OPENGOV SOFTWARE SERVICES AGREEMENT

This Software Services Agreement (this "**Agreement**") is entered into by OpenGov, Inc., a Delaware corporation with a principal place of business at 955 Charter Street, Redwood City, California 94063 ("**OpenGov**") and the customer listed on the signature block below ("**Customer**"), as of the date of last signature below (the "**Effective Date**"). This Agreement sets forth the terms under which Customer will be permitted to use OpenGov's hosted software services.

1. DEFINITIONS

"Customer Data" means data that is provided by Customer to OpenGov pursuant to this Agreement (for example, by email or through Customer's software systems of record). Customer Data shall not include any confidential personally identifiable information.

"Documentation" means the documentation for the Software Services at the Customer Resource Center page found at https://opengov.zendesk.com.

"Feedback" means suggestions, comments, improvements, ideas, or other feedback or materials regarding the Software Services provided by Customer to OpenGov, including feedback provided through online developer community forums.

"Initial Term" means the initial license term specified in number of years on the Order Form, commencing on the Effective Date.

"Intellectual Property Rights" means all intellectual property rights including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature.

"Order Form" means OpenGov's Software Services order form that: (a) specifies the Software Services provided by OpenGov; (b) references this Agreement; and (c) is signed by authorized representatives of both parties.

"Renewal Term" means each additional renewal period, which shall be for a period of equal duration as the Initial Term, for which this Agreement is extended pursuant to Section 7.2.

2. SOFTWARE SERVICES, SUPPORT AND PROFESSIONAL SERVICES

2.1 <u>Software Services</u>. Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to perform the software services identified in the applicable Order Form entered into by OpenGov and Customer ("**Software Services**").

2.2 <u>Support</u>. Customer support is available by email to support@opengov.com or by using the chat messaging functionality of the Software Services, both of which are available during OpenGov's standard business hours. Customer may report issues any time. However, OpenGov will address issues during business hours.

2.3 <u>Professional Services</u>.

(a) If OpenGov or its authorized independent contractors provides professional services to Customer, such as implementation services, then these professional services will be described in a statement of work ("**SOW**") agreed to by the parties (the "**Professional Services**"). For Professional Services performed on a time and materials basis, any pre-paid Professional Services Fees must be utilized within one (1) year from the Effective Date. Any unused pre-paid Professional Services Fees shall be forfeited.

(b) Unless the SOW provides otherwise, all reasonable travel expenses, pre-approved by Customer and incurred by OpenGov in performing the professional services will be reimbursed by Customer. Travel expenses include cost of coach airfare travel round trip from the individual's location to Customer's location, reasonable hotel accommodations, ground transportation and meals.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Restrictions. Customer may not use the Software Services in any manner or for any purpose other than as expressly permitted by the Agreement. Customer shall not, and shall not permit or enable any third party to: (a) use or access any of the Software Services to build a competitive product or service; (b) modify, disassemble, decompile, reverse engineer or otherwise make any derivative use of the Software Services (except to the extent applicable laws specifically prohibit such restriction); (c) sell, license, rent, lease, assign, distribute, display, host, disclose, outsource or otherwise commercially exploit the copy, rent, lease, distribute, assign, sell, or otherwise commercially exploit the Software Services; (d) perform or disclose any benchmarking or performance testing of the Software Services; (e) remove any proprietary notices included with the Software Services; (f) use the Software Services in violation of applicable law; or (g) transfer any confidential personally identifiable information to OpenGov or the Software Services platform.

3.2 Responsibilities. Customer shall be responsible for obtaining and maintaining computers and third party software systems of record (such as Customer's ERP systems) needed to connect to, access or otherwise use the Software Services. Customer also shall be responsible for: (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) all uses of Customer user accounts by any party other than OpenGov.

4. INTELLECTUAL PROPERTY RIGHTS; LICENSE GRANTS; ACCESS TO CUSTOMER DATA

4.1 Software Services. OpenGov retains all right, title, and interest in the Software Services and all Intellectual Property Rights in the Software Services. The look and feel of the Software Services, including any custom fonts, graphics and button icons, are the property of OpenGov and Customer may not copy, imitate, or use them, in whole or in part, without OpenGov's prior written consent. Subject to Customer's obligations under this Agreement, OpenGov hereby grants to Customer a non-exclusive, royalty-free license during the Term to use the Software Services.

4.2 Customer Data. Customer retains all right, title, and interest in the Customer Data and all Intellectual Property Rights therein. Customer hereby grants to OpenGov a non-exclusive, royalty-free license to, and permit its partners to, use, store, edit and reformat the Customer Data, and to use Customer Data for purposes of sales, marketing, business development, product enhancement, customer service, or for analyzing such data and publicly disclosing such analysis ("Insights"), provided that in all such uses Customer Data is rendered anonymous such that Customer is no longer identifiable.

4.3 Access to Customer Data. Customer may download the Customer Data from the Software Services at any time during the Term, other than during routine software maintenance periods. OpenGov has no obligation to return Customer Data to Customer.

4.4 Feedback. Customer hereby grants to OpenGov a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use and incorporate into the Software Services and Documentation Customer's Feedback. OpenGov will exclusively own any improvements or modifications to the Software Services and Documentation based on or derived from any of Customer's Feedback including all Intellectual Property Rights in and to the improvements and modifications.

5. CONFIDENTIALITY

5.1 Each party (the "Receiving Party") agrees not to disclose any Confidential Information of the other party (the "Disclosing Party") without the Disclosing Party's prior written consent, except as provided below. The Receiving Party further agrees: (a) to use and disclose the Confidential Information only in connection with this Agreement; and (b) to protect such Confidential Information using the measures that Receiving Party employs with respect to its own Confidential Information of a similar nature, but in no event with less than reasonable care. Notwithstanding the above, the Receiving Party may disclose Confidential Information to the extent required by law or court order, provided that prior written notice of such required disclosure and an opportunity to oppose or limit disclosure is given to the Disclosing Party.

5.2 "Confidential Information" means all confidential business, technical, and financial information of the disclosing party that is marked as "Confidential" or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the

disclosure (including the terms of the applicable Software Agreement). OpenGov's Confidential Information includes, without limitation, the software underlying the Software Services and all Documentation.

5.3 Notwithstanding the foregoing, "Confidential Information" does not include: (a) **"Public Data,"** which is data that the Customer has previously released to the public, would be required to release to the public, upon request, according to applicable federal, state, or local public records laws, or Customer requests OpenGov make available to the public in conjunction with the Software Services. Confidential Information does not include (b) information that has become publicly known through no breach by the receiving party; (c) information that was rightfully received by the Receiving Party from a third party without restriction on use or disclosure; or (d) information independently developed by the Receiving Party without access to the Disclosing Party's Confidential Information.

6. PAYMENT OF FEES

6.1 <u>Fees; Invoicing; Payment; Expenses</u>.

(a) <u>Fees</u>. The fees for the Software Services for the Initial Term and any Renewal Term (**"Software Services Fees"**) and the fees for Professional Services (**"Professional Services Fees"**) are set forth in the applicable Order Form. Software Services Fees and Professional Services Fees shall hereafter be referred to as **"Fees"**.

(b) <u>Inflation Adjustment</u>. OpenGov shall increase the Fees payable for the Software Services during any Renewal Term by 4% each year of the Renewal Term.

(c) <u>Invoicing and Payment</u>. OpenGov will invoice the Customer according to the Billing Frequency listed on the Order Form. Customer shall pay all invoices according to the Payment Terms listed on the Order Form.

(d) <u>Travel Expenses</u>. Unless the SOW provides otherwise, OpenGov will invoice Customer for pre-approved travel expenses incurred in connection with each SOW as they are incurred. Customer shall pay all such valid invoices within thirty (30) days of receipt of invoice. Each invoice shall include receipts for the travel expenses listed on the invoice.

6.2 <u>Credit Card Customers</u>. If applicable, Customer will provide OpenGov with valid credit card information and promptly notify OpenGov of any changes necessary to charge the credit card at billing@opengov.com. Please update your credit card information when necessary. The provision of credit card information to OpenGov authorizes OpenGov to charge the credit card for all applicable Fees plus a 3% credit card processing fee. OpenGov processes credit card payments through a secure third party processing partner and does not take receipt of credit card information itself.

6.3 <u>Taxes</u>. All Fees under this Agreement are exclusive of any applicable sales, value-added, use or other taxes (**"Sales Taxes"**). Customer is solely responsible for any and all Sales Taxes, not including taxes based solely on OpenGov's net income. If any Sales Taxes related to the Fees under this Agreement are found at any time to be payable, the amount may be billed by OpenGov to, and shall be paid by, Customer. If Customer fails to pay any Sales Taxes, then Customer will be liable for any related penalties or interest, and will indemnify OpenGov for any liability or expense incurred in connection with such Sales Taxes. In the event Customer or the transactions contemplated by the Agreement are exempt from Sales Taxes, Customer agrees to provide OpenGov, as evidence of such tax exempt status, proper exemption certificates or other documentation acceptable to OpenGov.

7. TERM & TERMINATION

7.1 <u>Term</u>. Subject to compliance with all terms and conditions, the term of this Agreement shall commence on the Effective Date and shall continue until the Subscription End Date specified on the Order Form (the **"Initial Term"**).

7.2 <u>Renewal</u>. Unless either party terminates this Agreement in writing no less than thirty (30) days before the end of the Initial Term, this Agreement shall renew for another period of the same duration as the Initial Term (the **"Renewal Term"** and together with the Initial Term, the **"Term"**).

7.3 <u>Termination</u>. If either party materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days after notice by the non-breaching party (ten (10) days in the case of non-payment), the non-breaching party may terminate this Agreement.

7.4 Effect of Termination.

(a) In General. Upon termination or expiration of this Agreement: (a) Customer shall pay in full for all Software Services and Professional Services performed up to and including the effective date of termination, (b) all Software Services provided to Customer hereunder shall immediately terminate; and (c) each party shall return to the other party or, at the other party's option, destroy all Confidential Information of the other party in its possession.

(b) Deletion of Customer Data. If Customer requests deletion of its Customer Data in writing prior to the date of termination or expiration of this Agreement, then OpenGov will permanently and irrevocably delete Customer Data, excluding any Insights, stored by its cloud hosting provider within ten (10) days of the date of termination or expiration of this Agreement. Such request must be addressed to "OpenGov Vice President, Customer Success" at OpenGov's address for notice described at Section 10.

7.5 Survival. The following sections of this Agreement shall survive termination: Section 5 (Confidentiality), Section 6 (Payment of Fees), Section 7.4(b) (Deletion of Customer Data), Section 8.3 (Warranty Disclaimer), Section 9 (Limitation of Liability) and Section 10 (Miscellaneous).

8. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

8.1 By OpenGov.

(a) General Warranty. OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with the related statement of work and generally prevailing industry standards. For any breach of the Professional Services warranty, Customer's exclusive remedy and OpenGov's entire liability will be the re-performance of the applicable services. If OpenGov is unable to re-perform all such work as warranted, Customer will be entitled to recover all fees paid to OpenGov for the deficient work. Customer must make any claim under the foregoing warranty to OpenGov in writing within ninety (90) days of performance of such work in order to receive such warranty remedies.

(b) Software Services Warranty. OpenGov further represents and warrants that for a period of ninety (90) days, the Software Services will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software Services that have been used in a manner other than as set forth in the Documentation and authorized under this Agreement. OpenGov does not warrant that the Software Services will be uninterrupted or error-free. Any claim submitted under this Section 8.1(b) must be submitted in writing to OpenGov during the Term. OpenGov's entire liability for any breach of the foregoing warranty is to repair or replace any nonconforming Software Services so that the affected portion of the Software Services operates as warranted or, if OpenGov is unable to do so, terminate the license for such Software Services and refund the pre-paid, unused portion of the Fee for such Software Services.

8.2 By Customer. Customer represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) OpenGov's use of the Customer Data pursuant to this Agreement will not infringe, violate or misappropriate the Intellectual Property Rights of any third party.

8.3 Disclaimer. OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

9. LIMITATION OF LIABILITY

9.1 By Type. NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR

ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.2 By Amount. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO OPENGOV (OR, IN THE CASE OF CUSTOMER, PAYABLE) FOR THE SOFTWARE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

9.3 Limitation of Liability Exclusions. The limitations of liability set forth in Sections 9.1 and 9.2 above do not apply to, and each party accepts liability to the other for: (a) claims based on either party's intentional breach of its obligations set forth in Section 5 (Confidentiality), (b) claim arising out of fraud or willful misconduct by either party and (c) either party's unauthorized use, distribution, or disclosure of the other party's intellectual property.

9.4 No Limitation of Liability by Law. Because some jurisdictions do not allow liability or damages to be limited to the extent set forth above, some of the above limitations may not apply to Customer.

10. MISCELLANEOUS

10.1 Logo Use. OpenGov shall have the right to use and display Customer's logos and trade names for marketing and promotional purposes in connection with OpenGov's website and marketing materials, subject to Customer's trademark usage guidelines provided to OpenGov.

10.2 Notice. Ordinary day-to-day operational communications may be conducted by email, live chat or telephone communications. However, for notices required by the Agreement (in Sections where the word "notice" appears) the parties must communicate more formally in a writing given by personal delivery, by pre-paid first-class mail or by overnight courier to the address specified in the most recent Order Form (or such other address as may be specified in writing in accordance with this Section).

10.3 Anti-corruption. OpenGov has not offered or provided any bribe, kickback, illegal or improper payment, gift, or thing of value to any Customer personnel in connection with the Agreement, other than reasonable gifts and entertainment provided Customer in the ordinary course of business. If OpenGov become aware of any violation of the above restriction then OpenGov shall promptly notify Customer.

10.4 Injunctive Relief. The parties acknowledge that any breach of the confidentiality provisions or the unauthorized use of a party's intellectual property may result in serious and irreparable injury to the aggrieved party for which damages may not adequately compensate the aggrieved party. The parties agree, therefore, that, in addition to any other remedy that the aggrieved party may have, it shall be entitled to seek equitable injunctive relief without being required to post a bond or other surety or to prove either actual damages or that damages would be an inadequate remedy.

10.5 Force Majeure. Neither party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of this Agreement, other than payment obligations, due to any act of god, act of governmental authority, or due to war, riot, labor difficulty, failure of performance by any third-party service, utilities, or equipment provider, or any other cause beyond the reasonable control of the party delayed or prevented from performing.

10.6 Severability; Waiver. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. There are no third-party beneficiaries to this Agreement.

10.7 Assignment. Except as set forth in this Section, neither party shall assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations to a third party without the other party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Either party may assign, without such consent but upon written notice, its rights and obligations under this Agreement to: (i) its corporate affiliate; or (ii) any entity that acquires all or substantially all of its capital stock or its assets related to this Agreement, through purchase, merger, consolidation, or otherwise. Any other attempted assignment shall be void. This Agreement shall inure to the benefit of and bind each party's permitted assigns and successors.

10.8 Independent Contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect.

10.9 Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

10.10 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Exclusive jurisdiction for litigation of any dispute, controversy or claim arising out of or in connection with this Agreement shall be only in the Federal or State court with competent jurisdiction located in San Mateo County, California, and the parties hereby submit to the personal jurisdiction and venue therein.

10.11 Complete Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement. No modification of this Agreement will be binding, unless in writing and signed by an authorized representative of each party.

Signatures

City of Asheville, NC	OPENGOV, INC.
Signature: *M. Dawa Mana Hitch*	Signature:
Name: M. DAWA MANA HITCH	Name:
Title: CAPE Director	Title:
Date: 3/28/19	Date:

Exhibit 1 - OpenGov Order Form

⊙ OPENGOV

OpenGov Inc. 955 Charter Street
Redwood City, CA 94063
United States

Created On: 3/6/2019
Order From Expiration: 3/31/2019
Subscription Start Date: 2/22/2019
Subscription End Date: 2/21/2020

Prepared By: Zach Garelik
Email: zgarelik@opengov.com
Contract Term: 1 Year

Customer Information
Customer: City of Asheville, NC
Bill To/Ship To: P.O. Box 7148
Asheville, NC 28801
United States

Contact Name: Dawa Hitch
Email: dhitch@ashevillenc.gov
Phone: 828-259-5981

Billing Contact: Dawa Hitch
Email: dhitch@ashevillenc.gov
Phone: 828-259-5981

Order Details
Billing Frequency: Annual
Payment Terms: Net Thirty (30) Days

SOFTWARE SERVICES:

Product / Service	Start Date	End Date	List Price	Discount	Annual Fee	Total Price
Citizen Engagement— Open Town Hall *(Billed Annually)*	2/22/2019	2/21/2020	$17,543.86	43%	$10,000.00	$10,000.00

Annual Subscription Total: $10,000.00

Order Form Legal Terms

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City of Asheville, NC

Signature:

Name:

Title:

Date:

OpenGov, Inc.

Signature:

Name: Leo Chui

Title: VP, Finance

Date: 3/27/2019

⊙ OPENGOV

OpenGov Inc. 955 Charter Street
Redwood City, CA 94063
United States

Created On: 3/6/2019	**Prepared By:** Zach Garelik
Order From Expiration: 3/31/2019	**Email:** zgarelik@opengov.com
Subscription Start Date 2/22/2019	**Contract Term:** 1 Year
Subscription End Date: 2/21/2020	

Customer Information

Customer:	City of Asheville, NC	**Contact Name:**	Dawa Hitch	**Billing Contact:** Dawa Hitch	
Bill To/Ship To:	P.O. Box 7148	**Email:**	dhitch@ashevillenc.gov	**Email:**	dhitch@ashevillenc.gov
	Asheville, NC 28801	**Phone:**	828-259-5981	**Phone:**	828-259-5981
	United States				

Order Details

Billing Frequency: Annual
Payment Terms: Net Thirty (30) Days

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Product / Service	Start Date	End Date	List Price	Discount	Annual Fee	Total Price
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Annual Subscription Total: $10,000.00

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City of Asheville, NC	OpenGov, Inc.
Signature: *[signature]*	Signature:
Name: CAPE Director	Name:
Title: M. DAWA MANA HITCH	Title:
Date: 3/28/19	Date:

The Agreement entered into between the City of Asheville and OpenGov, Inc., dated January 20, 2019 is hereby amended according to terms below.

THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

WHEREAS, the City desires to amend certain terms and conditions set forth in the Contract and Contractor is willing to amend said terms and conditions set forth herein; and

WHEREAS, on 20th day of January, 2016, the contract was made and entered by and between the City of Asheville and OpenGov, Inc. (previously Peak Democracy) in the amount of $9,500 in order to execute the scope of services under the contract;

WHEREAS, the contract between the City and Contractor authorizes amendments, supplements, or modifications to the contract in order to add to the scope of services under the contract;

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the City and the Contractor agree upon the following amended terms and conditions:

(Any changes to the agreement should be noted):

1. **CONTRACT TERM of the original contract is revised as follows:**
   The term of this contract shall be extended to February 21, 2020.

2. **CONTRACT AMOUNT of the original contract is revised as follows:**

   City shall compensate the CONTRACTOR, based on the unit rates set forth in the Contract. The total amount of this contract shall not exceed $38,500, unless this amount is amended in writing by duly authorized representatives of the City and CONTRACTOR.
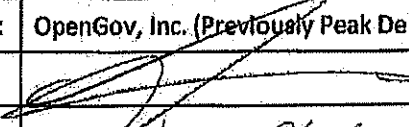
3. The effective date of this amendment is:
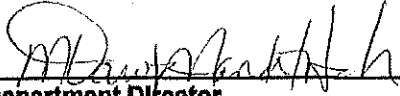
January 20, 2019

4. **ENTIRE AGREEMENT.** Except as expressly modified by this Amendment, the contract shall be and remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding and enforceable obligations to the parties. This Amendment and the Agreement (including any prior written amendments or change orders), collectively, are the complete agreement of the parties and supersede any prior agreements or representations, whether oral or written, with respect thereto.

5. **E-VERIFY EMPLOYER COMPLIANCE:** By executing this contract, Contractor and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes shall comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. E-verify can be accessed via this link: http://www.uscis.gov/e-verify/employers

6.   NON-APPROPRIATION. All funds for this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City for the services to be provided under the Contract to be entered into pursuant to this renewal agreement, the City will terminate the contract without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Contract are spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of the Contract, cancellation shall be accepted by the Contractor on (10) ten day's prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under the Agreement beyond the date of termination.

Agreed to and executed by authorized officials as of the day and date indicated below.

Contractor's Full Legal Name:	OpenGov, Inc. (Previously Peak Democracy)
Authorized Signature:	
Printed Name:	_Leo Choi_
Title of Person Signing:	VP, Finance
Date:	3/27/2019

Department Directors are authorized to sign amendments where the new contract amount of the agreement is less than $30,000. Agreements that are $30,000 or greater, the Department Director by Written Approval conveys that this agreement has been reviewed and presented for approval by the City of Asheville's City Manager.

_____ DATE 3/28/19
Department Director

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_____ DATE 4/1/19
Chief Financial Officer

Account code	Amount added to contract	Total amount of contract
xxxxxxxxxxxx	xxxxxx	xxxxxxxxxxx

	City of Asheville City Manager
Authorized Signature:	
Printed Name:	
Date:	

The Agreement entered into between the City of Asheville and OpenGov, Inc., dated February 28, 2018 is hereby amended according to terms below.

THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

WHEREAS, the City desires to amend certain terms and conditions set forth in the Contract and Contractor is willing to amend said terms and conditions set forth herein; and

WHEREAS, on the 20th day of January, 2016, the contract was made and entered by and between the City of Asheville and Peak Democracy in the amount of $9,500 in order to execute the scope of services under the contract;

WHEREAS, the contract between the City and Contractor authorizes amendments, supplements, or modifications to the contract in order to add to the scope of services under the contract;

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the City and the Contractor agree upon the following amended terms and conditions:

The CONTRACTOR has assigned this Agreement to OpenGov, Inc. All of the terms and conditions of the Agreement remain unchanged.

1. **The effective date of this amendment is:**

    Feb 28, 2018

2. **ENTIRE AGREEMENT.** Except as expressly modified by this Amendment, the contract shall be and remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding and enforceable obligations to the parties. This Amendment and the Agreement (including any prior written amendments or change orders), collectively, are the complete agreement of the parties and supersede any prior agreements or representations, whether oral or written, with respect thereto.

3. **E-VERIFY EMPLOYER COMPLIANCE:** By executing this contract, Contractor and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes shall comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. E-verify can be accessed via this link: http://www.uscis.gov/e-verify/employers

4. **NON- APPROPRIATION.** All funds for this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City for the services to be provided under the Contract to be entered into pursuant to this renewal agreement, the City will terminate the contract without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Contract are spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of the Contract, cancellation shall be accepted by the Contractor on (10) ten day's prior

⊙ OPENGOV

Dear Anika,

Peak Democracy was acquired by OpenGov, Inc. effective 10/24/2017.

Please update your records with our updated information:

OpenGov, Inc.
955 Charter St.
Redwood City, CA 94063

Thank you.

Steven McKillop

Steven McKillop
Senior Accountant
OpenGov, Inc.

Contract No. <u>9160188</u>
Funding No. <u>11000015 : 52 / 001</u>

AGREEMENT ($5,000 less than $30,000)

Department Directors have authority to approve contracts less than $30,000. Each department is still required to do any necessary review approvals which apply.

STATE OF NORTH CAROLINA _____

COUNTY OF BUNCOMBE

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the contractor agrees to the following:

1.	Contractor shall furnish all labor, material, equipment, supervision and permits as necessary to perform the work described in Exhibit A, attached hereto and made a part hereof. It is further agreed that the Contractor will perform the work in accordance with Exhibit B, City of Asheville Terms and Conditions, attached hereto and made a part hereof.

2.	The Contractor further agrees that this agreement requires written approval by the City of Asheville before Authorization to proceed is granted.

3.	Upon satisfactory completion of the work and acceptance by the City, the City shall pay the Contractor the monetary sum written in Exhibit A for the work described in Exhibit A, attached hereto and made a part hereof unless stated differently in writing.

4.	This Agreement incorporates Exhibit A (Scope of Work), Exhibit B (City of Asheville Terms and Conditions) and the Contract Signature Page.

This contract, made and entered this day of ___January 20____, 2016_, by and between the City of Asheville, a municipal corporation organized and existing under the laws of North Carolina (hereinafter referred to as "City") and _Peak Democracy_____ hereinafter referred to as "Contractor").

ATTACHMENTS: Exhibit A (Scope of Work), Exhibit B (City of Asheville Terms and Conditions) and the Contract Signature Page.

Revised 3/22/11

Contract Signature Page

Contract # 91600188

Council Resolution #_____ (if applicable)

[handwritten, top right:] Vendor 23487
1100 0015:5210001
#10,000
UR
JS
01/28/2016

IN WITNESS WHEREOF, each party has caused this agreement to be executed by it's duly authorized official as of the day and year written above.

The Department Director by Written Approval conveys that this contract has been reviewed and presented for approval by the City of Asheville.

_[signature]_____DATE 1/26/16

Department Director

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_[signature]_____DATE 1/28/16

Chief Financial Officer

City Manager's signature, if required
Attest to: **CITY OF ASHEVILLE**

_[signature]_____   BY: _____ DATE_____

Deputy **City Clerk**   **City Manager**
(Corporate Seal)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Notary Public of the County and State aforesaid, certify that ___Jaime Matthew___, personally came before me this day and acknowledged that she is the City Clerk *[Deputy]* of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

Witness my hand and notarial seal this _____ day of _____, 20_____

Notary Public
Printed Name:_____
My Commission Expires: _____

Revised 3/22/11

City of Asheville Contract Number **91 600188**

****
CORPORATION SIGNATURE FORM
****

IN WITNESS WHEREFORE, the parties hereto have made and executed this Agreement as of the day and year first above written.

Peak Democracy, Inc
(Insert Name of Corporation)

By: _(signature)_ _President_
(Insert signature and title of officer)

STATE OF _____

COUNTY OF _____

I, _____, Notary Public of the aforesaid County and State,

certify that _____ personally came before me this day and
(Insert Name of Person Signing)

acknowledged that he/she is _____ of _____
(Insert Title of Office) **(Insert Name of Corporation)**

corporation, and that he/she, as _____, being authorized to do so,
(Insert Title of Person Signing)

executed the foregoing on behalf of the said corporation.

Witness my hand and notarial seal this _____ day of _____, 20_____

Notary Public
Printed Name:_____
My Commission Expires: _____

[Handwritten diagonal note across form: SEE ATTACHED CERTIFICATE]

3   Revised 3/22/11

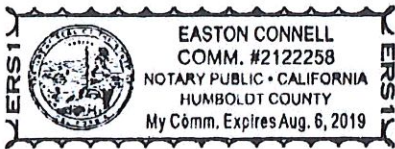# California All-Purpose Acknowledgement

State of California

County of Humboldt

On **20 January 2016** before me, **Easton Connell, Notary Public,**

personally appeared **Robert Vogel**

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

EASTON CONNELL
COMM. #2122258
NOTARY PUBLIC • CALIFORNIA
HUMBOLDT COUNTY
My Comm. Expires Aug. 6, 2019

Signature _____

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title of Type of Document: **Agreement**

Document Date: **20 January 2016** Number of Pages: **3**

ORIGINAL EMBOSSED

Signer(s) Other Than Named Above: ——

OPEN TOWN HALL

Exhibit A: Scope of Work

Open Town Hall is a feature-rich online civic engagement service that is designed to help government agencies and their communities identify and explore broad public interests and ultimately increase public trust in government. This document summarizes how Open Town Hall connects each user's experience with broad public interests and builds that trust.

Table of Contents

Scope of Services

Forum Support Services
Peak Democracy will provide the following support services:

Training
Via web conferencing, Peak Democracy staff will provide training on how to use the service.

Best Practices
Peak Democracy staff will provide advice and documentation on best practices for government online forums – including best practices on how to maintain civil and legal forums as well as best practices on how to optimize the quality and quantity of user participation.

Webpage Look
Peak Democracy staff will make clients forums match the look of the client's website by customizing images, colors and fonts. Client can also designate a name for its services such as "Open City Hall", "Open County Hall", or other custom name.

Heat Maps
Peak Democracy staff will post maps on the client's service that correspond to Shape or KML files provided by client.

Topic Development
Peak Democracy staff will help client staff craft topic content, and post topic content on client's website.

Topic Marketing
Peak Democracy staff will work with client staff to market topics via techniques such as press releases, posting on social media, HTML-formatted email announcements to email subscriber lists, and professionally designed flyers with QR codes.

Technical Support
Peak Democracy staff will provide technical support to client staff. This support will be available via email, phone and web conferencing.

Community Assistance
Peak Democracy staff will provide a help desk for the client's user community. This assistance will be available primarily via links on service to email, and when necessary via phone.

Forum Monitoring
Peak Democracy staff (in conjunction with Company's software) will monitor user registrations and content posted on the client's service.

User Authentication
Peak Democracy staff (in conjunction with Company's software) will authenticate all users that register. This authentication includes, (1) confirming that each registrant's email address is active, (2) geocoding each registrants street address, and (3) monitoring each registrants name, IP address as well as browser cookies.

Issue Reconciliation
If Peak Democracy software and staff detect activities or content that potentially violates the client's guidelines, then Peak Democracy staff will work with client staff to reconcile the issue.

Information Technology Services
Peak Democracy will provide the following Information Technology Services:

Implementation
At the client's discretion, Peak Democracy will implement the service on either: (a) an iframe on a webpage within the client's website, or (b) a dedicated website domain established by the client.

Hosting
Peak Democracy will host client's service on a server provisioned by the Company.

Performance
Peak Democracy will provide network bandwidth between its servers and the Internet at levels that are comparable to popular consumer web services.

Availability
Peak Democracy will continuously monitor client's service for availability.

Access
Peak Democracy will maintain access to client's service 24 hours a day, 7 days a week.

Backup
Peak Democracy will maintain daily backups of client's service.

Records Retention
Peak Democracy will retain the client's service for the client's record retention period via Amazon.com's S3 storage service that provides 99.999999999% durability. Client's staff can also download its forum content in PDF and CSV format for the client's own storage, archive and analysis.

Work Products

The Open Town Hall Portal

Peak Democracy will provide the client with one Open Town Hall portal and grant administrative access to that portal for an unlimited number of full or part time employees of client. The Open Town Hall portal will support these features:

- Ten Ways to Guide the Dialog
- Ten Ways to Glean Common Interests
- Additional Features
- Forum Administration

Ten Ways to Guide the Dialog:

Open Town Hall features ten kinds of topics, each designed to guide the public dialog toward broad public interests.

FORMAL FEEDBACK

Description	Guidance
Structured like a council or commission meeting, each user submits one on-topic statement per topic.	Users are restricted to one statement per topic to preclude any one person from dominating the forum. Peak Democracy monitors every statement to ensure it is on topic defined by the client to be in the broad public interest. If necessary, staff can post a response either publicly or privately to a statement.

FEEDBACK WITH SUPPORT

Description	Guidance
Users submit one on-topic statement per topic, which other users can support. Readers can sort statements by support.	In addition to Formal Feedback guidance, the links posted by social media share buttons bring friends back to participate in the topic, not to support the sharer's statement. The support count can also be hidden to preclude the perception of a vote.

IDEAS

Description	Guidance
Structured like a workshop or charrette, each user submits ideas which other users can comment on.	Peak Democracy monitors all ideas and comments to ensure they remain on topic and in compliance with the client's guidelines for civility.

TALLY

Description	Guidance
Users select a preferred option from a list of options	The options are defined by the client to be in the broad public interest, and are labeled 'positions' not 'votes'. The links posted by social media share buttons bring friends back to participate in the topic, not to support the sharer's position.

BUDGET

Description	Guidance
Modeled after participatory budgeting workshops, users allocate $100, $500 or a percentage to a set of priorities	Users asked to prioritize items pre-defined by client to be in the broad public interest, with a limited budget. Users are also allowed to supplement those items with their own statement.

PRIORITY LIST

Description	Guidance
Users drag items up or down to prioritize them in a list.	Users are allowed to prioritize items pre-defined by client to be in the broad public interest, and to supplement the list with their own statement

AREA PLAN

Description	Guidance
Users place land use place-types (e.g., open space, commercial, etc.) on a map to indicate preferred land use.	Users asked to use place types pre-defined by client to be in the broad public interest. Users can also describe their suggested land use strategy through their own statement.

SURVEY

Description	Guidance
Users complete a traditional survey.	Users are guided through a series of questions designed by the client. Responses are constrained to lie within parameters defined by the client for each question. Each question/survey element can be one of eleven types: Textbox, Text area, Multiple Choice (only one answer), Multiple Choice (multiple answers), Numeric, Select, Message, Page Break, Priority List, Matrix of Choices (only one answer per row), Matrix of Choices (multiple answers per row).

BLOG

Description	Guidance
A blogger (staff) writes topical posts designed to pique interest in the project.	Users can write comments on the post's topic and on other users' comments Users are required to post comments on the post's topic.

Ten Ways to Glean Common Interests:

Peak Democracy features ten 'Insights' that are publicly available analysis tools that reflect common interests back to the community. Not just back-end analysis tools (that are only available to staff), Insights are available to all residents, enabling every resident to better understand the broad public interests in their own community, and thereby build consensus.

WORD CLOUD

Description	Reflected Interests
An interactive set of words sized to reflect their frequency in the submitted statements. Clicking a word displays all statements containing that word.	Shows interests expressed through frequently used words found across many statements.

SEARCH

Description	Reflected Interests
A form used to select statements from authors in specific cities or statements containing a user-defined phrase.	Shows how interests vary from city to city, and how interests are expressed through a key phrase.

DEMOGRAPHICS

Description	Reflected Interests
A clickable bar graph displaying the number of users by age, gender or frequency of participation.	Shows how interests vary by age or by gender. The frequency of participation graph reflects how the interests of 'frequent flyers' (residents who frequently participate in Open Town Hall) differ from those participating for the first time.

MAP

Description	Reflected Interests
An interactive map displaying regions within the client's jurisdiction: council districts, planning districts, bull's eye circles around a project, transportation corridors, focus areas, neighbourhoods, etc. For Tally, Budget and Priority List topics, hovering over regions also displays the tally, average allocation or average priority of users from that region.	Shows how interests vary by place, e.g., distance from a project or a neighbourhood.

TALLY

Description	Reflected Interests
Tally of positions over all participants	Shows trends in preferred position across all participants.

AVERAGE ALLOCATION

Description	Reflected Interests
The amount allocated to items in a Budget topic, averaged over all participants.	Show trends in Priorities over all participants, given limited resources.

AGGREGATE AREA PLAN

Description	Reflected Interests
An interactive map displaying all place types as located by all participants. Specific categories of place types (e.g., open space, industry, commercial development) can be selectively displayed.	Shows where participants would like to see open space, industry, commercial development, etc.

AVERAGE PRIORITY

Description	Reflected Interests
The priority rank of all items averaged over all participants.	Shows trends in Priorities over all participants.

CONNECTED STATEMENTS

Description	Reflected Interests
"Users who support this statement also supported these statements". Borrowed from Amazon.com's shopping feature: "Users who bought this book also bought these books". A clickable listing or graph of statements, connected with other statements by users who support multiple statements.	Shows interests grouped by similar content. Since two statements are connected when someone supports them both, connected statements tend to have similar content (like the books listed in Amazon's shopping feature).

GALLERY

Description	Reflected Interests
Photos receiving the most 'likes' in a photo topic.	Shows favourite photos.

Additional Features:

In addition, all topic types have access to added features and services.

Feature / Service	Benefits
All topics can be embedded in the agency's official website	This creates a formality (like council chambers) which encourages statements that are on topic and civil.
Name Not Shown For each topic, the client can require participants to display their full name next to their publicly displayed content, or allow them to display "Name not shown." In either case, full registration is required, and full authentication is conducted by Peak Democracy.	To build participation
Users can post video, images, files and other media types with statements.	To build participation
Responsive design for tablets and phones.	To build participation
QR code generator available	To build participation
Subscription via SMS available	To build participation
Integrates with social media	To build participation
Topic marketing services, including professionally designed html email announcements and posters	To build participation
Translation via Google translate	To build participation
All public data downloadable via PSD and CSV (spreadsheet) files	To facilitate review and analysis

Forum Administration:

In addition we provide these back end tools to create and manage topics and to monitor and build participation. Note that Peak Democracy and staff both have access to these tools. Peak Democracy typically takes an active role in forum administration, at the discretion of the client.

PEAK NETWORK

Description	Purpose
Search tool that enables administrators to search by key word across all topics launched by all Peak Democracy clients. Search parameters can also include population, agency type, topic type and phase.	Topics in the search results can be copied into the administrator's portal with a single click. This helps the administrator design a new topic by providing easy access to existing topics that have common objectives, and to use them as a starting template with a single click.

TOPIC EDITOR

Description	Purpose
Simple editor for creating new topics and managing existing topics, including their name, question, introduction, closeout statement, list of public officials who are listening and configuration of the various input tools: Tally, Budget, Priority List, Area Plan, Map selection etc.	To enable the admin to easily create and/or manage topics, preview draft topics in private mode with other admins (including Peak Democracy), and launch topics.

FORUM EDITOR

Description	Purpose
Simple editor for grouping topics into forums: categories of topics around similar themes.	To enable users to easily navigate to topics of interest.

ANNOUNCEMENT

Description	Purpose
A button to announce topics and topic updates to current subscribers	To notify subscribers of key developments in the forum topics.

USER SURVEY

Description	Purpose
First time users will be surveyed on their satisfaction with the service.	To build participation by monitoring user satisfaction and improving the service to meet user requirements.

PARTICIPATION REPORTS

Description	Purpose
Cumulative visitors, participants and subscribers	To build participation by tracking it and its correlation with outreach efforts.

MONITORING THE MONITOR

Description	Purpose
Real-time monitoring of Peak Democracy's monitoring of statements.	To provide the admin with an overview of Peak Democracy's monitoring process, including a list of statements that are civil versus not civil and their status in the statement resolution protocol.

Additional Work Products

Topic Introductions

Peak Democracy will be available to write the topic introductions that guide the dialog and frame the topic. We will also be available to review and/or edit the client's drafts at client's discretion.

Marketing Templates

Peak Democracy will provide the client with templates that can be used to market each topic, including drafts of press releases, announcements for emails or newsletters for the client to distribute and drafts of posters or fliers for the client to print and distribute.

Email Announcements

Peak Democracy will be available to draft emails that announce new topics and updates to existing topics. Upon client's approval, Peak Democracy will distribute those announcements to subscribers.

Comment Monitoring

Peak Democracy staff and software will monitor every comment to ensure each comment complies with the client's guidelines for civility. If Peak Democracy believes that a comment may not meet those guidelines, we move the comment off the forum onto a separate section of the forum (The 'off forum' section) and ask our client whether the statement violates their guidelines for civility. If the client confirms that the statement violates the guidelines, then Peak Democracy contacts the author (see below). If the client decides the statement does not violate the guidelines, then Peak Democracy moves the statement back 'on forum' to the public page.

Non-English comments will be translated into English using Google Translate before monitoring; all interactions with the author will be in English.

In no case does Peak Democracy edit or delete any comment without the author's approval.

Emails to Disruptive Authors

When the client acknowledges that a participant's statement violates the client's guidelines for civility, Peak Democracy will draft an email to the participant inviting him or her to edit their statement to comply with those guidelines. Upon client's approval of that draft, Peak Democracy will send it to the author and keep the client apprised of any changes or emails received from the participant.

Topic Reports

Peak Democracy will be available to generate a PDF and/or a spreadsheet of all comments and other public input from participants. The client and/or members of the general public can also download these same documents from the Open Town Hall forum.

Obligations of the Client

Drawing on our experience from more than 2000 forum topics, Peak Democracy is available to assist the client in executing each of these tasks.

Before the First Topic
Before launching the first topic, the client will:

- Approve the guidelines for civility
- Formulate the initial outreach strategy
- Select a home page for the forum, either on the client's website or on one provisioned by Peak Democracy
- Should the home page be on the client's website, then the client will embed the html snippet provided by Peak Democracy in that page.

For Each Topic
For each topic, the client will:

- Select the topic for public input
- Provide background information
- Approve any topic introduction written by Peak Democracy
- Approve any marketing materials distributed by Peak Democracy
- Review statements that Peak Democracy identifies as potentially uncivil. For each such statement, the client classifies it as either meeting or failing to meet the client's guidelines for civility. For each uncivil statement, the client approves all emails sent by Peak Democracy to the author.

Though it is not strictly required, it is highly recommended that the client posts an 'outcome statement' at the conclusion of each topic which summarizes the decision made or the action taken. If possible, the outcome statement should describe how input from Open Town Hall was incorporated into the decision process. Our experience tells us that when clients post outcome statements, residents receive feedback that their participation is worthwhile, they continue to participate, and public trust in government grows.

Performance Standards

Turnaround Time for Comment Monitoring

Peak Democracy software will monitor all comments immediately as they are entered by users. Peak Democracy staff will monitor all comments: 95% of comments will be monitored within 20 minutes of posting during business hours (8am – 5pm Pacific Time), and 95% of comments will be monitored within 12 hours of posting off business hours.

Turnaround Time for Service Requests from Client

Peak Democracy will respond to all service requests: 95% of all service requests will be responded to within one hour of receipt of the request via email or phone during business hours.

Turnaround Time for Service Requests from Other Users

Peak Democracy will respond to all service requests: 95% of all service requests will be responded to within 4 hours of receipt of the request via email during business hours.

Records Retention

Peak Democracy will maintain all input from users on Amazon.com S3's storage designed to provide 99.999999999% durability.

Exhibit A (continued): Peak Democracy: Scope of Services

Payment: The City of Asheville shall pay Peak Democracy and annual amount of $9,500.00 for the work described in Exhibit A. This agreement shall terminate in 3 years from the date of the execution unless it is mutually amended in writing by both parties.

Payment will be Net 30 days from receipt of an approved invoice.

EXHIBIT - B
GENERAL TERMS AND CONDITIONS
SERVICE CONTRACT-$5,000 less than $30,000

1. SCOPE OF WORK: CONTRACTOR shall provide the service as set forth in Exhibit A. If there are any terms in Exhibit A that conflict with the terms in Exhibit B, the terms in Exhibit B take precedent and shall control.

2. TERM: The term of this contract shall be until the project is completed or as set forth in Exhibit A.

3. COMPENSATION: The City will compensate the CONTRACTOR as set forth in Department Director's Contract Approval Form. If the contract exceeds the aforementioned threshold, the City must amend or renew the contract in accordance with all applicable City policies.

4. TIME KEEPING: If applicable, the CONTRACTOR shall provide a timekeeping record of all hours worked and description of the duties performed during the hours worked. All timesheets shall be submitted to the Department Director or his or her designee for review and payment of services. These time sheets shall be submitted on a monthly basis. The City shall pay all invoices within thirty (30) days of submittal.

5. EMPLOYEES OF CONTRACTOR: Any employees furnished by CONTRACTOR, pursuant to this contract, will be employees of CONTRACTOR, an independent contractor. CONTRACTOR will maintain complete control over the employees' conduct and will disburse all payrolls, taxes, license, insurances, uniforms and all other expenses incurred by CONTRACTOR in performing the terms of this contract.

6. INSURANCE: The work performed under this Agreement has been classified as a ___low___ risk profile. The Contractor agrees to keep and maintain for the duration of this Agreement including but not limited to commercial general liability, automobile liability, workers compensation, employers liability, environmental liability and umbrella coverage in the amounts shown on the City of Asheville Minimum Insurance Coverage and Requirements Matrix in effect as of the date of this Agreement incorporated herein to this Agreement and available to the Contractor upon request. The Contractor shall furnish the City with certificates of insurance for each type of insurance described herein, with the City named as an additional insured on all coverages, except worker's compensation. In the event of cancellation, substantial changes or nonrenewal, the Contractor and insurance carrier shall give the City at least thirty (30) days prior written notice. No work shall be performed by Contractor until Contractor has furnished to the City the above referenced certificates of insurance, in a form suitable to the City. In the event the Certificate of Liability Insurance includes a disclaimer, Contractor shall cause his insurer to issue a Form CG20 10, or other Additional Insured Amendatory Endorsement showing City of Asheville as Additional Insured.

7. HOLD HARMLESS / INDEMNITY: CONTRACTOR shall indemnify, defend and hold harmless the City and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of the CONTRACTOR or any employee, agent or assign of the CONTRACTOR. This provision is not applicable to any claim arising out of or related to any active or primary negligence of or by City, its officers or employees. The Contractor shall comply with the provisions of the Americans with Disabilities Act and all rules and regulations promulgated thereunder. The Contractor hereby agrees to indemnify the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the Contractor, its subcontractors, agents, successors, assigns, officers or employees to comply with provisions of the ADA or the rules and regulations promulgated thereunder. Nothing herein shall be construed as a waiver on the part of the City to any defense of any claim, including, but not limited to the defense of governmental immunity.

8. SKILL OF CONTRACTOR: The CONTRACTOR shall be properly licensed and skilled in his/her respective trade.

9. COMPLIANCE WITH OTHER LAWS: CONTRACTOR shall comply with all state, federal or local laws, or ordinances, codes, rules or regulations governing performance of this Agreement, including but not limited to, equal opportunity employment laws, O.S.H.A., minimum wage and hour regulation, North Carolina State Building Code regulations and immigration laws.

10. TERMINATION: This contract may be terminated by either party, with thirty (30) days prior written notice. Notice shall be served under this contract by registered mail, certified mail or by other means.

11. GENERAL CONDITIONS: (a) This agreement contains the entire agreement between the parties. (b) Should any provision or provisions contained in this agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect. (c) This contract is entered into in North Carolina and shall be construed under the statutes and laws of North Carolina. (d) This contract is not assignable by either party without the prior written consent of the other party. (e) The contractor shall provide a drug-free workplace, as set forth in the Drug Free Workplace Policy. Said policy is available upon request.

12. RENEWAL: The City may elect to renew this Agreement for additional twelve (12) month periods. In order to elect renewal, the City shall provide the Contractor with sixty (60) days written notice prior to the end of the current term of this Agreement. Upon receipt of this notice, the Contractor shall provide ten (10) days written notice to the City regarding whether or not it agrees to renew the Agreement and for what amount. The parties acknowledge that approval by the City Council may be required, based upon the amount to be paid for performance of the Agreement.

13. RIGHT TO AUDIT: Contractor shall maintain all fiscal records relating to this Agreement in accordance with Generally Accepted Accounting Principles, and shall maintain any other records pertinent to this Agreement in a manner so as to clearly document Contractor's performance. The City shall have a right to access the fiscal and other records of Contractor that are pertinent to this Agreement to perform examinations and audits. Contractor shall retain and keep accessible all the fiscal and other records for a minimum of three (3) years following final payment and termination of this Agreement, or until the conclusion of any audit or controversy related to this Agreement, whichever is later.

14. NON APPROPRIATIONS: Notwithstanding any other provisions of this Agreement, if the City does not receive said funding for this Agreement from the City Council for any fiscal year applicable to this Agreement, then the City shall have the right to terminate this Agreement without penalty by giving not less than thirty (30) days' written notice documenting the lack of funding.

15. E-Verify Employer Compliance: Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. E-verify can be accessed via this link: http://www.uscis.gov/e-verify/employers