

CONTRACT SERVICES AGREEMENT

By and Between

CITY OF CARSON

and

VERTOSOFT, LLC

EXHIBIT NO. 1

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE CITY OF CARSON AND
VERTOSOFT, LLC**

THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this ____ day of _____, 2022 (“Effective Date”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and VERTOSOFT, LLC, a Virginia limited liability company (“Consultant”). City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

RECITALS

A. Section 2611(g) of the City’s Municipal Code (“CMC”) allows City, through its Purchasing Manager, to dispense with competitive bidding processes to purchase materials, supplies, equipment, or services by utilizing a cooperative purchasing program engaged in by any local, county, State, or Federal public entity or entities, even if the contracts and implementing agreements entered into by the participating entity or association under those cooperative purchasing programs were not entered into pursuant to a process that resulted in the contract being awarded to the lowest responsible and responsive bidder under CMC 2610(i); provided, that the selected bidder was selected in compliance with the competitive bidding or proposal process requirements of any participating entity or association within three years of City’s approval of the City contract entered into with the selected bidder via cooperative purchasing. The City Council has made a determination that the benefits to City of utilizing cooperative purchasing outweigh any incremental higher price that may be paid by City in certain instances as a result of not soliciting directly utilizing the lowest responsible and responsive bidder standard under CMC 2610(i).

B. The Texas Region 8 Education Service Center (“State”) is part of a cooperative purchasing program through which it entered into a contract with Consultant referred to as Contract #220105 after engaging in a proposal process in 2022 through RFP #220105 for technology solutions, products and services, including but not limited to, the Software Services and Professional Services as more particularly described in Exhibit A of this Agreement, whereby the State now receives such services at a greatly discounted price. Such discounted price is now being made available to the City pursuant to the State’s cooperative purchasing program.

C. Consultant is an authorized reseller of the Software Services and Professional Services offered by OpenGov, Inc., a Delaware corporation with its principal place of business at 6525 Crown Blvd #41340, San Jose, CA 95160 (“OpenGov”).

D. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

E. Pursuant to the City of Carson’s Municipal Code, City has authority to enter into and execute this Agreement.

F. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant’s Proposal.

The Scope of Service shall include the Consultant’s scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s

performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant

anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.9 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit “B” and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit “B” and any other provisions of this Agreement, the provisions of Exhibit “B” shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Three Hundred Sixty Eight Thousand One Hundred Sixty Three Dollars and Forty Six Cents (**\$368,163.46**) for the Term (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.8.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant’s rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City’s Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance

with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and

of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be Tarik Rahmani, Deputy City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

(g) Broader Coverages and Higher Limits. Notwithstanding anything else herein to the contrary, if Consultant maintains broader coverages and/or higher limits than the

minimums shown above, the City requires and shall be entitled to the broader coverages and/or higher limits maintained by Consultant.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Consultant Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or any automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's

insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims

arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

5.4 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor

in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without liability to Consultant, and Consultant’s guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City

Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant’s conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant’s default shall not be deemed to result in a waiver of the City’s legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

7.7 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant,

except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.8 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.9 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 90745 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address

by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, whether the signatures are originals, electronic, facsimiles or digital. All such counterparts shall together constitute but one and the same Agreement.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "non-interests" pursuant to Government Code Sections 1091 or 1091.5. Consultant

warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials _____

9.7 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF CARSON, a municipal corporation

Lula Davis-Holmes, Mayor

ATTEST:

Dr. Khaleah R. Bradshaw, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[rjl]

CONSULTANT:

VERTOSOFT, LLC, a Virginia limited liability company

By: *H. Jay Colavita*
Name: *Jay Colavita*
Title: President

By: *David Ball*
Name: David Ball
Title: Senior Director
Address: 1602 Village Market Blvd SE Suite 215
Leesburg, VA 20175

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2022 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

<p><input type="checkbox"/> CAPACITY CLAIMED BY SIGNER</p> <p><input type="checkbox"/> INDIVIDUAL</p> <p><input type="checkbox"/> CORPORATE OFFICER</p> <p>_____</p> <p><input type="checkbox"/> PARTNER(S) <input type="checkbox"/> TITLE(S) LIMITED</p> <p><input type="checkbox"/> <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT</p> <p><input type="checkbox"/> TRUSTEE(S)</p> <p><input type="checkbox"/> GUARDIAN/CONSERVATOR</p> <p><input type="checkbox"/> OTHER _____</p> <p>_____</p> <p>SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))</p> <p>_____</p> <p>_____</p>	<p>DESCRIPTION OF ATTACHED DOCUMENT</p> <p>_____</p> <p>TITLE OR TYPE OF DOCUMENT</p> <p>_____</p> <p>NUMBER OF PAGES</p> <p>_____</p> <p>DATE OF DOCUMENT</p> <p>_____</p> <p>SIGNER(S) OTHER THAN NAMED ABOVE</p>
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2022 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	_____
_____	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	NUMBER OF PAGES
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/> OTHER _____	DATE OF DOCUMENT
_____	_____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))	_____
_____	_____
_____	SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT “A”
SCOPE OF SERVICES

I. Consultant will perform the following Services which will include providing City an annual subscription for cloud-based integrated software services (“Software Services”) for the City’s budgeting needs, including but not limited to, for City’s operating budget, capital planning, workforce planning, budget book, and reporting needs, along with associated professional services (“Professional Services”). Generally, the Services to be provided are described below.

Products & Services	Description
OpenGov Budgeting & Planning	Operating Budget, Workforce Budgeting, Management Reporting & Dashboards, Transparency Portal, Integration (Munis Cloud)
Professional Services	Implementation & Deployment of the above solutions (see the attached SOW for additional information)

The Services are more specifically detailed below, as follows:

A. **OpenGov Reporting & Transparency Platform**

1. **OpenGov Reporting & Transparency Platform Project Deliverables**

Deliverable	Description
OpenGov Reporting & Transparency Platform	Cloud based Reporting & Transparency Platform that includes: <ul style="list-style-type: none"> ● Stories ● Community Feedback ● Reporting ● Dashboards ● Transparency Portal

2. **Project Tasks**

The tasks listed below are required for OpenGov and City to successfully complete the OpenGov Reporting & Transparency Platform implementation.

a. **Initiate**

Functionality	Description
Provisioning Reporting & Transparency Platform	OpenGov will provision Customer’s OpenGov entity and verify Customer has access to all purchased modules.
OpenGov University	OpenGov will provide access to OpenGov University online training courses intended to teach users on the basics of the Reporting & Transparency

Platform Training	Platform.
Stories and Community Feedback Examples	<p>OpenGov will build out an example of a Story:</p> <ul style="list-style-type: none"> One standard story based on available templates in OpenGov. <p>OpenGov will build out an example of a topic in Community Feedback.</p>
Initial Data Migration	<p>OpenGov will upload any applicable datasets to the OpenGov Platform.</p> <ul style="list-style-type: none"> Base Budget File Historical Budget and Transactions Files, including beginning balances Budget Reference Year data files <p>OpenGov will accept flat files such as CSV, Text, and/or Excel</p>

b. Best Practices

Functionality	Description
Overview of Best Practice	OpenGov assesses and identifies how best to configure and map data to ensure success based on materials provided by Customer.
Stories and Community Feedback Review	The Implementation Analyst will conduct a review of the examples created.
Solution Document	OpenGov will present a solution document to be mutually agreed upon prior to beginning configuration.

c. Configuration

Functionality	Description
Chart of Accounts	<p>OpenGov will</p> <ul style="list-style-type: none"> Review and give feedback on Customer's general ledger chart of accounts Provide a functional build of the proposed OpenGov Chart of Accounts, and gain sign off on acceptance from Customer. Configure OpenGov Chart of Accounts in OpenGov system
OpenGov Reports	<p>OpenGov will:</p> <ul style="list-style-type: none"> Set up 3 OpenGov reports (Annual, Budget to Actuals, and
	<p>Transactions)</p> <ul style="list-style-type: none"> Configure 3 departmental dashboards with up to 3 tiles each

d. Validation

Functionality	Description
Chart of Accounts	Once built in OpenGov system, Customer will validate and sign off on transformed Chart of Accounts.
Data	Customer will validate and sign off on the datasets uploaded as part of the implementation.

e. Deploy

Functionality	Description
Training Stories	OpenGov will review configured story and provide training to Customer on how to: <ul style="list-style-type: none"> ● Create new stories ● Update/Maintain current stories ● Publish internally and externally
Training Community Feedback	OpenGov will <ul style="list-style-type: none"> ● Present configured Community Feedback site and theme. ● Provide training to Customer on Community Feedback Functionality
Training OpenGov Reports	OpenGov will review configured OpenGov reports. OpenGov will provide training Customer on report: <ul style="list-style-type: none"> ● Configuration ● Update/Maintenance ● Publishing internally and externally
Training Dashboards	OpenGov will review configured Dashboards. OpenGov will provide training to Customer on Dashboard: <ul style="list-style-type: none"> ● Configuration ● Update/Maintenance ● Publishing internally and externally
Reporting & Transparency Training	OpenGov will review configured Chart of Accounts (COA) and uploaded data. OpenGov will provide training to Customer on Platform maintenance: <ul style="list-style-type: none"> ● Users ● Uploading data

	<ul style="list-style-type: none"> ● Maintaining COA
Sign Off	Customer will sign off that they have: <ul style="list-style-type: none"> ● Configured Story ● Configured Community Feedback ● Configured OpenGov reports ● Configured Dashboard ● Training has been provided on Stories, Community Feedback, OpenGov reports, Dashboards

B. OpenGov Budgeting & Planning

1. Budget & Planning Project Deliverables

Functionality	Description
OpenGov Budgeting & Planning Suite	Budgeting & Planning Suite, includes: <ul style="list-style-type: none"> ● Operating Budget ● Workforce Planning ● Online Budget Book ● Budget Reporting

2. Project Tasks – Budgeting and Planning

The tasks and responsibilities listed below are required for OpenGov and City to successfully complete the OpenGov Budgeting and Planning Suite Implementation.

a. Initiate

Functionality	Description
Documentation Receipt	Customer to provide OpenGov: <ul style="list-style-type: none"> ● Budget export ● Examples of the documentation currently provided to department ● Budget schedule ● Management budget reports example
OpenGov University Budget Training	During the initial phase, OpenGov will provide system training to administrators. Training will include: <ul style="list-style-type: none"> ● How to create <ul style="list-style-type: none"> ○ a budget ○ a proposal

	<ul style="list-style-type: none"> ○ a worksheet ○ add a line item ○ reselect line items ○ submit a budget ● Reporting overview ● Stories overview ● Community Feedback Overview ● Workforce Planning Overview
Budget and Workforce Solution Examples	<p>OpenGov will build out examples of best practices for budgeting solutions:</p> <p><i>Operating</i></p> <ul style="list-style-type: none"> ● 2 budget instances in OpenGov ● 2 proposals for each budget instance (Traditional and OpenGov) ● 3 budget reports <ul style="list-style-type: none"> ○ Operating Budget Development ○ Operating Budget Details ○ Operating Budget Categories ● 1 budget story for review <p><i>Workforce Planning Shell</i></p> <ul style="list-style-type: none"> ● 4 Standard cost elements <ul style="list-style-type: none"> ○ Wages ○ Insurance ○ Retirement ○ Taxes
Online Budget Book Examples	<p>OpenGov will build out:</p> <ul style="list-style-type: none"> ● Look and feel of Online Budget Book ● Best practice templates for: <ul style="list-style-type: none"> ○ Home Page ○ Generic (multi-use) ○ Operating ○ Department

b. Best Practices

Functionality	Description
Overview of Best Practice	OpenGov assesses and identifies how best to configure and map data to ensure success based on materials provided by Customer.
Budget and Workforce Solution	The Implementation Analyst will conduct a review of the examples created and work with the customer to confirm a budget format on which to move forward.

Online Budget Book Solution	The Implementation Analyst will conduct review of Online Budget Book templates and work with Customer to confirm format and approach.
Solution Document	OpenGov will present a solution document to be mutually agreed upon prior to beginning configuration.

c. **Configure**

Functionality	Description
Base Budget File	OpenGov will configure and upload Customer's base budget file into OpenGov.
Budget Configuration	<p>Based on the Review and Confirmation phase OpenGov OpenGov will set up Customer's preferred budget format:</p> <p><i>Operating</i></p> <ul style="list-style-type: none"> ● 1 Budget instance ● Up to 50 Proposals (Department) ● Corresponding worksheets (single, fund, division, or function) ● 1 standard budget Story template <p>Based on the review of the Workforce Planning Shell and with the guidance of the Implementation Analyst, Customer will:</p> <ul style="list-style-type: none"> ● Buildout remaining cost elements ● Populate position template ● Validate Workforce calculation
Budget Configuration Working Sessions	<p>OpenGov will hold working sessions between the Implementation Analyst and Customer for the purpose of validating, reviewing, and iterating upon draft budget instances. Session will focus on:</p> <ul style="list-style-type: none"> ● Set up ● Structure ● Workflow ● User access
Administrator Budget Management Training	<p>OpenGov will provide 1, 60-Minute training session(s) to enable Customer's Budget Administrators to manage and maintain their OpenGov budgets including:</p> <ul style="list-style-type: none"> ● User access ● Approval workflow ● Cloning ● Phases ● Proposal status

Dataset and View Configuration	OpenGov will set up 1 export and dataset view to enable budget reports
Budget Report(s)	<p>OpenGov will configure up to 4 budget reports to include:</p> <p><i>Operating</i></p> <ul style="list-style-type: none"> ● Operating Budget Milestones ● Operating Budget Development ● Operating Budget Details ● Operating Budget Categories
Budget Exports and Reporting Training	<p>OpenGov will provide 1, 60-Minute training session(s) to enable Customer to own, manage and maintain their OpenGov Budget Data and Reports including:</p> <ul style="list-style-type: none"> ● Exports ● Dataset views ● Reports

Online Budget Book Administrator Training	<p>OpenGov provide one 60-Minute session for training on the following topics:</p> <ul style="list-style-type: none"> ● Using and copying templates ● How Datasets and Reports work in Stories ● How the Online Budget Book works with Transparency Portal ● Preparing for updating and ongoing use
Online Budget Book Configuration	<p>Once templates are finalized, OpenGov will:</p> <ul style="list-style-type: none"> ● Create one Story shell from templates for <ul style="list-style-type: none"> ○ Up to 50 departments ● Create up to 2 reports for use in the Online Budget Book ● Create OpenGov report views and add report tiles to created templates. <p>OpenGov will provide up to 10 one-hour working sessions to answer Customer questions on Online Budget Book Configuration.</p> <p>Once trained, Customer will:</p> <ul style="list-style-type: none"> ● Build out remaining Stories required for Online Budget Book to include: <ul style="list-style-type: none"> ○ Narrative ○ OpenGov Report Views ○ Images ○ Data not in OpenGov ● Set up additional Online Budget Book stories. ● Create views in Online Budget Book Report(s) ● Add report views to online budget book stories ● Add narrative content to Online Budget Book Stories ● Add any additional content to Online Budget Book Stories
	<ul style="list-style-type: none"> ● Make Stories public and Publish Online Budget Book

d. Validation

Functionality	Description
Validation of Configured Budgets	The OpenGov Project Manager and Implementation Analyst will confirm with Customer's Project Lead that all budget proposals are configured properly based on the agreed upon format.

e. Deploy

Functionality	Description
Internal Budget User Training	OpenGov will provide 1, 60-Minute training session(s) to enable Customer's internal users to understand budgeting requirements.
Sign Off	Customer will provide written sign off that all Budgets and Reports have been configured based on agreed upon formats.

C. Financial Integrations

1. Financial Integration Deliverables

Functionality	Description
Financial Integration	OpenGov will work with Customer's IT Staff and Project Team to set up a one way data integration from Tyler Munis to OpenGov

2. Financial Integration Tasks

The tasks listed below are required for OpenGov and City to successfully complete the Financial Integrations with OpenGov.

a. Initiate

Functionality	Description
Solution Review	OpenGov will review the proposed solution with Customer <ul style="list-style-type: none"> ● Functionalities to be Integrated <ul style="list-style-type: none"> ○ Actuals (Revenue and Expenses) ○ Budget ● Integration Approach <ul style="list-style-type: none"> ○ SFTP (File Transfer) ● OpenGov Assumes: <ul style="list-style-type: none"> ○ The data will be linked to the Customer's COA. ○ Integration is unidirectional from the Customer's accounting software into OpenGov.
Data Files [SFTP]	Customer will provide the data in the required format associated with the functionalities <ul style="list-style-type: none"> ● Data Files for Historical Years ● Data Files for Current Year ● Automate the file transfers into the OpenGov SFTP location
Data Analysis	OpenGov will perform the data analysis <ul style="list-style-type: none"> ● To align with the required functionalities ● To align with the COA

b. Configuration

Functionality	Description
Integration Setup	<p>OpenGov will perform the following</p> <ul style="list-style-type: none"> ● SFTP Setup (SFTP Data Migrations) ● Sample File Format (SFTP Data Migrations) ● OpenGov Assumes: <ul style="list-style-type: none"> ○ OpenGov will require assistance from Customer to understand source system specific customizations and configurations when building the data extract. When OpenGov is not able to access or extract data as per requirements, Customer should provide the data files in CSV format into OpenGov SFTP Location. ○ When the source accounting software is hosted by a third party vendor on behalf of Customer, Customer is responsible for brokering OpenGov's access to Customer's data residing at the vendor's premises in accordance with OpenGov's data formatting requirements.
Configuration and Testing	<p>OpenGov will perform the Configuration to</p> <ul style="list-style-type: none"> ● Extract, Transform (when required) and Load the data ● Build Reports for the required functionalities
	<ul style="list-style-type: none"> ● Initial validation of data

c. Validation

Functionality	Description
Data Validation	<p>OpenGov team to work with Customer to</p> <ul style="list-style-type: none"> ● Validate the historical data ● Validate the current year data ● OpenGov Assumes: <ul style="list-style-type: none"> ○ Customer will provide data to validate against (PDF export). Data should be received prior to the start of the integration. ○ OpenGov will perform the validation for data accuracy for the Integration, working jointly with Customer team to approve the Financial Integration data.

d. Deploy

Functionality	Description
Deployment and Wrap Up	OpenGov will perform the Configuration to <ul style="list-style-type: none"> ● Schedule the current year data load ● Provide training to the administrators ● Monitor the data load
Sign Off	Customer will complete OpenGov-provided sign off document acknowledging <ul style="list-style-type: none"> ● Accuracy of the data for historical years and current year associated with the functionalities ● Accuracy Reports associated with the functionalities ● Training was provided on the Integration Functionalities

Customer support is available to City by email to support@opengov.com or by using the chat messaging functionality, both of which are available during OpenGov’s standard business hours. City may report issues any time. However, City’s issues will be addressed during OpenGov’s business hours.

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

As required in Section I. above.

III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:

As requested by the Contract Officer.

IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.

V. Consultant will utilize the following personnel to accomplish the Services:

- A. Jay Colavita, President
- B. David Ball, Senior Director
- C. OpenGov, subcontractor

EXHIBIT “B”
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

The Agreement is hereby amended as follows (deletions shown in ~~strike through~~ and additions shown in ***bold italics***):

I. Section 1.2 (Consultant’s Proposal) of the Agreement is hereby amended to read in its entirety as follows:

“1.2 Consultant’s Proposal.

The Scope of Service shall include the ***OpenGov Statement of Work created August 24, 2022, identified as Document Number: DD-02838, Version Number: 2*** ~~Consultant’s scope of work or bid~~ which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.”

II. Section 2.4 (Invoices) of the Agreement is hereby amended to read in its entirety as follows:

“2.4 Invoices.

The Contract Sum for the Software Services and Professional Services shall be prepaid by City on an annual basis after Consultant submits to City an invoice detailing the charges to City. Subject to Section 7.8 of this Agreement, all obligations to pay the Contract Sum are non-cancelable and all payments are non-refundable. Each month Consultant shall furnish to City an original invoice for all work ***to be*** performed and expenses ***to be*** incurred during the preceding month in a form approved by City’s Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work ***to be*** performed and expenses ***to be*** incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant’s correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.”

III. Section 3.4 (Term) of the Agreement is hereby amended to read in its entirety as follows:

“3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding ~~five~~ **five** (5) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit “D”).”

IV. Section 4.5 (Prohibition Against Subcontracting or Assignment) of the Agreement is hereby amended to read in its entirety as follows:

“4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, *with the exception of OpenGov*, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.”

V. Section 4.6 (City Responsibilities) is hereby added to the Agreement as follows:

“4.6 City Responsibilities.

City shall be responsible for obtaining and maintaining computers and third party software systems of record (such as City’s ERP systems) needed to connect to, access or otherwise use the Software Services. City 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 City user accounts by any party other than Consultant.”

VI. Section 4.7 (City Restrictions) is hereby added to the Agreement as follows:

“4.7 City Restrictions.

City may not use the Software Services in any manner or for any purpose other than as expressly permitted by this Agreement. City 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.

VII. The heading of Article 5 (INSURANCE AND INDEMNIFICATION) of the Agreement is hereby amended to read in its entirety as follows:

“Article 5. INSURANCE AND INDEMNIFICATION; *CONSULTANT WARRANTIES.*”

VIII. Section 5.1 (Insurance Coverages) of the Agreement is hereby amended to read in its entirety as follows:

“5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker’s Compensation Insurance. A policy of worker’s compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including “any auto” and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant’s profession. This coverage may be written on a “claims made” basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services

performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) **Cyber Liability. Technology professional liability errors & omissions insurance appropriate to Consultant's profession and the Services hereunder with limits not less than \$1,000,000 per claim/loss, and \$1,000,000 in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant pursuant to this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information or data breach, theft, loss, damage or misuse, release of private information, extortion and network security. If coverage is maintained on a claims-made basis, Consultant shall maintain such coverage for an additional period of three (3) years following termination of the contract. The insurance shall include the following coverage:**

i. ***Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including credit monitoring and regulatory fines arising from such theft, dissemination or use of the confidential information.***

ii. ***Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.***

iii. ***Liability arising from the failure of Consultant's proprietary technology products (software) required under the contract for Consultant to properly perform the services intended.***

iv. ***Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.***

v. ***Liability arising from the failure to render professional services as defined by industry standards appropriate to the technology being used.***

(f) **Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.**

(g) **Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".**

(h) Broader Coverages and Higher Limits. Notwithstanding anything else herein to the contrary, if Consultant maintains broader coverages and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverages and/or higher limits maintained by Consultant.”

IX. Section 5.3 (Indemnification) of the Agreement is hereby amended to read in its entirety as follows:

“5.3 General and Intellectual Property Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein “claims or liabilities”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable (“indemnitors”), or arising from Consultant’s or indemnitors’ reckless or willful misconduct, or arising from Consultant’s or indemnitors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefor, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as

a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement. *Consultant represents and warrants that it owns all intellectual property rights to the Products or otherwise is legally authorized to grant City the right to use the Products and all associated trademarks, and agrees to defend, indemnify, and hold harmless the City and pay all damages (including reasonable attorneys' fees) relating to any third party claim, demand, cause of action, or proceedings (whether threatened, asserted, or filed) ("Claims") against City to the extent that such Claims are based upon the Products (excluding third party products) directly infringing a United States patent, registered United States copyright, or registered United States trademark, provided that the Products are used in compliance with this Agreement. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.*"

X. Section 5.6 (Software Services Warranty) is hereby added to the Agreement to read in its entirety as follows:

"5.6 Software Services Warranty.

Consultant further represents and warrants that for a period of ninety (90) days, the Software Services will perform in all material respects in accordance with the Documentation. Documentation means the documentation for the Software Services at OpenGov's Customer Resource Center page found at <https://opengov.zendesk.com>. 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 for the Software Services at the Customer Resource Center page found at <https://opengov.zendesk.com> and authorized under this Agreement. Consultant does not warrant that the Software Services will be uninterrupted or error-free. Any claim submitted under this Section 5.6 must be submitted in writing Consultant during the Term. Consultant'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 Consultant 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."

XI. Section 6.3 (Ownership of Documents) of the Agreement is hereby renamed "Grant of License and Ownership of Documents," and amended to read in its entirety as follows:

"6.3 Grant of License and Ownership of Documents.

Consultant grants to City, its employees, officials, and agents a limited, non-exclusive, non-transferrable, royalty-free license for the Term to use the products associated with the Services ("Product" or "Products") as described in the Scope of Services. The license is granted only to the City. During the first year of the Term, the license will grant only one user of City but during subsequent years, based on City's needs, there will not be any limitations on the number of City users authorized to use the Products. The City must not distribute, transfer, resell, assign, rent, lease or sublicense any Product or any of the City's rights under the license

without the Consultant's prior written consent. Unless otherwise provided in this Agreement, this will include not making any Product available in any medium or manner to any third party (including the City's subsidiaries and affiliates). City retains all right, title, and interest in the Customer Data and all intellectual property rights therein. Customer Data means data that is provided by City to Consultant pursuant to this Agreement (for example, by email or through City's software systems of record). Customer Data shall not include any confidential personally identifiable information. City may download the Customer Data from the Software Services at any time during the Term, other than during routine software maintenance periods.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City."

XII. Section 6.4 (Confidentiality and Release of Information) of the Agreement is hereby amended to read in its entirety as follows:

"6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(e) *Without limiting the generality of the foregoing and subject to the California Public Records Act, "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. Consultant's Confidential Information includes, without limitation, the software underlying the Software Services and all Documentation.*

XIII. Section 7.2 (Disputes; Default) is hereby deleted from this Agreement.

XIV. Section 7.7 (Termination Prior to Expiration of Term) is hereby deleted from this Agreement.

XV. Section 7.8 (Termination for Default of Consultant) is hereby renamed to "Termination" and amended in its entirety as follows:

"7.8 Termination for Default of Consultant.

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, the non-breaching Party may terminate this Agreement. Additionally, City may terminate this Agreement, upon providing at least ninety (90) days' notice prior to the annual anniversary date of the Agreement ("Anniversary Date") upon the occurrence of an Event of Nonappropriation as defined below. An "Event of Nonappropriation" occurs when prior to each Anniversary Date: a) City uses all efforts that are lawful and within City's official power, to secure the appropriate funds for the next year's fees, including indicating the Software Services serve an essential purpose to City; and b) City has not acquired, used or issued a proposal for similar products or services during this period or has not hired any third party or allowed its own employees to use other services in place of the Software Services.

Upon expiration or sooner termination of this Agreement for any reason, (a) City 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 City hereunder shall immediately cease, and (c) each party shall return to the other party or, at the other party's option, destroy all Confidential Information and other confidential information of the other party in its possession. Upon termination of this Agreement due to Consultant's default, and additionally, even if this Agreement is not terminated but due to a dispute between the Parties if City requests Consultant to cease performing further Services, any portions of the Contract Sum pre-paid by City for any year of the Term shall be refunded to City. Additionally, unless otherwise requested, upon the expiration or termination of this Agreement the Customer Data shall be deleted pursuant to Consultant's standard data deletion and retention practices. Upon written request, City may request deletion of Customer Data prior to the date of termination or expiration of this Agreement.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of *this* Section 7.87-2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), ~~and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.~~

EXHIBIT "C"
SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks at the following rates:

Part No.	Description	Unit Price	Qty	Price
OPGV-GABS-B6080M-RR-1Y	Budgeting and Planning Dashboards, Financial Integration, Online Budget Book, Open Town Hall, Reporting & Analytics, Story Builder Transparency, Workforce Planning Y1 period of performance: Effective Date to one year thereafter	\$60,743.90	1	\$60,743.90
OPGV-GGBP-U20-NR-0Y	Professional Services Deployment Start date: Effective Date until Term expires	\$44,538.75	1	\$44,538.75
SUBTOTAL:				\$105,282.65
OPGV-GABS-B6080M-RR-1Y	Budgeting and Planning Dashboards, Financial Integration, Online Budget Book, Open Town Hall, Reporting & Analytics, Story Builder Transparency, Workforce Planning Y2 period of performance: first anniversary of Effective Date to one year thereafter	\$60,743.90	1	\$60,743.90
OPGV-GABS-B6080M-RR-1Y	Budgeting and Planning Dashboards, Financial Integration, Online Budget Book, Open Town Hall, Reporting & Analytics, Story Builder Transparency, Workforce Planning Y3 period of performance: second anniversary of Effective Date to one year thereafter	\$63,780.56	1	\$63,780.56
OPGV-GABS-B6080M-RR-1Y	Budgeting and Planning Dashboards, Financial Integration, Online Budget Book, Open Town Hall, Reporting & Analytics, Story Builder Transparency, Workforce Planning Y4 period of performance: third anniversary of Effective Date to one year thereafter	\$68,039.16	1	\$68,039.16
OPGV-GABS-B6080M-RR-1Y	Budgeting and Planning Dashboards, Financial Integration, Online Budget Book, Open Town Hall, Reporting & Analytics, Story Builder Transparency, Workforce Planning Y5 period of performance: fourth anniversary of Effective Date to one year thereafter	\$70,317.19	1	\$70,317.19
TOTAL:				\$368,163.46

- II. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**

- III. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**
 - A.** Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
 - B.** Line items for all materials and equipment properly charged to the Services.
 - C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
 - D.** Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

- IV. The total compensation for the Services shall not exceed \$368,163.46 as provided in Section 2.1 of this Agreement.**

EXHIBIT “D”
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all services timely in accordance with the following schedule:

Consultant will work with City to develop the project schedule for all deliverables. An estimated project timeline for each year of the Term is below.

Budgeting & Planning Sample Timeline		Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9
Chart of Accounts										
Operating Budget										
Workforce Planning										
Online Budget Book										
Budget and Planning Suite	Department User Training									
Financial Integration										
GoLive Support	Hypercare									

II. Consultant shall deliver the following tangible work products to the City by the following dates.

As required in Exhibit A, Section I.

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.