**PROFESSIONAL SERVICES AGREEMENT**
**BETWEEN THE**
**CITY OF MILPITAS AND OPENGOV INC.**


This Agreement is made and entered into as of _____, 20____ ("Effective Date") by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and **OpenGov, Inc.,** a Corporation with its principal place of business at **955 Charter Street, Redwood City, CA. 94063** (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**RECITALS**

A.      City is a public agency of the State of California and is in need of professional services for the following project:

**PURCHASE AND INSTALLATION OF BUDGET AND PERFORMANCE SOFTWARE AND CONSOLIDATION OF THE MANAGEMENT REPORTING AND OPEN TOWN HALL SOFTWARE**

(hereinafter referred to as "the Project").

B.      Consultant is duly licensed and has the necessary qualifications to provide such services.

C.      The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

**AGREEMENT**

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1.      Services.

Consultant shall provide the City with the software services ("Software Services") and professional services ("Professional Services") (collectively, the "services") described in the Scope of Services attached hereto as Exhibit A.

2.      Compensation.

a.      Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.

b.      In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Four Hundred Ten Thousand Four Hundred Fifty-One Dollars and Forty Cents ($410,451.40)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Payment for Professional Services will be made in advance as a one-time lump sum fee in the amount specified in Exhibit B and within thirty (30) days of the City's receipt of a valid invoice for the Professional Services from Consultant.. Payments to Consultant for Software Services will be made on an annual basis in advance with payment occurring within thirty (30) days of the City's receipt of a valid invoice for the Software Services from Consultant.

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3.      Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4.      Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times, with ten (10) days prior notice, during the Agreement term and for four (4) years from the date of final payment under the Agreement for inspection by City.

5.      Term.

The term of this Agreement shall be from **October 16, 2019** to **October 15, 2024**, unless earlier terminated as provided herein.

6.      Delays in Performance.

a.      Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b.      Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7.      Compliance with Law.

Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

8.      Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9.      Assignment and Subconsultant

Except in the event of a change of control wherein a controlling interest in Consultant's company is transferred to a third party, Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any

reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10.     Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11.     Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit D (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12.     Indemnification.

a.      To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless, from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b.      If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13.     California Labor Code Requirements.

a.      Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents ($1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code

Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

        b.      If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

        c.      This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations.  It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

     14.      Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

     15.      City Material Requirements.

[RESERVED]

     16.      Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California.  If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

     17      Termination or Abandonment

        a.      If either Party materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice from the non-breaching party, the non-breaching party may terminate this Agreement.  City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. In the event the City has materially breached the Agreement and failed to cure in accordance with the requirements above, City shall pay Consultant any portion of the annual Software Services fee due for the year in which the breach occurred. In the event the Consultant has materially breached the Agreement and failed to cure in accordance with

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the requirements above, any payments for Software Services made in advance shall be refunded based on the proportionate percentage of the year remaining in which the breach occurred. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for professional services performed during such task shall be the reasonable value of such professional services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed professional services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

c. The Consultant understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget decisions are subject to the discretion of the Mayor and City Council. Consultant's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement. With respect to the Software Services the City will be responsible for payment of any portion of the annual Software Services fee due prior to termination under this Section 17.c, and any payments made for Software Services shall be non-refundable. Consultant shall have no right to collect any annual Software Services fee accruing following termination under this Section 17.c.

18    [RESERVED]

19.    Organization

Consultant shall assign **Sally Steel-Ginis** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City or the departure of the Project Manager from the Consultant's employ.

20.    Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21.    Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

| CITY: | CONSULTANT: |
|---|---|
| City of Milpitas | OpenGov, Inc. |
| 455 E. Calaveras Boulevard | 955 Charter Street |
| Milpitas, California 95035 | Redwood City, CA, 94063 |
| Attn: City Manager | Attn: General Counsel |

and shall be effective upon receipt thereof.

22.     Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23.     Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions.  Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24.     Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void.  This Agreement may not be modified or altered except in writing signed by both Parties hereto.  This is an integrated Agreement.

25.     Severability

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

26.     Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement.  However, except in the event of a change of control wherein a controlling interest in Consultant's company is transferred to a third party, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City.  Any attempted assignment without such consent shall be invalid and void.

27.     Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

28.     [RESERVED]

29.     City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

31. Wage Theft Prevention

a. Consultant, and any subconsultant it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

b. BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONSULTANT OR ITS SUBCONSULTANTS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONSULTANT AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONSULTANT OR ITS SUBCONSULTANT(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

c. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Consultant or a subconsultant it employs to perform work under this Agreement has violated any applicable wage and hour law, or Consultant learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Consultant shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Consultant or its subconsultant(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Consultant or its subconsultant is subject to a payment or other alternative plan, the Consultant or its subconsultant shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

d.      For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

e.      Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

f.      Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND OPENGOV, INC.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**CITY OF MILPITAS**
*Approved By:*

_____
Steven G. McHarris, Interim City Manager

_____
Date

*Approved As To Form:*

_____
Christopher J. Diaz, City Attorney

*Approved:*

_____
Walter C. Rossmann, Risk Manager/Director of Finance

**OPENGOV, INC.**

_____
Signature

Paul H. Denton
_____
Name

CFO
_____
Title

_____
Date

_____
DIR Registration Number (If Applicable)

**Scope of Services**

## 1. Objective

1.1. Summary

This Statement of Work ("SOW") identifies services that OpenGov, Inc. ("OpenGov") will perform for City of Milpitas, CA ("Customer"). This SOW is subject to, and hereby incorporates by reference, the terms and conditions contained in the Software Subscription Agreement (the "Agreement") to which it is attached between Customer and OpenGov.

OpenGov will enable and support the Customer to deliver on the Scope of Work outlined below. The objective of this Statement of Work is to define the scope, activities, roles and responsibilities, and timeline necessary to successfully execute this deployment project. This project aims to implement the OpenGov Budgeting and Planning Solution for the Customer to enable effective and accountable governing. This SOW defines the scope and deliverables for a successful implementation of the OpenGov Cloud.

2. Scope

2.1. Project Scope

The project scope includes the following services and deliverables. Any items not specifically included in scope will be considered out of scope.

OpenGov will provide Professional Services to implement the OpenGov Cloud Full Cycle package.

2.2. Deliverables

| OpenGov Cloud - Full Cycle - Fixed Fee | |
|---|---|
| **Functionality** | **Deliverables** |
| **Chart of Accounts** | <ul><li>Review and feedback of Customer's source system chart of accounts</li><li>Chart of accounts functional build and review</li><li>Chart of accounts configuration and peer review</li><li>Administrator training</li></ul> |
| **Management Reporting** | <ul><li>4 Standard Reports (Annual, Budget to Actuals, Change in Fund Balance, and Transactions)</li><li>1 department-specific budget to actual report</li><li>1 custom report (stipulated by the Customer)</li><li>Standard saved views for each report</li><li>Up to 10 years of data</li><li>Administrator training</li></ul> |

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|---|---|
| | • Creation of launch plan<br>• End user training/presentation (depts, council, etc.)<br>• Review of best practices for launch<br>• Launch |
| **Performance Measures** | • Metrics Conceptualization sessions for 2 programs from 2 departments<br>• Program Inventory document for 2 departments<br>• Up to 6 non-financial reports<br>• 1 department dashboard containing tiles for the 2 programs above<br>• OpenGov recommends building the following tile types,<br>    ○ 2 Financial<br>    ○ 4 Output or Outcome<br>    ○ 2 Efficiency (cost for doing something)<br>• SFTP dataset integration of up to 3 .CSV datasets<br>• Administrator Training<br>• Creation of launch plan<br>• Review of best practices for launch<br>• Launch |
| **Stories** | • Up to 2 story conceptualizing sessions<br>• Up to 2 Stories<br>• Administrator training<br>• External communication resource packet<br>• Citizen Engagement Best Practice Newsletter<br>• Creation of launch plan<br>• Review of best practices for launch<br>• Publish the created stories |
| **Financial Integration** | • Integration of budget and actuals, with transaction level detail up to 10 years<br>• Single system connector<br>• Design, map, and validate data from the system.<br>• Administrator training<br>• Ongoing monitoring and alerts |
| **Budget Builder**<br>• **Operating Budget**<br>• **Capital Budget** | • Builder Builder setup<br>• Up to 2 budgets (i.e. Operating & capital)<br>• Creation of up to 5 proposals per budget<br>• 2 Reports (Budget to Actuals & milestones)<br>• Project continues to Adopted Budget<br>• Administrator training<br>• Personalized User Guide<br>• Up to 3 kick off trainings to departments<br>• Creation of launch plan<br>• Review of best practices for launch<br>• Launch<br>• Budget end user and Administrator assistance throughout Budget Development and Adoption |

| | |
|---|---|
| **Workforce Planning** | - Initial configuration based on Customer provided documentation and cost elements<br>- 1 Workforce plan<br>- Data formatting and loading<br>- Validate calculations<br>- 1 authorized position list report<br>- 1 total compensation detail report<br>- Administrator training<br>- Administrator guide |
| **Budget Book** | Import and Format Main Document:<br>- Import document (must be in .docx format) provided by Customer.<br>- Set up document outline and break document into appropriate outline sections.<br>- Review text and tables for formatting accuracy (font style, font size, spacing, borders, shading). Set up default header and footer.<br>- Import and place graphics.<br>- Set up the Table of Contents to auto generate page numbers, edit text to reflect current quarter and add hyperlinks to text.<br>Linking:<br>- Includes 1-1 linking from a source spreadsheet to the main document for all data presented in a chart or table in the main document.<br>Process Improvement Consultation:<br>- Our solutions architect team will spend time with your reporting team. This time will allow the team to understand your data source files and how they integrate with your final report(s) in Wdesk.<br>- We will provide process and data flow recommendations, best practices, outline project implementation, and provide enhanced training as needed.<br>Training:<br>- Our team will spend time with your reporting team training on the Wdesk Account and Budget Book, project editing and maintenance following implementation. Five training sessions will be offered:<br>   o Wdesk Application Introduction & Account Overview<br>   o Wdesk Account Administration<br>   o Wdesk Document Editing & Formatting<br>   o Wdesk Spreadsheet Editing and<br>   o Wdesk Linking & Wdesk Sync |

## 2.3. Assumptions

- If a Fixed Fee engagement: The concept of Fixed Fee defines how the outlined deliverables are achieved. If Fixed Fee, OpenGov commits to delivering on the items outlined in the above Professional Services packages regardless of how many hours they might take.

- **For the Financial Integration,**

  o The data will be linked to the Customer's chart of accounts.

- o OpenGov will perform the validation for data accuracy for the Integration.

- o OpenGov will require assistance from the Customer to understand source system specific customizations and configurations when building the data extract.

- **If there is an FTP integration of 3 .CSV datasets,**

  - o The data will NOT be linked to the Customer's chart of accounts.

  - o The Customer will perform the validation for data accuracy for the Integration.

  - o Customer will perform the data extraction from the source system and automate it to be dropped in OpenGov FTP location.

3. Schedule

OpenGov will schedule resources for this project upon signature of this SOW. Unless specifically noted, the OpenGov assigned project manager (as identified below or such alternate designated by OpenGov, the "OpenGov Project Manager") will work with Customer to develop the project schedule for all requested deliverables under this SOW. OpenGov reserves the right to adjust the schedule based on the availability of OpenGov resources and the deliverables provided by Customer.

4. Project Organization

4.1. Project Team

**OpenGov**

OpenGov will assign a Project Manager (the "OpenGov Project Manager") upon execution of the SOW. The OpenGov Project Manager will coordinate any additional resources needed from OpenGov.

**Customer**

Customer will assign a project manager (the "Customer Project Manager") and technical resource prior to project kick-off. The Customer Project Manager will be the primary contact person at Customer and will coordinate all Customer resources needed to complete the project. It is anticipated that the areas of need will be in Finance, Data Gathering, and the IT department.

4.2. Project Responsibilities

The project responsibilities for each organization are outlined below:

**OpenGov**

1. Manage delivery of in-scope items in coordination with Customer.
2. Make available deliverables to Customer project team for review and verification.
3. Provide relevant technical details and documentation for data requirements for Customer's environment.
4. Keep Customer Project Manager informed of project progress and communicate any issues relating to the project in a timely manner.
5. Establish documentation and procedural standards for the project.

6. Review and administer project change control, as described in Section 5, Change Control Procedures.
7. Ensure that all meetings and training sessions are attended by OpenGov personnel, as scheduled.

8. Budget Builder files are exported as .xlsx. OpenGov may assist in formatting that file, but cannot convert files to any other file types

**Customer**

1. Make available a representative to serve as the primary contact for OpenGov Project Manager to coordinate project activities.
2. Make available appropriate representatives with the authority to review and approve deliverables produced during the project.
3. Make available appropriate Subject Matter Experts (SME) to support the project needs, test integrations and provide Customer environment specific technical details.
4. Setup firewall rules to allow incoming requests from OpenGov's proxy over HTTP/HTTPS to Customer systems.
5. Communicate any issues relating to the project to OpenGov Project Manager in a timely manner.
6. Provide acceptance of deliverables and Project in a timely manner.
7. If Integration services are purchased, Customer will be responsible for making any configuration changes or modifications to Financial System (ERP) to support integration and make available access for integration to OpenGov software. The Customer will be responsible for ensuring that the versions of Financial System (ERP) running on all environments remain the same across all environments.
8. Customer will be responsible for any infrastructure required to access OpenGov, and will maintain relevant non-OpenGov software licenses and infrastructure needed for this project i.e. accounting system licenses. Please note, OpenGov software is optimized for Google Chrome.
9. The Customer will be responsible for ensuring that all meetings and training sessions are attended by personnel, as scheduled.

### 4.3. Implementation Methodology

OpenGov uses an iterative methodology, with a focus on rapid implementation of a configured system. This methodology requires a degree of focus from the Customer and collaboration between both parties to complete work products in a timely manner.

1. **Initiate Phase**
a. **Key Activities:** Discovery, Design Sessions, Solution Document Review
b. **Key Work Products:** Data Inventory, Functional Model Build, Solution Document
c. **Summary:** The Initiate Phase is the first step of the implementation project. The purpose of this phase is to define the success criteria of the project, make design decisions based on the functional model build, and begin gathering data that needs to be loaded into the OpenGov platform. At the end of the Phase, a Solution Document will be created that outlines how the solutions will be implemented.

2. **Configure Phase**
. **Key Activities:** Application and Solution Configuration, Data Load
a. **Key Work Products:** Peer Review
b. **Summary:** The Configure Phase consists of application configuration, and solution configuration as defined in the Solution Document. OpenGov will also load the data gathered in the Initiate Phase from

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the Customer to use for unit testing purposes.  The Phase ends with a Peer Review done by an OpenGov Subject Matter Expert to confirm that the solution follows OpenGov best practices.


3.  **Validate Phase**
.       **Key Activities:** User Acceptance Testing, Data Confirmation
a.      **Key Work Products:** Test Scripts, Test Acceptance
b.      **Summary:** The Validate Phase starts with a review of the entire solution with the Customer project team to confirm that all project elements have been implemented.  Once that process has completed, the Customer will execute test scripts and validate that data is being represented accurately in the solution.  If any issues are found, they will be logged and the OpenGov team will assess the issue and resolve as needed.  The Phase ends with the Acceptance of test results by the Customer.


4.  **Deploy Phase**
.       **Key Activities:** Administrator Training, Go Live Support, Transition to Customer Success Manager and Technical Support
a.      **Key Work Products:** Project Documentation, Project Acceptance
b.      **Summary:** The purpose of the Deploy phase is to complete the Administrator Training process, provide Go Live Support, and begin Transition activities to close the project.  Post Go Live Support is technical assistance with the project team and issue resolution for the solution during the two week period after Go Live.  Once this period has passed, the Project team will begin working on transition activities to the Customer, the CSM, and the Customer Technical Support Function.  The Project closes upon the acceptance of the project and a brief survey to provide feedback about the experience.

## EXHIBIT B

## Schedule of Charges/Payments

With respect to Professional Services, Consultant will invoice City on a monthly cycle as specified below. With respect to the Software Services the City will be responsible for payment of any portion of the annual Software Services fee due following receipt of an invoice from Consultant, and any payments made for Software Services shall be non-refundable except in the event of a material breach of this Agreement by Consultant. Consultant will inform City regarding any out-of-scope work being performed by Consultant. With respect to Software Services, this is a Software Services subscription agreement pursuant to the terms of Exhibit E, attached and incorporated herein.

**SOFTWARE SERVICES:**

| Product / Service | Start Date | End Date | Annual Term | Annual Fee |
|---|---|---|---|---|
| The OpenGov Cloud<br>*Budget Builder, Budget Book, Workforce Planning, Management Reporting, Performance Measures, Story Builder, Open Town Hall, Financial Integration* | 11/11/2019 | 11/10/2024 | 5 | $75,090.28 |
| | | | **Annual Subscription:** | $75,090.28 |

**PROFESSIONAL SERVICES:**

| Product / Service | Description | |
|---|---|---|
| OpenGov Deployment — One Time Fee | Product configuration and setup, training, and ongoing support to help organizations deploy and adopt the OpenGov solutions described in the attached SOW. | |
| | **Professional Services Total:** | $35,000.00 |

**Billing Table:**

| Billing Date | Amount Due |
|---|---|
| November 11, 2019 | $110,090.28 |
| November 11, 2020 | $75,090.28 |
| November 11, 2021 | $75,090.28 |
| November 11, 2022 | $75,090.28 |
| November 11, 2023 | $75,090.28 |

**EXHIBIT C**

## Activity Schedule

| | October | | | | November | | | | December | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | W1 | W2 | W3 | W4 | W1 | W2 | W3 | W4 | W1 | W2 | W3 | W4 | W5 | |
| Chart of Accounts* | V | D | | | | | | | | | | | | |
| Operating Budget | | | I | | C | | | V | D | | | | | I = Initiate |
| | | | | | | | | | | | | | | C = Configure |
| Capital Budget | | | I | | C | | | V | D | | | | | V = Validate |
| | | | | | | | | | | | | | | D = Deploy |
| Workforce | | | I | C | V | D | | | | | | | | |
| Financial Integration | | | I | C | V | D | | | | | | | | |
| Budget Book | | | | | | | | I | | C | V | D | | |
| Performance Measures | | | | | | I | | C | V | D | | | | |
| Story Builder | | | | | | | | I | | C | V | D | | |

*Because Milpitas is an existing customer, we will be able to go right to the Validation stage Day 1.

Please note, this proposed project schedule is subject to change based on customer priorities and preferences

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**Insurance Requirements**

Please refer to the insurance requirements listed below. Those that have an "X" indicated in the space before the requirement apply to Contractor's or Consultant's Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

**Commercial General Liability (CGL):**

\_\_\_     Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

X\_     Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $1,000,000.00 per occurrence.  If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

\_\_\_     Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $5,000,000.00 per occurrence.  If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

**Automobile Liability:**

X_    Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than $1,000,000.00 per accident for bodily injury and property damage.

___    Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than $5,000,000.00 per accident for bodily injury and property damage.

___    Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

**Professional Liability (Errors and Omissions):**

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

___    Insurance appropriates to the Contractor or Consultant's profession, with limit no less than $1,000,000.00 per occurrence or claim, $2,000,000.00 aggregate.

___    (If Design/Build), with limits no less than $1,000,000.00 per occurrence or claim, and $2,000,000.00 policy aggregate.

___    Insurance appropriates to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

**Workers' Compensation Insurance:**

X_ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

X_____
Contractor/Consultant Signature

**Builder's Risk (Course of Construction):**

___    Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

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**Surety Bonds:**

___ Contractor shall provide the following Surety Bonds:
1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

**Contractor's or Consultant's Pollution Legal Liability:**

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than $1,000,000.00 per occurrence or claim and $2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain the following provisions:

**X_ Additional Insured Status:**

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis

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for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**X__ Primary Coverage:**

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the Contractor's or Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

**____ Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)**

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

**X__ Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

Each insurance policy required above shall contain, or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

**X__ Waiver of Subrogation:**

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

**____ Completed Operations**

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

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THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

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**Deductibles and Self-Insured Retentions ("SIR"):**

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

**Acceptability of Insurers:**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

**Claims Made Policies: (note - should be applicable only to professional liability, see below)**

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or

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asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

**Subcontractors:**

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

**Verification of Coverage:**

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Special Risks or Circumstances**

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

**Failure to Comply:**

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

**Applicability of Coverage:**

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**EXHIBIT E - OpenGov Software Services Agreement**

This Software Services Agreement (this "**Agreement**") is entered into by OpenGov, Inc., a Delaware corporation with a principal place of business at 955 Charter Street, Redwood City, California 94063 ("**OpenGov**") and the City of Milpitas ("**Customer**"). This Agreement is an Exhibit to the Professional Services Agreement between OpenGov and Customer and sets forth the terms under which Customer will be permitted to use OpenGov's hosted software services.

1. **DEFINITIONS**

"Customer Data" means data that is provided by Customer to OpenGov pursuant to this Agreement (for example, by email or through Customer's software systems of record). Customer Data shall not include any confidential personally identifiable information.

"Documentation" means the documentation for the Software Services at the Customer Resource Center page found at https://opengov.zendesk.com.

"Feedback" means suggestions, comments, improvements, ideas, or other feedback or materials regarding the Software Services provided by Customer to OpenGov, including feedback provided through online developer community forums.

"Initial Term" means the initial license term specified in number of years on the Order Form, commencing on the Effective Date.

"Intellectual Property Rights" means all intellectual property rights including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature.

"Order Form" means OpenGov's Software Services order form that: (a) specifies the Software Services provided by OpenGov; (b) references this Agreement; and (c) is signed by authorized representatives of both parties.

"Renewal Term" means each additional renewal period, which shall be for a period of equal duration as the Initial Term, for which this Agreement is extended pursuant to Section 7.2.

2. **SOFTWARE SERVICES, SUPPORT AND PROFESSIONAL SERVICES**

2.1 Software Services. Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to perform the software services identified in the applicable Order Form entered into by OpenGov and Customer ("**Software Services**").

2.2 Support. Customer support is available by email to support@opengov.com or by using the chat messaging functionality of the Software Services, both of which are available during OpenGov's standard business hours of 8am to 6pm Pacific Time. Customer may report issues any time. OpenGov will timely address issues during the business hours noted above.

2.3 Professional Services.

(a) If OpenGov or its authorized independent contractors provides professional services to Customer, such as implementation services, then these professional services will be described in a statement of work ("**SOW**") agreed to by the parties (the "**Professional**

**Services**"). For Professional Services performed on a time and materials basis, any pre-paid Professional Services Fees must be utilized within one (1) year from the Effective Date. Any unused pre-paid Professional Services Fees shall be forfeited.

(b) Unless the SOW provides otherwise, all reasonable travel expenses, pre-approved by Customer and incurred by OpenGov in performing the professional services will be reimbursed by Customer. Travel expenses include cost of coach airfare travel round trip from the individual's location to Customer's location, reasonable hotel accommodations, ground transportation and meals.

## 3. RESTRICTIONS AND RESPONSIBILITIES

3.1 <u>Restrictions</u>. Customer may not use the Software Services in any manner or for any purpose other than as expressly permitted by the Agreement. Customer shall not, and shall not enable any third party to: (a) use or access any of the Software Services to build a competitive product or service; (b) modify, disassemble, decompile, reverse engineer or otherwise make any derivative use of the Software Services (except to the extent applicable laws specifically prohibit such restriction); (c) sell, license, rent, lease, assign, distribute, display, host, disclose, outsource, copy or otherwise commercially exploit the Software Services; (d) perform or disclose any benchmarking or performance testing of the Software Services; (e) remove any proprietary notices included with the Software Services; (f) use the Software Services in violation of applicable law; or (g) transfer any confidential personally identifiable information to OpenGov or the Software Services platform except as authorized by this Agreement or at law.

3.2 <u>Responsibilities</u>. Customer shall be responsible for obtaining and maintaining computers and third party software systems of record (such as Customer's ERP systems) needed to connect to, access or otherwise use the Software Services. Customer also shall be responsible for: (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) all uses of Customer user accounts by any party other than OpenGov. OpenGov shall provide such reasonable assistance as specified in the SOW to integrate the Software Services to operate in the manner contemplated in the SOW.

## 4. INTELLECTUAL PROPERTY RIGHTS; LICENSE GRANTS; ACCESS TO CUSTOMER DATA

4.1 <u>Software Services</u>. OpenGov retains all right, title, and interest in the Software Services and all Intellectual Property Rights in the Software Services. Except as authorized by this Agreement, the Software Services, are the property of OpenGov and Customer may not copy, imitate, or use them, in whole or in part, without OpenGov's prior written consent. Subject to Customer's obligations under this Agreement, OpenGov hereby grants to Customer a worldwide, non-exclusive, royalty-free license during the Term to use the Software Services.

4.2 <u>Customer Data</u>. Customer retains all right, title, and interest in the Customer Data and all Intellectual Property Rights therein. Customer hereby grants to OpenGov a non-exclusive, royalty-free license to, and permit its hosting and development partners to, use, store, edit and reformat the Customer Data, and to use Customer Data for purposes of sales, marketing, business development, product enhancement, customer service, or for analyzing such data and publicly disclosing such analysis ("**Insights**"), provided that in all such uses Customer Data is rendered anonymous such that Customer is no longer identifiable.

4.3 <u>Access to Customer Data</u>. Customer may download the Customer Data from the

Software Services at any time during the Term, other than during routine software maintenance periods. OpenGov has no obligation to return Customer Data to Customer.

4.4 <u>Feedback</u>. Customer hereby grants to OpenGov a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use and incorporate into the Software Services and Documentation Customer's Feedback provided Customer is not identified without Customer's prior written consent. OpenGov will exclusively own any improvements or modifications to the Software Services and Documentation based on or derived from any of Customer's Feedback including all Intellectual Property Rights in and to the improvements and modifications.

5. **CONFIDENTIALITY**

5.1 Each party (the "**Receiving Party**") agrees not to disclose any Confidential Information of the other party (the "**Disclosing Party**") without the Disclosing Party's prior written consent, except as provided below. The Receiving Party further agrees: (a) to use and disclose the Confidential Information only in connection with this Agreement; and (b) to protect such Confidential Information using the measures that Receiving Party employs with respect to its own Confidential Information of a similar nature, but in no event with less than reasonable care. Notwithstanding the above, the Receiving Party may disclose Confidential Information to the extent required by law or court order, provided that prior written notice of such required disclosure is given to the Disclosing Party.


5.2 "**Confidential Information**" means all confidential business, technical, and financial information of the disclosing party that is marked as "Confidential" or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the disclosure. OpenGov's Confidential Information includes, without limitation, the software underlying the Software Services and all Documentation.


5.3 Notwithstanding the foregoing, "Confidential Information" does not include: (a) "**Public Data**," which is data that either party has previously released to the public, would be required to release to the public, upon request, according to applicable federal, state, or local public records laws, or is data OpenGov makes available to the public in conjunction with the Software Services. Confidential Information does not include (b) information that has become publicly known through no breach by the receiving party; (c) information that was rightfully received by the Receiving Party from a third party without restriction on use or disclosure; or (d) information independently developed by the Receiving Party without access to the Disclosing Party's Confidential Information.


6. **PAYMENT OF FEES**

6.1 <u>Fees; Invoicing; Payment; Expenses</u>.

(a) <u>Fees</u>. The fees for the Software Services for the Initial Term and any Renewal Term ("**Software Services Fees**") shall be as specified in Exhibit B. Software Services Fees and Professional Services Fees shall hereafter be referred to as "**Fees**".

(b) <u>Inflation Adjustment</u>. OpenGov shall increase the Fees payable for the Software Services during any Renewal Term by 4% each year of the Renewal Term.

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6.2 <u>Credit Card Customers</u>. If applicable, Customer will provide OpenGov with valid credit card information and promptly notify OpenGov of any changes necessary to charge the credit card at billing@opengov.com. Please update your credit card information when necessary. The provision of credit card information to OpenGov authorizes OpenGov to charge the credit card for all applicable Fees plus a 3% credit card processing fee. OpenGov processes credit card payments through a secure third party processing partner and does not take receipt of credit card information itself.

6.3 <u>Taxes</u>. All Fees under this Agreement are exclusive of any applicable sales, value-added, use or other taxes ("**Sales Taxes**"). Customer is solely responsible for any and all Sales Taxes, not including taxes based solely on OpenGov's net income. If any Sales Taxes related to the Fees under this Agreement are found at any time to be payable, the amount may be billed by OpenGov to, and shall be paid by, Customer. If Customer fails to pay any Sales Taxes, then Customer will be liable for any related penalties or interest, and will indemnify OpenGov for any liability or expense incurred in connection with such Sales Taxes. In the event Customer or the transactions contemplated by the Agreement are exempt from Sales Taxes, Customer agrees to provide OpenGov, as evidence of such tax exempt status, proper exemption certificates or other documentation acceptable to OpenGov.

## 7. TERM & TERMINATION

7.1 <u>Term</u>. Subject to compliance with all terms and conditions, the term of this Agreement shall commence on the Effective Date and shall continue until the Subscription End Date specified in Section 5 of the Agreement (the "**Initial Term**").

7.2 <u>Renewal</u>. The parties may elect by mutual written agreement to renew this Agreement, in writing no less than thirty (30) days before the end of the Initial Term (the "**Renewal Term**"). The "**Renewal Term**" together with the Initial Term, shall be the "**Term**").

## 8. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

8.1 <u>By OpenGov</u>.

(a) <u>General Warranty</u>. OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with the related statement of work and generally prevailing industry standards. For any breach of the Professional Services warranty, Customer's exclusive remedy and OpenGov's entire liability will be the re-performance of the applicable services. If OpenGov is unable to re-perform all such work as warranted, Customer will be entitled to recover all fees paid to OpenGov for the deficient work.

(b) <u>Software Services Warranty</u>. OpenGov further represents and warrants that for a period of one (1) year, the Software Services will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software Services that have been used in a manner other than as set forth in the Documentation and authorized under this Agreement. OpenGov does not warrant that the Software Services will be uninterrupted or error-free. Any claim submitted under this Section 8.1(b) must be submitted in writing to OpenGov during the Term. OpenGov's entire liability for any breach of the foregoing warranty is to repair or replace any nonconforming Software Services so that the affected portion of the Software Services operates as warranted or, if OpenGov is unable to do so,

terminate the license for such Software Services and refund the pre-paid, unused portion of the Fee for such Software Services.

8.2  By Customer. Customer represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) OpenGov's use of the Customer Data pursuant to this Agreement will not infringe, violate or misappropriate the Intellectual Property Rights of any third party.

8.3  Disclaimer. OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES.   EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

## 9.  LIMITATION OF LIABILITY

9.1  Special Damages. NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.2  By Amount. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THREE TIMES THE FEES PAID BY CUSTOMER TO OPENGOV (OR, IN THE CASE OF CUSTOMER, PAYABLE) FOR THE SOFTWARE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

9.3  Limitation of Liability Exclusions.  The limitations of liability set forth in Sections 9.1 and 9.2 above do not apply to, and each party accepts liability to the other for: (a) claims based on either party's intentional breach of its obligations set forth in Section 5 (Confidentiality), (b) claims arising out of fraud or willful misconduct by either party and (c) either party's unauthorized use, distribution, or disclosure of the other party's intellectual property.

9.4  No Limitation of Liability by Law.  Because some jurisdictions do not allow liability or damages to be limited to the extent set forth above, some of the above limitations may not apply to Customer.

## 10.  MISCELLANEOUS

10.1  Logo Use. Customer hereby grants to OpenGov a non-exclusive, royalty-free license to use, reproduce, distribute and publicly display Customer's name and logos in connection with OpenGov's corporate resume. Subject to approval from Customer, OpenGov may issue a press release generally describing the transaction contemplated by this Agreement or otherwise state that Customer is a user of an OpenGov product.

10.2  Notice. Ordinary day-to-day operational communications may be conducted by email, live chat or telephone communications. However, for notices required by the Agreement (in Sections where the word "notice" appears) the parties must communicate more formally in a writing given by personal delivery, by pre-paid first-class mail or by overnight courier to the address specified in the most recent Order Form (or such other address as may be specified in writing in accordance with this Section).

10.3  Anti-corruption. OpenGov has not offered or provided any bribe, kickback, illegal or improper payment, gift, or thing of value to any Customer personnel in connection with the Agreement, other than reasonable gifts and entertainment provided Customer in the ordinary course of business. If OpenGov become aware of any violation of the above restriction then OpenGov shall promptly notify Customer.

10.4  Injunctive Relief.  The parties acknowledge that any breach of the confidentiality provisions or the unauthorized use of a party's intellectual property may result in serious and irreparable injury to the aggrieved party for which damages may not adequately compensate the aggrieved party.   The parties agree, therefore, that, in addition to any other remedy that the aggrieved party may have, it shall be entitled to seek equitable injunctive relief without being required to post a bond or other surety or to prove either actual damages or that damages would be an inadequate remedy.

10.5  Force Majeure. Neither party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of this Agreement, other than payment obligations, due to any act of god, act of governmental authority, or due to war, riot, labor difficulty, failure of performance by any third-party service, utilities, or equipment provider, or any other cause beyond the reasonable control of the party delayed or prevented from performing.

10.6  Severability; Waiver. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.  Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. There are no third-party beneficiaries to this Agreement.

10.7  Assignment. Except as set forth in this Section, neither party shall assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations to a third party without the other party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.  Either party may assign, without such consent but upon written notice, its rights and obligations under this Agreement to: (i) its corporate affiliate; or (ii) any entity that acquires all or substantially all of its capital stock or its assets related to this Agreement, through purchase, merger, consolidation, or otherwise. Any other attempted assignment shall be void. This Agreement shall inure to the benefit of and bind each party's permitted assigns and successors.

10.8  Independent Contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect.

10.9  Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

10.10 Complete Agreement. This Agreement is the complete and exclusive statement of the

mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement. No modification of this Agreement will be binding, unless in writing and signed by an authorized representative of each party.

10.11 Cooperative Use Contract: Any Agreement resulting from this solicitation shall be for the use of the City. In addition, third party, public and nonprofit agencies that have entered into a direct order with OpenGov are eligible to use the terms and conditions of this Agreement.