

City of Merced
TRANSMITTAL FOR CONTRACT/AGREEMENT APPROVAL

Contract No.: _____ (# will be assigned by City Clerk's Office after all documentation has been obtained)
Distribution: Original Contract - Filed in the City Clerk's Office
Duplicate Originals - Returned to Originating Department

Date Submitted: 06/26/2014 Council Meeting Date (if applicable): 08/4/2014

Contact Name & Extension: Venus Rodriguez Submitting Dept.: Finance

Purpose of the Contract:

Software services to provide web application that visualizes City's budget and general ledger financial data to citizens and staff through an online portal.

Note: The following require City Council approval:

- Non-Public Works Contracts in Excess of \$26,000 or Public Work Contracts in Excess of \$58,575; or
- Amendments Exceeding the Accumulated Contract Amount of 25% or More

New Contract: ☒ Amendment No.: _____ Change Order No.: _____

Contractor/Vendor Name: OpenGov, Inc.

Contractor/Vendor E-mail: nlevine@opengov.com

Verification of Business License: ☐ Business License No.: _____ Misc. Receivable Acct. No.: _____

Funds available in the Budget?: ☒ Yes ☐ No ☐ Does Not Require Budget Funds

If No: Dept. Prepared Budget Transfer Form **OR** Admin. Report Appropriating Funds (attach copy)

Account No(s): 001-0101-512-17-00

Original Contract

Amount: \$ 9,500 1st Amendment: \$ _____

Date of Original Contract: _____ 2nd Amendment: \$ _____

(Council Meeting date if requires Council approval.)

3rd Amendment: \$ _____

Beginning Date: 07/01/2014 Expiration Date: 06/30/2019 ✓

Required Attachments:

- | | | |
|---|--|--|
| <input type="checkbox"/> Certificate of Insurance | <input type="checkbox"/> Labor & Material Bond | <input type="checkbox"/> Warranty Bond |
| <input type="checkbox"/> W-9 (or substitution) | <input type="checkbox"/> Faithful Performance Bond | <input type="checkbox"/> Admin. Report (if applicable) |
| Other: _____ | | |

Note: Please be sure all blanks have been filled in, all exhibits are attached, and the contract has been signed by the contractor/vendor and City Attorney's Office before submitting to the City Clerk's Office for routing.

Department Head

Signature: 

Date: 7-11-14

City Clerk's Office Checklist:

- | | | |
|--|--|--|
| <input type="checkbox"/> Dept. Head Signature on Form | <input type="checkbox"/> Admin. Report Attached | <input type="checkbox"/> Applicable Bond(s) |
| <input type="checkbox"/> Contractor/Vendor Signature | <input type="checkbox"/> Finance Dept. Signature | <input type="checkbox"/> City Manager's Signature |
| <input type="checkbox"/> City Attorney's Dept. Signature | <input type="checkbox"/> Insurance Certificate(s) | <input type="checkbox"/> Deputy City Clerk Signature |
| <input type="checkbox"/> Logged into Databases | <input type="checkbox"/> Council Approval Verification | <input type="checkbox"/> Image & File Contract |

Updated 7/31/12

OPENGOV, INC. SOFTWARE AGREEMENT

| | ORGANIZATION CONTACT | BILLING CONTACT (If Different) |
|----------------|---|--------------------------------|
| Customer Name: | City of Merced, CA | |
| Contact Name: | Bradley Grant | |
| Address: | 678 W. 18 th St. Merced, CA 95348 | |
| Telephone: | 209-385-6844 | |
| Email: | grantb@cityofmerced.org | |

Effective Date: 07/01/2014

Software Services:

- ☒ Annual Budget View: A proprietary web application that visualizes the customer's general ledger and chart of accounts, making multiple years of annual financial data accessible to citizens and staff through an online portal.
- ☒ Current Year View: A proprietary web application that visualizes the customer's general ledger and chart of accounts such that monthly, quarterly, or year-to-date financial data is accessible through an online portal.

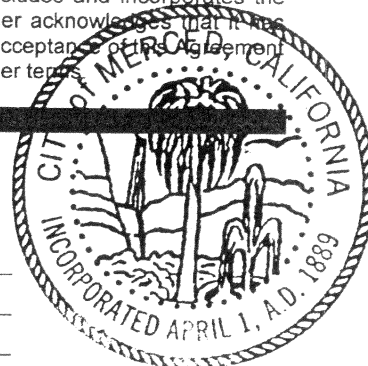
Fees: In consideration of Customer using the Services identified above, Customer shall pay OpenGov, Inc. a fee of \$9,500, billed annually in advance for the period of the agreement, commencing on the Effective Date.

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 1023 Shoreline Blvd, Suite 100, Mountain View, CA 94043 ("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. 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.

Customer

Signature: John M. Bramble
 Printed Name: JOHN M. BRAMBLE
 Title: CITY MANAGER
 Date: 07-21-2014

ATTEST:
CITY CLERK



OpenGov Inc.

Signature: Nate Levine
 Printed Name: Nate Levine
 Title: Co-Founder
 Date: 6/27/14

BY 7/22/14
Assistant/Deputy City Clerk

214829 PO#: 115233
FUNDS/ACCOUNTS VERIFIED

FINANCE OFFICE DATE
 Funds Available. 7/21/14
 001-0701-512-17-00
 \$ 9,500.00

APPROVED AS TO FORM:

7/11/14
 KENNETH ROZELL
 Senior Deputy City Attorney

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. 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 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 OpenGov typically sends 45 days after the Effective Date). 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. TERM & 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 five (5) twelve (12) month terms, for a total of sixty (60) months from that date. The customer will be billed on an annual basis for each twelve (12) month term, and either party may terminate this Agreement at the end of the applicable term, without penalty, with thirty (30) days prior written notice. 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 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 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.

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

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