

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PERSONAL SERVICES AGREEMENT WITH OPENGOV, INC. FOR AN ENTERPRISE MANAGEMENT SYSTEM AND DECLARING AN EMERGENCY.

WHEREAS, Section 59 of the Avon Lake City Charter, entitled Competitive Bidding, authorizes the expenditure of funds without public bidding for “personal services” as defined in the Charter; and

WHEREAS, the City of Avon Lake desires to retain the personal services of OpenGov, Inc. of San Jose, California for the installation and implementation of OpenGov Citizen Services and Cartegraph Asset Management System.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is hereby authorized and directed to enter into an agreement (Exhibit A) with OpenGov, Inc. of San Jose, California, for the installation and implementation of OpenGov Citizen Services and Cartegraph Asset Management System. The agreement shall state among its terms that the cost of said personal services shall not exceed \$251,244.52.00. Upon completion of said installation to the satisfaction of the Director of Finance, he is hereby directed to deliver to OpenGov, Inc. the warrant of this City and to cause said warrant to be paid.

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of providing City employees with a software system to aid in the performance of their duties that will provide efficiency in the operation of City departments, thus for the health, safety, and welfare of the residents of Avon Lake. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

1st reading: 2/13/2023

2nd reading:

3rd reading:

PASSED: 2/27/2023

/s/ Martin E. O'Donnell

President of Council

POSTED: 3/03/2023

APPROVED: 2/28/2023

ATTEST: /s/ Valerie E. Rosmarin
Clerk of Council

/s/ Gregory J. Zilka
Mayor



OpenGov Inc.
PO Box 41340
San Jose, CA 95160
United States

Quote Number: OG-Q006385
Created On: 1/25/2023
Order Form Expiration: 3/2/2023
Subscription Start Date: 3/1/2023
Subscription End Date: 2/29/2028

Prepared By: Kelly Ammons
Email: kammons@opengov.com
Contract Term: 60 months

Customer Information			
Customer:	City of Avon Lake, OH	Contact Name:	Barb Cagley
Bill To/Ship To:	150 Avon Belden Rd. Avon Lake, OH United States	Email:	bcagley@avonlake.oh=g
		Phone:	4409337677
Order Details			
Billing Frequency:		Annually in Advance	
Payment Terms:		Net Thirty (30) Days	

SOFTWARE SERVICES:

Product / Service	Start Date	End Date	Annual Fee
Citizen Services - 3 Service Areas <i>Community Feedback, Dashboards, Document Designer, Inspections, Online Payments, Transparency, Public Portal, Reporting & Analytics, Story Builder, MAT / Assessor System & Flags, Esri ArcGIS Integration, Flag Integration, Accounting and Finance Export, Record Data Export, Autofill Interface, Bluebeam Integration, Mobile App</i>			
	3/1/2023	2/29/2028	\$56,400.00
Enterprise Asset Management <i>Asset Builder, Sanitary Sewer, Integration Toolkit, Facilities Domain, Parks & Recreation Domain, Stormwater Domain, Transportation Domain, Walkability Domain</i>			
	3/1/2023	2/29/2028	\$40,009.52
Annual Subscription Total:			\$96,409.52

PROFESSIONAL SERVICES:

Product / Service	Start Date	
Professional Services Deployment - Prepaid <i>This includes \$8,400.00 for estimated onsite travel costs</i>	3/1/2023	
Professional Services Total:		\$154,835.00

Billing Table:

Billing Date	Amount Due	
March 1, 2023	\$251,244.52	<i>(Annual Software Fee + Professional Services)</i>
March 1, 2024	\$96,409.52	
March 1, 2025	\$96,409.52	
March 1, 2026	\$96,409.52	
March 1, 2027	\$96,409.52	

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 PO Box 41340, San Jose, CA 95160 ("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 and attached, 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 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.

City of Avon Lake, OH

Signature:

Name:

Title:

Date:

OpenGov, Inc.

Signature:

Name:

Title:

Date:

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 6525 Crown Blvd #41340, San Jose, CA 95160 (“**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.

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

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

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

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

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

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

2. SOFTWARE SERVICES, SUPPORT AND PROFESSIONAL SERVICES

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

2.2 Support & Service Levels. 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. OpenGov will provide support for the Software Services in accordance with the Support and Software Service Levels found at <https://opengov.com/service-sla>, as long as Customer is entitled to receive support under the applicable Order Form and this Agreement.

2.3 Professional Services.

(a) If OpenGov or its authorized independent contractors provides professional services to Customer, such as implementation services, then these professional services will be described in a statement of work (“**SOW**”) agreed to by the parties (the “**Professional Services**”). Unless otherwise specified in the SOW, any pre-paid Professional Services Fees must be utilized within one (1) year from the Effective Date. Any unused pre-paid Professional Services Fees shall be forfeited.

(b) Unless the SOW provides otherwise, all reasonable travel expenses, pre-approved by Customer and incurred by OpenGov in performing the professional services will be reimbursed by Customer. Travel expenses

include cost of coach airfare travel round trip from the individual's location to Customer's location, reasonable hotel accommodations, ground transportation and meals.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 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 (which include, without limitation the hosting providers of the Software Services) 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**”) and the fees for Professional Services (“**Professional Services Fees**”) are set forth in the applicable Order Form. Software Services Fees and Professional Services Fees shall hereafter be referred to as “**Fees**”. Except to the extent otherwise expressly stated in this Agreement or in an Order Form, (i) all obligations to pay Fees are non-cancelable and all payments are non-refundable, (ii) Customer must pay all Fees due under all Order Forms and SOW within thirty (30) days after Customer receives each invoice (invoices are deemed received when OpenGov emails them to Customer’s designated billing contact); (iii) the Software Service Fee shall be due annually in advance, and (iv) Customer must make all payments without setoffs, withholdings or deductions of any kind.

(b) Annual Software Maintenance Price Adjustment. OpenGov shall increase the Fees payable for the Software Services during any Renewal Term by 5% 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 travel expenses, pre-approved by the Customer, 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.

(e) Customer Delays; On Hold Fee.

I. On Hold Notice. Excluding delays caused by Force Majeure as described in Section 10.5, if OpenGov determines that Customer’s personnel or contractors are not completing Customer’s responsibilities described in the applicable SOW timely or accurately, OpenGov shall promptly, but in no event more than thirty (30) days from the date of such determination deliver to Customer a notice (an “**On Hold Notice**”) that (A) designates the Professional Services to be provided to the Customer as “**On Hold**”, (B) detail Customer’s obligations and responsibilities necessary for OpenGov to continue performing the Professional Services, and (C) specify the Customer shall be invoiced for lost time in production (e.g. delayed or lost revenue resulting from rescheduling work on other projects, delay in receiving milestone payments from Customer, equipment, hosting providers and human resources idle) for a fee equal to 10% of the first year Software Service Fee (the “**On Hold Fee**”).

II. Effects of On Hold Notice. Upon issuing an On Hold Notice, OpenGov shall be entitled, without penalty, to (A) reallocate resources otherwise reserved for the performance of the Professional Services, and (B) stop or caused to be stopped the Professional Services to be provided to the Customer until the Customer has fulfilled its obligations as set forth in the On Hold Notice. OpenGov shall remove the “On Hold” status, only upon Customer’s fulfillment of its obligations set out in the On Hold Notice, including payment of the On Hold

Fee. Upon Customer's fulfillment of its obligations in the On Hold Notice, OpenGov may, in its sole discretion, extend the timeline to complete certain Professional Services up to six (6) weeks, depending on the availability of qualified team resources (OpenGov cannot guarantee that these team resources will be the same as those who were working on the project prior to it being placed On Hold). OpenGov shall bear no liability or otherwise be responsible for delays in the provision of the Professional Services occasioned by Customer's failure to complete Customer's responsibilities or adhere to a Customer schedule which were brought to the attention of the Customer on a timely basis, unless such delays result, directly or indirectly from the failure of OpenGov or its authorized independent contractors to perform the Professional Services in accordance with this Agreement or applicable SOW.

6.2 Consequences of Non-Payment. If Customer fails to make any payments required under any Order Form or SOW, then in addition to any other rights OpenGov may have under this Agreement or applicable law, (a) Customer will owe late interest penalty of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower and (b) If Customer's account remains delinquent (with respect to payment of a valid invoice) for thirty (30) days after receipt of a delinquency notice from OpenGov, which may be provided via email to Customer's designated billing contact, OpenGov may temporarily suspend Customer's access to the Software Service for up to ninety (90) days to pursue good faith negotiations before pursuing termination in accordance with Section 7. Customer will continue to incur and owe all applicable Fees irrespective of any such Service suspension based on such Customer delinquency.

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**") unless sooner terminated pursuant to Section 7.3 below.

7.2 Renewal. This Agreement shall automatically renew for another period of the same duration as the Initial Term (the "**Renewal Term**" and together with the Initial Term, the "**Term**"), unless either party notifies the other party of its intent not to renew this Agreement in writing no less than thirty (30) days before the end of the Initial Term.

7.3 Termination. Neither party shall have the right to terminate this Agreement without a legally valid cause. 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 pursuant to Section 7.3 or expiration of this Agreement pursuant to Section 7.1: (a) Customer shall pay in full for all Software Services and Professional Services performed up to and including the effective date of termination or expiration, (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.** Unless otherwise requested pursuant to this Section 7.4(b), upon the expiration or termination of this Agreement the Customer Data, excluding any Insights, shall be deleted pursuant to OpenGov's standard data deletion and retention practices. Upon written request, Customer may request deletion of Customer Data, excluding any Insights, prior to 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; and (ii) the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with the related statement of work and generally prevailing industry standards. For any breach of the Professional Services warranty, Customer’s exclusive remedy and OpenGov’s entire liability will be the re-performance of the applicable services. If OpenGov is unable to re-perform all such work as warranted, Customer will be entitled to recover all fees paid to OpenGov for the deficient work. Customer must make any claim under the foregoing warranty to OpenGov in writing within ninety (90) days of performance of such work in order to receive such warranty remedies.

(b) Software Services Warranty. OpenGov further represents and warrants that for a period of ninety (90) days upon completion of the Professional Services specified in the initial SOW, the Software Services will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software Services that have been used in a manner other than as set forth in the Documentation and authorized under this Agreement. OpenGov does not warrant that the Software Services will be uninterrupted or error-free. Any claim submitted under this Section 8.1(b) must be submitted in writing to OpenGov during the Term. OpenGov’s entire liability for any breach of the foregoing warranty is to repair or replace any nonconforming Software Services so that the affected portion of the Software Services operates as warranted or, if OpenGov is unable to do so, terminate the license for such Software Services and refund the pre-paid, unused portion of the Fee for such Software Services.

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

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

9. LIMITATION OF LIABILITY

9.1 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 THE FEES PAID BY CUSTOMER TO OPENGOV (OR, IN THE CASE OF CUSTOMER, PAYABLE) FOR THE SOFTWARE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

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

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

10. MISCELLANEOUS

10.1 Logo Use. Upon receiving Customer's prior written consent, 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, including legal 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 Ohio 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 the State of Ohio, and the parties hereby submit to the personal jurisdiction and venue therein.

10.11 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.

[SIGNATURE PAGE TO FOLLOW]

Signatures

Customer: City of Avon Lake, Ohio

OPENGov, INC.

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[SIGNATURE PAGE TO OPENGOV SOFTWARE SERVICES AGREEMENT]