

OPENGOV, INC. SOFTWARE SERVICES AGREEMENT

CUSTOMER INFORMATION

Customer Information


	<u>ORGANIZATION CONTACT</u>	<u>BILLING CONTACT (If Different)</u>
Customer Name:	City of Bell, CA	
Contact Name:	JOSH BETTA	
Address:	6330 PINE AVE	
	BELL CA 90201	
Telephone:	323.923.2649	
Email:	JBETTA@CITYOFBELL.ORG	

Effective Date: 6 SEP 13

This Software Services Agreement ("Agreement") is entered into between OpenGov, Inc., with its principal place of business at 1023 Shoreline Blvd, Suite 100, Mountain View, CA 94043 ("OpenGov"), and the entity identified above ("Customer") as of the Effective Date. This Agreement includes and incorporates the attached Terms and Conditions, as well as any accompanying Description of Services and contains, among other things, warranty disclaimers, liability limitations, and use limitations. Each party's acceptance of this Agreement was and is expressly conditional upon the other's acceptance of the terms contained in the Agreement to the exclusion of all other terms.

SIGNATURES

Customer

Signature: 

Printed Name: DOUG WILLMORE

Title: CITY MANAGER

Date: 6 SEP 13

OpenGov Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

TERMS AND CONDITIONS

1. SERVICES AND SUPPORT

1.1 Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to perform and make available to Customer the services set forth in each Description of Services entered into hereunder by the parties (each a "DOS"), including without limitation the services set forth in DOS attached hereto as Exhibit A (the "Initial Services"). The Initial Services and the services set forth in any other DOS entered into hereunder by the parties are collectively the "Services." Upon commencement of any Services other than the Initial Services, OpenGov will notify Customer that such Services have commenced and billing for such Services has begun.

1.2 Customer understands that OpenGov's performance is dependent on Customer timely providing OpenGov with customer deliverables specified in the applicable DOS, and 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 material or information. 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 Services and the Software (as defined below) may only be accessed by Customer and no license is granted thereto. Customer will not, 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 Services or any software, documentation or data related to the Services ("Software"), except to the extent such a restriction is limited by applicable law; modify, translate, or create derivative works based on the Services or any Software; or copy, rent, lease, distribute, assign, sell, or otherwise commercially exploit, transfer, or encumber rights to the Services or Software; or remove any proprietary notices.

2.2 Customer will use the Services and Software 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 and/or Services, including, without limitation, hardware, software, operating system, and internet, long distance, and local telephone service (collectively, "Equipment"). Customer shall be responsible for ensuring that such Equipment is compatible with the Software and/or Services. Customer shall also be responsible for maintaining the security of the Equipment, Customer user accounts, passwords and files, and 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 and 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) the 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. OpenGov's Confidential Information includes, without limitation, the Software and all documentation relating to the Services. "Confidential Information" does not include "Public Data," which is data that the city has previously released or would be required to release according to applicable federal, state, or local public records laws. OpenGov agrees to take reasonable security precautions to protect non-Public Data. 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. Confidential Information shall only be disclosed to the Receiving Party's employees and independent contractors only to the extent such individuals have a specific need to know of the Confidential Information for purposes of this Agreement. 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. 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. **DATA LICENSE.** Customer grants OpenGov a non-exclusive, transferable, perpetual, worldwide, and royalty-free license to copy, modify, and make derivative works of any data or information submitted by Customer on the Software or Services (including non-Public Data) for the purpose of developing new software and software products.

6. **PAYMENT OF FEES.** The fees for the Services ("Fees") are set forth in each DOS. Customer shall pay all Fees within thirty (30) days after the date of OpenGov's invoice. Unpaid invoices may be subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.

7. TERMINATION

7.1 Subject to compliance with all terms and conditions, the initial term of this Agreement shall be from the Effective Date and shall continue for a period of twelve (12) consecutive months from that date. Thereafter the Agreement shall automatically renew for successive terms of twelve (12) months each. Either party may terminate this Agreement at the end of the applicable term, with thirty (30) days prior written notice. This Agreement shall commence on the Effective Date and remain in full force and effect until

terminated by either party in accordance with the terms. If either party materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days after notice thereof 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 Services performed up to and including the effective date of termination. Upon any termination of this Agreement: (a) all DOS's in effect and any applicable licenses to the Services and Software 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 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 Services will not violate the rights of any third party.

8.3 OPENGOV DOES NOT WARRANT THAT THE 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 SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE 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. NOTWITHSTANDING ANYTHING TO THE CONTRARY 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 TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY 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 (EXCEPT WITH REGARD TO PAYMENT OBLIGATIONS), 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 SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

10. MISCELLANEOUS. 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 hereunder, due to any act of god, act of governmental authority, or due to war, riot, civil commotion, insurrection, labor difficulty, lack or shortage of electrical power, failure of communications services or devices, failure of performance by any third party hosting service, failure of equipment provided or maintained by others, including general performance of the internet itself, 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 to all or substantially all of its business or assets. Both parties agree that this Agreement (including the DOS) 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, except as otherwise provided herein. 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 whatsoever. 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.

EXHIBIT A

DESCRIPTION OF SERVICES

This Description of Services ("DOS") is entered into by and between OpenGov, Inc. ("OpenGov") and City of Bell, CA ("Customer") pursuant to the Software Services Agreement entered into between the parties as of _____, 2013 (the "DOS Effective Date"). All capitalized terms not defined in this DOS shall have the meanings set forth in the Agreement. The parties hereby agree as follows:

1. OpenGov Services

OpenGov and Customer agree that the following OpenGov services shall be purchased and included in the definition of the "OpenGov Services." Further, Customer agrees to pay to OpenGov the fees for OpenGov Services set forth below in Section 3.

Annual Transparency: A proprietary web application that visualizes the city's general ledger and chart of accounts, making multiple years of annual financial data accessible to citizens and staff through an online portal.

2. Customer Deliverables

Customer agrees to provide OpenGov with a copy of the city'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.

3. Fees

In consideration of Customer using OpenGov Services, Customer shall pay OpenGov a services fee of \$0, billed annually in advance for the period of the agreement, commencing on the DOS Effective Date.

After the initial term of one year, the Customer will have the option to renew the contract for an annual services fee of \$1,800.

4. Service Term

The "Service Term" shall commence on the DOS Effective Date and will continue for an initial term of one (1) year. Either party may notify the other of its intent not to renew at the end of the applicable term by providing thirty (30) days prior written notice. Notwithstanding the foregoing, either party may terminate the Service Term by terminating this DOS and/or the Agreement pursuant to Section 7.1 of the Agreement.