OpenGov Inc. 955 Charter Street
Redwood City, CA 94063
United States

Created On:	8/26/2020		
Order From Expiration:	9/1/2020	**Prepared By:**	Zach Garelik
Subscription Start Date	9/1/2020	**Email:**	zgarelik@opengov.com
Subscription End Date:	6/30/2025		

Customer Information

Customer:	City of Cupertino, CA	**Contact Name:**	Thomas Leung	**Billing Contact:**	Kristina Alfaro
Bill To/Ship To:	10300 Torre Avenue	**Email:**	thomasl@cupertino.org	**Email:**	kristinaa@cupertino.org
	Cupertino, CA 95014	**Phone:**	(778) 968-4846	**Phone:**	(408) 777-3220
	United States				

Order Details

Billing Frequency:	Annual	**Description:**	See Billing Table Below
Payment Terms:	Net Thirty (30) Days		

SOFTWARE SERVICES:

Product / Service	Start Date	End Date	Annual Term	Annual Fee
OpenGov Reporting & Analytics, Operating and Capital Budgeting, Integration, Open Town Hall	9/1/2020	6/30/2021	Prorated Term	$35,250.00
OpenGov Story Builder, Performance Measures	12/1/2020	6/30/2021	Prorated Term	$14,518.00
OpenGov Budgeting & Planning Suite	7/1/2021	6/30/2025	4	$67,188.00
			Annual Subscription:	See Billing Table

Billing Table:

Billing Date	Amount Due
September 1, 2020	$35,250.00
December 1, 2020	$14,518.00
July 1, 2021	$67,188.00
July 1, 2022	$67,188.00
July 1, 2023	$67,188.00
July 1, 2024	$67,188.00

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, signed between the parties, effective September 1, 2016 as amended on November 5, 2019. The Order Form and SSA and 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 Agreement, Customer acknowledges that it has reviewed, and agrees to be legally bound by, the OpenGov Software Services Agreement. Each party's acceptance of this Agreement is conditional upon the other's acceptance of the terms in the Agreement to the exclusion of all other terms.
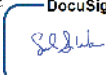
City of Cupertino, CA

Signature: _____

Name: _____

Title: _____

Date: _____

OpenGov, Inc.

Signature: _DocuSigned by:_ [signature] 6151AD9171B644C...

Name: Sean Wani

Title: General Counsel

Date: 9/8/2020

APPROVED AS TO FORM:

_____
City Attorney
Heather M. Minner

ATTEST:

_____
City Clerk
Date: _____

OPENGOV, INC. SOFTWARE AGREEMENT

OPENGOV

OpenGov, Inc.
955 Charter Street
Redwood City, CA 94063
United States

Quote Number:	OG-000003113	Prepared By:	Brendan Carry
Created Date:	8/19/2016	Phone:	650-489-9074
Expiration		Email:	bcarry@opengov.com
Date:		Contract Dates:	Effective: 9/1/2016
			Ends on: 9/1/2020

Customer Information

Contact Name	Kristina Alfaro	Bill To Name	City of Cupertino, CA
Phone	408-777-3200	Bill To	10300 Torre Ave
Email	kristinaa@cupertino.org		Cupertino, CA 95014

Fax

Order Details

Description

OpenGov Intelligence™ allows customers to easily create and share internal operational reports, combining unlimited financial (e.g., general ledger, chart of accounts, current year and month spending, transactions, and balance sheet) and non-financial data (performance metrics, operational data, census data, custom financial projections, etc.) from numerous sources to help governments make better financial decisions and operate more efficiently. OpenGov Intelligence includes the features of OpenGov Transparency, allowing multiple years of financial and non-financial data to be accessible by citizens through an online portal.

Fees

Product	Discount	Quantity	Annual Subscription
OpenGov Transparency and Intelligence	-	4 years	$20,425
OpenGov Budget Builder	51%	4 years	$9,575
OpenGov Intelligence Deployment	100%		waived

Billing Frequency: Annual

Welcome to OpenGov! Thanks for using our software. This Software Agreement ("**Agreement**") 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 Agreement includes and incorporates the OpenGov Terms and Conditions attached as Appendix A; B and C. By signing this Agreement, Customer acknowledges that it has reviewed, and agrees to be legally bound by, the OpenGov Terms and Conditions. Each party's acceptance of this Agreement is conditional upon the other's acceptance of the terms in the Agreement to the exclusion of all other terms.

Signature

City of Cupertino, CA		OpenGov, Inc.	
Signature:	_Kristina Alfaro_	Signature:	_Ainslie Mayberry_ (DocuSigned by) 16DA3024253342D...
Name:	Kristina Alfaro	Name:	Ainslie Mayberry
Title:	Dir of Admin Svcs	Title:	CFO
Date:	8/22/2016	Date:	8/23/2016

OPENGOV, INC. SOFTWARE AGREEMENT

Terms and Conditions

Appendix A

OpenGov Terms and Conditions

1. **SOFTWARE SERVICES**

1.1   Subject to the terms and conditions of these OpenGov Terms and Conditions (the "Agreement"), OpenGov will use commercially reasonable efforts to perform the software services (the "Software Services") identified in the applicable Software Agreement entered into by OpenGov and Customer ("Software Agreement").

1.2   Customer understands that OpenGov's performance depends on Customer timely providing OpenGov with a copy of the Customer's chart of accounts in .csv or .xls format. In addition, Customer agrees to provide OpenGov with five or more years of general ledger data, also in .csv or .xls format, including budget data for the current year and actual expense and revenue data for past years. Any dates or time periods relevant to OpenGov's performance will be extended appropriately and equitably to reflect any delays caused by Customer's failure to timely deliver any such materials. OpenGov shall not be liable for any delays in performance under this Agreement resulting from Customer's failure to meet these obligations.

2. **RESTRICTIONS AND RESPONSIBILITIES**

2.1   This is a contract for access to the Software Services and Customer agrees not to, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Software Services, documentation or data related to the Software Services, except to the extent such a restriction is limited by applicable law; modify, translate, or create derivative works based on the Software Services; or copy, rent, lease, distribute, assign, sell, or otherwise commercially exploit, transfer, or encumber rights to the Software Services; or remove any proprietary notices.

2.2   Customer will use the Software Services only in compliance with all applicable laws and regulations (including, but not limited to, any export restrictions).

2.3   Customer shall be responsible for obtaining and maintaining any equipment and other services needed to connect to, access or otherwise use the Software Services and Customer shall also 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) for all uses of Customer user accounts with or without Customer's knowledge or consent.

3.   **OWNERSHIP.** OpenGov retains all right, title, and interest in the Software Services and 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) therein.

4.   **CONFIDENTIALITY.** Each party (the "Receiving Party") agrees not to disclose (except as permitted herein) any Confidential Information of the other party (the "Disclosing Party") without the Disclosing Party's prior written consent. "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 relating to the Software Services. "Confidential Information" does not include "Public Data," which is data that the Customer has previously released or would be required to release according to applicable federal, state, or local public records laws. The Receiving Party agrees: (i) to use and disclose the Confidential Information only in connection with this Agreement; and (ii) 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 foregoing, Confidential Information does not include information that: (i) has become publicly known through no breach by the receiving party; (ii) was rightfully received by the receiving party from a third party without restriction on use or disclosure; or (iii) is independently developed by the Receiving Party without access to such Confidential Information.

OPENGOV, INC. SOFTWARE AGREEMENT

Notwithstanding the above, the Receiving Party may disclose Confidential Information to the extent required by law or court order.

5. DATA LICENSE. Customer grants OpenGov a non-exclusive, transferable, perpetual, worldwide, and royalty-free license to use any data or information submitted by Customer to OpenGov for the development of new software or the provision of the Software Services.

6. PAYMENT OF FEES. The fees for the Software Services ("Fees") are set forth in the applicable Software Agreement. Customer shall pay all Fees within thirty (30) days after the date of OpenGov's invoice, which shall be billed as of the effective date.

7. TERM & TERMINATION

7.1 Subject to compliance with all terms and conditions, the term of this Agreement shall be from the Effective Date and shall continue until the End date specified on page one (1) of the Agreement. The Customer will be billed according to the Billing Frequency as specified above. 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 immediately upon notice.

7.2 Upon termination, Customer will pay in full for all Software Services performed up to and including the effective date of termination. Upon any termination of this Agreement: (a) all Software Services provided to Customer hereunder shall immediately terminate; and (b) 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.

7.3 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

8. WARRANTY AND DISCLAIMER

8.1 OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Software Services shall be performed in a professional and workmanlike manner in accordance with generally prevailing industry standards.

8.2 Customer represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; (ii) it owns all right, title, and interest in and to all data provided to OpenGov for use in and in connection with this Agreement, or possesses the necessary authorization thereto; and (iii) OpenGov's use of such materials in connection with the Software Services will not violate the rights of any third party.

8.3 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 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. NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR RELATED TERMS AND CONDITIONS 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. 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 THE FEES PAID BY CUSTOMER TO OPENGOV (OR, IN THE CASE OF CUSTOMER, PAYABLE) FOR THE

OPENGOV, INC. SOFTWARE AGREEMENT

SOFTWARE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

10. MISCELLANEOUS. Capitalized terms not otherwise defined in these Terms and Conditions have the meaning set forth in the applicable Software Agreement. 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. 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 (as provided to OpenGov). 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. This Agreement is not assignable or transferable by either party without the other party's prior written consent, provided however that either party may assign this Agreement to a successor or to all or substantially all of its business or assets. This Agreement (including the Software 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, and that all waivers and modifications must be in a writing signed by both parties. 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. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions

Appendix B
OpenGov Service Level Metrics

1. SCHEDULED DOWNTIME. When needed, OpenGov will schedule downtime for routine maintenance or system upgrades ("**Scheduled Downtime**") for its Services. OpenGov shall exercise commercially reasonable efforts to schedule Scheduled Downtime outside of peak traffic periods. OpenGov will notify Customer's designated contact at least twenty-four (24) hours prior to the occurrence of Scheduled Downtime.

2. SYSTEMS ACCESSABILITY WARRANTY.

A. The Services will be accessible 99.9% of the time, 7 days of the week, and 24 hours per day, as calculated over a calendar month ("**Systems Accessibility Warranty**"). Such System Accessibility Warranty shall not apply to, and OpenGov will not be responsible for, any inaccessibility which: 1) results from Scheduled Downtime, including a maintenance period every Tuesday from 6:00pm Pacific Time to 11:00pm Pacific Time ; 2) results from a failure of equipment, software or services not under the direct control of OpenGov; 3) results from the failure of communication or telephone access service or other outside service or equipment not the fault of OpenGov; 4) is caused by a third party not under OpenGov control; or 5) is a result of causes beyond the reasonable control of OpenGov, including any force majeure event. To the extent solely under OpenGov control, OpenGov shall be responsible for monitoring and maintaining adequate controls over Customer Data transmissions and storage. OpenGov shall be solely responsible for setting applicable data processing and transmission parameters.

B. If the Services experience Downtime, then as Customer's sole and exclusive remedy, and OpenGov sole and exclusive financial liability and obligation, Customer is entitled to a Service Level Credit equal as follows:

Monthly Uptime Percentage	Percentage of monthly bill for Services to be credited to future monthly bills of Customer
99.00% - < 99.9%	10%
95.00% - < 99.00%	25%
< 95.00%	50%

OPENGOV, INC. SOFTWARE AGREEMENT

- **"Downtime"** means that for a valid request by our external verification service, made on no less than a minutely basis, results in a server error (HTTP status 5XX or the server response takes 3 or more minutes).
- **"Downtime Period"** means a period of fifteen consecutive minutes of Downtime. Intermittent Downtime for a period of less than fifteen minutes will not be counted towards any Downtime Periods.
- **"Monthly Uptime Percentage"** means total number of minutes in a month, minus the number of minutes of Downtime suffered from all Downtime Periods in a month, divided by the total number of minutes in a month.

C.   To receive a Service Level Credit, Customer must submit a written request for Service Level Credits to Customer's designated account manager or the OpenGov support team. To be eligible, the request must (i) include the dates and times of each incident of Downtime experienced by Customer in the preceding month; and (ii) be received by OpenGov within thirty days after the end of the current monthly period in which the Downtime occurred.

EXHIBIT A
OpenGov Service Level Metrics

D.   Upon receipt of a Service Level Credit request in compliance with the above requirements, OpenGov shall have 30 days to review the request and to validate the information provided. If OpenGov determines in good faith that the Services failed to meet the Systems Accessibility Warranty as alleged in such a request, then OpenGov will apply such Service Level Credits to Customer's next billing period. Customer's failure to comply with the provisions of Section 2.C. above will disqualify it from receiving a Service Level Credit.

E.   Customers whose accounts are past due, delinquent, and/or not in good standing at any time during the service month of a given service outage are not eligible for a credit.

APPENDIX C
OpenGov Support Services

1. **Support**. Customer support is available via email 12 hours per day, Monday through Friday, excluding OpenGov corporate designated holidays. See below for a list of holidays observed by OpenGov. Problems may be reported any time, however, OpenGov will not be obligated to assign work after business hours (9 a.m. to 5 p.m. Pacific Time).

2. **Liaisons**. On or before the Activation Date, Customer and OpenGov shall each designate a liaison as a respective point of contact for technical issues. Each party may change such liaison upon written notice from time to time at reasonable intervals. OpenGov will not be obligated to provide support to any person other than the Customer's designated liaison.

3. **Holidays**. OpenGov observes the following holidays: New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving Day, Christmas Eve Day, Christmas Day, and New Year's Eve.