

## AGREEMENT FOR SERVICES

### PREAMBLE

THIS AGREEMENT is dated for identification on this 19<sup>th</sup> day of November 2024 by and between TOWN OF LOS GATOS, a California municipal corporation, (“Town”) and OpenGov, Inc. (“Service Provider”), identified as a C Corporation and whose address is 660 3rd Street, Suite 100, San Francisco CA 94107. This Agreement is made with reference to the following facts.

### I. RECITALS

Town sought quotations for the services described in this Agreement, and Service Provider was found to be the lowest responsible supplier for this purchase.

Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.

Town desires to engage Service Provider to provide new contract for Enterprise Asset Management program (Cartegraph) services and Procurement Suite services provided by OpenGov, Inc.

Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

### II. AGREEMENTS

2.1 Scope of Services. Service Provider shall provide services as described in that certain Proposal Order Form for the period of December 30, 2024 through December 29, 2025 sent to the Town on September 6, 2024, which is hereby incorporated by reference and attached as Exhibit A.

2.2 Term and Time of Performance. The effective date of this Agreement shall begin December 30, 2024 through December 29, 2025, with four one-year options.

2.4 Sole Responsibility. Service Provider shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

2.5 Intentionally Omitted.

2.6 Compensation: Compensation for services for the dates December 30, 2024 to December 29, 2025 are in the amount **not to exceed \$ \$66,355.59**, inclusive of all costs. All invoice amounts, including exercised option years (pending budget appropriation and extension of the agreement). Including option years, shall be invoiced in the amounts further described in the applicable Order Form (“Exhibit A”).

2.7 Billing. Billing shall be annually by invoice within thirty (30) days of the execution of this Agreement.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

Email (preferred): [AP@losgatosca.gov](mailto:AP@losgatosca.gov)

2.8 Availability of Records. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider offices during business hours upon written request of the Town.

2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Service Provider. No portion of these services shall be assigned or subcontracted without the written consent of the Town, which shall not be unreasonably withheld.

2.10 Independent Contractor. It is understood that the Service Provider, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Service Provider may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.

2.11 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Service Provider warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an

interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Service Provider shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

2.12 Equal Employment Opportunity. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

### **III. INSURANCE AND INDEMNIFICATION**

#### 3.1 Minimum Scope of Insurance:

- i. Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies in an amount not less than: two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Service Provider agrees to have and maintain, for the duration of the contract, Cyber Liability insurance for limits no less than \$2,000,000 per occurrence or claim, and \$4,000,000 in the aggregate.
  - Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant in this contract.
  - The policy(ies) shall include coverage for claims involving security breach, business interruption, cyber extortion, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, and damage to or destruction of electronic information.
  - The policy(ies) shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- iii. Service Provider agrees to have and maintain, for the duration of the contract, Technology Errors and Omissions Liability insurance in an amount of \$2,000,000 per occurrence or claim, and \$4,000,000 in the aggregate sufficient to

insure Consultant for technological errors or omissions in the performance of the particular scope of work under this contract.

iv. Service Provider shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Service Provider agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

### 3.2 General Liability:

i. The Town, its elected and appointed officials, employees, and agents are to be covered as additional insureds as respects: commercial general liability policy to cover liability arising out of activities performed by or on behalf of the Service Provider.

ii. The Service Provider's insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents with respect to this contract. Any insurance or self-insurances maintained by the Town, its officers, officials, or employees shall be excess of the Service Provider's insurance and shall not contribute with it.

iii. Intentionally Omitted.

iv. The Service Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.3 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

3.4 Workers' Compensation. In addition to these policies, Service Provider shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.

3.5 Indemnification. The Service Provider shall save, keep, hold harmless and indemnify and defend the Town its elected and appointed officials, agents, and employees ("Indemnitees") from all third party claims for damages, liabilities, penalties, costs, or expenses (including attorneys' fees) in law or equity that may at any time arise or be set up because of damages to

property or personal injury received by reason of a material breach of this Agreement or in the course of performing work which may be occasioned by a grossly negligent act or omissions of the Service Provider, or any of the Service Provider's officers, employees, or agents or any subcontractor. Service Provider's duty to indemnify and hold harmless Indemnitees shall not apply to the extent such damages or liabilities are caused by the sole or active negligence or willful misconduct of Indemnitees.

#### IV. GENERAL TERMS

4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.

4.3 Termination of Agreement. If either party materially breaches any term of this Agreement and fails to cure such breach within 30 days after receiving written notice by the non-breaching party (10 days in the case of non-payment), the non-breaching party may terminate this Agreement.

Termination for Non-Appropriation of Funds. For any term after the first full year of this Agreement, Town may terminate this Agreement if it does not appropriate funds to continue this Agreement in a future fiscal year by providing notice in writing no less than 30 days before the end of the then-current term. Such termination shall be effective upon the expiration of the then-current term. To invoke termination under this section, Town must use good faith efforts to secure the appropriate funds for the next year's fees.

4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Service Provider.

4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.

4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos  
Attn: Town Clerk  
110 E. Main Street  
Los Gatos, CA 95030

OpenGov, Inc.  
660 3rd Street, Suite 100  
San Francisco CA 94107

or personally delivered to Service Provider to such address or such other address as Service Provider designates in writing to Town.

4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.

4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Service Provider. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

4.9 Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

4.10 Contract Interpretation. Each party acknowledges that it has reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

4.11 Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. A scanned, electronic, facsimile or other copy of a party's signature shall be accepted and valid as an original.

4.12 Warranty of Authority. The signatories to this Agreement warrant and represent that each is authorized to execute this Agreement and that their respective signatures serve to legally obligate their respective representatives, agents, successors and assigns to comply with the provisions of this Agreement.

IN WITNESS WHEREOF, the Town and Service Provider have executed this Agreement.

Town of Los Gatos by:

OpenGov, Inc. by:

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Chris Constantin, Town Manager

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Sam Kramer, SVP of Finance

Recommended by:

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Nicolle Burnham,  
Director of Parks and Public Works

Approved as to Form:

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Gabrielle Whelan, Town Attorney

Attest:

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Wendy Wood, CMC, Town Clerk