



City of Green River  
City Council Meeting  
Agenda Documentation

Preparation Date: November 29, 2018	Department: Human Resources
Meeting Date: December 4, 2018	Department Head: Cari Kragovich
	Presenter: Chris Meats

**Subject:**

*Approval of a contract with NEOGOV for online applicant tracking services.*

**Background/Alternatives:**

*The City's currently uses eRecruit for online applicant tracking services. While eRecruit is integrated with our ERP system, New World, Tyler Technologies is no longer developing enhancements and upgrades for eRecruit. In addition, it offers very little customization for submission of online employment applications. Our end-users (applicants) find it extremely difficult to use and often receive errors that require them to start the entire process from the beginning. The City's HR Director, Finance Director and a Network Analyst participated in demos of several different online applicant tracking solutions to replace eRecruit. NEOGOV's Insight product was selected as the most cost-effective solution while still providing the flexibility with customization and an excellent end-user experience. This product is currently being used by Laramie, Casper, Cheyenne, Riverton and the State of Wyoming as their online applicant tracking solution.*

**Attachments:**

*NEOGOVS Contract*

**Fiscal Impact:**

*Annual Subscription Cost \$4,748*

*Implementation Cost \$2,000*

*Funds are available in the approved FY19 Human Resources budget for this project.*

**Staff Impact:**

*N/A*

**Legal Review:**

*Approved by City Attorney Galen West 11/19/18.*

**NEOGOV ONLINE SERVICES AGREEMENT**

**THIS ONLINE SERVICES AGREEMENT** and Order Form (collectively the “**Agreement**”) is made and entered into as of date the last of the Customer or NEOGOV has executed this Agreement (“the “**Effective Date**”), by and between **GovernmentJobs.com, Inc.**, a California corporation doing business as NEOGOV (“**NEOGOV**”), with offices at 300 Continental Blvd., Suite 565, El Segundo, California 90245, and **City of Green River, Wyoming** a public entity acting by and through its duly appointed representative (“**Customer**”).

**1. Provision of Online Services.**

(a) **Services.** Subject to the terms and conditions set forth herein, Customer hereby engages NEOGOV, and NEOGOV hereby agrees, to provide Customer with, and/or access to, the services (the “**Services**”) described in this Agreement and in the order form attached hereto as **Exhibit A** (the “**Order Form**”). Customer hereby acknowledges and agrees that NEOGOV’s provision and performance of, and Customer’s access to, the Services is dependent and conditioned upon Customer’s full performance of its duties, obligations and responsibilities hereunder.

(b) **Change Orders.** Either party may initiate a change to any part of the Order Form by delivering a written change order request to the other party. The receiving party shall notify the party making such request, in writing within ten (10) business days of such receiving party’s receipt of such change order request, of such receiving party’s acceptance or rejection of the proposed changes. If the receiving party fails to respond within such ten (10) business day period, such receiving party shall be deemed to have rejected such proposed changes. If the receiving party approves such change order, the parties shall agree on the estimate of time to complete the changes, associated costs, an impact analysis indicating ramifications or impacts to the overall project, a modification of any affected Fees, Services or deliverables, and any other relevant details related to such change order.

**2. Customer Responsibilities.** In connection with the performance of this Agreement and the provision of the Services, Customer shall be responsible for the following:

(a) **Compliance with Laws.** Customer shall be responsible for ensuring that Customer’s use of the Services and the performance of Customer’s other obligations hereunder comply with all applicable rules, regulations, laws, code and ordinances.

(b) **Customer Data and Website.** While NEOGOV is responsible for data integrity within the NEOGOV Servers, Customer shall be solely responsible for (i) the accuracy and completeness of all records, databases, data and information provided, submitted or uploaded by Customer or its authorized end users in connection with this Agreement or use of the Services, (ii) the content, quality, performance, and all other aspects of the goods or services and the information or other content contained in or provided through Customer’s website, and (iii) making and keeping additional copies of all Customer Data. Except set forth in Section 9, NEOGOV shall have no obligation to provide or make available to Customer, and Customer shall have no right to receive, a copy of the Customer Data or any associated data files in any format.

(c) **Acceptable Use.** Customer shall not: (i) provide system passwords or other log-in information for the Services to any third party except those specifically authorized to access the Services in this Agreement; (ii) share non-public NEOGOV system features or content with any third party; (iii) access the Services in order to build, assist, or facilitate the assembly of a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Services, or to copy any ideas, features, functions or graphics of the Services; (iv) reverse engineer, decompile, disassemble or otherwise attempt to discover or directly access the source code or any underlying ideas or algorithms of any portions of the Services or any underlying software or component thereof; or (v) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Services except as expressly permitted by this Agreement. In the event that NEOGOV suspects any breach of the requirements provided in this Section 2(c), including by way of users of Customer’s system, NEOGOV may suspend Customer’s access to the Services for the reasonable

NEOGOV

time required to confirm or deny suspicion, in addition to other lawful remedies as required.

(d) **Unauthorized Access.** Customer will take reasonable steps to prevent unauthorized access to the Services, including, without limitation, by protecting its passwords and other log-in information for the Services. Customer will notify NEOGOV immediately of any known or suspected unauthorized use of the Services or breach of its security and will use best efforts to stop any such breach. NEOGOV represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information does and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives. In the event there is a security breach NEOGOV will notify the Customer twenty-four (24) hours prior to any breach notifications being sent out.

(e) **Customer Equipment.** Other than the Services provided by NEOGOV, Customer is responsible for all other services, equipment and facilities (including, without limitation, all hardware, telecommunications equipment, connectivity, cabling and software) required to access the Services. Customer shall be responsible for procuring all licenses of third party software necessary for Customer’s use of the Services.

**3. Maintenance and Support Services.**

(a) **Maintenance.** NEOGOV maintains NEOGOV’s hardware/software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation, software delivery, and security for the Services. Preventive system maintenance is conducted by NEOGOV from time to time and is addressed in a variety of methods including scalable architecture and infrastructure, log checking, performance maintenance, and other preventative tasks. Customer is not responsible for NEOGOV system maintenance.

(b) **Modification.** NEOGOV may periodically modify the features, components and functionality of the Services. NEOGOV shall have no liability for, or any obligations to, investments in or modifications to Customer’s hardware, systems or other software which may be necessary to use or access the Services due to a modification of the Services provided by NEOGOV.

(c) **Support.** Phone support for the Services is available to Customer between the hours of 6:00AM and 6:00PM, Pacific Time, Monday through Friday, excluding NEOGOV holidays. Online support for the Services is available 24 hours a day, seven days a week. Both phone and online case receipts are confirmed immediately. The length of time for a resolution of any problem is fully dependent on the type of case (i.e., High/Medium/Low priority, question, enhancement request). High priority issues such as “system down” will be addressed immediately and resolved as soon as possible. All other issues are reviewed internally by NEOGOV, and then will be discussed and reviewed with Customer to identify priority and a resolution timeline.

(d) **Updates and Upgrades.** During the Term, NEOGOV will make all Updates and Upgrades to the Services accessible to Customer at no additional expense to Customer. Upgrades are automatic and available upon Customer’s next login to the Services following an Update or Upgrade. NEOGOV shall have no obligation to provide, at no additional expense to Customer, major product enhancements and/or new features that NEOGOV markets separately to other customers for an additional fee; provided, that, NEOGOV may, in its sole discretion, elect to provide such enhancements or features to Customer on a case-by-case basis at no cost. NEOGOV shall

have no liability for, or any obligations to, investments in or modifications to in Customer's hardware, systems or other software which may be necessary to use or access the Services due to an Update or Upgrade. For the purposes hereof, (i) "Update" means any update, bug fix, patch or correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its third-party customers of the same module, excluding Upgrades, and (ii) "Upgrade" means any update of the Services or underlying NEOGOV software such as bug fixes, platform updates, and major product enhancements and/or new features that NEOGOV makes commercially available and does not market separately to other customers on a custom, exclusive basis for a separate fee.

(e) Training. NEOGOV will provide Customer with access to the online training materials. All NEOGOV provided training materials will be provided online, unless otherwise set forth in the Order Form.

(f) Limitations. This Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly required to be provided by NEOGOV in this Agreement, including, but not limited to, training, data conversion, and program modification and enhancement.

#### 4. Ownership and Protection

(a) Customer Data. The Parties agree that as between NEOGOV and Customer, data or information received or uploaded by Customer, and retained by Customer on NEOGOV Servers, is the sole property of Customer, subject only to the rights of data subjects and the law (the "Customer Data"). NEOGOV shall acquire no rights in any Customer Data and process Customer Data only to provide the Services or as otherwise instructed by Customer, or as may be required or permitted by applicable law.

(a) NEOGOV Intellectual Property. As between NEOGOV and Customer, NEOGOV shall exclusively own all right, title and interest in and to all Services (including any Update or Upgrade thereto), NEOGOV's products, system, any software (including any source code or object code) or documentation related thereto, any trademarks, service marks, logos and other distinctive brand features of NEOGOV and all Proprietary Rights embodied therein (collectively, the "NEOGOV Intellectual Property").

(b) Grant to Use Certain Data. Customer agrees that NEOGOV may collect, disclose, and use quantitative and non-personal data derived from the use of NEOGOV Services for analysis, to provide Services to Customer, develop improvements to Services, benchmarking, analytics, marketing, job-seeker services, and internal business purposes for job-seeker and Customer benefit.

(c) Reservation of Rights. This Agreement does not convey or transfer title or ownership of the NEOGOV Intellectual Property to Customer or any of its users. Except as expressly set forth in Section 4(e), this Agreement does not grant Customer any licenses or other rights with respect to any of the NEOGOV Intellectual Property. All rights not expressly granted herein are reserved by NEOGOV.

(d) NEOGOV License Grant. NEOGOV's approved logos and trademarks (the "Approved Marks"), including the "powered by" logo, will appear on the "employment opportunities", "job description" and other NEOGOV hosted pages. NEOGOV hereby grants to Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the Term to use and reproduce the Approved Marks solely for purposes set forth in this Section 4(e). All uses of the Approved Marks shall conform to NEOGOV's standard guidelines and requirements for use of the Approved Marks.

(e) Privacy. NEOGOV will have no responsibility or liability for the accuracy of the Customer Data. NEOGOV and Customer shall comply with all applicable laws and regulations relating to (i) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (ii) the use, collection, retention, storage, security, disclosure,

transfer, disposal, and other processing of any Customer Data (including any personally identifiable information). Without limiting the generality of the foregoing, in using the Services or any other NEOGOV Intellectual Property, Customer will not disclose or provide to NEOGOV any personally identifiable information of any other person or entity.

(f) NEOGOV is the host for the data, agrees to maintain and have in place data recovery and data security procedures, in compliance with industry standards and applicable laws, to maintain and protect Customer's data. NEOGOV agrees to use commercially reasonable methods during the Term of this Agreement, which it will, at a minimum, utilize and maintain the backup procedures that allow for immediate data recovery (daily and/or weekly), monthly and yearly offsite backup to restore Customer Data within three (3) business days. NEOGOV agrees to use commercially reasonable methods to maintain and store all of the Customer's Data as long as they maintain the SOA

#### 5. Representations, Warranties and Disclaimers

(a) Authority. Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement; and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

(b) Service Performance Warranty. NEOGOV warrants that it will perform the Services in a manner consistent with industry standards reasonably applicable to the performance thereof.

(c) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.

(d) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

(e) Compliance with Policies. During this Agreement, Parties shall observe and comply with NEOGOV policies, including but not limited to Service Level Warranties, Malicious Traffic, Privacy, Incident Response, Retention, and Cookie Policies (the "Policies"), as from time to time may be amended and of which applicable provisions are incorporated herein by reference. Copies of Policies will be provided upon request. Customer shall be notified in the event material change to such Policies.

6. Publicity. Following the mutual execution and delivery of this Agreement, each party hereto may advertise, disclose and publish its

relationship with the other party under this Agreement. NEOGOV may display Customer's name and logo in connection with such advertisement, disclosure and publishing.

**7. Nondisclosure.** Through exercise of each party's rights under this Agreement, each party may be exposed to the other party's technical, financial, business, marketing, planning, and other information and data, in written, oral, electronic, magnetic, photographic and/or other forms, including, but not limited to (a) oral and written communications of one party with the officers and staff of the other party which are marked or identified as confidential or secret or similarly marked or identified, (b) other communications which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret and (c) trade secrets (collectively, "Confidential Information"). In recognition of the other party's need to protect its legitimate business interests, each party hereby covenants and agrees that it shall regard and treat each item of information or data constituting Confidential Information of the other party as strictly confidential and wholly owned by such other party and that it will not, (x) without the express prior written consent of the other party (y) except as permitted or authorized herein or (z) except as required by law including the Public Records Act of the Customer's State, redistribute, market, publish, disclose or divulge to any other person, firm or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of the other party's Confidential Information during the Term and for a period of three (3) years thereafter or, if later, from the last date Services (including any warranty work) are performed by the disclosing party hereunder; and (ii) any of the other party's trade secrets at any time during which such information shall constitute a trade secret under applicable law. In association with NEOGOV's concern for the protection of trade secrets, Confidential Information, and fair market competition, Customer acknowledges all photos, "screen captures", videos, or related media of NEOGOV products, pages, and related documentation shall be approved by NEOGOV prior to any publicly accessible disclosure of such media.

**8. Liability Limitations.**

(a) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL NEOGOV HAVE ANY LIABILITY TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CUSTOMER'S USE OR, OR INABILITY TO USE, THE SERVICES, UNDER ANY CIRCUMSTANCE, CAUSE OF ACTION OR THEORY OF LIABILITY, OR DUE TO ANY EVENT WHATSOEVER, FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, LOSS OF USE, LOSS OF GOODWILL OR BUSINESS STOPPAGE, EVEN IF NEOGOV KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.**

(b) **WITHOUT LIMITATION OF SECTION 8(A), EXCEPT FOR DAMAGES ARISING OUT OF NEOGOV'S NEGLIGENCE OR WILLFUL MISCONDUCT, THE TOTAL LIABILITY OF NEOGOV FOR ANY AND ALL CLAIMS AGAINST NEOGOV UNDER THIS AGREEMENT SHALL NOT EXCEED TWO TIMES (2X) THE TOTAL FEES PAID BY CUSTOMER TO NEOGOV UNDER THIS AGREEMENT DURING THE INITIAL TERM. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY**

**ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.**

(c) Independent Allocations of Risk. Each provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages represents an agreed allocation of the risks of this Agreement between the Parties. This allocation is reflected in the pricing offered by NEOGOV to Customer and is an essential element of the basis of the bargain between the Parties. Each of these provisions is severable and independent of all other provisions of this Agreement, and each of these provisions will apply even if the warranties in this Agreement have failed of their essential purpose.

**9. Term and Termination.**

(a) Term. This Agreement shall commence on the Effective Date and remain in effect for the initial term set forth on the Order Form, unless terminated earlier in accordance with this Agreement (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive twelve (12) month terms (each a "Renewal Term" and together with the Initial Term, collectively, the "Term") unless a party delivers to the other party, at least ninety (90) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party's intention to not renew this Agreement, or unless terminated earlier in accordance with this Agreement. In the case of professional services, if no end date is specified in the SOW, then the SOW shall expire upon completion of professional services or early termination as permitted by this Agreement.

(b) Termination. NEOGOV may suspend the Services or terminate this Agreement immediately in the event of any of the following: (A) Customer fails to pay any amount then due under this Agreement and such failure is not cured within five (5) days following NEOGOV's written notice thereof, (B) Customer is in material breach of this Agreement and such breach is not cured within thirty (30) days following NEOGOV's written notice thereof, or (C) the Services provided hereunder become illegal or contrary to any applicable law, rule, regulation, public policy. Customer may terminate this Agreement immediately if NEOGOV is in material breach of this Agreement and such breach is not cured within thirty (30) days following Customer's written notice thereof.

(c) Effect of Termination. Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV Intellectual Property. Additionally, Customer shall be obligated to pay, as of the effective date of such expiration or termination, all amounts due and unpaid to NEOGOV under this Agreement. In the event that Customer elects to receive Insight data files from the NEOGOV system, NEOGOV shall provide Customer with a dedicated flat data file in .CSV format or provide a proprietary and confidential delete of data. Such data files will be comprised of Customer's standard data contained in NEOGOV's Insight Enterprise (IN) system. NEOGOV retains the right to purge such data files from NEOGOV's systems without consent from, or notice to, the Customer after ninety (90) days after the date of expiration or termination of this Agreement.

(d) Survival. Sections 2, 4(a) through 4(d), 4(f), 5, 6, 7, 8, 9(c), 9(d), 12 and 13 shall survive the termination or expiration of this Agreement.

**10. Payments.**

(a) Payment Terms. Except as expressly set forth in the applicable Order Form or SOW, Customer will pay all Fees set forth in the Order Form or SOW in accordance with the following: (i) NEOGOV Fees are invoiced annually in advance and NEOGOV may invoice all Fees due under this Agreement in one invoice for each invoice period; (ii) invoices shall be delivered to the stated "Bill To" party on the Order Form (iii) Customer shall

pay NEOGOV the applicable fees (collectively, the “Fees”) within the applicable time periods as follows:

- (A) Customer shall pay all annual recurring Fees (including for any NEOGOV Integrations) for the Initial Term within forty-five (45) days of the date of Customer’s receipt of invoice;
- (B) Customer shall pay all training Fees within forty-five (45) days of the date of Customer’s receipt of invoice;
- (C) Customer shall pay all setup and implementation Fees within forty-five (45) days of the date of Customer’s receipt of invoice. NEOGOV may submit an invoice after implementation is complete;
- (D) any other Fees owed by Customer to NEOGOV pursuant to this Agreement shall be paid by Customer within forty-five (45) days of Customer’s receipt of NEOGOV’s invoice therefor;
- (E) Customer shall pay all annual recurring Fees (including for any NEOGOV Integrations) for any Renewal Term within forty-five (45) days of Customer’s receipt of NEOGOV’s invoice therefor.

NEOGOV may, in its sole discretion, increase the Fees for any Renewal Term. NEOGOV shall provide Customer with written notice of any such Fee increase at least sixty (60) days prior to the commencement of such Renewal Term.

(b) Upon execution by Customer and NEOGOV, each Order Form and/or SOW is non-cancellable and non-refundable except as provided in this Agreement, and the Term as set forth in the Order Form for NEOGOV subscriptions is a continuous and non-divisible commitment for the full duration of the Term regardless of any invoice schedule. Customer may withhold from payment any charge or amount disputed by Customer in good faith pending resolution of such dispute, provided that Customer: (i) notifies NEOGOV of the dispute prior to the date such payment is due, specifying in such written notice (A) the amount in dispute, and (B) the reason for the dispute set out in sufficient detail to facilitate investigation by NEOGOV and resolution by the parties; (ii) makes timely payment of all undisputed charges and amounts; (iii) works diligently with NEOGOV to resolve the dispute promptly; and (iv) pays all amounts that are determined to be payable by resolution of the dispute (by adversarial proceedings, agreement or otherwise) within ten (10) days following such resolution.

(c) Undisputed Fees. In the event any undisputed amount due is not paid when due, the recipient shall pay to the other party late payment interest on all undisputed amounts past due from such due date therefore until paid in full at a rate equal to the lesser of: (i) one percent (1%) per month; or (ii) the maximum interest rate permitted by applicable law.

(d) Customer Purchase Orders. If Customer issues a purchase order, then it shall be for the full amount set forth in the applicable Order Form or SOW, and NEOGOV hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by Customer, and conditions assent solely based on the terms and conditions of this Agreement as offered by NEOGOV. Customer agrees that a failure to provide NEOGOV with a corresponding purchase order shall not relieve Customer of its obligations to provide payment to NEOGOV pursuant to this Section 10.

(e) Taxes. Customer will pay all taxes, duties and levies imposed by all federal, state and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV’s net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption with ten (10) days of NEOGOV’s request therefor.

**11. Force Majeure.** NEOGOV shall not be liable for any damages, costs, expenses or other consequences incurred by Customer or by any other person or entity as a result of delay in or inability to deliver any Services due to circumstances or events beyond NEOGOV’s reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts

or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, military action or usurped power; or (h) actions or failures to act on the part of a governmental authority.

**12. Piggyback Clause.** It is understood and agreed by Customer and NEOGOV that any governmental entity (the “New Entity”) may purchase the services specified herein in accordance with the terms and conditions of this Agreement. It is also understood and agreed that each New Entity will establish its own contract with NEOGOV, be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the New Entity and NEOGOV. With respect to any purchases by a New Entity pursuant to this Section, Customer: (i) shall not be construed as a dealer, re-marketer, representative, partner or agent of any type of NEOGOV, or such New Entity; (ii) shall not be obligated, liable or responsible for any order made by New Entities or any employee thereof under the agreement or for any payment required to be made with respect to such order; and (iii) shall not be obliged, liable or responsible for any failure by any New Entity to comply with procedures or requirements of applicable law or to obtain the due authorization and approval necessary to purchase under the agreement. Termination of this Agreement shall in no way limit NEOGOV from soliciting, entering into, or continuing a contractual relationship with any New Entity of which procured NEOGOV services using this Agreement. In the event this Agreement is terminated, the agreement between the New Entity and NEOGOV shall survive, subject to local procurement law.

**13. Miscellaneous.**

(a) Assignment. This Agreement may not be assigned by either party without the express written approval of the other party and any attempt at assignment in violation of this Section 13(a) shall be null and void.

(b) Entire Agreement; Amendment. This Agreement and the Order Form constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the party to be bound.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Customer’s State, without giving effect to conflict of law rules.

(d) Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect and enforceable.

(e) Independent Contractor; Third Party Agreements. Customer is and shall be deemed to be an independent contractor of NEOGOV and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto, or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOGOV to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.

(f) Cost of Requests. In the event NEOGOV is required to provide a data dump or respond to a subpoena, court order or other legal process for the production of documents and/ or testimony relative to this Agreement or Customer’s use of the Services, Customer agrees to compensate NEOGOV at hourly rates for the time expended to provide a response, and to reimburse NEOGOV for any out-of-pocket costs incurred.

(g) Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, three (3) business days following delivery by recognized overnight courier or electronic mail, or seven (7) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Order Form and (ii) NEOGOV at the address set forth in the introductory paragraph hereof. Notice of change of address shall be given by written notice in the manner detailed in this Section 13(f).

(h) Waiver. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind.

(i) Attorneys' Fees. Should either party hereto initiate a legal or administrative action or proceeding (an "Action") to enforce any of the terms or conditions of this Agreement, the prevailing party shall be entitled to recover from the losing party all reasonable costs of the Action, including without limitation attorneys' fees and costs.

(j) Conflict. In the event of a conflict between the body of this Agreement and the Order Form, the terms of the body of this Agreement shall control.

(k) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

<b>Customer:</b>	<b>GovernmentJobs.com, Inc. (dba "NEOGOV")</b> a California Corporation
Signature: _____	Signature: _____
Print Name: <u>Pete Rust</u>	Print Name: _____
Title: <u>Mayor</u>	Title: _____
Date: _____	Date: _____

**EXHIBIT A – ORDER FORM**

**Customer & Customer Address:**

**Bill To (if different than Customer Address):**

City of Green River (WY) Attn: Cari Kragovich Email: ckragovich@cityofgreenriver.org Phone: (307) 872-6107	
<b>Quote Date: 11/10/18</b> <b>Valid To: Today plus 30 days</b>	<b>Initial Term: 12 Months from the date of execution of this Agreement.</b> <b>Billing Frequency: Annual</b>

Annual Recurring Fees

Line	Description <sup>1</sup>	Initial Annual Recurring Fee <sup>2</sup>
1.	Insight Enterprise Edition (IN) Subscription	<b>\$4,748.00</b>
2.	GovernmentJobs.com Job Posting Subscription (GJC) – <b>Free for first year Insight License</b>	<b>\$1,500.00</b>
3.	Perform (PE) Subscription	N/A
4.	Onboard (ON) Subscription	N/A
5.	Learn (LE) Subscription –	N/A
6.	NEOGOV Integrations Subscription	N/A
<b>Sub Total:</b>		<b>\$4,748.00</b>

Non-Recurring Fees

Line	Description <sup>1</sup>	Non-Recurring Fees
NEOGOV Services		
6.	Insight (IN)	
	Setup and Implementation	\$2,000.00
	Training – <b>Discounted if purchased by 12/31/18</b>	<b>\$2,000.00</b>
7.	Perform (PE)	
	Setup and Implementation	N/A
	Training	N/A
8.	Onboard (ON)	
	Setup and Implementation	N/A
	Training	N/A
	Onboard form building as Professional Service	N/A
9.	Learn (LE)	
	Setup and Implementation	N/A
	Training	N/A
10.	NEOGOV Integrations	
	Setup and Configuration	N/A
<b>Sub Total:</b>		<b>\$2,000.00</b>
<b>Order Total:</b>		<b>\$6,478.00</b>

<sup>1</sup>Items designated as Not Applicable, N/A or NA on the Order Form are not included in the Services. Customer may request a quote for these items at their discretion throughout the Term.

<sup>2</sup> The annual recurring Fees for a Renewal Term are subject to increase pursuant to the Agreement.

1. Description of Services.

(a) Insight Enterprise (IN). Insight Enterprise (IN) is designed to address five major areas of human resource activities including recruitment, selection, applicant tracking, reporting and analysis, and HR automation. As described below, Insight Enterprise (IN) enables agencies to post class specifications online, post job announcements on Customer websites, accept online applications, conduct applicant tracking including EEO and other statistical analysis, create email/hardcopy applicant notices, complete item analysis, create/route/approve requisitions and hire actions online, and certify eligible lists electronically. A subscription to Insight Enterprise (IN) will include the following:

Recruitment:

- Online job application
- Configurable Career site
- Automatic online job interest cards

Selection:

- Configurable supplemental questions
- Define unique automatic scoring plans
- Test analysis and pass-point setting

- Recruitment and examination planning

Applicant Tracking:

- Email and hardcopy notifications
- EEO Data collection and reports
- Track applicants by step/hurdle
- Schedule written, oral, and other exams
- Candidate self-service portal for scheduling and application status

Career Pages:

- NEOGOV will provide the URLs for the Career Pages, which the Customer will use to advertise on their website. Customer will need to change the IP addresses for the following three Customer website links (NEOGOV will provide the new link addresses):
- Job openings
- Promotional job openings
- Transfer Job openings
- Class Specifications
- Job Interest Cards

Optional Integrations:

- Customer may export data from and to Insight Enterprise (IN) to integrate with other systems. Specifications regarding optional, for cost, NEOGOV integrations can be made available to Customer, including:
  - Configure New Hire Export Interface
  - Configure Position Control Import Interface
  - Class Spec Interface
  - Employee Integration
- As part of each such integration, NEOGOV shall:
  - Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings.
  - Provide Integration Worksheets and/or guides.

- Score, rank, and refer applicants

Reporting and Analysis:

- 90 standard system reports
- Ad hoc reporting tool

HR Automation:

- Automatically route job requisitions and hire actions for approval
- Automatically score and pass/fail applicants based on scoring plans
- Automatically email users when there are candidates sent to them for review
- Automatically email jobseeker job interest card notices for jobs posted on the main job openings page

Insight Training:

- NEOGOV will create a Customer-specific training environment for Insight Enterprise (IN), which is used by Customer during training and afterwards to train in prior to moving into production.
- Customer will have full access to the demo/training environment setup for Insight Enterprise (IN).
- NEOGOV training is available online (web-based, pre-built, content) unless otherwise proposed as included in the Order Form.
- NEOGOV's pre-built, online training consists of a series of web courses as well as a series of hands-on exercise designed to introduce the standard features and functions and may be used as reference material by the staff following training to conduct day-to-day activities. The pre-built, online training includes exercises that are designed to be flexible enough to allow Customer led training sessions internally to introduce user-specific requirements and processes for staff to learn the system as closely as possible to the customer's actual recruitment processes after go-live.

- (b) GovernmentJobs.com Job Posting Subscription. A subscription to GovernmentJobs.com Job Posting Subscription will include the following functionality:
- Enables organizations to advertise their job postings created in Insight on the GovernmentJobs.com website.
  - May add an unlimited number of postings
  - Note: Jobs advertised on the promotional and transfer webpages are not advertised on GovernmentJobs.com as these are typically for internal employees.
- (c) Perform (PE). Perform (PE) is designed to address the major areas of human resource activities centered around employee performance management. As described below, Perform (PE) includes built-in workflow for business processes, configurable tasks, performance evaluations and reports. A subscription to Perform (PE) will include the following:
- Configurable Performance Evaluations
  - Ability to build Library of Goals, Competencies, and Writing Assistants
  - Shareable Competency Content
  - Development Plans
  - Configurable Process Workflows
  - Scored and Non-scored Rating Scales
  - Log of Performance Observations throughout the year
  - Peer Reviews & Multi-rater capability
  - Configurable Email Notifications
  - Automatic Evaluation Creation
  - Ability to perform actions in bulk for Employees & Evaluations
- (d) Onboard (ON). Onboard (ON) is designed to facilitate the onboarding process for new hires. As described below, NEOGOV maintains standard forms as part of the annual subscription. Agencies shall maintain any custom forms created by Customer. A subscription to Onboard (ON) will include the following functionality:
- Electronic Employee File of Onboard forms
  - Federal I9 and W4 forms
  - Checklists of tasks to create specific Onboard process by position, department, division or class spec
  - Configurable new hire portal
  - Ability to promote, rehire and offboard employees (task assignment based on new position)
  - Global form bank
  - Configurable Email Notifications

- Automation of Onboard process
  - Build your own Onboarding forms. Onboard (ON) includes Federal I9 and Federal W4 forms which are updated as new versions are released. Additional forms or form maintenance is available from NEOGOV at the following cost:
    - Background forms \$295 per form
    - Dynamic Forms \$195 per form
    - Updates to existing forms \$200 an hour
- (e) Learn (LE). Learn (LE) is designed to provide a seamless experience for organizations to train and develop employees. LE addresses the critical need of organizations to ensure completion of required trainings. By tracking both in-person and online training in one central place, organizations can improve employee performance and safety and reduce risk and liability claims. A subscription to Learn (LE) will including the following:
- Create, schedule, enroll learners in, and track completion of online and in-person, classroom trainings
  - Ability to upload SCORM course content files
  - Certificates after course completion
  - Learner transcripts & class rosters
  - Course catalog with configurable categories for learners to browse
  - Centralized dashboard that displays all required and elective trainings (online and in-person) that employees are enrolled in
  - Hundreds of 'off-the-shelf' online courses
  - Learn Setup and Implementation will include the following activities:
    - NEOGOV will work with Customer staff to understand the existing processes, as well as other workforce business practices, where applicable.
    - NEOGOV will establish Customer's production environment.
    - All NEOGOV products will be implemented off-site.
- (f) NEOGOV Training.
- NEOGOV training is available online (web-based, pre-built, content) unless otherwise proposed as included in the Order Form.
  - NEOGOV's pre-built, online training consists of a series of tutorials to introduce the standard features and functions and may be used as reference material by the staff conducting day-to-day activities.
- (g) NEOGOV Implementation. The following activities will be conducted as a part of the Services:
- Customer to review the project kick-off tutorial for information on the project timeline, deliverables, and establish project expectations.
  - NEOGOV will work with Customer staff to understand the existing processes as well as other workforce business practices where applicable.
  - NEOGOV will establish Customer's production environment.
  - All NEOGOV products will be implemented off-site. Customer may integrate NEOGOV solutions with other systems using standard NEOGOV integration tools, export data from Insight Enterprise (IN) using web services and/or flat files to integrate with other systems, but the specifications and scope must be defined prior to agreeing to a timeline or price.
  - Following NEOGOV product rollout, NEOGOV and Customer will confirm the rollout was completed successfully and that any production questions are addressed promptly.
- (h) NEOGOV Integrations. NEOGOV offers Standard Integrations as well as platform APIs for third party system integration(s). A subscription to Standard Integrations includes the following:
- Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings
  - Annual maintenance by NEOGOV
  - Employee import and export
  - Department division position import and export
  - Note: NEOGOV APIs are to be configured directly by Customer staff using NEOGOV documentation. If required, professional services may be included by NEOGOV to help define and validate scope, business requirements, timelines, and associated costs (if applicable).

2. Miscellaneous.

- (a) Online Services Agreement. This Order Form is an attachment to and part of that certain Online Services Agreement (the "Agreement") by and between NEOGOV and Customer. Terms not defined in this Order Form shall have the meanings set forth in the Agreement. THERE ARE SIGNIFICANT ADDITIONAL TERMS AND CONDITIONS, WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS CONTAINED IN THE AGREEMENT. CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT IT HAS READ THE AGREEMENT IN ITS ENTIRETY AND AGREE TO BE BOUND BY ITS PROVISIONS.
- (b) Effectiveness. Neither Customer nor NEOGOV will be bound by this Order Form until this Order Form has been signed by authorized representatives of both parties.
- (c) Modifications. This Order Form may not be modified or amended except through a written instrument signed by the party to be bound.

IN WITNESS WHEREOF, the parties have caused this Order Form to be executed by their respective duly authorized officers as of the date set forth below.

<b><u>Customer:</u></b>		<b><u>NEOGOV: GovernmentJobs.com, Inc.</u></b>	
Signature:	_____	Signature:	_____
Print Name:	Pete Rust	Print Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____