

**RESOLUTION NO. R2023-01****A RESOLUTION APPROVING AN AGREEMENT WITH  
POLICY CONFLUENCE, INC. FOR COMMUNITY SURVEY SERVICES**

WHEREAS, the City is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, the City desires to retain a consultant to assist with performance of a community-wide survey regarding the City's livability, which will focus on items including, without limitation, safety, mobility, community design, health and wellness, and education, arts and culture (collectively, "**Services**"); and

WHEREAS, in accordance with Section 1-8-4.B.6(a)(1) of the Warrenville City Code, City staff has determined that the procurement of the Services is not adapted to award by competitive bidding because the Services require a high degree of professional skill and judgement; and

WHEREAS, Policy Confluence, Inc. ("**Consultant**") submitted a proposal to provide the Services to the City; and

WHEREAS, City staff has determined that the proposal from Consultant is best suited to meet the needs of the City; and

WHEREAS, the City staff recommends that the City enter into a one-year agreement ("**Agreement**") with Consultant for the performance of the Services in the not-to-exceed amount of \$23,550; and

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to approve the Agreement with Consultant;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

**SECTION 1: Recitals.** The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

**SECTION 2: Approval of Agreement.** The Agreement with Consultant for the performance of the Services in the not-to-exceed amount of \$23,550 is hereby approved substantially in the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by the City Administrator and the City Attorney.

**SECTION 3: Execution.** The City Council hereby authorizes and directs the City Administrator and the City Clerk to execute and seal, on behalf of the City, the final Agreement only after receipt by the City Clerk of at least two executed copies of the Agreement from Consultant; provided, however, that if the City Clerk does not receive such executed copies of the Agreement from the Consultant within 60 days after the date of adoption of this Resolution, then the authority to execute and seal the Agreement shall, at the option of the City Council, be null and void.

SECTION 4: Effective Date. This Resolution shall be in full force and effect following its passage and approval in the manner provided by law.

PASSED THIS \_\_\_\_ day of \_\_\_\_\_, 2023.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

**EXHIBIT A**  
**AGREEMENT**



**Policy Confluence, Inc.  
Services Agreement**

THIS POLCO SERVICES Agreement (the “**Order Form**”) is entered into and made effective as of January 16, 2023 (“**Effective Date**”) by and between Policy Confluence, Inc., a Delaware corporation (“**Polco**” or “**Company**”), and the City of Warrenville, IL, an Illinois home rule municipal corporation (“**Customer**” “**you**” or “**your**”). Polco and Customer may be referred to in this Agreement individually as a “**Party**” or collectively as the “**Parties.**”

**Agreement** - This is a binding agreement by Customer to purchase Polco’s software and services, and Polco agrees to provide the software and services, as set forth in the table below, described in detail in Polco’s Proposal, attached to this Order Form as Attachment 1, and as further defined in this Order Form (the “**Services**”). Each of the Services are governed by and incorporates the general terms and conditions set forth in this Order Form, the Enterprise Terms and Conditions (the “**Enterprise Terms**” found at <https://info.polco.us/enterprise-terms>) and the Website Terms of Use (the “**Website Terms**” found at <https://info.polco.us/eula>) (each a “**Supplement,**” and collectively with this Order Form, the “**Agreement**”).

Unless otherwise expressly defined herein, all defined terms in any Supplement, respectively, used in this Order Form have the meaning stated in the applicable Supplement. In the event of any conflict or inconsistency between the provisions of (a) this Order Form, (b) a Supplement (as applicable), and (c) any other documents or policies referenced in this Order Form or the Supplements, the governing order of precedence shall be: (i) this Order Form (ii) the Enterprise Terms; (iii) the Website Terms; and (iv) any other document incorporated herein by reference.

<b>Customer Information:</b>	
<b>Customer Name:</b>	City of Warrenville
<b>Address:</b>	<b>City Hall</b> 3S258 Manning Avenue Warrenville, IL 60555
<b>Contact:</b>	<b>Cristina White, City Administrator</b>
<b>Phone:</b>	630.836.3050 ext. 1740
<b>E-mail:</b>	cwhite@warrenville.il.us

**Training and Support** - Your subscription includes access to the Services and Polco Materials as described below, which includes training materials, as well as access to technical support services for your Authorized Users. You understand that technical support services are for



technical product support, and such services are not to be used as a substitute for proper training and education.

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

**Term Starting:** January 16, 2023 **Term Ending:** January 15, 2024

The Term of this Agreement shall be for a period of twelve (12) months from the Effective Date, unless earlier terminated pursuant to this Agreement. This Agreement may be renewed by written agreement of the parties at the end of the Term for up to two additional one year terms.

**Termination.** Notwithstanding any other provision hereof, the Customer may terminate this Agreement, at any time and for any reason, upon 30 days prior written notice to Polco. In the event that the Agreement is terminated early prior to the end of the Initial Term or any subsequent renewal term, Polco will reimburse the Customer on a pro-rated basis for the remainder of the unused term.

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

Fee Type	Name	Fee
Software Service Subscription	Polco Performance Plan	\$17,000/ year
Subscription	½ page of custom questions	\$2,800/year
Subscription	Spanish Translation	\$1,350/year
Subscription	Presentation of results	\$2,400/year
		<b>Total: \$23,550 / year</b>

Polco reserves the right to modify and increase Fees upon providing written notice to Customer at least sixty (60) calendar days prior to the commencement of any Renewal Term, which modified Fees will be applicable for that immediately following Renewal Term, and the applicable Fees in this Order Form will be deemed amended accordingly. Any such increases shall not to exceed 7% per Renewal Term. You will receive standard updates to the Services that are made generally available by Polco during the Term. However, Polco reserves the right to offer additional functionality or premium feature improvements for an additional cost.

**Billing** - You will be invoiced upon execution of this Agreement and all Fees for your Initial Term are due within 60 days following the Invoice Date, in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.* If applicable, sales tax shall be assessed



on your invoice to comply with the sales tax laws and regulations in your state. Your Implementation shall be suspended if Fees for your Initial Term are not received in a timely fashion, and your Account shall be suspended and inaccessible if such Fees are not received within 60 days of the invoice due date.

Fees for Renewal Terms shall be invoiced 60 days in advance of the start date of the Renewal Term, and shall be due by the start date of the Renewal Term. Your Account shall be automatically suspended and inaccessible as of the start date of the Renewal Term if Fees have not been received by such date, and your subscription shall be deemed terminated if Fees for a Renewal Term are not received within 30 days following the start date of the Renewal Term. There shall be a \$500 (USD) reactivation fee if your account is suspended for late payment.

Except to the extent otherwise expressly stated in this Agreement all obligations to pay subscription Fees are non-cancelable and all payments are non-refundable. You agree that your purchases are not contingent on the delivery of any future functionality or features that are not currently offered as part of the Software or Subscriptions, or dependent on any oral or written public comments made by Polco regarding future functionality or features that are not currently offered as part of the Software or Subscriptions.

**Compliance with data protection laws** - Each Party will comply with any applicable data protection and privacy laws and applicable to such Party's performance of its obligations under or in connection with this Agreement ("**Data Protection Laws**"). Where applicable Data Protection Laws, whether in effect at the start of the Term or as become applicable or effective during the Term, require the processing of Personal Data to be subject to specific terms between the Parties, the Parties shall enter into any necessary amendments to this Agreement and/or separate agreements to the extent necessary to comply with such applicable Data Protection Laws, including without limitation a Data Sharing Agreement.

### **Polco Representations.**

**A. Ability to Perform.** Polco represents that it is financially solvent, has the necessary financial resources, has sufficient experience and competence, and has the necessary capital, facilities, organization, and staff necessary to provide, perform, and complete the Services in accordance with this Agreement and in a manner consistent with the standards of professional practice by recognized consulting firms providing services of a similar nature.

**B. Authorization.** The execution, delivery and performance by Polco of this Agreement has been duly authorized by all necessary corporate action, and does not and will not violate its organizational documents, as amended and supplemented, any of the applicable requirements of law, or constitute a breach of or default under, or require any consent under, any agreement, instrument, or document to which Polco is now a party or by which Polco is now or may become bound.



**C. Company Background.** The information disclosed by Polco regarding its corporate structure, financial condition, expertise, and experience is true and correct. Polco will promptly notify Customer in writing of any material change to or about Polco, including without limitation to change in ownership or control, and any change will be subject to Customer approval which will not be unreasonably withheld.

**D. Conflict of Interest.** Polco represents and certifies that, to the best of its knowledge: (1) no Customer employee, official, or agent has an interest in the business of Polco or this Agreement; (2) as of the date of this Agreement, neither Polco nor any person employed or associated with Polco has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither Polco nor any person employed by or associated with Polco will at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

**E. No Collusion.** Polco represents and certifies that Polco is not barred from contracting with a unit of state or local government as a result of (i) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Polco is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (ii) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 2012, 720 ILCS 5/33E-1 *et seq.* Polco represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to Customer prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it is found that Polco has, in procuring this Agreement, colluded with any other person, firm, or corporation, then Polco will be liable to Customer for all loss or damage that Customer may suffer, and this Agreement will, at Customer's option, be null and void.

**F. Sexual Harassment Policy.** Polco certifies that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 775 ILCS 5/2-105(A)(4).

**G. No Default.** Polco is not in arrears to Customer under any debt or contract and is not in default as surety, contractor, or otherwise to any person, unless as disclosed Customer in writing.

**H. No Legal Actions Preventing Performance.** As of the Effective Date, Polco has no knowledge of any action, suit, proceeding, claim or investigation pending or to its knowledge threatened against Polco in any court, or by or before any federal, state, municipal, or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, would materially affect Polco's ability to perform its obligation under this Agreement.



**I. Patriot Act Compliance.** Polco represents and warrants to Customer that neither Polco nor any of its principals, shareholders, or other employees or officials (collectively "**Personnel**") is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. Polco further represents and warrants that Polco and its Personnel are not directly or indirectly engaged in or facilitating transactions related to this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. Polco must, and will, defend, indemnify, and hold harmless Customer and its officials, officers, authorities, and all Customer elected or appointed officials, officers, employees, agents, representatives, and attorneys from and against every claim, damage, loss, risk, liability, and expense (including attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this Section.

**Indemnification; Insurance; No Personal Liability.**

**A. Indemnification.** Polco agrees to, and does hereby, hold harmless and indemnify Customer and all Customer's elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of those parties in connection with this Agreement or Polco's performance, or failure to perform, all or any part of the Services; provided, however, that this indemnity does not, and will not, apply to willful misconduct or gross negligence on the part of Customer.

**B. Insurance.** Contemporaneous with Polco's execution of this Agreement, Polco will provide certificates of insurance, all with coverages and limits acceptable to Customer, and Polco must provide certificates of insurance, endorsements, and insurance policies acceptable to Customer and including at least the minimum insurance coverage and limits set forth in **Attachment 2** to this Agreement.

**C. No Personal Liability.** No elected or appointed official, or employee of Customer will be personally liable, in law or in contract, to Polco as the result of the execution and performance of this Agreement.

**Default.**

**A. Default.** If Customer determines that Polco has failed or refused to properly undertake the Services with diligence, or has delayed in the undertaking of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("**Event of Default**"), and fails to cure any the Event of Default within ten days after Polco's receipt of written notice of the Event of Default from Customer, then Customer will have the right, notwithstanding the availability of other remedies provided by law or equity, to pursue any one or more of the remedies provided for under Section B of this "Default" Section.





**B. Remedies.** In case of any Event of Default, Customer may pursue the following remedies:

1. **Cure by Polco.** Customer may require Polco, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all other action necessary to bring Polco and the Services into compliance with this Agreement;

2. **Termination of Agreement.** Customer may terminate this Agreement and, notwithstanding anything in the "Termination" Section of this Agreement, Customer will not have any liability for further payment of amounts due or to become due under this Agreement;

3. **Withholding of Payment.** Customer may withhold from any payment, whether or not previously approved, or may recover from Polco, any and all costs, including attorneys' fees and administrative expenses, incurred by Customer as the result of any Event of Default by Polco or as a result of actions taken by Customer in response to any Event of Default by Polco.

#### **Miscellaneous.**

**Notices.** All notices shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; or (iii) the second business day after sending by email (provided that such email has not been returned as undelivered, or that sender does not receives an automatic response or other indication that the email account is not being monitored).

<p><u>To Polco:</u> 8001 Terrace Avenue, #201 Middleton, WI 53562 alex@polco.us Alex Pedersen, Chief Financial Officer</p>	<p><u>To Customer:</u> City of Warrenville C/O: Cristina White Address: 3S258 Manning Avenue, Warrenville, IL 60555 Email: <a href="mailto:cwhite@warrenville.il.us">cwhite@warrenville.il.us</a></p> <p>Copy To City Attorney: Elrod Friedman C/O: Brooke Lenneman Address: 325 North Lasalle Street, Suite 450, Chicago, IL 60654 Email: <a href="mailto:brooke.lenneman@elrodfriedman.com">brooke.lenneman@elrodfriedman.com</a></p>
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**Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference, 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, and representations and warranties, both written and oral, with respect to such subject matter.



**Counterparts.** This Agreement and any amendments thereto may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The Parties may execute this Agreement and any amendment hereto in the form of an electronic record utilizing electronic signatures, as such terms are defined in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et. seq.). Electronic signatures, or signatures transmitted electronically via PDF or similar file delivery method is legal, valid, and binding upon execution and delivery for all purposes and each shall have the same effect as an original signature.

**Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will 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 shall negotiate in good faith to modify this Agreement so as to affect their original intent 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.

**Freedom of Information Act and Local Records Act.** Polco acknowledges that this Agreement, all documents submitted to the Customer related to this Agreement, and records in the possession of Polco related to this Agreement or the Services may be a matter of public record and may be subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, and any other comparable state or federal laws now existing or adopted later (collectively, the “**Disclosure Laws**”). In the event that the Customer requests records from Polco, Polco shall promptly cooperate with the Customer to enable the Customer to meet all of its obligations under the applicable Disclosure Law. Polco acknowledges and agrees that the determination as to whether information in the records is exempt from disclosure or should be released to the public will be made by Customer in its sole and absolute discretion.

**Governing Laws.** This Agreement will be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

**Venue.** Exclusive jurisdiction with regard to the any actions or proceedings arising from, relating to, or in connection with this Agreement will be in the Circuit Court of DuPage County, Illinois or, where applicable, in the federal court for the Northern District of Illinois. The Parties waive their respective right to transfer or change the venue of any litigation filed in the Circuit Court of DuPage County, Illinois.



	<b>POLICY CONFLUENCE, INC.</b>
	DocuSigned by: By: <i>Lisa Dowling</i> E52A0AB2ADC14E1... Name: Lisa Dowling Title: Vice President of Sales

	<b>CUSTOMER: CITY OF WARRENVILLE</b>
	By: Name: Cristina White Title: City Administrator



ATTACHMENT 1  
PROPOSAL



**ATTACHMENT 2**

**INSURANCE COVERAGES**

A. Worker's Compensation and Employer's Liability with limits not less than:

- (1) Worker's Compensation: Statutory;
- (2) Employer's Liability:
  - \$500,000 injury-per occurrence
  - \$500,000 disease-per employee
  - \$500,000 disease-policy limit

Insurance will evidence that coverage applies in the State of Illinois.

B. Comprehensive Motor Vehicle Liability with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 for vehicles owned, non-owned, or rented.

All employees will be included as insureds.

C. Comprehensive General Liability with coverage written on an "occurrence" basis and with limits no less than:

\$2,000,000 Bodily Injury and Property Damage Combined Single Limit

Coverage is to be written on an "occurrence" basis.

Coverages will include:

- Broad Form Property Damage Endorsement
- Blanket Contractual Liability (must expressly cover the indemnity provisions of this Agreement)

D. Professional Liability Insurance. With a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and covering the Consultant against all sums that Polco may be obligated to pay on account of any liability arising out of this Agreement.

E. Umbrella Policy. The required coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis so that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover the loss.

F. Owner as Additional Insured. Customer will be named as an Additional Insured on all policies except for:



Worker's Compensation

Professional Liability

Each additional Insured endorsement will identify Customer as follows: City of Warrenville, Illinois including its Board members and elected and appointed officials, its officers, employees, agents, attorneys, the Consultants, and representatives.

- G. Other Parties as Additional Insureds. In addition to Customer, the following parties will be named as additional insured on the following policies:

<u>Additional Insured</u>	<u>Policy or Policies</u>
_____	_____
_____	_____
_____	_____