PROFESSIONAL SERVICES AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620

AGREEMENT FOR SERVICES BETWEEN
THE CITY OF MENLO PARK AND OPENGOV, INC.

THIS AGREEMENT made and entered into at Menlo Park, California, this 10/1/2019, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and OPENGOV, INC., hereinafter referred to as "FIRST PARTY."

WITNESSETH:

WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Implementation of OpenGov Software Services purchased by the City pursuant to the software services agreement between the parties dated 10/1/2019.

WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:

1. SCOPE OF WORK

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.

2. SCHEDULE FOR WORK

FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.

FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.

3. PROSECUTION OF WORK

FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).
## 4. COMPENSATION AND PAYMENT

A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed $35,000 as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.

B. FIRST PARTY’s fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

C. Payments shall be monthly due on signing for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.

D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY’s relevant records pertaining to the charges.

## 5. EQUAL EMPLOYMENT OPPORTUNITY

A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.

B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.

E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY’s agreement with all sub-consultants.

## 6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

A. Except in the event of a change of control, the FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.

B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.
B. 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.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY’s services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY’s work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Lenka Diaz  
Administrative Services  
City of Menlo Park  
701 Laurel St.  
Menlo Park, CA 94025  
650-330-6677  
LDDiaz@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

General Counsel  
OpenGov, Inc.  
955 Charter Street  
Redwood City, CA. 94063  
legal@opengov.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.
## 10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

## 11. INSURANCE

**A.** FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.

**B.** There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.

1. **Workers' compensation and employer's liability insurance:**
   
   The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California 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 the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).

2. **Liability insurance:**
   
   The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars ($1,000,000) per occurrence and one million dollars ($1,000,000) in aggregate, or one million dollars ($1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars ($1,000,000) for each accident combined single limit or not less than one million dollars ($1,000,000) for any one (1) person, and one million dollars ($1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars ($300,000) property damage.

3. **Professional liability insurance:**
   
   FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars ($1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

C. **CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability**
Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.

E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY’s work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY’s convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY’s change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:

1. Immediately discontinue all services affected (unless the notice directs otherwise); and

2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.

B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.

D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.

E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.

F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.

B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.
### 23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the City, a federal agency, and the state of California.

### 24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of September 25, 2019 through September 24, 2022 unless extended, amended, or terminated in writing by CITY.

### 25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document’s date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

### 26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant’s Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk’s office no later than 30 days after the execution of the agreement.

SIGNATURE PAGE TO FOLLOW
IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Paul H Denton  
Signature  9/30/2019
Printed name  CFO
Title
Tax ID#

APPROVED AS TO FORM:

William L. McClure, City Attorney  9/30/2019

FOR CITY OF MENLO PARK:

Starla Jerome-Robinson, City Manager  10/1/2019

ATTEST:

Judi A. Herren, City Clerk  10/1/2019
EXHIBIT “A” – SCOPE OF SERVICES

<table>
<thead>
<tr>
<th>A1. SCOPE OF WORK</th>
</tr>
</thead>
</table>
| FIRST PARTY agrees to provide consultant services for CITY’s Administrative Services. In the event of any discrepancy between any of the terms of the FIRST PARTY’s proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:  

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A-1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.  

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY’s satisfaction. |

<table>
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<tr>
<th>A2. COMPENSATION</th>
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| CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY’s standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.  

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work. |

<table>
<thead>
<tr>
<th>A3. SCHEDULE OF WORK</th>
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<tbody>
<tr>
<td>FIRST PARTY’S proposed schedule for the various services required will be set forth in Exhibit A-1.</td>
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</tbody>
</table>

<table>
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<tr>
<th>A4. CHANGES IN WORK -- EXTRA WORK</th>
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</table>
| In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:  

- Change in the services because of changes in scope of the work.  
- Additional tasks not specified herein as required by the CITY.  

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY’s services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Finance and Budget Manager. |
A5. BILLINGS

FIRST PARTY’s bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY’s discretion. Such expenses shall be FIRST PARTY’s sole financial responsibility.
# EXHIBIT “B” - DISPUTE RESOLUTION

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td><strong>B1.0</strong></td>
<td>All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:</td>
</tr>
<tr>
<td><strong>B2.0</strong></td>
<td>Mediation</td>
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<tr>
<td><strong>B2.1</strong></td>
<td>The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator’s fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.</td>
</tr>
<tr>
<td><strong>B3.0</strong></td>
<td>Arbitration</td>
</tr>
<tr>
<td><strong>B3.1</strong></td>
<td>Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.</td>
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<tr>
<td><strong>B3.2</strong></td>
<td>The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:</td>
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<tr>
<td><strong>B3.3</strong></td>
<td>Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.</td>
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<tr>
<td><strong>B3.4</strong></td>
<td>The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years’ experience in construction litigation.</td>
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<tr>
<td><strong>B3.5</strong></td>
<td>All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.</td>
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<td><strong>B3.6</strong></td>
<td>The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.</td>
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<tr>
<td><strong>B3.7</strong></td>
<td>Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.</td>
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<tr>
<td><strong>B3.8</strong></td>
<td>The prevailing party shall be awarded reasonable attorneys’ fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.</td>
</tr>
<tr>
<td><strong>B3.9</strong></td>
<td>Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.</td>
</tr>
<tr>
<td><strong>B3.10</strong></td>
<td>The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.</td>
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Scope of Services

Menlo Park, CA

OpenGov Cloud Full Cycle

Created By Santana Shorty
SOW Creation Date 7/26/2019
1. Objective

1.1. Summary

This Statement of Work (“SOW”) identifies services that OpenGov, Inc. (“OpenGov”) will perform for Menlo Park, 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 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

<table>
<thead>
<tr>
<th>OpenGov Cloud - Full Cycle - Prepaid</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Functionality</strong></td>
</tr>
</tbody>
</table>
| Chart of Accounts                   | ● Review and feedback of Customer’s source system chart of accounts  
|                                    | ● Chart of accounts functional build and review  
|                                    | ● Chart of accounts configuration and peer review  
|                                    | ● Administrator training  |
| Management Reporting                | ● 4 Standard Reports (Annual, Budget to Actuals, Change in Fund Balance, and Transactions)  
|                                    | ● 1 department-specific budget to actual report  
|                                    | ● 1 custom report (stipulated by the Customer)  
|                                    | ● Standard saved views for each report  
|                                    | ● Up to 10 years of data  |
| | Administrator training  
| | Creation of launch plan  
| | End user training/presentation (depts, council, etc.)  
| | Review of best practices for launch  
| | Launch  
| **Performance Measures - Design** | Metrics Conceptualization sessions for 2 programs from 2 departments  
| | Program Inventory document for 2 departments  
| | Up to 6 non-financial reports  
| | 1 department dashboard containing tiles for the 2 programs above  
| | OpenGov recommends building the following tile types,  
| | ○ 2 Financial  
| | ○ 4 Output or Outcome  
| | ○ 2 Efficiency (cost for doing something)  
| | SFTP dataset integration of up to 3 .CSV datasets  
| | Administrator Training  
| | Creation of launch plan  
| | Review of best practices for launch  
| | Launch  
| **Stories** | Up to 2 story conceptualizing sessions  
| | Up to 2 Stories  
| | Administrator training  
| | External communication resource packet  
| | Citizen Engagement Best Practice Newsletter  
| | Creation of launch plan  
| | Review of best practices for launch  
| | Publish the created stories  
| **Open Town Hall** | Site setup and Forum theming  
| | Development of 1 topic  
| | List of recommended 5 topics  
| | Administrator Training (f/k/a Product orientation, includes civility monitoring)  
| | Self Service promotional resources (sample press release, tips & tricks)  
| | Assistance with first topic launch  
| **Financial Integration** | Integration of budget and actuals, with transaction level detail up to 10 years  
| | Single system connector  
| | Design, map, and validate data from the system.  
| | Administrator training  
| | Ongoing monitoring and alerts  

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OpenGov - Statement of Work  
Page 3
| **Budget Builder - Full Cycle** | ● Builder Builder setup  
● Up to 2 budgets (i.e. Operating & capital)  
● Creation of up to 5 proposals per budget  
● 2 Reports (Budget to Actuals & milestones)  
● Project continues to Adopted Budget  
● Administrator training  
● Personalized User Guide  
● Up to 3 kick off trainings to departments  
● Creation of launch plan  
● Review of best practices for launch  
● Launch  
● Budget end user and Administrator assistance throughout Budget Development and Adoption |
|--------------------------------|------------------------------------------------------------------------------------------------|
| **Workforce Planning** | ● Initial configuration based on Customer provided documentation and cost elements  
● 1 Workforce plan  
● Data formatting and loading  
● Validate calculations  
● 1 authorized position list report  
● 1 total compensation detail report  
● Administrator training  
● Administrator guide |
| **Budget Book - Premium** | **Import and Format Main Document:**  
● Import document (must be in .docx format) provided by Customer.  
● Set up document outline and break document into appropriate outline sections.  
● Review text and tables for formatting accuracy (font style, font size, spacing, borders, shading). Set up default header and footer.  
● Import and place graphics.  
● Set up the Table of Contents to auto generate page numbers, edit text to reflect current quarter and add hyperlinks to text.  

**Linking:**  
● 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.  

**Setup Hours:**  
● OpenGov support team will spend up to 80 hours on the Document Set-Up. If additional time is required, customer will need to buy additional onboarding packages.  

**Process Improvement Consultation:**  
● OpenGov will spend up to 16 hours with your
reporting team. This time will allow OpenGov to understand your data source files and how they integrate with your final report(s) in Wdesk.

- The Solutions Architect will provide process and data flow recommendations, best practices, outline project implementation, and provide enhanced training as needed.

Training:
- OpenGov’s will spend up to 4 hours with your reporting team training on the Wdesk Account and Budget Book, project editing and maintenance following implementation. Five training sessions will be offered:
  - Wdesk Application Introduction & Account Overview,
  - Wdesk Account Administration,
  - Wdesk Document Editing & Formatting,
  - Wdesk Spreadsheet Editing, and
  - Wdesk Linking & Wdesk Sync.

Hours for Wdesk implementation are not captured in the Prepaid Total below, if the Customer is opting for the Prepaid Professional Services approach. These are captured in the Wdesk Professional Services line item, but represented here for consistency.

| Prepaid Hours | 454 |

### 2.3. Assumptions

- If a Prepaid engagement: The concept of Prepaid Hours means that the Customer is purchasing a package with a set number of Professional Service hours to achieve the outlined deliverables. The hours are based on OpenGov’s best estimate given reasonable assumptions outlined in section 4.2, Project Responsibilities. These hours should be adequate to achieve the deliverables, however if they are not, the Customer will need to purchase additional hours.

- Hours estimated above are for deployment of outlined deliverables. Any leftover hours may be utilized for additional professional services activities dictated by the Customer.

- For the Financial Integration,
  - The data will be linked to the Customer’s chart of accounts.
OpenGov will perform the validation for data accuracy for the Integration.

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

If the integration is with Central Square, the Customer is responsible for getting data from Central Square system.

- If there is an FTP integration of 3 .CSV datasets,
  - The data will NOT be linked to the Customer’s chart of accounts.
  - The Customer will perform the validation for data accuracy for the Integration.
  - 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. Governance and Accountability**
OpenGov works closely with the Customer deployment teams to meet timelines and scope. OpenGov strives to address areas of concern as they may appear and during the scheduled executive touch base meetings. Support and communication span the implementation through a customer’s lifecycle.

<table>
<thead>
<tr>
<th>Communication Type &amp; Activities</th>
<th>Customer Attendees</th>
<th>OpenGov Attendees</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Program Leadership</strong></td>
<td>Customer Executive Sponsor</td>
<td>OpenGov Executive Sponsor Customer Success Manager</td>
<td>Quarterly</td>
</tr>
<tr>
<td>• Quarterly Management Review</td>
<td></td>
<td>Project Manager</td>
<td></td>
</tr>
<tr>
<td>• Escalation point for direction, scope, lack of progress</td>
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<tr>
<td>• Alignment of goals with government initiatives</td>
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<tr>
<td>• Strategic initiative guidance</td>
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<td></td>
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<tr>
<td>• Mid-project review</td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Program Management</strong></td>
<td>Customer OpenGov Administrator or Project Manager</td>
<td>OpenGov Customer Success Manager Project Manager</td>
<td>Monthly/Bi-Monthly</td>
</tr>
<tr>
<td>• Program relationship and delivery</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>• Challenges, opportunities and feedback management</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>• Address escalations</td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Deployment Delivery</strong></td>
<td>Project Manager Customer Project Team</td>
<td>Project Manager OpenGov Project Team</td>
<td>Weekly</td>
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<tr>
<td>• Workstream activity review and completion</td>
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<td></td>
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<tr>
<td>• Issue resolution</td>
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<td></td>
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<tr>
<td>• Weekly project communication/meeting</td>
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</tbody>
</table>

4.4. Implementation Methodology
1. Planning and Design Phase
   a. **Key Activities:** Project Kickoff, Requirements Gathering, Functional Review, Design Review, Solution Document
   b. **Key Work Products:** Data Gathering, Functional Build, Solution Document
   c. **Summary:** The Planning and Design 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 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. The Customer will sign off of this design precipitating the next phase.

2. Setup Phase
   a. **Key Activities:** Application and Solution Configuration, Data Load, Peer Review
   b. **Key Work Products:** Solution Configuration, Peer Review
   c. **Summary:** The Setup Phase consists of application configuration, and solution configuration as defined in the Solution Document. The outcome of this phase will result in all software deliverables configured. OpenGov will also load the data gathered in the Planning and Design Phase from the Customer to use for 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
   a. **Key Activities:** Solution Validation, Data Validation, Customer Review
   b. **Key Work Products:** Customer Solution Acceptance
c. **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 been completed, the Customer will review and validate the solution and their data to ensure it is represented accurately in the solution. If any issues are found, they will be logged and the OpenGov team will assess the issue and resolve. The Phase ends with the Acceptance of solution results by the Customer.

4. **Deploy and Enable Phase**
   a. **Key Activities:** Administrator Training, Launch Preparation, User Training, Launch Support, Project Acceptance, Transition to Customer Success Manager and Technical Support
   b. **Key Work Products:** Project Documentation, Project Acceptance
   c. **Summary:** The purpose of the Deploy and Enable phase is to complete the Administrator Training process, provide Launch Support, and begin Transition activities to close the project. Launch is technical assistance with the project team and issue resolution for the solution during the two week period after Launch. Once this period has passed, the Project team will begin working on transition activities to the Customer, the Customer Success Manager 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.

5. **Own (Ongoing)**
   a. **Key Activities:** Customer Success Manager Engagement, OpenGov Support Team, Solution Roadmap, User Groups
   b. **Summary:** The Customer will have the opportunity to join various OpenGov customer engagement events, like webinars, trainings, user groups, etc. The Customer will work primarily with their Customer Success Manager and the OpenGov Support Team for technical issues.

**5. Change Control Procedures**

No amendments, changes or other modifications to this SOW will be effective without a written project change order, in the form attached hereto as Appendix 1 (a “Project Change Order”). The Project Change Order will describe the change, the rationale for the change, and specify any change in the charges, estimated schedule, or other terms. The terms of a mutually agreed upon Project Change Order will prevail over those of this SOW or any previous Project Change Orders. Such Project Change Order may require additional charges, which will be set forth in the Project Change Order.

**6. Fees and Expenses**
6.1. Fees and Payment Terms

All fees and expenses will be paid in accordance with the Order Form to which this SOW is attached. For any Project Change Orders or for any new Professional Services, fees will be mutually agreed upon provided that any hourly fees shall be based on OpenGov's then-current, applicable hourly rate. Opengov’s Standard Professional Services rate for 2019 is $185/hour.

6.2. Travel Expenses

All rates and fees are exclusive of work-related travel, living and other expenses. Customer will be billed for actual expenses as incurred.
1. Appendix 1

Project Change Order

<table>
<thead>
<tr>
<th>Reason for Change</th>
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<th>Scope of Change</th>
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<table>
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<tr>
<th>Project Impact (Schedule and Cost)</th>
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<table>
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<th>Approvals</th>
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<tbody>
<tr>
<td>OpenGov</td>
<td>Customer</td>
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<tr>
<td>Signature:</td>
<td>Signature:</td>
<td></td>
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<tr>
<td>Name:</td>
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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 customer listed on the signature block below (“Customer”), as of the date of last signature below (the “Effective Date”). This Agreement 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.


“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

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”). OpenGov shall obtain any license, permit, or approval if applicable and necessary from any agency whatsoever for providing the Software Services to Customer, at OpenGov’s own expense and shall comply with all federal, state and local laws applicable to this Agreement.

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. Customer may report issues any time. However, OpenGov will address issues during business hours.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Restrictions. 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 permit or 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.

3.2 Responsibilities. 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.

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

4.1 Software Services. OpenGov retains all right, title, and interest in the Software Services and all Intellectual Property Rights in the Software Services. The look and feel of the Software Services, including any custom fonts, graphics and button icons, 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 non-exclusive, royalty-free license during the Term to use the Software Services.

4.2 Customer Data. 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 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 Access to Customer Data. 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 Feedback. 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. 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 and an opportunity to oppose or limit 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 (including the terms of the applicable Software Agreement). 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 the Customer 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 Customer requests OpenGov make 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 Fees: Invoicing; Payment: Expenses.

(a) Fees. The fees for the Software Services for the Initial Term and any Renewal Term ("Software Services Fees") are set forth in the applicable Order Form. Software Services Fees shall hereafter be referred to as “Fees”.

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

(c) Invoicing and Payment. OpenGov will invoice the Customer according to the Billing Frequency listed on the Order Form. Customer shall pay all invoices according to the Payment Terms listed on the Order Form.

(d) Travel Expenses. Unless the SOW provides otherwise, OpenGov will invoice Customer for pre-approved travel expenses incurred in connection with each SOW as they are incurred. Customer shall pay all such valid invoices within thirty (30) days of receipt of invoice. Each invoice shall include receipts for the travel expenses listed on the invoice.

6.2 Credit Card Customers. 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 Taxes. 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 Term. 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 on the Order Form (the “Initial Term”).

7.2 Renewal. Unless either party terminates this Agreement in writing no less than thirty (30) days before the end of the Initial Term, this Agreement shall renew for another period of the same duration as the Initial Term (the “Renewal Term” and together with the Initial Term, the “Term”).

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

7.4 Effect of Termination.

(a) In General. Upon termination or expiration of this Agreement: (a) Customer shall pay in full for all Software Services performed up to and including the effective date of termination, (b) all Software Services provided to Customer hereunder shall immediately terminate; and (c) each party shall return to the other party or, at the other party’s option, destroy all Confidential Information of the other party in its possession.

(b) Deletion of Customer Data. If Customer requests deletion of its Customer Data in writing prior to the date of termination or expiration of this Agreement, then OpenGov will permanently and irrevocably delete Customer
Data, excluding any Insights, stored by its cloud hosting provider within ten (10) days of the date of termination or expiration of this Agreement. Such request must be addressed to “OpenGov Vice President, Customer Success” at OpenGov’s address for notice described at Section 10.

7.5 Survival. The following sections of this Agreement shall survive termination: Section 5 (Confidentiality), Section 6 (Payment of Fees), Section 7.4(b) (Deletion of Customer Data), Section 8.3 (Warranty Disclaimer), Section 9 (Limitation of Liability) and Section 10 (Miscellaneous).

8. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

8.1 By OpenGov.

(a) General Warranty. OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement.

(b) Software Services Warranty. OpenGov further represents and warrants that for a period of ninety (90) days, 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 prepaid, 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 NONINFRINGEMENT.

9. LIMITATION OF LIABILITY

9.1 By Type. 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 TWO TIMES THE ANNUAL FEE PAYABLE UNDER THIS AGREEMENT.

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
OPENGOV SOFTWARE SERVICES AGREEMENT

10.1 **Logo Use.** OpenGov shall have the right to use and display Customer’s logos and trade names for marketing and promotional purposes in connection with OpenGov’s website and marketing materials, subject to Customer’s trademark usage guidelines provided to OpenGov.

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 **Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Exclusive jurisdiction for litigation of any dispute, controversy or claim arising out of or in connection with this Agreement shall be only in the Federal or State court with competent jurisdiction located in San Mateo County, California, and the parties hereby submit to the personal jurisdiction and venue therein.

10.11 **Insurance.**

(a) OpenGov shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
(b) There shall be a contractual liability endorsement extending the OpenGov’s coverage to include the contractual liability assumed by the OpenGov pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to the Customer, at the address shown in Section 9, of any pending cancellation of the policy. OpenGov shall notify Customer of any pending change to the policy. All certificates shall be filed with the City.

(c) **Workers’ compensation and employer’s liability insurance:** The OpenGov shall have in effect during the entire life of this agreement workers’ compensation and Employer’s Liability Insurance providing full statutory coverage. In signing this agreement, the OpenGov makes the following certification, required by Section 18161 of the California Labor Code: “I am aware of the provisions of Section 3700 of the California 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 the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement” (not required if the OpenGov is a Sole Proprietor).

(d) **Liability insurance:** The OpenGov shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, as well as claims for property damage which may arise from the OpenGov’s operations under this Agreement, whether such operations be by OpenGov or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars ($1,000,000) per occurrence and one million dollars ($1,000,000) in aggregate, or one million dollars ($1,000,000) combined single limit bodily injury and property damage for each occurrence. OpenGov shall provide the Customer with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. OpenGov shall maintain Automobile Liability Insurance pursuant to this Agreement in an amount of not less than one million dollars ($1,000,000) for each accident combined single limit or not less than one million dollars ($1,000,000) for any one (1) person, and one million dollars ($1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars ($300,000) property damage.

(e) **Professional liability insurance:**

1. OpenGov shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of OpenGov pursuant to this Agreement, in the amount of not less than one million dollars ($1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

2. Customer and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers’ compensation), which shall also contain a provision that the insurance afforded thereby to the Customer, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the Customer, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

3. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, Customer, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

4. Before the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by Customer.

10.12 **Equal opportunity.**

1. OpenGov, with regard to the work performed by it under this Agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.

2. OpenGov shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

3. OpenGov shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
(d) OpenGov shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.

(e) OpenGov shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

10.13 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.

Signatures

Customer: City of Menlo Park, CA
Signature: Starla Jerome-Robinson
Name: Starla Jerome-Robinson
Title: City Manager
Date: 10/1/2019

OPENGOV, INC.
Signature: Paul H. Denton
Name: Paul H. Denton
Title: CFO
Date: 9/30/2019
Order Form Number: OG-0004174
Created On: 09/05/2019
Order Form Expiration: 09/30/2019
Subscription Start Date: 10/01/2019
Subscription End Date: 09/30/2022

Customer Information
Customer: City of Menlo Park, CA
Bill To/Ship To: 701 Laurel St
Menlo Park, California 94025
United States

Primary Contact: Dan Jacobson
Email: dcjacobson@menlopark.org
Phone: 650-330-6649

Billing Contact: Dan Jacobson
Email: dcjacobson@menlopark.org
Phone: 650-330-6649

Order Details
Billing Frequency: Annual
Payment Terms: Net 30

SOFTWARE SERVICES
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BILLING TABLE

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Order Form Legal Terms
Welcome to OpenGov! Thanks for using our Software Services. This Order Form is entered into between OpenGov, Inc., with its principal place of business at 955 Charter Street, Redwood City, 94063 (“OpenGov”), and you, the entity identified above (“Customer”), as of the Effective Date. This Order Form includes and incorporates the OpenGov Software Services Agreement (“SSA”) executed by the parties, or if no such SSA is executed or attached, the SSA at https://opengov.com/terms-of-service and the applicable Statement of Work (“SOW”) incorporated herein in the event Professional Services are purchased. The Order Form, SSA and SOW shall hereafter be referred to as the “Agreement”. Unless otherwise specified above, fees for the Software Services and Professional Services shall be due and payable, in advance, on the Effective Date. By signing this Order Form, Customer acknowledges that it has reviewed, and agrees to be legally bound by the Agreement.

City of Menlo Park, CA

Starla Jerome-Robinson

City Manager

Date: 10/1/2019

OpenGov, Inc.

Paul A. Denton

CFO

Date: 9/30/2019