

Software and Consulting Agreement

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I. Agreement Summary, Contact Information, and ResourceX Specialists

BASIC INFORMATION	
Organization name:	City of Pueblo, CO
Project Lead:	Laura Solano, Chief of Staff to the Mayor's Office
Telephone number/email:	lsolano@pueblo.us
Start Date:	June 2022
Year 1 Completion Date:	May 2023
Total Project Cost Year 1:	\$ 30,000.00
Subsequent Annual Renewal Cost:	\$ 25,000.00
Customer Success Representative:	Santina Reichow, sreichow@resourcex.net
ResourceX VP of Client Success:	Eric Keck, ekeck@resourcex.net

II. Scope of Work

CHOOSE FROM SEVERAL IMPLEMENTATION OPTIONS + BUNDLE YOUR SOFTWARE

WHICH PBB IMPLEMENTATION IS RIGHT FOR YOU?

A. Project Preparation			Program Budgeting	Full PBB	PBB Budgeter
<input checked="" type="checkbox"/>	Virtual Project Kick-off	Free w/ Project	X	X	X
B. Support and Training			Program Budgeting	Full PBB	PBB Budgeter
<input checked="" type="checkbox"/>	<u>30-hr Package of Training*</u> Project implementation meetings, user training webinars, and implementation support	\$10K	X	X	X
	<u>Additional Package of On-going Support</u> Project implementation meetings, user training webinars, and implementation support	\$	X	X	X
<input checked="" type="checkbox"/>	<u>Access to Bi-Weekly Q&A Sessions & Help Center</u> Open Q&A Sessions and On-Demand Help Center with overview and how-to reference videos	Free w/ Project	X	X	X
C. Software Tools**			Program Budgeting	Full PBB	PBB Budgeter
	Online Program Budgeting + PBB Budgeter Module	\$	X		X
<input checked="" type="checkbox"/>	Online Priority Based Budgeting + PBB Budgeter Module	\$ 15K		X	X
	Facilitated Insight Workshops	\$	X	X	
D. Additional Software Applications			Program Budgeting	Full PBB	PBB Budgeter
<input checked="" type="checkbox"/>	ARPA Proposal Development + Prioritization Software Module	\$ 5K			
E. Optional Consulting Engagements			Program Budgeting	Full PBB	PBB Budgeter
	On-site Visit for Staff, Council, Citizens (per day)	\$	X	X	X
	Advanced Consulting: Developing Insight Implementation Plans	TBD***	X	X	

* 30 hours of support is recommended for full PBB implementation. Additional support packages available.

** Ongoing annual software renewal rates are documented in Section III

*** Advanced consulting quotes may be developed for your organization upon request.

III. Contract Terms, Setup, Renewal Period and Signatures

COST SUMMARY	
Implementation Set-up Total – Breakdown described in section II	\$ 30,000.00
Software Renewal Rate – Fixed for 3 renewals	\$ 25,000.00
Subscription Period – Reoccurring annually	June 1 st to May 31 st
Initial Invoice Amount – Software + one-time set up.	\$ 30,000.00
Initial Invoice Date – Due net 30 Days	June 1, 2022
Renewal Invoice Amount	\$ 25,000.00
Renewal Invoice Dates – Due net 30 Days	May 1 st 2023 May 1 st 2024 May 1 st 2025

Initial Setup & Ongoing Management: Initial implementation can be divided into two parts, the setup and ongoing management. Both efforts are detailed below.

ResourceX Obligations

As part of the setup, ResourceX will:

- A. Discuss the project scope and overall plan;
- B. Assist with the creation of the project charter;
- C. Upload annual budget and personnel data to the online tools;
- D. Provision users in the online tools;
- E. Provide standardized community results and definitions (with opportunity to customize).

As part of ongoing management, ResourceX will provide training and software support in the development of the following deliverables:

- A. Creating program inventories;
- B. Allocating costs to programs;
- C. Scoring programs against results and definitions;
- D. Peer reviewing program scores;
- E. Validating costs and scores;
- F. Insight Workshops;
- G. PBB Budgeter training and support
- H. ARPA training and support

Implementation Steps

Launch Phase	Task	Description
Preparation	Planning Session	Discuss project scope and create a Project Charter
Preparation	Super User 101	Introduction to PBB and the online tools for Super Users
Preparation	Super User Tool Setup	Cost template creation and BPA/Result confirmation
Preparation	PBB 101	Introduction to PBB and the online tools for Department Users
Preparation	Peer Review Team Selection Discussion	Discuss the creation of Peer Review teams
Preparation	Insight or Budgeter Workshop Planning Session	Discuss the scope of the Insight or Budgeter Workshop
Data Creation	Program Inventory	Introduction to Program Inventory
Data Creation	Program Cost Allocation	Introduction to Program Cost Allocation
Data Creation	Program Scoring & Peer Review	Introduction to Program Scoring
Post Launch	Next Steps	Learn easy ways to analyze the data
Post Launch	Insights Workshop	Create, Clarify and Confirm Program Insights
Post Launch	Budgeter Workshop	Create Budget Requests in Online PBB
Post Launch	Post-Implementation: Check-In	Meet with RX to discuss project retrospective (4Ls)

Client Requirements

Client agrees to the following terms for delivery and review of materials.

- A. Client shall complete the ResourceX Project Charter.
- B. Client shall provide budget and personnel data for the implemented fiscal year.
- C. Client shall provide a list of employees that will need access to the online tools.
- D. Client shall commit to adhering to mutually agreed upon implementation schedule.

Communications

Client agrees the communication is to be via email. If the Client wishes to engage via Zoom meeting, the Client should send an email to ResourceX stating that you would like to schedule a Zoom meeting and ResourceX will work with the Client to arrange a time. ResourceX typically responds to email within 24 hours excluding weekends and standard public holidays.

Annual Renewal Terms: Annual renewal rate of \$25,000.00 will be set for 3 years. Each year an invoice will be sent March 1st (first renewal invoice scheduled for 2023) for continued access to the Online Priority Based Budgeting tools. Either party may terminate this agreement, at any time, with a minimum of a written 30-day notice (with the ability to re-subscribe again at any time, subject to the current subscription rates at that time).

THIS AGREEMENT is made and effective as of **May 9, 2022**, between **City of Pueblo, Colorado and Resource Exploration, Inc.** The parties agree as follows:

Resource Exploration, Inc.

City of Pueblo, CO


_____ Date: May 9, 2022

_____ Date: May 9, 2022

By: Chris Fabian
Co-Founder

By: Nicholas A. Gradisar
Mayor

*Note - Treasury released their [final rules](#) regarding eligible use of ARP funds late last year. This new guidance provides additional opportunities for local governments to use American Rescue Plan dollars on building the capacity to use data better and implement evidence-based strategies. Which includes, among other things, investing in Priority (Outcomes) Based Budgeting and/or ARPA support leveraging ARP dollars.

"These resources include but are not limited to data gathering, data cleaning, data analysis, data infrastructure, data management, data sharing, data transparency, performance management, *outcomes-based budgeting*, outcomes-based procurement, and other data needs." (p. 188)

Appendix A

End User License Agreement

IV. Appendix A: End User License Agreement

ONLINEPBB® LICENSE AND HOSTING AGREEMENT

IMPORTANT - BY UTILIZING ONLINEPBB SOFTWARE, YOU ARE ACCEPTING THE TERMS AND CONDITIONS OF THIS AGREEMENT. PLEASE READ THE FOLLOWING CAREFULLY BEFORE PROCEEDING.

This Agreement is a legal agreement between you (City of Pueblo, Colorado) and Resource Exploration, Inc, the licensor of OnlinePBB software and associated on-line documentation that you access using this internet website (together referred in this Agreement as "OnlinePBB").

1. OnlinePBB License. Subject to the terms of this Agreement, Resource Exploration, Inc, grants you a non-exclusive, non-transferable license to access OnlinePBB remotely via browser on the server used by Resource Exploration, Inc, to operate this website (the "Server") solely for purposes of creating and maintaining on the Server any interactive website developed using this website and with respect to which all required fees payable under this Agreement have been paid by you (each, a "Website").

2. Restrictions. You may not download or otherwise copy all or any portion of OnlinePBB software. You may not sell, rent, license, lend, transfer or otherwise grant access to OnlinePBB to any other person or entity except as contemplated by the license granted to you above. You must comply with all applicable laws and regulations in your use of OnlinePBB. You may not modify, translate, reverse engineer, decompile disassemble or otherwise attempt to obtain or derive source code from all or any portion of OnlinePBB.

3. Proprietary Rights. Resource Exploration, Inc, and its supplier's reserve all rights to OnlinePBB not expressly granted in this Agreement. Resource Exploration, Inc and its suppliers own OnlinePBB and all associated patent, copyright, trade secrets and other proprietary rights in OnlinePBB. No title or ownership of OnlinePBB or any associated proprietary rights are transferred to you or any other person by this Agreement.

4. Disclosure and Ownership of Data. a.) All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by your organization or at its expense, will be kept confidential

by Resource Exploration, Inc and will not be disclosed to any other party without your organization's prior written consent. b.) The materials used by Resource Exploration, Inc for work performed under this Agreement are specific and unique methods of fiscal management and budget prioritization. As such, these materials are protected by copyright. You agree and understands that these materials and all methods, models and applications resulting from the use of said materials are the sole, complete and absolute property of Resource Exploration, Inc. As such, any use, future use or application or any publication (either oral or written) of these materials by your organization will be at the discretion of Resource Exploration, Inc and in any event will not occur without the express and prior written permission of Resource Exploration, Inc. All legal rights and protections afforded by copyright and Resource Exploration, Inc's ownership of all the underlying intellectual property associated with these fiscal management and budget prioritization materials are retained and reserved exclusively by Resource Exploration, Inc, reserving all legal rights and remedies incident to its ownership of these materials. It is understood that your organization may utilize these methods, models and applications for their own specific use but are not free to share these methods, models and applications with other individuals or entities. Nothing herein precludes disclosures required by law.

5. U.S. Government Restricted Rights. If OnlinePBB is accessed or used by any agency or other part of the U.S. Government, the U.S. Government acknowledges that (i) OnlinePBB and accompanying materials constitute "commercial computer software" or "commercial computer software documentation" for purposes of 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-3, as applicable, and (ii) the U.S. Government's rights relating to OnlinePBB and accompanying materials are limited to those specifically granted in this Agreement.

6. Data - Data Security. The OnlinePBB web-application provides data security via SSL encryption, and is accessed via https - this protects and secures the client's data from outside the organization, protecting the client and ResourceX. Additionally, data is protected within the client's organization by way of individual user accounts and user passwords, and varying levels of permission and access, to give the client control over data accessibility.

7. Data - Data Storage. The OnlinePBB web-application utilizes Amazon Web Services (AWS) for best-in-class data storage.

8. Data - Data Protection/backups. Resource Exploration performs complete back-ups of all OnlinePBB data at a frequency of once per night.

9. Service Availability - Disaster recovery/business continuity. To support the organization in the case of disaster, Resource Exploration performs complete back- ups of all OnlinePBB data at a frequency of once per night. The organization may also download their own data files on a more frequent basis, in order to perform complete data restoration - restoring from any point in time, from previously saved data, completely in control of the City. Data files are stored in DropBox, as well as Resource Exploration headquarters to provide additional redundancy.

10. Service Levels - System Availability / performance. The OnlinePBB web- application is provided and available 24 hours per day, 7 days per week. Resource Exploration reserves the right to perform regularly scheduled updates and maintenance, during which time the organization may experience brief periods of downtime for server restarts to make updates available. Scheduled updates take place after 6pm EST Monday-Friday, and the organization will be made aware ahead of schedule, to the greatest extent possible. It should be noted that Resource Exploration reserves the right to restart the web server at any time, but will provide the organization as much advanced awareness as possible. Resource Exploration uses all reasonable business means to ensure the application is available for the organization's use.

11. Insurance - Vendor insurance and liability. Resource Exploration agrees to procure and maintain in force during the term of this Agreement, at its own cost, cyber insurance coverage.

12. Mutual Indemnification - From third party claims. Each party will indemnify and hold harmless the other party from any and all claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by the other party's negligence, breach of warranty or contract or wrongful conduct.

13. Independent Contractors. The parties agree that Resource Exploration, Inc, is an independent contractor as that term is commonly used and Resource Exploration, Inc's employees are not and shall not be considered subcontractors or employees of the City and has no authority to bind the City in any manner. Contractor shall be solely responsible for the withholding and reporting of all federal, state, and local income and employment taxes. Contractor acknowledges that it is not insured in any manner through the City for any bodily injury, personal injury, or property loss whatsoever.

14. Limitation of Liability. Except for indemnification and those matters required

to be insured pursuant to this Addendum, neither party shall be liable to the other, or any of their respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

15. Liability Insurance. Resource Exploration, Inc, shall obtain and maintain in full force and effect during the entire term of this agreement a policy of comprehensive general liability insurance, including an acknowledgement of and coverage for the indemnity provision of this Addendum, with limits of liability of not less than \$1 million and workers disability compensation insurance in compliance with Colorado's statutory limits, and shall provide a certificate of insurance to the City naming the City as a certificate holder, which certificate shall provide that the City shall receive at least 30 days prior written notice of cancellation or nonrenewal of such insurance. Said insurance shall cover any claims arising out of, occurring during, or accruing during the term of this agreement and shall survive the term and termination of this agreement and shall be primary without right of contribution against the City.

16. Non-Assignment. The parties agree that there shall be no authority on the part of Resource Exploration, Inc, to subcontract, assign, or otherwise dispose of any portion of the services to be performed herein without the prior written approval of the City. In the event that the City approves a subcontract, assignment, or disposition, Resource Exploration, Inc, solely shall be responsible for managing, directing, and paying the subcontractors or assignees, and the City shall have no obligations whatsoever toward said subcontractors or assignees. Consent to subcontract, assign, or otherwise dispose of any portion of this Agreement shall not be construed to relieve Contractor of any responsibility for the fulfillment of this Agreement.

17. Remedies. The Parties acknowledge that the Proprietary Information exchanged is valuable and unique and that disclosure in breach of this Agreement will result in irreparable injury to the adversely affected Party, for which monetary damages, on their own, would be inadequate. Accordingly, the Parties agree the adversely affected Party shall have the right to seek an immediate injunction enjoining any such breach or threatened breach of the Agreement.

18. Handling of Disputes. The Parties agree that any dispute regarding this Agreement, and any claim made by Client for return of monies paid to ResourceX, shall be handled in accordance with applicable State and Federal laws.

19. Severability. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, the remaining provisions of this Agreement shall remain in full force and effect.

20. Interpretation and Enforcement. The parties understand and agree that the construction and interpretation of this Agreement is governed by the laws of the State of Colorado. In the event that either party must initiate legal action to enforce this Agreement, the Parties agree that the proper venue for such action shall be the courts of the State of Colorado.

21. Completeness of Agreement. This Agreement constitutes the entire agreement between your organization and Resource Exploration regarding OnlinePBB, the hosting of the Website and your use of the website. Resource Exploration will not be bound by any provision in any purchase order, receipt, acceptance, confirmation, correspondence or otherwise unless Resource Exploration specifically agrees in writing to such provision.