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TYPE OF RECORD:	NON-PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	ENERGOV SOLUTIONS
SUBJECT/PROJECT:	SOFTWARE SUPPORT AGREEMENT
CITY DEPARTMENT:	ADMINISTRATION
YEAR:	2009
EXPIRATION DATE:	10/27/2010 WITH OPTION TO RENEW
DESTRUCTION DATE:	01/01/2017

**Microsoft**  
**CERTIFIED**  
Partner

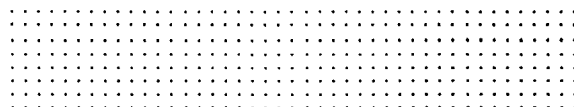
# Software Support Agreement

**\*\* ORIGINAL \*\***

**City of Grand Junction  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501**



THE POWER OF ENTERPRISE.



## SOFTWARE SUPPORT AGREEMENT

THIS SOFTWARE SUPPORT AGREEMENT ("Support Agreement") is made this 27<sup>th</sup> day of Oct., 2009 by and between EnerGov Solutions, LLC a Georgia limited liability company ("EnerGov") and the City of Grand Junction ("Customer").

### BACKGROUND

EnerGov has licensed Customer certain of EnerGov's proprietary software in accordance with that certain Master Customer Agreement dated \_\_\_\_\_, 2009 by and between EnerGov and Customer (the "Master Customer Agreement").

Customer desires to have EnerGov support such software and EnerGov desires to support such software for Customer under the terms and conditions set forth herein.

**IN CONSIDERATION** of the foregoing and the mutual covenants set forth herein, and intending to be legally bound, the parties agree as follows:

**1. Definitions.** The following words shall have the following meanings when used in this Support Agreement:

"Error" means a substantial reproducible failure of the EnerGov Software to conform to the specifications set forth in the applicable end user Documentation.

"Error Correction" means either a modification or addition to, or deletion from the EnerGov Software that, when made to EnerGov Software, establishes the substantial conformity of such EnerGov Software to the specifications therefore as set forth in the applicable end user Documentation, or a procedure or routine that, when observed in the regular operation of the EnerGov Software, eliminates the practical adverse effect of such Error on Customer.

"Major Release" means a revision to the EnerGov Software indicated by a change in the first digit of the version number.

"Minor Release" means a revision to the EnerGov Software indicated by a change in the second digit of the version number.

"Release" means either a Major Release or Minor Release.

"Support Services" shall mean the services described in Section 3 of this Support Agreement.

Any capitalized terms not defined in this Support Agreement shall have the meaning set forth in the Terms and Conditions of the Master Customer Agreement.

### 2. EnerGov's Obligations.

2.1 In consideration of Customer's performance hereunder, EnerGov shall render the Support Services pursuant to Section 3.

2.2 All Support Services performed by EnerGov under this Support Agreement shall be performed by EnerGov in a professional manner. EnerGov does not warrant that the Support Services or EnerGov Software will be uninterrupted or error free.

2.3 The parties acknowledge and agree that, notwithstanding anything to the contrary herein contained, EnerGov shall not support or maintain any hardware or any third party software.

### 3. Support Services.

3.1 During the term of this Support Agreement, and subject to the terms and conditions of this Support Agreement, EnerGov shall provide the following Support Services to the Customer with respect to any EnerGov Software licensed to the Customer:

3.1.1 Unlimited Phone Support. The Customer shall have unlimited access to phone support during the hours of operation by calling 1-888-355-1093, or a toll free number in use at the time requesting support. Hours of operation are 8am to 8pm (EST).

3.1.2 Unlimited Email Support. The Customer shall have unlimited access to email support by emailing support@energov.com, or a mutually agreeable email address designated for support. Email will be monitored only during normal hours of operation.

3.1.3 Free Upgrades. EnerGov shall make available to the Customer from time to time each Minor and Major Release of the EnerGov Software without additional charge to its customers who have continuously paid for Software Support since Customer's initial purchase of all EnerGov Software.

3.1.4 Remote Support. The Customer is entitled to dial in support during normal hours of operation. EnerGov will often utilize third party software products to dial into a client workstation. Examples of third party vendors are PC Anywhere and BLive. The Customer is not required to purchase any additional software or incur any expense to utilize this type of support. Customer agrees to install such third party software furnished by EnerGov as may be necessary to facilitate dial in support.

3.1.5 Offsite Data Storage of Backups. Upon the written election of Customer, EnerGov will provide offsite data storage of backups of Customer's data on EnerGov's ftp servers. Customer agrees to provide EnerGov with at least ten (10) days prior written notice of its election to use the offsite data storage services of EnerGov. Unless provided otherwise on the Proposal attached hereto: (i) the storage space of the data shall be limited to no more that 10 megabytes; (ii) stored backup data will be saved for a period of no more than seven (7) days; and (iii) all data may be removed and deleted by

EnerGov five (5) days after the termination of this Support Agreement or the Support Services provided hereunder. To the extent Customer has elected to use the offsite data storage services of EnerGov pursuant to this Support Agreement, EnerGov agrees to promptly make such data available to Customer upon request as needed from time to time (for example, in case of disaster recovery).

3.2 Response Time. EnerGov shall be responsible for the handling of all support issues, whether written or oral. All support issues are entered into the EnerGov tracking database and will be handled as efficiently as possible. Support issues that indicate an Error will be given higher priority and will be handled prior to non-critical issues. EnerGov does not guarantee a resolution time beyond the fact that it will work diligently to resolve all customer issues and concerns as quickly as possible.

3.3 Notwithstanding any other provisions in this Support Agreement, EnerGov shall provide Support Services only with respect to the two (2) most recent Major Releases of any EnerGov Software.

3.4 Notwithstanding any other provisions in this Support Agreement, EnerGov is not obligated to provide custom modifications to the EnerGov Software for the purpose of providing additional functionality or performance beyond that which is described in the Proposal.

3.5 Title to all Releases, Error Corrections, fixes, enhancements, and other Proprietary Information shall remain solely and exclusively with EnerGov and shall be subject to the Terms and Conditions of the Master Customer Agreement governing the license for the EnerGov Software supported hereunder.

#### 4. Out of Scope Problems.

4.1 This Support Agreement only covers the Support Services described in Section 3. Without limiting the foregoing, the following items are not covered by this Support Agreement:

(A) Errors resulting from breach of the software license, misuse, negligence, revision, modification, or other improper use by Customer or any other person or entity of the EnerGov Software or any portion thereof;

(B) Failure by Customer to timely install Error Corrections or Releases provided to Customer by EnerGov from time to time;

(C) EnerGov Software installed on any equipment other than the Designated System or used with any software not specified in the applicable end user Documentation;

(D) Errors or other problems caused by viruses;

(E) Any network failures or problems including, but not limited to, cabling, communication lines, routers, connectors, and network software; or

(F) On-site service visits to Customer's offices or other facilities.

4.2 Any time incurred by EnerGov in diagnosing or fixing problems that are not caused by the EnerGov

Software, or are not covered by this Support Agreement, are billable to the Customer at EnerGov's then-existing rates for such services with a one-hour minimum per call.

4.3. Any travel and expenses incurred in conjunction with out of scope support shall be billed to Customer at EnerGov's actual costs, provided all such travel and expenses shall be approved by Customer in advance.

**5. Term of Support Agreement.** This Support Agreement shall become effective upon its execution and continue for a one (1) year term (the "Initial Term"), unless terminated earlier as provided for herein. Thereafter, it shall continue on a year-to-year basis, until terminated by either party thirty (30) days prior to the anniversary date of this Support Agreement or any renewal term. Notwithstanding the foregoing, (i) the Customer may terminate the Support Services at any time by providing EnerGov with written thirty (30) days notice; and (ii) EnerGov may terminate this Support Agreement in the event the Customer fails to timely pay any amounts due pursuant to this Support Agreement and such failure is not cured within fifteen (15) calendar days after written notice of such failure is provided to the Customer.

Customer may terminate the Agreement in the event of the occurrence of any of the following:

5.1 Insolvency of EnerGov: EnerGov shall be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition for bankruptcy has been filed, and whether or not insolvent within the meaning of the Federal Bankruptcy Law;

5.2 The filing of a voluntary petition to have EnerGov declared bankrupt;

5.3 The appointment of a Receiver or Trustee for EnerGov; or

5.4 The execution by EnerGov of a general assignment for the benefit of creditors.

The rights and remedies of Customer provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

After receipt of a Notice of Termination for insolvency or in the event of non-appropriation, and except as otherwise directed by Customer, EnerGov shall stop work under this Agreement on the date and to the extent specified in the Notice of Termination. After receipt of a Notice of Termination for Insolvency or Non-Appropriation, EnerGov shall submit to Customer, in the form and with any certifications as may be prescribed by Customer, its termination claim and invoice. Such claim and invoice shall be submitted promptly, but not later than (3) months from effective date of termination. Upon failure of the Contractor to submit its termination claim and invoice within the time allowed, Customer may determine on the basis of information available to Customer, the amount, if any, due to the Contractor in

respect to the termination and such determination shall be final. When such determination is made, Customer shall pay EnerGov the amount so determined. Subject to the provisions of this section, Customer and EnerGov shall negotiate an equitable amount to be paid EnerGov by reason of the total or partial termination of work pursuant to this clause, which amount shall be consistent with the line-item Payment Schedule attached to the Master Customer Agreement as Schedule 1 and may include a reasonable allowance for profit on work done but shall not include an allowance on work terminated. Customer shall pay the agreed amount; provided that such amount shall not exceed the total funding obligated under this Agreement as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated.

#### **6. Fees for Support Services.**

6.1 Except as provided in Section 6.2, Customer shall pay to EnerGov the fees for the Support Services ("Support Fees") in the amounts set forth on the Proposal attached hereto, with payments beginning in the 5<sup>th</sup> calendar quarter following the full "Go-Live" date for the EnerGov Software. The initial Support Fees are due upon completion of the Installation of the EnerGov Software. Thereafter, all Support Fees are payable ten (10) days before each successive quarterly period (i.e., 10 days before January, April, July and October, as applicable). After the Initial Term, EnerGov may modify from time to time the amount of the fees charged for the Support Services by providing Customer with written sixty (60) days notice. In the event that the Customer purchases additional licenses of any additional EnerGov Software, the parties agree to either amend this Support Agreement to add the additional Support Fees related to such additional EnerGov Software or execute a new Support Agreement with respect to such additional EnerGov Software. All sums payable to EnerGov pursuant to this Support Agreement which are past due shall accrue interest at the rate of 1.5% per month or the highest legal rate allowed whichever is less, commencing with the date on which the payment was due, unless such payments are the subject of a good faith dispute of which Customer has notified EnerGov in writing within thirty (30) days of receipt of the applicable invoice.

6.2 Customer is a governmental agency. Anticipated expenditures/obligations beyond the end of the current Customer's fiscal year shall be subject to budget approval. If Customer's City Council fails to appropriate or authorize the expenditure of sufficient funds to provide for the continuation of this Support Agreement, or if a lawful order issued in or for any fiscal year during the term of this Support Agreement reduces the funds appropriated or authorized in such amounts as to preclude making the payments set forth herein, this Support Agreement shall terminate on the date said funds are no longer available without any termination charge or other liability incurring to the Customer. Customer shall provide EnerGov with notice not less than thirty (30)

days prior to the date of cancellation, if such time is available. Otherwise, prompt notice shall suffice.

**7. Confidentiality.** Proprietary Information provided by either party to the other under this Support Agreement shall be kept confidential in accordance with the terms of Section 8 of the Master Customer Agreement.

#### **8. Limitation of Liability and Disclaimer of Warranty.**

8.1. In no event shall EnerGov be liable for any special, indirect, incidental, punitive, or consequential damages, including loss of profits arising from or related to the breach of this Support Agreement.

8.2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUPPORT AGREEMENT, IN THE EVENT ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE, ENERGOV'S LIABILITIES UNDER THIS SUPPORT AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNT ACTUALLY RECEIVED BY ENERGOV PURSUANT TO THIS SUPPORT AGREEMENT.

8.3 EXCEPT AS SET FORTH IN SECTION 2.2, ENERGOV MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE ENERGOV SOFTWARE OR SUPPORT SERVICES OR THEIR CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY CUSTOMER. ENERGOV FURNISHES THE WARRANTIES IN SECTION 2.2 IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.4 No action, regardless of form, arising under this Support Agreement, may be brought more than one year after the cause of action has arisen, except that an action for nonpayment may be brought within two (2) years after the date of the most recent payment.

8.5 Customer specifically reserves its right to sovereign immunity pursuant to Colorado State Law as a defense to any action arising in conjunction to this agreement.

**9. Assignment.** Except as provided in the last sentence of this Section 9, neither Customer nor EnerGov may assign or transfer its interests, rights or obligations under this Support Agreement whether by written agreement, merger, consolidation, operation of law, or otherwise, without the prior written consent of an authorized executive officer of the other party. Any attempt to assign this Support Agreement by either party shall be null and void unless written consent has been obtained beforehand. Notwithstanding the foregoing, EnerGov may assign this Support Agreement without Customer's

consent in the event of a merger or sale of all or substantially all of EnerGov's assets.

**10. Amendments.** Amendments, modifications, or supplements to this Support Agreement shall be permitted, provided all such changes shall be in writing signed by the authorized representatives of both parties, and all such changes shall reference this Support Agreement and identify the specific articles or sections of this Support Agreement that is amended, modified, or supplemented.

**11. Notices.** All notices, demands, or other communications herein provided to be given or that may be given by any party to the other shall be in writing and delivered to such party at the address set forth on the signature page of this Support Agreement or at such other address as such party may hereafter designate to the other party in accordance herewith, which other address shall not be effective for purposes hereof until the receipt of same by such other party as designated below. All such notices, demands, or other communications given in accordance herewith shall be deemed to have been given and received (i) on the date of receipt if delivered by hand; (ii) on the earlier of the date of receipt or the date five (5) business days after depositing with the United States Postal Service if mailed by United States registered or certified mail, return receipt requested, first class postage paid and properly addressed; or (iii) on the next business day after depositing with a national overnight courier service if sent by national overnight courier service, priority delivery, properly addressed.

**12. Obligations that Survive Termination.** The parties recognize and agree that the obligations of the other party under Sections 7, 8, 13 and 15 of this Support Agreement, shall survive the cancellation, termination, or expiration of this Support Agreement.

**13. Governing Law.** The validity, construction, interpretation, and performance of this Support Agreement shall be governed by and construed in accordance with the domestic laws of the State of Colorado, except as to its principles of conflicts of laws. Each party hereto hereby voluntarily (i) submits to personal, exclusive jurisdiction in the State of Colorado, with respect to any suit, action or proceeding by any person arising from, relating to or in connection with this Support Agreement, (ii) agrees that any such suit, action or proceeding shall be brought in any state court of competent jurisdiction sitting in Mesa County, Colorado, or the United States District Court applicable to such county, (iii) submits to the jurisdiction of such courts, and (iv) irrevocably agrees not to assert any objection as to the venue of any such suit, action or proceeding in the courts described above and any claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

**14. Authority.** Each party represents and warrants to the other that it has the right to enter into this Agreement.

**15. Costs and Attorneys' Fees.** In any action, suit, arbitration, mediation or other similar proceeding brought by any party hereto for enforcement hereof or arising out of or relating hereto or breach hereof, the non-prevailing or unsuccessful party shall promptly pay directly, or promptly reimburse the prevailing or successful party for all costs and all consultants' and attorneys' fees and expenses, paid or incurred by the prevailing or successful party in enforcing this Support Agreement, in addition to other such relief as such prevailing or successful party may be entitled. For purposes of this Section, the determination of which party is to be considered the prevailing or successful party shall be decided by the court of competent jurisdiction or independent party (i.e., mediator or arbitrator) that resolves such action, suit, dispute, claim, or litigation.

**16. Waiver.** No waiver of breach or failure to exercise any option, right, or privilege under the terms of this Support Agreement on any occasion or occasions shall be construed to be a waiver of the same or any other option, right or privilege on any other occasion.

**17. Severability.** If any of the provisions of this Support Agreement shall be invalid or unenforceable under the laws of the jurisdiction where enforcement is sought, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Support Agreement but rather the entire Support Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions and the rights and obligations of EnerGov and Customer shall be construed and enforced accordingly.

**18. Counterparts.** This Support Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

**19. Delivery of Electronic Copy of Executed Agreement.** The parties agree that electronic transmission via facsimile or email to the other party of a copy of this Support Agreement bearing such party's signature shall suffice to bind the party transmitting same to this Support Agreement in the same manner as if an original signature had been delivered. Without limitation of the foregoing, each party who electronically transmits an executed copy of this Support Agreement via facsimile or email bearing its signature covenants to deliver the original thereof to the other party as soon as possible thereafter.

**20. Entire Agreement.** This Support Agreement and the Master Customer Agreement constitute the entire agreement between the parties hereto and replaces and supersedes all prior agreements, written and oral, relating to the subject matter hereof, between the parties to this Support Agreement.

**21. Independent Contractor.** EnerGov shall be legally considered an independent contractor and neither EnerGov nor its employees shall, under any circumstances, be considered servants or agents of Customer; and Customer shall be at no time legally responsible for any negligence or other wrongdoing by EnerGov, its servants, or agents. Customer shall not withhold from the contract payments to EnerGov any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to EnerGov. Further, Customer shall not provide to EnerGov any insurance coverage or other benefits, including Workers' Compensation, normally provided by Customer for its employees.

**22. Employment Discrimination.** During the performance of the contract, EnerGov agrees to the following:

22.1 EnerGov shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap or national origin except when such condition is a bona fide occupational qualification reasonably necessary for the normal operations of EnerGov. EnerGov agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

22.2 EnerGov, in all solicitations or advertisements for employees placed by or on behalf of EnerGov, shall state that EnerGov is an Equal Opportunity Employer.

22.3 Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

IN WITNESS WHEREOF, the parties have executed this Support Agreement under seal as of the day and year first written above.

<p><b>CUSTOMER:</b> <u>City of Grand Jct</u></p> <p>By: <u>[Signature]</u></p> <p>Title: <u>Purchasing Mgr.</u></p> <p><u>Address:</u></p> <p><u>250 N 5th St.</u></p> <p><u>Grand Jct., CO 81501</u></p>	<p><b>ENERGOV SOLUTIONS, LLC</b></p> <p>By: <u>[Signature]</u></p> <p>Title: <u>Executive Vice President</u></p> <p><u>Address:</u></p> <p>2160 Satellite Blvd., Ste. 300 Duluth, GA 30097</p>
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**Three-Party Escrow Agreement**

**Among**

**EnerGov Solutions, LLC (Depositor), City of Grand Junction, Colorado  
(Beneficiary) and Escrow Associates, LLC**



### Three-Party Escrow Agreement

This Technology Escrow Agreement ("Agreement") among Escrow Associates ("Escrow Associates"), City of Grand Junction, Colorado ("Beneficiary") and EnerGov Solutions, LLC ("Depositor") is effective on this 27<sup>th</sup> day of October 2009 (the "Effective Date").

#### Recitals

Whereas, Depositor licenses technology to Beneficiary in the form of software object code (the "Software") pursuant to a license agreement ("License Agreement"). The source code is defined as the Software in source code form, including all relevant documentation and instructions necessary to maintain, duplicate, and compile the source code (the "Source Code"). The Source Code is necessary to maintain and support the Software as defined in the License Agreement. The Source Code and any other components Depositor provides which are related to building and maintaining the Software identified on Exhibit B (as the same may be modified herein) are hereafter referred to collectively as the deposit materials ("Deposit Materials").

Whereas, the purpose of this Agreement is to protect Depositor's ownership and confidentiality of the Deposit Materials and to protect Beneficiary's legitimate use of the Deposit Materials as defined by the License Agreement. Further, this Agreement is intended to provide for certain circumstances under which Beneficiary shall be entitled to receive the Deposit Materials held in escrow by Escrow Associates to continue its legitimate use and support of the Software.

Whereas, Beneficiary and Depositor hereby designate and appoint Escrow Associates as the escrow agent under this Agreement. Escrow Associates hereby accepts such designation and appointment and agrees to carry out the duties of escrow agent pursuant to the terms and provisions of this Agreement. Escrow Associates is not a party to, and is not bound by, any agreement that might be evidenced by, or might arise out of, any prior or contemporaneous dealings between Depositor and Beneficiary other than as expressly set forth herein.

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

#### 1. Deposit Materials

(a) Initial Deposit - Depositor shall submit the initial Deposit Materials to Escrow Associates within sixty (60) days of the Effective Date or sixty (60) days after development of the Deposit Materials is completed. Depositor shall complete and deliver with all Deposit Materials a form as shown herein as Exhibit B, which shall then become part of this Agreement. Escrow Associates shall notify Beneficiary within ten (10) business days of receipt of the initial Deposit Materials. Escrow Associates has no obligation with respect to the initial Deposit Materials for delivery, functionality, completeness, performance or initial quality.

(b) Deposit Material Updates - Depositor shall submit updates to the initial Deposit Materials to Escrow Associates within sixty (60) days of any material modification, upgrade or new release of the Software. Depositor shall complete and deliver with all updates to the Deposit Materials an amended Exhibit B form, which shall additionally become part of this Agreement. Escrow Associates shall notify Beneficiary within ten (10) business days of receipt of updates to the Deposit Materials. Escrow Associates has no obligation with respect to the updates to the Deposit Materials for delivery, functionality, completeness, performance or initial quality.

(c) Electronic Deposit - In the event Depositor elects to utilize electronic means to transfer the Deposit Materials to Escrow Associates, whether through a service provided by Escrow Associates or other means, Escrow Associates shall not be liable for transmissions that fail in part or in whole, are lost, or are otherwise compromised during transmission. Furthermore, Escrow Associates shall not be liable for any subsequent services that may or may not be delivered as a result of a failed transfer. Escrow Associates shall not be liable to Depositor or Beneficiary for any encrypted update, or any part thereof, that is transmitted over the Internet to Escrow Associates' FTP Site but is not received in whole or in part, or for which no notification of receipt is given.

(d) Duplication of Deposit Materials - Escrow Associates may duplicate the Deposit Materials only as necessary to comply with the terms of this Agreement. Escrow Associates at its sole discretion may retain a third party for the purpose of duplicating the Deposit Materials only as necessary to comply with the terms herein. All duplication expenses shall be borne by the party requesting duplication.

(e) Deposit Material Verification - Escrow Associates may be retained by separate agreement or by alternative means, to conduct a test of the Deposit Materials to determine the completeness and accuracy of the Deposit Materials. Escrow Associates shall not be liable for any actions taken on the part of any third party with regards to the Deposit Materials.

## 2. Term

(a) Term of Agreement - The term of this Agreement shall be for a period of one (1) year from the Effective Date. At the end of the initial and each subsequent term, this Agreement shall automatically renew for an additional one (1) year term unless terminated according to the terms herein.

(b) Termination of Agreement - This Agreement may be terminated by written mutual consent of Depositor and Beneficiary provided that one of the following occurs:

- i. The License Agreement has been terminated or has expired, or
- ii. All Deposit Materials have been released in accordance with the terms hereof.

(c) Termination for Non-Payment - In the event that full payment of any or all fees due to Escrow Associates under this Agreement have not been received by Escrow Associates within thirty (30) days of the date payment is due, Escrow Associates will

notify all parties hereto of the delinquent fees. If the delinquent fees are not received within thirty (30) days of the delinquency notification, Escrow Associates shall have the right to terminate this Agreement and destroy the Deposit Materials.

(d) Return of Deposit Materials – Upon termination of this Agreement for any reason other than in the event all Deposit Materials have been released in accordance with the terms of Section 6 herein, Escrow Associates shall return the Deposit Materials to Depositor via commercial courier to the address of Depositor shown in this Agreement, provided that all fees due Escrow Associates are paid in full. If two (2) attempts to return Deposit Materials via commercial courier to Depositor fail or Depositor does not accept the Deposit Materials, Escrow Associates shall destroy the Deposit Materials.

### 3. Fees

(a) Payment - Upon receipt of signed Agreement or initial Deposit Materials, whichever comes first, Escrow Associates will submit an initial invoice to Depositor for amount shown on Exhibit A attached hereto. If payment is not received, Escrow Associates shall have no obligation to perform its duties under this Agreement. Depositor agrees to pay to Escrow Associates all additional fees for services rendered related to this Agreement as shown on Exhibit A. The fee for any service that is not expressly covered in Exhibit A shall be established by Escrow Associates upon request. All fees are due in advance of service and are non-refundable. Escrow Associates may amend Exhibit A at any time upon sixty (60) days written notice to Beneficiary and Depositor.

(b) Currency - All fees are in U.S. dollars and payment must be rendered in U.S. dollars unless otherwise agreed to in advance by Escrow Associates.

4. Indemnification - With the exception of gross negligence, willful misconduct or intentional misrepresentation on behalf of Escrow Associates, Depositor and Beneficiary shall, jointly and severally, indemnify and hold harmless Escrow Associates, to the extent permitted by law, and each of its directors, officers, agents, employees, members and stockholders ("Escrow Associates Indemnitees") absolutely and forever, from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted against any Escrow Associates Indemnitee in connection with this Agreement or the performance of Escrow Associates or any Escrow Associates Indemnitee hereunder.

### 5. Depositor's Representations and Warranties

(a) The Deposit Materials as delivered to Escrow Associates are a copy of Depositor's proprietary information corresponding to that described in Exhibit B and are capable of being used to generate the Software. Depositor shall update the Deposit Materials as provided for in the License Agreement and/ or as provided for herein. The Deposit Materials shall contain all information necessary to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Deposit Materials.

(b) Depositor owns the Deposit Materials and all intellectual property rights therein free and clear of any liens, security interests, or other encumbrances.

## 6. Release of Deposit Materials

(a) Release - The Deposit Materials, including any copies thereof, will be released to Beneficiary after the receipt of the written request for release only in the event that the release procedure set forth in Section 6 is followed and:

- i. Depositor notifies Escrow Associates in writing to effect such release; or
- ii. Beneficiary makes written request to Escrow Associates; and
  - a. Beneficiary asserts that Depositor has failed in a material respect under the License Agreement; or
  - b. Beneficiary asserts that Depositor has ceased all business operations without a successor or assign; or
  - c. Beneficiary asserts that Depositor has filed for bankruptcy protection; and
  - d. Beneficiary includes a written statement that the Deposit Materials will be used in accordance with the terms of the License Agreement; and
  - e. Beneficiary includes specific instructions for the delivery of the Deposit Materials.

(b) Depositor Request for Release - If the provisions of Section 6(a)(i) are met, Escrow Associates will release the Deposit Materials to Beneficiary within ten (10) business days.

(c) Beneficiary Request for Release - If the provisions of Section 6(a)(ii) are met, Escrow Associates will within ten (10) business days forward a complete copy of the request to Depositor. Depositor shall have thirty (30) days to make any and all objections to the release known to Escrow Associates in writing. If after thirty (30) days Escrow Associates has not received any written objection from Depositor, Escrow Associates shall release the Deposit Materials to Beneficiary as instructed by Beneficiary.

(d) Depositor Objection to Release - Should Depositor object to the request for release by Beneficiary in writing, Escrow Associates shall notify Beneficiary in writing within ten (10) business days of Escrow Associates receipt of said objection and shall notify both parties that there is a dispute to be resolved pursuant to Section 7 (Arbitration) of this Agreement. Escrow Associates will continue to hold the Deposit Materials without release pending (i) joint instructions from Depositor and Beneficiary; (ii) dispute resolution according to Section 7 (Arbitration); or (iii) order from a court of competent jurisdiction.

(e) Grant of License to Deposit Materials – As of the Effective Date, Depositor hereby grants to Beneficiary, a non-exclusive, worldwide, perpetual, paid in full license, to install, use, copy, publicly perform and digitally perform, modify and create derivative works from the Deposit Materials delivered by Escrow Associates under this Section, for the sole purpose of continuing the benefits afforded to Beneficiary under this Agreement, including the development of patches and upgrades solely for Beneficiary's internal use.

(f) Restrictions on Use – The following restrictions shall apply to Deposit Materials delivered to Beneficiary: (i) Beneficiary shall not copy the Deposit Materials other than as necessary for installation on Beneficiary's equipment and for backup copies on Beneficiary's equipment, (ii) Beneficiary will keep the Deposit Materials in a secure, safe place when not in use, (iii) Beneficiary agrees to use the Deposit Materials under carefully controlled conditions in accordance with, and for the purposes of, this Agreement, (iv) Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials in accordance with Section 8, and (v) Beneficiary agrees to treat, handle, and store the Deposit Materials in the same manner and with the same care as it treats its most sensitive and valuable trade secrets.

7. Arbitration - Except as expressly provided for herein, any dispute or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled in Atlanta, Georgia by arbitration administered by the American Arbitration Association in accordance with its Commercial or other Arbitration Rules including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall award attorneys' fees and costs to the prevailing party. Any and all costs incurred by Escrow Associates as a result of any Arbitration, including attorney's fees, shall be reimbursed by the non-prevailing party.

8. Confidentiality – Except as otherwise required to carry out its duties under this Agreement, Escrow Associates shall hold in strictest confidence and not permit any third party access to nor otherwise use, disclose, transfer or make available the Deposit Materials except as otherwise provided herein, unless consented to in writing by Depositor.

9. Limitation of Liability - Under no circumstance shall Escrow Associates be liable for any special, incidental, or consequential damages (including lost profits) arising out of this Agreement even if Escrow Associates has been apprised of the possibility of such damages. In performing any of its duties hereunder, Escrow Associates shall not incur any liability to any party for any damages, losses, or expenses, except for willful misconduct or gross negligence on the part of Escrow Associates, and it shall not incur any liability with respect to any action taken or omitted in reliance upon any written notice, request, waiver, consent, receipt or other document which Escrow Associates in reasonably good faith believes to be genuine.

10. Notices – Notices shall be deemed received on the third business day after being sent by first class mail, or on the following day if sent by commercial express mail. All notices under this Agreement shall be in writing and addressed and sent to the person(s) listed in the space provided below:

Depositor

Contact: Mark Beverly                      Title: Executive Vice President  
Address: 2160 Satellite Blvd, Suite 300  
City, State, Zip: Duluth, Georgia 30097

Telephone: 888-355-1093  
Email: mbeverly@energov.com

Fax: 678-474-1002

Billing Contact: Mark Beverly Title: Executive Vice President  
Address: 2160 Satellite Blvd, Ste 300  
City, State, Zip: Duluth, GA 30097  
Telephone: 888-355-1093 Fax: 678-474-1002  
Email: mbeverly@energov.com  
Purchase Order (if applicable): \_\_\_\_\_

**Beneficiary**

Company: City of Grand Junction, Colorado  
Contact: Jay Valentine Title: Purchasing Mgr.  
Address: 250 N 5<sup>th</sup> St.  
City, State, Zip: Grand Jct., CO 81501  
Telephone: 970 244 1517 Fax: 970 256 4157  
Email: jayva@gjcity.org

**Escrow Associates, LLC**

Attn: Contracts Administration  
1303 Hightower Trail, Suite 220  
Atlanta, GA 30350 USA  
Telephone: 800-813-3523  
Fax: 770-518-2452  
Email: info@escrowassociates.com

**11. Miscellaneous**

(a) Counterparts - This Agreement may be executed in any number of multiple counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

(b) Entire Agreement - This Agreement supersedes all prior and contemporaneous letters, correspondences, discussions and agreements among the parties with respect to all matters contained herein, and it constitutes the sole and entire agreement among them with respect thereto.

(c) Limitation of Effect - This Agreement pertains strictly to the escrow services provided for herein and does not modify, amend or affect any other contract or agreement of one or more of the parties. The terms and provisions of the License Agreement, as the same may be physically modified by the terms and provisions hereof, shall continue in full force and effect and be binding upon and inure to the benefit of the parties hereto, their legal representatives, successors and assigns.

(d) Modification - This Agreement shall not be altered or modified without the express written consent of all parties.

(e) Bankruptcy Code - This Agreement shall be considered an agreement supplementary (together with any modification, supplement, or replacement thereof agreed to by the parties) to the License Agreement pursuant to Title 11 United States Bankruptcy Code Section 365(n).

(f) Survival of Terms - All obligations of the parties intended to survive the termination of this Agreement, including without limitation, are the provisions of Sections 2 (Term), 3 (Fees), 4 (Indemnification), 7 (Arbitration), 9 (Limitation of Liability), and 11 (Miscellaneous) which shall survive the termination of this Agreement for any reason.

(g) Governing Law - This Agreement shall be governed by the laws of the state of Georgia.

(h) Time of the Essence - Time is of the essence in this Agreement.

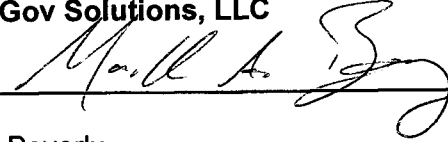
(i) Successors and Assigns - This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties, provided, however, that Beneficiary shall have no right to assign any rights hereunder or with respect to the Deposit Materials except as permitted with respect to assignment of Beneficiary's rights under the License Agreement.

*(Signatures are on following page. Remainder of the page intentionally left blank.)*

IN WITNESS WHEREOF, the parties have executed this Agreement by and through their duly authorized agents as of the Effective Date.

**Depositor**

**EnerGov Solutions, LLC**

Signature: 

Name: Mark Beverly

Title: Executive Vice President

Company: EnerGov Solutions


Date: October 20, 2009

Contract Negotiated by: Victor Cook

Negotiator Telephone: 888-355-1093

**Beneficiary**

**City of Grand Junction, Colorado**

Signature: 

Name: Judy Valentine

Title: Purchasing Mgr.

Company: City of Grand Jct.

Date: 10/27/09

Contract Negotiated by: \_\_\_\_\_

Negotiator Telephone: \_\_\_\_\_

**Escrow Associates, LLC**

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

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

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

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



**Exhibit A**  
Schedule of Fees

[TBD]

**Exhibit B**  
**Deposit Materials**

Please complete Exhibit B form and enclose a copy with the Deposit Materials or contact us for details on electronic depositing.

**Attn: Vault Manager**  
**Escrow Associates, LLC**  
**1303 Hightower Trail, Suite 220**  
**Atlanta, GA 30350 USA**  
**1-800-813-3523**

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

Escrow Associates Account Number: \_\_\_\_\_

Product Name & Version: \_\_\_\_\_

**Three-Party Agreement**

**New Deposit Account**

**Two-Party Agreement**

**Update to existing Deposit Account**

Please list specific Beneficiaries under a Two-Party Agreement associated with this product/  
update or check here to apply to all Beneficiaries:

\_\_\_\_\_

\_\_\_\_\_

Media Description:

Quantity	Type	Description / Label
_____	DVD/CDR	_____
_____	DAT/DDS Tape	_____
_____	Documentation	_____
_____	Other	_____

Deposit Prepared by:

Deposit Accepted by (*Escrow Associates*):

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

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

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

## Credit Card/Wire Transfer Payment Form

<b>CREDIT CARD PAYMENT INFORMATION</b>	
Company Name / Account Number:	
Credit Card Number:	
Expiration Date:	
Card Type (Amex / Visa / etc.):	
Billing Name:	
Billing Address:	
Billing City State Zip:	
Transaction Amount:	
Escrow Associates Invoice Number:	
<p>If you would like Escrow Associates, LLC to charge the above credit card on an annual basis for this fee, please sign below. If at any time you choose to use an alternate method of payment, please notify us (in writing) at least thirty (30) days prior to the escrow account renewal date.</p> <p>Client Signature: _____ Title: _____</p> <p>Print Name: _____ Date: _____</p>	

<b>WIRE TRANSFER PAYMENT INFORMATION</b>	
Company Name & Address:	Escrow Associates, LLC 1303 Hightower Trail, Suite 220 Atlanta, GA 30350
Bank Name & Address:	Fidelity Bank 225 Sandy Springs Circle Atlanta, GA 30328
Account Number:	03025643
Routing Number	061102400

Please contact us directly with any questions! Thank you for your business!

## Amendment

To

### Master Customer Agreement

Between Tyler Technologies and City of Grand Junction, Colorado

This document amends the Master Customer Agreement with the Effective Date of 10/27/09 (included by reference) between Tyler Technologies, Inc., ("Tyler") a Delaware corporation with offices at 2160 Satellite Blvd., Suite 300, Duluth, Georgia 30097, as successor-in-interest to EnerGov Solutions, LLC, and the City of Grand Junction, Colorado, ("Customer"), located at 250 North 5<sup>th</sup> Street, Grand Junction, CO 81501

The Effective Date of this Amendment is 1/22, 2013. In the event this date is left blank, the later of the dates which the parties sign shall be the Effective Date.

Tyler and Customer desire to modify the Master Customer Agreement to include the purchase and use of Tyler's iG Workforce Applications on mobile devices such as the iPad\*. Tyler will provide the server software which includes, at no additional cost, the iG Review user application. Additionally, Tyler will provide the iG Enforce application at standard costs. Tyler offers, and Customer accepts 90-days from the first use of the iG Workforce Server to terminate this Agreement and receive a refund.

Therefore, in consideration of the mutual promises and responsibilities described below, the parties agree as follows:

1. **Existing Contract and Amendments.** All terms and conditions and previous amendments of the Master Customer Agreement not herein amended shall remain in full force and effect.

2. **Definitions.** The following definition shall apply to this Amendment.

"iG Workforce Server" means the server-level computer software that is accessed by and controls the functioning aspects of the various iG Workforce Applications and connects those applications to the Tyler Software database licensed by the Customer.

"iG Workforce Application" means any of the various iG applications, such as iG Review, iG Inspect, and iG Enforce, that are loaded onto a user's mobile device, such as an Apple iPad\* and which exchanges data between itself and the iG Workforce Server.

"iG Named User" means an individual user named on the iG Workforce Server which has one or more iG Workforce Applications loaded onto their assigned mobile device.

"Server Availability Date" means the date the iG Workforce Server is activated and available for access by iG Workforce Applications.

3. **Tyler iG Workforce Server.**

3.1 Tyler will provide iG Workforce Server, for up to 20 iG Named Users, for the Fees listed in Section 6.

3.2 Tyler's iG Review, an iG Workforce Application, is included at no cost.

3.3 Tyler will invoice for and Customer agrees to pay Annual Support and Maintenance for the iG Workforce Server for the Fees listed in Section 6.

4. **Tyler iG Trial Period.**

4.1 Tyler will enable access to iG Enforce, an iG Workforce Application, which Customer shall download from the Apple iStore \* onto Customer-owned iPads\*.

4.2 Customer agrees to pay all Fees as listed in Section 6.

4.3 Tyler agrees that Customer may terminate this Amendment within 90-days (the "Trial Period") from the first use of the iG Workforce Server.

4.4. If terminated prior to end of the Trial Period, Tyler will refund all monies paid in conjunction with this Amendment.

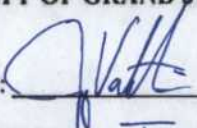
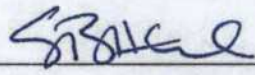
5. **Tyler iG Enforce Application.** Customer may elect to add on any other available iG Workforce application at the rate of \$59 per month.

6. **Fees and Invoicing.** Tyler will invoice Customer in advance of the due date and payments are due Tyler based on the following schedule:

Item #	Item Description	Fee Amount	Payment Schedule/Invoicing
1.	iG Workforce Server License (up to 20 iG Named Users) (iG Review included at no additional cost)	\$2,500	Payment due upon Amendment Signing.
2.	iG Workforce Server Support and Maintenance	\$500 per year	First payment due on the Server Availability Date and invoiced annually thereafter on anniversary of the Server Availability Date.
3.	iG Enforce Application	\$59/month/user	First payment due on the first date of activation of each user, prorated for the remainder of the year until the anniversary of Server Availability Date, then annually thereafter on the anniversary of the Server Availability Date. (Applications may be ordered with a Customer Purchase Order.)
4.	Other iG Workforce Applications (i.e. iG Inspect)	\$59/month/user	First payment due on the first date of activation of each user, prorated for the remainder of the year until the anniversary of Server Availability Date, then annually thereafter on the anniversary of the Server Availability Date (Applications may be ordered with a Customer Purchase Order.)

7. **Term.** Subject to annual appropriation by the Grand Junction City Council, after the first 90 days from the Effective Date, the term of this Amendment shall be for three (3) years commencing on the Effective Date and will automatically renew on a year-to-year basis unless either party provides 30-days written notice in advance of the end of the then-current term.

IN WITNESS WHEREOF, the parties have executed this Amendment under seal as of the Effective Date.

<p><b>CITY OF GRAND JUNCTION, COLORADO</b></p> <p>By: <u></u></p> <p>Printed Name: <u>Jay Valentine</u></p> <p>Title: <u>Purchasing/Internal Services Mgr.</u></p> <p>Date: <u>1/22/13</u></p>	<p><b>TYLER TECHNOLOGIES, INC</b></p> <p>By: <u></u></p> <p>Printed Name: <u>S. Brett Cate</u></p> <p>Title: <u>President, LGD</u></p> <p>Date: <u>12/29/12</u></p>
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\* iStore and iPad are Registered Trademarks of Apple.