



Agenda Item Executive Summary

AGENDA ITEM: OpenGov Asset Management System Purchase

BOARD OR COMMITTEE: Board

BUDGET IMPACT

Amount	\$ 87,156.39	Budgeted	\$ 90,000
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Fund: General **Corresponding Activity Measure:**

EXECUTIVE SUMMARY

In conjunction with many goals of the strategic plan, Village staff initiated a comprehensive evaluation of Enterprise Asset Management Systems (EAMS). Staff recommend the implementation of the OpenGov EAMS, the same platform utilized for code compliance, permits and licensing within the Village. The Master Service Agreement is attached for review and is for a 1-year term with 2 additional option years. The initial term includes the costs of implementation and training, so subsequent years will be approximately half the cost. Staff presented OpenGov during the budget proposal and it was included in the approved FY 25/26 budget.

Per the Board's request, staff reached out to see if we could get a bigger discount for the services, as the Village was already a user on the permitting side. OpenGov has offered to discount the cost of the three-years by 24%.

The Village of Bartlett owns and maintains approximately \$2 billion dollars of infrastructure, and with the implementation of OpenGov, staff will be able to realize operational improvements, improve service and transparency, and continue compliance with regulations and cost savings by performing more proactive and effective preventative maintenance.

RECOMMENDATION

Staff recommends entering into the Master Service Agreement for the purchase of the OpenGov Enterprise Asset Management System.

ATTACHMENTS (PLEASE LIST)

Memo, Resolution, Order Form, Master Service Agreement

RELATIONSHIP TO STRATEGIC PLAN GOAL

Strategic Plan Goal: Continue to enhance and improve efficiency of service delivery methods and approaches
Evaluate, budget and implement water, wastewater and stormwater infrastructure projects
Enhance Communication to stakeholders via an education campaign to increase residents' awareness of village services
Maintain checks and balances to ensure financial stewardship

Short Term (1-3 Years): Routine Complex

Long Term (3-5 Years): Routine Complex

ACTION REQUESTED

- For Discussion Only
- Resolution
- Ordinance
- Motion

MOTION: MOTION TO APPROVE RESOLUTION 32025-___, A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND OPENGOV, INC., FOR SOFTWARE SERVICES

Staff: Tyler Isham, Assistant Director of Public Works

Date: April 28, 2025

Memo

To: Paula Schumacher, Village Administrator
From: Tyler Isham, Assistant Director of Public Works
Subject: OpenGov Asset Management System Purchase
Date: April 28, 2025

BACKGROUND

As an objective of the strategic plan goal to “Continue to enhance and improve the efficiency of service delivery methods and approaches”, “evaluate, budget and implement water, wastewater and stormwater infrastructure projects”, and many others, Staff has researched different asset management software to assist the Village, and determined the most suitable to our needs and an easier implementation would be to utilize the OpenGov Asset Management System, the same platform utilized for permits, licensing and code compliance. This was requested and approved in the 25/26 fiscal year budget at the April 15th meeting.

In 2024, the Village initiated a comprehensive evaluation of Enterprise Asset Management Systems (EAMS), led by Public Works in collaboration with GIS and IT departments. While originally intended for Public Works, the scope expanded to include additional departments such as Fleet, GIS, and IT. A series of interviews and workshops helped identify critical system requirements for future implementation. The Village reached out to OpenGov after the department budget presentation, and they have offered to provide a 24% discount on the price for the software and implementation. The Order Form is attached and available for review.

Recent advances in mobile and web technologies have made EAMS more accessible and powerful. Key trends in adoption include:

- Aging infrastructure and deferred maintenance
- Increased demand for transparency and efficiency
- Budget constraints requiring smarter resource use

The proposed EAMS (OpenGov) is already adopted by peer municipalities such as Elk Grove Village, Hoffman Estates, St. Charles, Buffalo Grove, Wheeling, Kane County, McHenry County and many others. Peer feedback via meetings and correspondence confirms high satisfaction and measurable improvements.

DISCUSSION

The Village manages infrastructure valued at over \$2 billion, including streets, signs, lighting, vehicles, and utilities. Current tools do not provide adequate functionality for asset lifecycle tracking, preventative

maintenance, capital budgeting, or risk management. OpenGov will centralize data and support operations across departments by:

- Managing physical assets and associated costs
- Enhancing preventative and predictive maintenance
- Tracking labor, materials, and project lifecycles
- Facilitating inspections, warranties, and compliance
- Supporting capital planning and budgeting with accurate data

As stated during the budget presentation, there are several benefits to utilizing a system like OpenGov, such as:

Operational Improvements: efficiency gains within the department by consolidating different software into one, central location. Staff would be able to share and maintain consistency with information and enhance planning by improving maintenance scheduling, capital planning and using the software to make data-driven decisions of resource allocation.

Improved service and Transparency: integration with OpenGov enhances transparency and responsiveness by providing residents with instant updates on service requests (streetlight out, pothole, etc.) and will allow them to receive these real-time updates.

Stay Up to Date with Regulations: The system can automatically generate reports for regulatory agencies and support compliance with infrastructure inspections and permits, as well as monitor the department's progress in managing the asset lifecycles.

Implementing EAMS consolidates multiple existing software systems, reducing costs and saving staff time. Key financial and strategic advantages include:

- **Cost Avoidance**: Early detection of issues prevents costly reactive repairs and catastrophic failures.
- **Lifecycle Costing**: Enables better capital investment decisions by evaluating total cost of asset ownership.
- **Long-Term Value**: Extends asset life through informed maintenance and replacement planning.

Implementing OpenGov will significantly enhance asset oversight, interdepartmental collaboration, and service delivery to residents. It supports the Village's mission of maintaining a resilient infrastructure while providing excellent public service. Moving forward, staff will continue evaluating integrations and cost-saving opportunities during the system rollout. To complete this, a Master Service Agreement (MSA) is attached for review and will be entered into to begin the process.

RECOMMENDATION

Staff recommends entering into the Master Service Agreement with OpenGov Inc for the purchase of the Enterprise Asset Management System and implementation services.

MOTION

MOVE TO APPROVE RESOLUTION # 2025- _____, A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND OPENGOV, INC., FOR SOFTWARE SERVICES

RESOLUTION 2025 - _____

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND OPENGOV, INC., FOR SOFTWARE SERVICES

BE IT RESOLVED by the President and Board of Trustees of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, pursuant to its home rule authority, as follows:

SECTION ONE: **APPROVAL.** The OpenGov Master Services Agreement and corresponding Order Form between the Village of Bartlett and OpenGov, Inc., for software services (collectively, the "Agreement"), a copy of which is appended hereto as Exhibit A and expressly incorporated herein by this reference, is hereby approved.

SECTION TWO: **AUTHORIZATION.** The Village President is hereby authorized and directed to sign the Agreement on behalf of the Village of Bartlett.

SECTION THREE: **SEVERABILITY.** The various provisions of this Resolution are to be considered as severable, and of any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

SECTION FOUR: **REPEAL OF PRIOR RESOLUTIONS.** All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FIVE: **EFFECTIVE DATE.** This Resolution shall be in full force and effect upon passage and approval.

ROLL CALL VOTE:

AYES:

NAYS:

ABSENT:

PASSED:

APPROVED:

Daniel Gunsteen, Village President

ATTEST:

Lorna Giles, Village Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Resolution 2025 - _____ enacted on May 6, 2025, and approved on May 6, 2025, as the same appears from the official records of the Village of Bartlett.

Lorna Giles, Village Clerk

EXHIBIT A

OpenGov Master Services Agreement and Order Form



OpenGov Inc.
660 3rd Street, Suite 100
San Francisco, CA 94107
United States

Order Form Number: Q-07126
Created On: 04/25/2025
Order Form Expiration: 05/16/2025
Subscription Start Date: 05/01/2025
Subscription End Date: 04/30/2028

Prepared By: Elliott Pipkin
Email: epipkin@opengov.com
Contract Term: 36 Months

Customer Information:

Customer: Village of Bartlett, IL
Bill To/Ship To: 228 S. Main St.
Bartlett, Illinois
60103
United States
Contact Name: Daniel Dinges
Email: ddinges@bartlett.il.gov
Phone: 1 (630) 837-0811

Order Details:

Billing Frequency: Prepaid
Payment Terms: Net 30 Days

SOFTWARE SERVICES:

Product Name	Start Date	End Date	Annual Fee
811 Integration	05/01/2025	04/30/2026	\$5,319.27
Asset Management	05/01/2025	04/30/2026	\$19,858.61
Integration Toolkit	05/01/2025	04/30/2026	\$2,978.79
Transportation Domain	05/01/2025	04/30/2026	\$16,851.88
811 Integration	05/01/2026	04/30/2027	\$5,585.23
Asset Management	05/01/2026	04/30/2027	\$20,851.54
Integration Toolkit	05/01/2026	04/30/2027	\$3,127.73

Transportation Domain	05/01/2026	04/30/2027	\$17,694.47
811 Integration	05/01/2027	04/30/2028	\$5,864.50
Asset Management	05/01/2027	04/30/2028	\$21,894.12
Integration Toolkit	05/01/2027	04/30/2028	\$3,284.12
Transportation Domain	05/01/2027	04/30/2028	\$18,579.19

PROFESSIONAL SERVICES:

Product Name	Start Date	Description	Fee
Professional Services Deployment - Prepaid	05/01/2025	Custom Deployment from OpenGov Professional Services team. Scope-dependent.	\$42,147.84

Professional Services Total: \$42,147.84
Travel and Expense (Billed as incurred and not to exceed): \$2,400.00

Customer Billing/Service Periods:

Period:	Total:	
05/01/2025	\$87,156.39	
05/01/2026	\$47,258.97	<i>(Optional Renewal)</i>
05/01/2027	\$49,621.93	<i>(Optional Renewal)</i>

Order Form Legal Terms:

This Order Form incorporates the OpenGov Master Services Agreement ("MSA") attached here or available at <https://opengov.com/terms-of-service/master-services-agreement/>.

The "Agreement" between OpenGov and the entity identified above ("Customer") consists of the Order Form, MSA, and, if Professional Services are purchased, the Statement of Work.

Unless otherwise specified above, fees for the Software Services and Professional Services shall be due and payable, in advance, 30 days from receipt of the invoice.

By signing this Agreement, Customer acknowledges that it has reviewed, and agrees to be legally bound by the Agreement. Each party's acceptance of this Agreement is conditional upon the other's acceptance of the Agreement to the exclusion of all other terms

Village of Bartlett, IL:

Signature:

Name:

Title:

Date:

OpenGov, Inc.

Signature:

Name:

Title:

Date:

OpenGov Master Services Agreement

The parties to this Master Services Agreement (this “Agreement”) are OpenGov, Inc., a Delaware corporation (“OpenGov”), and the customer named in the signature block below (“Customer”). This Agreement, which becomes binding when the parties have signed it (the “Effective Date”), sets forth the terms under which Customer will be permitted to use OpenGov’s hosted software services and receive professional services.

1. Definitions

- 1.1. “Customer Data” means data that is provided by Customer to OpenGov pursuant to this Agreement (for example, by email or through Customer’s software systems of record). Customer Data does not include any confidential personally identifiable information.
- 1.2. “Documentation” means materials produced by OpenGov that provide information about OpenGov’s software products and systems.
- 1.3. “Intellectual Property Rights” means all intellectual property rights including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature.
- 1.4. “Order Form” means the document(s) separately executed by the parties or attached as an Exhibit, that specifies the Software Services that OpenGov will provide to Customer under this Agreement.
- 1.5. “Term” refers to the Initial Term defined in Section 6.1 plus all Renewal Terms defined in Section 6.2.

2. Software Services, Support, and Professional Services

- 2.1. **Software Services.** Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to provide the commercial-off-the-shelf software solutions identified in the applicable Order Form (“Software Services”). Software Services do not include any pre-release features, functionality, and/or software that Customer elects to use while they are in beta.
- 2.2. **Support and Service Levels.** Customer support is available by email to support@opengov.com or by using the chat messaging functionality of the Software Services, both of which are available during OpenGov’s standard business hours. Customer may report issues any time; however, OpenGov will address issues during business hours. OpenGov will provide support for the Software Services in accordance with the Support and Software Service Levels found at opengov.com/service-sla, as long as Customer is entitled to receive support under the applicable Order Form and this Agreement.

2.3. Professional Services

2.3.1. If OpenGov or its authorized independent contractors provides professional services to Customer, such as implementation services, then these professional services (“Professional Services”) will be described in an applicable statement of work (“SOW”) agreed to by the parties, which is incorporated by reference. Unless otherwise specified in the SOW, any pre-paid Professional Services must be utilized within one year from the Effective Date.

2.3.2. Relevant travel expenses are provided in the SOW. Any other travel expenses related to the performance of the Professional Services shall be pre-approved by and reimbursed by Customer.

3. Restrictions and Responsibilities

3.1. Restrictions. Customer may not use the Software Services in any manner or for any purpose other than as expressly permitted by the Agreement. In addition, Customer shall not, and shall not permit or enable any third party to: (a) use or access any of the Software Services to build a competitive product or service; (b) modify, disassemble, decompile, reverse engineer or otherwise make any derivative use of the Software Services (except to the extent applicable laws specifically prohibit such restriction); (c) sell, license, rent, lease, assign, distribute, display, host, disclose, outsource, copy or otherwise commercially exploit the Software Services; (d) perform or disclose any benchmarking or performance testing of the Software Services, including but not limited to load testing, or stress testing; (e) remove any proprietary notices included with the Software Services; (f) use the Software Services in violation of applicable law; or (g) transfer any confidential personally identifiable information to OpenGov or the Software Services platform.

3.2. Responsibilities. Customer shall be responsible for obtaining and maintaining computers and third-party software systems of record (such as Customer’s ERP systems) needed to connect to, access or otherwise use the Software Services. Customer also shall be responsible for: (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) all uses of Customer user accounts by any party other than OpenGov.

4. Intellectual Property Rights; License Grants; Access to Customer Data

4.1. Software Services. OpenGov owns all interests and Intellectual Property Rights in the Software Services. The look and feel of the Software Services, including any custom fonts, graphics and button icons, are the property of OpenGov. Customer may not copy, imitate, or use them, in whole or in part, without OpenGov’s prior written consent. Subject to Customer’s obligations under this Agreement, OpenGov

grants Customer a non-exclusive, royalty-free license during the Term to use the Software Services.

- 4.2. Customer Data. Customer Data and the Intellectual Property Rights therein belong to Customer. Customer grants OpenGov and its partners (such as hosting providers) a non-exclusive, royalty-free license to use, store, edit, and reformat Customer Data for the purpose of providing the Software Services. Customer further agrees that OpenGov and its partners may use aggregated, anonymized Customer Data for purposes of product enhancement, customer service, and data analysis. Insights gleaned from aggregated, anonymized Customer Data will belong to OpenGov.
- 4.3. Access to Customer Data. Customer may download Customer Data from the Software Services at any time during the Term, excluding during routine software maintenance periods.
- 4.4. Deletion of Customer Data. Unless otherwise requested pursuant to this Section 4.4, upon the termination of this Agreement, Customer Data shall be deleted pursuant to OpenGov's standard data deletion and retention practices, which is to delete Customer Data 45 days after termination or expiration of the Agreement. Upon written request, Customer may request deletion of Customer Data prior to the date of termination of this Agreement. Such a request must be addressed to "OpenGov Vice President, Customer Success" at OpenGov's address for notice in Section 10.2.
- 4.5. Feedback. "Feedback" means suggestions, comments, improvements, ideas, or other feedback or materials regarding the Software Services provided by Customer to OpenGov, including feedback provided through online developer community forums. Customer grants OpenGov a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use and incorporate Feedback into the Software Services and Documentation. OpenGov will exclusively own any improvements or modifications to the Software Services and Documentation based on or derived from any of Customer's Feedback including all Intellectual Property Rights in and to the improvements and modifications.

5. Confidentiality

- 5.1. "Confidential Information" means all confidential business, technical, and financial information of the disclosing party that is marked as "Confidential" or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the disclosure. OpenGov's Confidential Information includes, without limitation, the software underlying the Software Services, and all Documentation.
- 5.2. Confidential Information does not include: (a) data that Customer has previously released to the public; (b) data that Customer would be required to release to the public upon request under applicable federal, state, or local public records laws; (c)

Customer Data that Customer requests OpenGov make available to the public in conjunction with the Software Services; (d) information that becomes publicly known through no breach by either party; (e) information that was rightfully received by a party from a third party without restriction on use or disclosure; or (f) information independently developed by the Receiving Party without access to the Disclosing Party's Confidential Information.

- 5.3. Each party agrees to obtain prior written consent before disclosing any of the other party's Confidential Information. Each party further agrees to use the other's Confidential Information only in connection with this Agreement. Each party further agrees to protect the other party's Confidential Information using the measures that it employs with respect to its own Confidential Information of a similar nature, but in no event with less than reasonable care. If a party is required to disclose Confidential Information by law or court order, they must notify the other party in writing before making the disclosure to give the other party an opportunity to oppose or limit the disclosure.

6. Term and Termination

- 6.1. Initial Term. This Agreement begins on the Effective Date and ends on the date the subscription ends ("Initial Term"), according to the Order Form, unless sooner terminated pursuant to Section 6.3.
- 6.2. Renewal. Customer shall have the option to renew the Agreement for the additional periods specified in the Order Form ("Renewal Term"). In the event Customer does not wish to renew, this Agreement shall terminate at the end of the applicable Initial Term or Renewal Term.
- 6.3. Termination for Cause. If either party materially breaches any term of this Agreement and fails to cure such breach within 30 days after receiving written notice by the non-breaching party, the non-breaching party may terminate this Agreement.
- 6.4. Termination for Non-Appropriation. For any term after the first full year of this Agreement, Customer may terminate this Agreement if it does not appropriate funds to continue this Agreement in a future fiscal year by providing notice in writing no less than 30 days before the end of the then-current term. Such termination shall be effective upon the expiration of the then-current term. To invoke termination under this section, Customer must use good faith efforts to secure the appropriate funds for the next year's fees.
- 6.5. Effect of Termination. Upon termination of this Agreement pursuant to Section 6:
(a) Customer shall pay in full for all Software Services and Professional Services for the then-current annual term; however, and in the case of termination for cause, OpenGov shall issue any relevant refunds pursuant to Section 8.1, (b) OpenGov shall stop providing Software Services and Professional Services to Customer; and

(c) each party shall (at the other party's option) return or delete any of the other party's Confidential Information in its possession.

7. Payment of Fees

7.1. Fees; Invoicing; Payment; Expenses.

7.1.1. Fees. Fees for Software Services and for Professional Services are set forth in the applicable Order Form, and OpenGov will invoice Customer accordingly. Customer agrees to pay invoices in accordance with the Illinois Local Government Prompt Payment Act. Obligations to pay fees are non-cancelable, and payments are non-refundable.

7.1.2. Travel Expenses. OpenGov will invoice Customer for travel expenses provided in the SOW or Order Form as they are incurred. Customer shall pay all such valid invoices in accordance with the Local Government Prompt Payment Act. Receipts shall be provided for the travel expenses listed on the invoice.

7.2. Consequences of Non-Payment. If Customer fails to make any payments required under any Order Form or SOW, then in addition to any other rights OpenGov may have under this Agreement or applicable law, (a) Customer will owe a late interest penalty of the maximum rate permitted by the Local Government Prompt Payment Act (50 ILCS 505/4) and (b) If Customer's account remains delinquent (with respect to payment of an undisputed invoice) for 10 days after receipt of a delinquency notice from OpenGov, which may be provided via email to Customer's designated billing contact, OpenGov may temporarily suspend Customer's access to the Software Service for up to 90 days to pursue good faith negotiations before pursuing termination in accordance with Section 6.3. Customer will continue to incur and owe all applicable fees irrespective of any such service suspension based on such Customer's delinquency.

7.3. Taxes. All fees under this Agreement are exclusive of any applicable sales, value-added, use or other taxes ("Sales Taxes"). Customer is solely responsible for all Sales Taxes, not including taxes based solely on OpenGov's net income. If any Sales Taxes related to the fees under this Agreement are found at any time to be payable, the amount may be billed by OpenGov to, and shall be paid by, Customer. If Customer fails to pay any Sales Taxes, then Customer will be liable for any related penalties or interest and will indemnify OpenGov for any liability or expense incurred in connection with such Sales Taxes. In the event Customer or the transactions contemplated by the Agreement are exempt from Sales Taxes, Customer agrees to provide OpenGov, as evidence of such tax-exempt status, proper exemption certificates or other documentation acceptable to OpenGov.

8. Representations and Warranties; Disclaimer

8.1. By OpenGov.

8.1.1. General Warranty. OpenGov represents and warrants that it has all right and authority necessary to enter into and perform this Agreement.

8.1.2. Professional Services Warranty. OpenGov further represents and warrants that the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with the related SOW and generally prevailing industry standards. For any breach of the Professional Services warranty, OpenGov will re-perform the applicable services. If OpenGov is unable to re-perform such work as warranted, Customer will be entitled to recover all fees paid to OpenGov for the deficient work. Customer must give written notice of any claim under this warranty to OpenGov within 90 days of the completion of Professional Services pursuant to the applicable SOW to receive such warranty remedies.

8.1.3. Software Services Warranty. OpenGov further represents and warrants that for the Term, the Software Services will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software Services that have been used in a manner other than as set forth in this Agreement. OpenGov does not warrant that the Software Services will be uninterrupted or error-free. Customer must give written notice of any claim under this warranty to OpenGov within 90 days of Customer discovering the defect. For any breach of the Software Services warranty, OpenGov will repair or replace any nonconforming Software Services so that the affected portion of the Software Services operates as warranted. If OpenGov is unable to do so, Customer may terminate the license for such Software Services and will be entitled to recover all fees paid to OpenGov for the deficient Software Services.

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

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

9. Limitation of Liability

- 9.1. By Type. NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND A PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- 9.2. By Amount. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO OPENGOV FOR THE SOFTWARE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.
- 9.3. Limitation of Liability Exclusions. The limitations of liability set forth in Sections 9.1 and 9.2 above do not apply to, and each party accepts liability to the other for: (a) claims based on either party's intentional breach of its obligations set forth in Section 5 (Confidentiality), (b) claims arising out of fraud or willful misconduct by either party and (c) either party's infringement of the other party's Intellectual Property Rights.
- 9.4. No Limitation of Liability by Law. Because some jurisdictions do not allow liability or damages to be limited to the extent set forth above, some of the above limitations may not apply to Customer.

10. Miscellaneous

- 10.1. Logo Use. OpenGov shall have the right to use and display Customer's logos and trade names for marketing and promotional purposes in OpenGov's website and marketing materials, subject to Customer's trademark usage guidelines provided to OpenGov.
- 10.2. Notice. Ordinary day-to-day operational communications may be conducted by email, live chat or telephone. For notices required by the Agreement the parties must communicate more formally in a writing sent via USPS certified mail and via email. OpenGov's addresses for notice are: legal@opengov.com with a mailed copy to OpenGov, Inc., 660 3rd Street, Suite 100, San Francisco, CA 94107.

- 10.3. Anti-corruption. Neither OpenGov nor any of its employees or agents has offered or provided any illegal or improper payment, gift, or transfer of value in connection with this Agreement. The parties will promptly notify each other if they become aware of any violation of any applicable anti-corruption laws in connection with this Agreement.
- 10.4. Injunctive Relief. The parties acknowledge that any breach of the confidentiality provisions or the unauthorized use of a party's intellectual property may result in serious and irreparable injury to the aggrieved party for which damages may not adequately compensate the aggrieved party. The parties agree, therefore, that, in addition to any other remedy that the aggrieved party may have, it shall be entitled to seek equitable injunctive relief without being required to post a bond or other surety or to prove either actual damages or that damages would be an inadequate remedy.
- 10.5. Force Majeure. Neither party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of this Agreement, other than payment obligations, due to any act of god, act of governmental authority, or due to war, riot, labor difficulty, failure of performance by any third-party service, utilities, or equipment provider, or any other cause beyond the reasonable control of the party delayed or prevented from performing.
- 10.6. Severability; Waiver. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.
- 10.7. Survival. The following sections of this Agreement shall survive termination: Section 5 (Confidentiality), Section 7 (Payment of Fees), Section 4.4 (Deletion of Customer Data), Section 8.3 (Warranty Disclaimer), Section 9 (Limitation of Liability) and Section 10 (Miscellaneous).
- 10.8. Assignment. There are no third-party beneficiaries to this Agreement. Except as set forth in this Section 10.8, neither party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations to a third party without the other party's written consent, which consent may not be unreasonably withheld, conditioned, or delayed. Either party may assign, without such consent but upon written notice, its rights and obligations under this Agreement to its corporate affiliate or to any entity that acquires all or substantially all of its capital stock or its assets related to this Agreement, through purchase, merger, consolidation, or otherwise. Any other attempted assignment shall be void. This Agreement will benefit and bind permitted assigns and successors.

- 10.9. Independent Contractors. This Agreement does not create an agency, partnership, joint venture, or employment relationship, and neither party has any authority to bind the other.
- 10.10. Governing Law and Jurisdiction. This Agreement will be governed by the laws of Customer's jurisdiction, without regard to conflict of laws principles. The parties submit to personal jurisdiction and venue in the courts of Customer's jurisdiction.
- 10.11. Complete Agreement. OpenGov has made no other promises or representations to Customer other than those contained in this Agreement. Any additional or different terms in a purchase order or click-through agreement are expressly rejected by the Parties and are void. Any modification to this Agreement must be in writing and signed by an authorized representative of each party.

Village of Bartlett, IL

OpenGov, Inc.

Signature _____

Signature _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____