

**FIRST AMENDMENT TO THE
AGREEMENT FOR DATA AND TRANSPARENCY PORTAL SOFTWARE
BETWEEN THE CITY OF SAN JOSE
AND
OPENGOV, INC.**

This First Amendment to the Agreement for Data and Transparency Portal Software between the City of San José (hereinafter “City”), a California municipal corporation, and OpenGov, Inc. (hereinafter “Contractor”), a Delaware corporation, is entered into on the date of execution by City (“Effective Date”). Each of City and Contractor are sometimes referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, effective January 1, 2019, City and Contractor entered into an agreement entitled “Agreement for Data and Transparency Portal Software between the City of San José and OpenGov, Inc.” (“Agreement”); and

WHEREAS, City and Contractor now desire to amend the Agreement to add five (5) one-year options to extend the term of the Agreement through December 31, 2026;

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

SECTION 1. Section 1 of the Agreement entitled “Agreement Documents” is amended to add the following new exhibit:

Exhibit F - Notice of Option to Extend Agreement

SECTION 2. Section 2 of the Agreement entitled “Term of Agreement” is amended to read as follows:

2 TERM OF AGREEMENT

2.1 Term

The term of this Agreement is from January 1, 2019 to December 31, 2021 (“Initial Term”), inclusive, subject to the provisions of Section 13 TERMINATION.

2.2 Options to Extend

After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for five (5) additional one-year terms (“Option Periods”) through December 31, 2026 for ongoing subscription, support, maintenance, and related professional services. City shall provide Contractor written notice in the form of Exhibit F of its intention to exercise its option prior to the end of the then current term.

SECTION 3. Section 30 of the Agreement entitled “Notices” is hereby amended to modify the Contractor’s address as follows:

To Contractor: OpenGov, Inc.
6525 Crown Blvd #41340
San José, CA 95160

SECTION 4. Section 31 of the Agreement entitled “Miscellaneous” is hereby amended to add Subsections 31.5 and 31.6 entitled “Counterparts” and “Use of Electronic Signatures” respectively as set forth below:

31.5 Counterparts

This Agreement may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

31.6 Use of Electronic Signatures

Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

SECTION 5. The Agreement is hereby amended to add Section 32 entitled “Wage Theft” as set forth below:

32 Wage Theft

32.1 Definition: For purposes of this provision, “Wage Theft” means a final judgement, order, or other determination of a federal or state court, or of a federal, state, or local administrative agency that a contractor or subcontractor failed to pay its workers in accordance with any applicable federal, state, or local wage and hour laws, regulations, or other requirements. A judgement, order, or other determination is "final" if the contractor or subcontractor has exhausted all appeals, and the time period to appeal has expired.

32.2 Compliance with Wage and Hour Laws: The Contractor must comply with all applicable federal, state, and local wage and hour laws, regulations, and policies, as required by City Council Policy 0-44 <https://www.sanjoseca.gov/home/showdocument?id=12945>. The Contractor must include this requirement in each of its subcontracts.

32.3 Representations in Wage Theft Disclosure Certification Forms: The City awarded this Agreement to the Contractor, in part, based on the representations made by the Contractor and its listed subcontractors in the Proposal Certification or Wage Theft Disclosure Certification Form that they completed as part of the of procurement process.

32.3.1 Contractor Warranty: By executing this Agreement, the Contractor affirms the accuracy of the representation it made in its Proposal Certification or Wage Theft Disclosure Certification Form. It is a material breach of this Agreement if the City determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.

32.3.2 Listed Subcontractors: The Contractor must include in the subcontract of all subcontractors that it listed during the procurement, a provision that does the following:

32.3.2.1 Requires the subcontractor to warrant the accuracy of the Proposal Certification or Wage Theft Disclosure Certification Form that it submitted during the procurement of this Agreement, and

32.3.2.2 Allows the Contractor to terminate the subcontract if the City or the Contractor determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.

32.3.3 Termination of Subcontractor: The Contractor must terminate a listed subcontractor if requested by the City based on the subcontractor's submittal of a materially inaccurate Proposal Certification or Wage Theft Disclosure Certification form.

32.4 Subcontractors Not Listed: Before contracting with a subcontractor not listed during the procurement process, the Contractor will require the subcontractor to complete a Wage Theft Disclosure Certification Form provided by the City's Office of Equality Assurance through their website at <https://www.sanjoseca.gov/home/showdocument?id=64354>. The Contractor must provide the completed certification form to the City within ten (10) calendar days of executing the subcontract.

32.4.1 The Contractor cannot use any subcontractor that has one or more Wage Theft violations, or has one (1) outstanding, unpaid Wage Theft violation, within five (5) years before the date it certified the Wage Theft Disclosure Certification Form.

32.4.2 The Contractor must include a provision in each subcontract allowing the Contractor to terminate the subcontract based on the subcontractor's submission of a materially inaccurate Wage Theft Disclosure Certification Form. The Contractor must terminate a subcontractor if requested by the City based on the subcontractor's submittal of a materially inaccurate Wage Theft Disclosure Certification Form.

32.5 Occurrence or Discovery of Wage Theft: The Contractor must notify, in writing, the City's Office of Equality Assurance no more than fifteen (15) calendar days after either of the following events: (1) any Wage Theft that occurs during the term of the

Agreement involving the Contractor or a subcontractor, and (2) the Contractor becomes aware of Wage Theft by the Contractor or a subcontractor that should have been previously disclosed but was not.

32.5.1 **Satisfaction by Contractor:** The Contractor must promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it. The Contractor must provide the City’s Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order, or other determination within five (5) calendar days of doing so.

32.5.2 **Satisfaction by Subcontractor:** The Contractor must include appropriate provisions in each subcontract requiring the subcontractor to do the following: (a) promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it and (b) provide the Contractor and the City’s Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order or other determination within five (5) calendar days of doing so.

32.5.3 **City’s Right to Withhold Payment:** The City has the right to withhold any moneys owing the Contractor in the amount of the Wage Theft against the Contractor or a subcontractor.

32.6 **Material Breach:** Failure to comply with any part of this Section 32 constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

32.7 **Notice:** Notice provided to the Office of Equality Assurance as required under this Section 32 shall be addressed to: Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San José, CA 95113. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

SECTION 6. Exhibit B entitled “Compensation and Payment Schedule” is hereby amended as set forth in Revised Exhibit B, which is attached hereto and incorporated herein.

SECTION 7. Exhibit F entitled “Notice of Exercise of Option to Extend Agreement” is hereby added to the Agreement and is attached hereto and incorporated herein.

SECTION 8. All terms and conditions of the Agreement not specifically modified by this First Amendment shall remain in full force and effect.

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WITNESS THE EXECUTION HEREOF on the day and year set forth beneath the respective name below.

City of San José (“City”)
a municipal corporation



Vickie Davis (12/15/2021)
Email: vickie.davis@sanjoseca.gov

By _____

Vickie J. Davis
IT & Strategic Procurement Manager

OpenGov, Inc. (“Contractor”)
a Delaware corporation



pdenton@opengov.com (12/13/2021)
Email: pdenton@opengov.com

By _____

Paul H. Denton
CFO

APPROVED AS TO FORM:



Diana Yuan (12/15/2021)
Email: diana.yuan@sanjoseca.gov

Diana Yuan
Deputy City Attorney



estevenson@opengov.com (12/13/2021)
Email: estevenson@opengov.com

By _____

Eric Z. Stevenson
Associate Corporate Counsel

REVISED EXHIBIT B COMPENSATION AND PAYMENT SCHEDULE

1 Compensation and Payment Terms

- 1.1 The maximum amount payable for all products and services provided under this Agreement shall not exceed **Two Hundred Fifteen Thousand Dollars (\$215,000)** during the Initial Term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.
- 1.2 For the Professional Services, progress payments shall be made to Contractor by City based on net thirty (30) days payment terms, following delivery and acceptance of designated milestones as shown below in Table B1: Payment Schedule. All payments are based upon City's acceptance of Contractor's performance as evidenced by successful completion of all of the deliverables as set forth for each milestone. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the milestone for which payment is due.
- 1.3 With respect to the Professional Services, payment for any deliverable under this Agreement, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect each deliverable and reject upon notification to Contractor any that do not conform to the specifications or other requirements of this Agreement. Rejected deliverables shall be promptly corrected, repaired, or replaced by Contractor. If City receives deliverables with defects or nonconformities not reasonably apparent on inspection, the City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations.

2 Project Performance and Payment Schedule

- 2.1 Work shall commence within two weeks of Agreement execution. All timeline dates are understood to be close of business, 5:00 pm Pacific Time. If timeline dates fall on a weekend or City holiday, the date is understood to be the next business day.
- 2.2 Compensation and payments shall be made to Contractor by City based on Net Thirty (30) days payment terms.
- 2.3 Implementation Invoicing Procedure: Contractor will invoice the City upon completion of each milestone but not more frequently than monthly.
- 2.4 Ongoing Annual Services Invoicing Procedure: Contractor shall invoice the City annually for applicable Subscription, Hosting, Technical Support, and Maintenance fees beginning on the Subscription Anniversary Date. City shall prepay a year in advance for Subscription, Hosting, Technical Support, and Maintenance services provided under the Agreement.

In the event of early termination of the Agreement for Contractor’s default pursuant to Section 13.2 of the Agreement, Contractor shall refund the City on a pro-rated basis any fees paid in advance that have not been used as of the date of termination.

- 2.5 The City agrees to compensate Contractor for the Services performed and the Software provided in accordance with the terms and conditions of this Agreement. Contractor shall invoice City in accordance with the Payment Schedule in Table B1 below:

Table B1: Payment Schedule

Milestones/Tasks	Deliverables	Estimated Completion Date	Cost
IMPLEMENTATION (ONE TIME)			
Phase 1: Planning and Analysis	Project Plan and Business Requirements Documents	4/8/2019	\$30,400
Phase 2: Data Migration / Configuration / Implementation	Solution implementation, including migrating all data and reports from City’s existing portals and performing website configuration per City requirements	5/6/2019	Included
Phase 3: Testing / Refinement	Solution Testing and bug fixes, including some training, as required, for admin users who will be assisting with testing	5/24/2019	Included
Phase 4: Training	Training of City staff to ensure ability to utilize Solution following implementation and Go Live.	5/31/2019	Included
Phase 5: Go Live and Full Acceptance	Successful completion of Go Live and City’s full acceptance of the solution triggers release	5/31/2019	\$7,600
Implementation Subtotal			\$38,000

Milestones/Tasks	Deliverables	Estimated Date	Cost
SOFTWARE SUBSCRIPTION/TECHNICAL SUPPORT (ONGOING)			
Year 1 (Initial Term)	Annual Subscription, Support, and Maintenance	1/1/2019	\$59,000
Year 2 (Initial Term)	Annual Subscription, Support, and Maintenance	Subscription Anniversary	\$59,000
Year 3 (Initial Term)	Annual Subscription, Support, and Maintenance	Subscription Anniversary	\$59,000
Subscription Subtotal			\$177,000

MAXIMUM COMPENSATION (INITIAL TERM)			\$215,000
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All amounts stated above are in United States Currency.

3 Additional Services

- 3.1 In the event the City requires additional services, Contractor shall provide a written quotation, at no cost to the City, of the type of Additional Service requested and the time required to complete requested work.

Supplemental professional service rates shall not exceed the following:

Supplemental Services	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate
Project Management	\$155	\$185	\$185
Integration Services (API Development)	\$155	\$185	\$185
Custom Feature Development	\$155	\$185	\$185
Training	\$155	\$185	\$185
Custom Report Writing	\$155	\$185	\$185

- 3.2 The City reserves the right to request a fixed priced quote in lieu of time and materials. Any fixed price quotes shall be consistent with the agreed-upon supplemental service rates in Section 3.1 above and must be good for at least ninety (90) days.
- 3.3 Quotes must be approved by the City through an executed Change Order prior to any work being performed.

4 Renewal Period Compensation

- 4.1 After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section 2.2 (“Options to Extend”) at the same rates as the Initial Term unless otherwise quoted and agreed to in writing by the Parties.
- 4.2 Price Renegotiation. Contractor may request adjustments to compensation rates sixty (60) days prior to an option term. Contractor shall provide information justifying reasons for any increase, and City shall not unreasonably withhold approval of any increase provided the renewal quote for ongoing services does not increase by more than the Producer Price Index (PPI) final demand - WPUFD4 (<https://data.bls.gov/cgi-bin/surveymost?wp>) and does not exceed 5% over the previous year’s fees, unless the City’s Living and/or Prevailing Wage, if applicable, increases by more than 5% or unless otherwise negotiated.
- 4.3 City shall provide Contractor prior written notice in the form of Exhibit F of its intention to exercise its option for the next term prior to the end of the then current term. The City’s Director of Finance or designee is authorized to exercise options on behalf of the City.

EXHIBIT F
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONTRACTOR Name and Address:	
DATE:	

Pursuant to Section ____ of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
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OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
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Pursuant to Section ____ of the Agreement the Rates of Compensation are hereby adjusted as follows:
 (use attachment if necessary)

MAXIMUM COMPENSATION for Option Term:	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the maximum compensation set forth above for Contractor’s services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation and funds are available for the option term specified above.

<p>CITY OF SAN JOSE a municipal corporation</p> <p>By _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
