagement practices and other such functionality as may be provided from time to time (collectively, the **"Free Content and Services"**). During the Term (defined below in **Section 7.1**) and subject to the and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, Polco shall use commercially reasonable efforts to provide to Customer and its Authorized Users (a) the Free Content and Services, and (b) any custom survey services as described in the attached **Schedule A** and this Agreement (the **"Custom Services,"** together with Free Content and Services, the **"Services"**). Polco will use commercially reasonable efforts to make the Services available to the Customer twenty-four (24) hours per day, seven (7) days per week every day of the year, except for: (i) Service downtime or degradation due to a Force Majeure Event (defined below in **Section 12**); (ii) any other circumstances beyond Polco's reasonable control, including Customer's or any Authorized User's use of third party materials or use of the Services other than in compliance with the express terms of this Agreement or the Terms of Use; and (iii) any suspension or termination of Customer's or any Authorized Users' access to or use of the Services as permitted by this Agreement or the Terms of Use.

**2.2. Service and System Control.** Except as otherwise expressly provided in this Agreement, as between the parties: (a) Company has and will retain sole control over the operation, provision, maintenance, and management of the Services; and (b) Customer has the responsibility for making all arrangements necessary for Customer to have access to the Website and ensuring that all persons who access the Website through Customer's internet connection are aware of this Agreement, the Terms of Use, and the Privacy Policy, and comply therewith.

**2.3. Changes.** Polco reserves the right, in its sole discretion, to make any changes to the Services or Polco Materials that it deems necessary or useful to: (a) maintain or enhance the quality or delivery of Polco's services to its customers, or (b) to comply with applicable law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services or Polco Materials. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.

**2.4. Suspension or Termination of Services.** Polco may suspend, terminate or otherwise deny Customer's or any Authorized User's access to or use of all or any part of the Services or Polco Materials if: (a) Polco believes, in its sole discretion, that Customer or any Authorized User has failed to comply with, any term of this Agreement, or accessed or used the Services or Polco Materials beyond the scope of the rights granted or for a purpose not authorized under this Agreement; or (b) this Agreement expires or is terminated. This **Section 2.4** does not limit any of Polco's other rights or remedies, whether at law, in equity or under this Agreement.

**2.5. Applicability of Additional Agreements.** As a user of Company's Website, Customer is subject to the Terms of Use and the Privacy Policy as are in effect from time to time. In the event of any conflict between this Agreement, the Terms of Use and Privacy Policy, this Agreement shall first govern, followed by the Terms of Use and the Privacy Policy.

## **3. Authorization and Customer Restrictions.**

3.1. Authorization. Subject to and conditioned on Customer's payment of the fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Polco hereby authorizes Customer to access and use, solely during the Term, the Services and Polco Materials as Polco may supply or make available to Customer. This authorization is non-exclusive and, other than as may be expressly set forth in **Section 13.6**, non-transferable. Notwithstanding the foregoing, Polco hereby grants to Customer a perpetual, royalty-free, non-transferable license to use any tangible Polco Materials provided to Customer by or through the Services during the Term, which license shall survive the termination of this Agreement.

3.2. Limitations and Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services or Polco Materials except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Services or Polco Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Polco Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or access or use the Services other than by an Authorized User through the use of his or her own then valid access credentials;
- (e) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services or Polco's provision of services to any third party, in whole or in part;
- (f) access or use the Services or Polco Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Polco customer), or that violates any applicable law;
- (g) access or use the Services or Polco Materials for purposes of competitive analysis of the Services, the development, provision or use of a competing software service or product or any other purpose that is to Polco's detriment or commercial disadvantage; or
- (h) otherwise access or use the Services or Polco Materials beyond the scope of the authorization granted under **Section 3.1**.

3.3. Customer Responsibilities. Except as otherwise determined by Polco, Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "**Equipment**"). In the event Polco obtains or provides any such Equipment, Polco shall only be responsible for maintaining such Equipment. Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

#### 4. Fees; Payment Terms.

4.1. Fees. Customer shall pay Polco the fees ("**Fees**") for the Services on or prior to the date due set forth on **Schedule A**, which shall be payable to Polco in US dollars in the amounts and pursuant to the



payment schedules set forth on **Schedule A**. To the extent Fees are not set forth on **Schedule A**, Polco may, in its sole discretion, modify and increase Fees upon providing written notice to Customer at least sixty (60) calendar days prior to the commencement of any Renewal Term, and the applicable **Schedule A** will be deemed amended accordingly.

4.2. Taxes. All fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Polco's income.

4.3. Late Payment. If Customer fails to make any payment when due, then a 1.5% charge per month (or the applicable amount allowed by law, whichever is less) shall be assessed on any amount past due. Furthermore, should Customer fail to settle amounts past due within thirty (30) days of Customer's invoice receipt, Polco may, without notice, (i) suspend performance of the Services until all past due amounts and interest thereon have been paid, or (ii) terminate this Agreement. Customer shall reimburse Polco for all costs in collecting any late payments or interest, including actual attorneys' fees, court costs and collection agency fees.

4.4. No Deductions or Setoffs. All amounts payable to Polco under this Agreement shall be paid by Customer to Polco in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

## 5. Intellectual Property Rights.

5.1. Ownership of Services and Polco Materials. All right, title and interest in and to the Services, Polco Materials and the Resultant Data, including all Intellectual Property Rights therein, are and will remain with Polco. Customer has no right, license or authorization with respect to any of the Services or Polco Materials except as expressly set forth in **Section 3.1**. All other rights in and to the Services and Polco Materials are expressly reserved by Polco and the respective third-party licensors. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Polco an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

## 6. Confidentiality.

6.1. Confidential Information. In connection with this Agreement, each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including, but not limited to, information relating to the Disclosing Party's technology, software, code, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, in each case whether or not marked, designated or otherwise identified as "Confidential". Without limiting the foregoing, all Polco Materials are the Confidential Information of Polco and the financial terms of this Agreement are the Confidential Information of Polco. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

6.2. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for three (3) years after the Term: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) not disclose or permit access to Confidential

Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of performing obligations under and in accordance with this Agreement; (ii) are informed of the confidential nature of the Confidential Information and bound by written confidentiality and restricted use obligations at least as protective as the terms set forth in this **Section 6.2**; (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care; and (d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 6**.

6.3. Residual Works. In addition to other rights and provisions in this Agreement, Polco shall be free to use for any purpose the Resultant Data resulting from access to or work with the Confidential Information or any information or ideas provided by Customer with respect to the Services.

6.4. Feedback. The Customer may from time to time provide suggestions, comments or other feedback ("Feedback") to Polco with respect to the Services. Both parties agree that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by Customer, shall not, absent a separate written agreement, create any confidentiality obligation for Polco. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, Polco will own the Feedback and shall be free to use, disclose, protect (e.g., patent, copyright, trademark, trade secret, etc.), reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

6.5. Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 6**; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 6.5**, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

## 7. Term and Termination.

7.1. Term. The initial term of this Agreement shall be for a period of twelve (12) months from the Effective Date ("Initial Term"). The Initial Term shall automatically renew for additional successive twelve (12) month periods (each, a "Renewal Term", and together with the Initial Term, the "Term"), unless earlier terminated pursuant to this Agreement or either party gives the other party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current Term.

7.2. Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Polco may terminate this Agreement, effective immediately upon written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after the date such amounts are due; or (ii) breaches any of its obligations under **Section 3.2** (Limitations and Restrictions) or **Section 6** (Confidentiality);

(b) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (a) is incapable of cure; or (b) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; or

(c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its

debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.3. Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

- (a) all rights, licenses, consents and authorizations (including, without limitation, access to the Services) granted by either party to the other hereunder will immediately terminate;
- (b) Customer shall immediately cease all use of any Services and Polco Materials and (i) promptly return to Polco, or at Polco's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Polco's Confidential Information; and (ii) permanently erase Polco's Confidential Information from all systems Customer directly or indirectly controls; except to the extent and for so long as required by applicable law and all such information and materials will remain subject to all confidentiality requirements of this Agreement;
- (c) Polco may disable all Customer and Authorized User access to the Services; and
- (d) if Polco terminates this Agreement pursuant to **Section 7.2**, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable.

7.4. Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 3.2, Section 5, Section 6, Section 7.3, this Section 7.4, Section 8, Section 9, Section 10, Section 11, and Section 13.**

## 8. Representations and Warranties.

8.1. Representations and Warranties. Customer represents and warrants to Polco that it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; and Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Polco and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law. Additionally, Customer represents and warrants that Customer will use (and will cause any Authorized Users to use) the Services and Polco Materials only in compliance this Agreement, and all applicable laws and regulations.

8.2. DISCLAIMER OF WARRANTIES. ALL SERVICES ARE PROVIDED "AS IS" AND POLCO HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND POLCO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, POLCO MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ANY THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR

CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

## 9. Indemnification.

9.1. Indemnification. Customer shall indemnify, hold harmless and defend Polco and its affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all losses, liability, claims, damages, actions, penalties, costs, or expenses of whatever kind, including actual attorneys' fees and the costs of enforcing any right to indemnification under this Agreement, arising out of or relating to (a) any actual or alleged infringement of a third party's Intellectual Property Rights from use of Customer Data; (b) any act or omission by Customer or any Authorized Users in connection with use of the Services; (c) Customer's or any Authorized User's use of the Services or Polco Materials other than as expressly allowed by this Agreement; (d) Customer's or any Authorized User's breach of this Agreement; or (e) any actual or alleged infringement of a third party's Intellectual Property Rights resulting from Customer's or any Authorized User's modifications and/or combinations of the Services or Polco Materials. Customer shall inform Polco as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall not settle any claim or action unless Polco consents to such settlement in writing.

## 10. Mitigation.

10.1. Mitigation. If any of the Services or Polco Materials are, or in Polco's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Services or Polco Materials is enjoined or threatened to be enjoined, Polco may, at its option and sole cost and expense: (a) obtain the right for Customer to continue to use the Services and Polco Materials materially as contemplated by this Agreement; (b) modify or replace the Services and Polco Materials, in whole or in part, to make the Services and Polco Materials non-infringing, or (c) by written notice to Customer, terminate this Agreement with respect to all or part of the Services and Polco Materials, and require Customer to immediately cease any use of the Services and Polco Materials or any specified part or feature thereof. **THIS SECTION 10.1 SETS FORTH CUSTOMER'S SOLE REMEDIES AND POLCO'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND POLCO MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.**

## 11. Limitations of Liability.

11.1. EXCLUSION OF DAMAGES. IN NO EVENT WILL POLCO OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.2. CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF POLCO AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AGGREGATE AMOUNT PAID BY THE CUSTOMER TO POLCO WITHIN THE IMMEDIATELY PRECEDING 12 MONTHS. THE FOREGOING



LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**12. Force Majeure.** In no event will Polco be liable or responsible to Customer, or be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond Polco's reasonable control (a "**Force Majeure Event**"), including, but not limited to, failures or interruptions of communications facilities or equipment of third parties, labor strikes or slowdowns, shortages of resources or materials, acts of God, natural disasters, fire, world events, delay or disruption of shipment or delivery, trespass or interference of third parties, or similar events or circumstances outside Polco's reasonable control, whether or not otherwise enumerated. Either party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of thirty (30) days or more.

**13. General Provisions.**

13.1. **Further Assurances.** Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

13.2. **No Agency.** Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

13.3. **Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing by electronic mail or other electronic means to the address of the party specified by the parties from time to time.

13.4. **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

13.5. **Entire Agreement.** This Agreement, including all Schedules attached hereto, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

13.6. **Assignment.** Customer shall not assign or otherwise transfer any of its rights or obligations under this Agreement without Polco's prior written consent, which consent Polco may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Customer will be deemed to be a transfer of rights or obligations under this Agreement for which Polco's prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this **Section 13.6** is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

13.7. **Notices.** Any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this **Section 13.2**):

If to Polco: Policy Confluence, Inc.  
8001 Terrace Avenue, #201  
Middleton, WI 53562  
E-mail: alex@polco.us  
Attention: Alex Pedersen, Chief Financial Officer

If to Customer: City of Panama City Beach  
17007 Panama City Beach Pkwy  
Panama City Beach, Florida 32413

E-mail: torourke@pcb.gov.com  
Attention: Tony O'Rourke, City Manager

13.8. Notices sent in accordance with this **Section 13.7** will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by email, (with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the fifth day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

13.9. Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving.

13.10. Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.11. Governing Law; Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Wisconsin. The parties submit all of their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the state and/or federal courts located in Dane County, the State of Wisconsin.

13.12. Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

13.13. Equitable Relief. Customer acknowledges and agrees that a breach or threatened breach by Customer of any of its obligations under **Section 3.2** or **Section 6** would cause Polco irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, Polco will be entitled to equitable relief, without any requirement to post a bond. Such remedies are in addition to all other remedies that may be available at law, in equity or otherwise.

13.14. Counterparts. This Agreement may be executed in counterparts, including by facsimile or pdf, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

#### 14. Insurance Requirements

- 14.1 Comprehensive General Liability. The Consultant shall procure and keep in force during the duration of this contract a policy of Comprehensive General Liability insurance insuring the Consultant against any liability for personal injury, bodily injury, or death arising out of the performance of services hereunder and against liability for property damage with a combined single limit of at least \$1,000,000 each occurrence and \$2,000,000 aggregate

Policies described above shall be for the mutual and joint benefit and protection of the Consultant and the Client.

- 14.1.1 Other Insurance. The Consultant shall procure and keep in force during the term of

the Agreement Worker's Compensation and such other insurance as may be required by any law, ordinance or governmental regulation.

- 14.1.2 Prior to commencement of work, the Consultant shall furnish to the Client certificates of insurance policies evidencing the required coverages if the Client so desires.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereto have executed this Enterprise Services Agreement as of the date first above written.

**POLICY CONFLUENCE, INC.**

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

**CUSTOMER:**

\_\_\_\_\_

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



**SCHEDULE A**

**SERVICES AND FEES**

**Features and Services**

Feature or Service	Cost	Frequency	Notes
The National Community Survey* - Sample size: 1,700	\$21,635	Bi-annually (June of even years)	Includes: -NCS Basic Service (\$16,000) -Geographic subgroup comparisons (\$945) -Custom benchmark comparisons (\$1,120) -6 <sup>th</sup> page of questions (\$2,380) -PowerPoint presentation of results (slides only)(\$1,190)
Polco core features - 3 Demographic breakdowns - Map analytics	included	Ongoing	
<b>Full value for 36 month period</b>	<b>\$43,270</b>		

\*Reflects 10% discount for ICMA members, NLC members, and repeat clients

**Example Payment Schedules (pending renewal)**

Term	Payment	Due Date
Initial 12 month term (2020)	\$21,635	Upon delivery of draft reports (Sept. 2020)
12 month renewal term (2021)	N/A	N/A
12 month renewal term (2022)	\$21,635	Upon delivery of draft reports (~Sept. 2022)

