

**AMENDMENT NO. 6 TO THE SOFTWARE LICENSE AND SERVICES AGREEMENT  
BETWEEN SNOHOMISH COUNTY AND CARTEGRAPH SYSTEMS LLC.**

THIS AMENDMENT NO. 6 TO THE SOFTWARE LICENSE AND SERVICES AGREEMENT FOR AN ASSET MAINTENANCE MANAGEMENT SYSTEM (AMMS) (“Amendment No. 6”) is entered into by and between Snohomish County, a political subdivision of the State of Washington (“County”), and OpenGov, Inc., a Delaware corporation with a principal place of business at 6525 Crown Blvd #41340, San Jose, CA 95160 and duly licensed to conduct business in Washington State (“Contractor” or “OpenGov”).

**RECITALS**

A. Whereas, the County and Cartegraph Systems LLC entered into an Agreement executed on September 15, 2015, entitled Software License and Services Agreement (the “Agreement”); and

B. Whereas, the Agreement was amended on June 14, 2017 under Amendment No. 1, which extended the initial contract term through August 31, 2021; Amendment No. 2 on February 26, 2020, which added additional but related scope and budget; and Amendment No. 3 on August 26, 2021, which added five (5) additional one (1) year terms; and Amendment No. 4 on October 12, 2021, which added the Department of Conservation and Natural Resources to the Agreement; and Amendment No. 5 on July 14, 2022, which added the Airport to the Agreement; and

C. Whereas, OpenGov acquired Cartegraph Systems LLC; the acquisition was announced July 27, 2022 and completed on September 1, 2022; and

D. Whereas, County departments sometimes have a need for additional remote support including but not limited to training, configuration, reports, automations, dashboards, consultation, and imports; and

E. Whereas, OpenGov provides support subscriptions at a discounted price; and

F. Whereas, the County and OpenGov have negotiated an amendment to add a subscription for Orange Advantage support to the Agreement beginning January 1, 2024 through the remainder of the contract term; and

G. Whereas, the initial term for Orange Advantage support through August 31, 2024 shall be prorated; and

G. Whereas, in conjunction with that additional subscription, the parties have agreed to modify certain terms of the Master Agreement.

**AGREEMENT**

NOW, THEREFORE, the County and Contractor agree as follows:

1. Exhibit A-4 Orange Advantage Scope of Work is attached hereto and by this reference made a part of the Agreement.
2. Exhibit C-5 Orange Advantage Payment Schedule is attached hereto and by this reference

made part of the Agreement, as additional compensation for the additional work performed under Exhibit A-4 Orange Advantage Scope of Work.

3. The words "Contractor" and "Cartegraph" shall mean "OpenGov." wherever they appear in the Master Agreement, all Amendments, and all outstanding Work Orders.
4. Section 4. Software and Services License Grant is deleted in its entirety and replaced with the following:

**License Grant.** The Contractor hereby grants the County a nonexclusive nontransferable subscription license to use the Software and Documentation for the duration of the Master Agreement term.

5. Section 5. Term of Agreement is deleted in its entirety and replaced with the following:

**Term of Agreement.** The initial term of the Agreement shall commence upon execution and continue for five (5) year(s) and six (6) months from the date of Acceptance of Phase 1 Milestone "Testing Sign-Off- Complete" (per the Project Schedule, Exhibit A-2) ("Initial Term"), and may be extended by the County for five (5) additional one (1) year option terms by providing written notice subject to termination as provided in this Agreement.

The maximum term for this Agreement, consisting of the initial term and all option term(s), is ten and one half (10.5) years from Acceptance unless extended by written agreement signed by all parties.

Termination.

Termination by the County for Default. If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may terminate the Agreement if the Contractor has not cured following a thirty (30) day written notice to the Contractor sent certified mail, return receipt requested. If the County terminates the Agreement for default, the County may obtain performance of the work elsewhere, less any extra cost or damages to the County caused by or arising from such default(s), which shall be deducted from any money due or coming due to the Contractor. The termination of this Agreement by the County for default shall in no way relieve the Contractor from any of its obligations under this Agreement or as outlined in Exhibit F. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued as a Termination for Convenience.

Termination for Convenience. The County may terminate for convenience its subscription to an individual OpenGov System only if notice of termination is tendered before Acceptance of the System in question (or the applicable go-live date or similar milestone described in the applicable SOW or Work Order,

whichever is earliest). Notice of termination for this reason must be sent certified mail, return receipt requested, to the Contractor. Termination of more than one System for this reason requires more than one such notice. Termination of any System under this section will not affect the parties' obligations under this Agreement with respect to any other Systems or Services. With respect to Professional Services, County will be responsible for payment of any portion of the Services completed prior to Contractor's receipt of the notice of termination. With respect to the Software, County will be responsible for payment of any portion of the annual Software fee due and any payment made for Software shall be non-refundable.

Termination by the Contractor for Default. If the County violates any material term or condition of this Agreement or fails to fulfill in a timely and proper manner its obligations under this Agreement, then the Contractor may terminate the agreement if the County has not cured following a thirty (30) day written notice to the County sent certified mail, return receipt requested. The County will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected the Agreement may be terminated immediately by written notice from the Contractor to the County.

Termination for Non-Appropriation. In the event that sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County may terminate this contract as a matter of public convenience as provided herein and as specified in Exhibit F. The County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period, provided the County provides the Contractor written notice prior to the end of the current fiscal period that non-allocation of funds is probable and provides a Notice of Termination within 14 days after the end of the fiscal period.

Effect of Termination. The termination of this Agreement shall not affect the accrued rights of the County under any other section or paragraph of this Agreement or limit the rights and remedies of the County hereunder in any manner.

Suspension of Work. The County may, at any time, instruct the Contractor in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work, or a notice from the County of breach or termination under this Agreement.

6. Section 6. Acceptance Testing is hereby deleted in its entirety and replaced with the following:

**Acceptance Testing.**

The parties will agree to project milestones, acceptance criteria and a schedule for Acceptance testing in a Statement of Work or Order Form. In the event that the parties do not agree to any material term regarding Acceptance of the System or if such a term is not reduced to writing, then the provisions set forth in this Section 6 will control.

Within ten (10) business days of the Contractor providing notice to the County that

the System has been installed and County personnel have been trained in accordance with the Agreement, the County shall begin the Acceptance testing process at the County Site according to the Software Acceptance Plan.

The Acceptance testing shall include thirty (30) days of continuous operation of the System, per the contracted deliverables, without Material Defect in accordance with all Functional Specifications, Performance Standards, and Documentation in the County's fully implemented production environment.

If the County accepts the work, the County will send a notice of Acceptance to the Contractor.

If the County determines that the work is not acceptable, pursuant to the Statement of Work, the County shall notify the Contractor in writing and subsequently provide a written description of the deficiencies.

The Contractor shall either provide a detailed, written plan to achieve Acceptance, or make correction or replacements. Corrections or replacements to achieve Acceptance shall be made with no charge to the County. Should a change order be required due to a County-requested change in scope, additional charges may occur. The Contractor shall submit change order documentation clearly defining the County's non-acceptance as a change in scope and detail any additional charges required to affect the change.

Should both parties agree non-acceptance is a result of a change in scope, the County will either provide notice to proceed with the change order or re-evaluate Acceptance based on the existing scope of work. The parties shall mutually agree on a start date for beginning another Acceptance testing period.

Another thirty (30) day successful operation period shall follow any corrections, replacements or change orders. A third or additional Acceptance testing period may occur if mutually agreed to by the parties.

If the County accepts the System following a second or subsequent Acceptance testing period, the County will send a notice of Acceptance to the Contractor.

The County shall send written notice of Acceptance or non-Acceptance within five (5) business days of completing the 30-day Acceptance testing period. If the County notifies Cartegraph the work is not acceptable, the County shall subsequently provide a written description of the deficiencies.

If the Contractor does not correct or replace the unacceptable aspects of the contracted System deliverables, the County may declare a breach of the Agreement.

7. Section 10. Reproduction of Documentation and Object Code is hereby deleted in its entirety and replaced with the following:

**Reproduction of Documentation.**

The County shall have the right, at no additional charge, to reproduce for

compliance with its obligations under RCW chapter 42.56, and for its own internal use for the duration of the Initial Term and any option terms, all Documentation furnished by the Contractor, as Contractor may update it from time to time, pursuant to this Agreement regardless of whether such Documentation is copyrighted by the Contractor. All Copies of Documentation made by the County shall include any proprietary notice or stamp that has been affixed by the Contractor. All Documentation shall be in the English language.

8. Section 11. Warranty Provisions is hereby deleted in its entirety and replaced with the following:

**Warranty provisions.**

Unless otherwise extended or limited, the warranties and commitments contained in this Section shall remain in full force and effect throughout the term of this Agreement.

General Warranties. Contractor warrants that it owns all rights, title, and interest in and to the Software, or that in the case of any third party software that it has the right to grant a sublicense to use such third party software. This warranty coverage shall include any modifications made to the Software by the Contractor.

System. The Contractor represents and warrants to the County that the System shall function without Critical Defect, in accordance with the applicable Documentation.

Software Performance. The Contractor represents and warrants that for a period of 90 days from Acceptance of the System, the Software will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software that have been used in a manner other than as set forth in the Documentation and authorized under this Agreement. Contractor does not warrant that the Software will be uninterrupted or error-free. Contractor's entire liability for any breach of the foregoing warranty is to repair or replace any nonconforming Software so that the affected portion of the Software operates as warranted or, if Contractor is unable to do so, terminate the license for such Software and refund the pre-paid, unused portion of the fee for such Software.

Services. The Contractor represents and warrants to the County that it shall perform the Services and provide the Deliverables required by this Agreement in a workmanlike manner, in accordance with the related Statement of Work and generally prevailing industry standards. For any breach of the Services warranty, County's exclusive remedy, and Contractor's entire liability will be the re-performance of the applicable Services. If Contractor is unable to re-perform all such work as warranted, County will be entitled to recover all fees paid to Contractor for the deficient work. County must make any claim under this warranty to Contractor in writing within ninety (90) days of performance of such work in order to receive such warranty remedies.

Documentation. The Contractor represents and warrants to the County that it has provided to the County all Documentation for the Software and the System and that such Documentation is detailed and complete and accurately describes the

functional and operation characteristics of the software and the System. The Contractor further represents and warrants that it will provide to the County updated versions of all such Documentation when it provides updates. The warranty and commitments contained in this Section shall remain in full force and effect for as long as the County continues to receive Support and Maintenance Services from the Contractor.

**Compatibility.** The Contractor warrants that the initial Software will be compatible with the County's technical environment, including hardware, operating system(s), software applications, CPU's, and networks specified by the County in Request for Proposal RFP-14-14.

**Future Compatibility.** The Contractor warrants that all updates, upgrades, and revisions to the Software furnished hereunder will be implemented in such a manner as to maintain backward compatibility with the last version or release of the Standard Software furnished under the Agreement, so that such last version or release shall continue to be operable with the Software as updated, upgraded, or revised, in materially the same manner and with materially equivalent performance. Without limiting the foregoing, Contractor further warrants that future Support, Maintenance and other Services will not degrade the Software, cause a breach of any other warranty, or require the County to purchase new or additional hardware or software for continued operation of the Software or the System as long as the then current hardware is sufficient for the updates, upgrades and revisions to the Software hereunder.

**Software Obsolescence.** The Contractor acknowledges that the County is making a significant resource commitment in order to acquire the Software and that the County does not want to move involuntarily to a new system for the term of this agreement. Having acknowledged the foregoing, the Contractor represents and warrants to the County that it will continue to enhance the Software (meaning adding new features and functionality, in addition to ordinary course defect corrections), as long as the County continues to receive Subscription and Maintenance and Support Services from the Contractor.

**On-Premises Version.** Contractor will not require County to migrate to a cloud version of the Software during the term of this Agreement.

**Latest Versions.** Contractor warrants that all Software as delivered will be the most current release or version that the Contractor has made commercially available to its customers, unless the County, after being advised by the Contractor of the availability of a newer release or version, expressly elects to acquire and deploy and older one.

**Virus Warranty.** The Contractor warrants that the Software does not contain any malicious code, program or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), that could damage, destroy, or alter any computer program, firmware, or hardware or which could, in any manner, reveal damage, destroy, or alter any data or other information accessed through or processed by the Software in any manner. The Contractor shall immediately advise the County, in writing, upon reasonable suspicion or actual

knowledge that the Software may result in the harm described above. The Contractor shall indemnify and hold the County harmless from any damage resulting from the harm described above. This warranty shall survive the expiration or termination of this Agreement.

**Disabling or Restrictive Code.** Without limiting any other provision to the Agreement, the Contractor warrants that the Software does not contain and the Contractor will not introduce any code, date block, time-bomb, Trojan horse, encrypted software keys, back door, or remote disabling function that may restrict the County's use of or access to the Software or the System or related data or equipment, with the exception of a shutoff that can only be used in the event of County default for non-payment, the details of which are described in Exhibit E. The Contractor understands and agrees that the County's inability to use the Software or System or its related data or equipment will cause substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons. No limitation of liability, whether contractual or statutory, shall apply to a breach of warranty. This warranty shall survive the expiration or termination of this Agreement.

**Intellectual Property.** The Contractor represents and warrants to the County that the County's use of the Software does not and shall not infringe upon any United States patent, trademark, copyright, trade secret or other intellectual property, or proprietary right of any third party, and there is currently no actual or threatened suit against the Contractor by any third party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement.

**Ownership of County Data.** County Data shall be the property of the County and shall be delivered to the County or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of the contract. The County retains all rights to access all County Data for any purpose even in the event that this Agreement shall be terminated for any reason. The Contractor shall not use any means to prevent the County's access to County Data.

**Third Party Warranties and Indemnities.** For any third party Software provided by the Contractor to the County, Contractor hereby assigns to the County all end-user warranties and indemnities relating to such third party Software. To the extent that the Contractor is not permitted to assign any of such end-user warranties and indemnities through to the County, the Contractor shall enforce such warranties and indemnities on behalf of the County to the extent the Contractor is permitted to do so under the terms of the applicable third party agreements. This warranty shall survive the expiration or termination of this Agreement.

**Authority.** Each Party represents and warrants to the other that it has the right to enter into this Agreement. Contractor further represents and warrants that there are no outstanding assignments, grants, licenses, encumbrances, obligations, or agreements (whether written, oral, or implied) that are inconsistent with this Agreement and the rights granted or transferred herein. This warranty shall survive the expiration or termination of this Agreement.

Privacy. Contractor acknowledges that the County data may contain personal data, health data, and/or medical records data, the use of which data is subject to various Privacy Laws, including all state, federal, and international laws and regulations and state, federal, and national government agency orders and decrees to which the County may be subject ("Privacy Laws"), as well as certain restrictions imposed on the County data by the data subjects or other third party data providers. The Contractor agrees to strictly abide by all such restrictions pertaining to County Data, as they are promulgated and applied, currently and in the future. Furthermore, Contractor shall in good faith execute any and all agreements that the County is required to have the Contractor execute in order that the County may comply with any Privacy Laws. If the Contractor's use (whether directly or indirectly) of the County data is contrary to any Privacy Law, or contrary to any of the restrictions set forth in this Agreement, the County shall have the right to: (1) terminate this Agreement for cause if such breach has not been cured within five (5) days of receipt by the Contractor of written notice, and (2) pursue any other legal and equitable remedies.

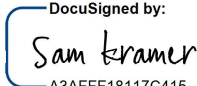
9. Section 28. Time is of the Essence is hereby deleted in its entirety.

10. Section 33. Source Code Escrow is hereby deleted in its entirety.

11. Except as expressly provided in this Amendment No. 6, the terms and conditions of the Master Agreement, as amended, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 6 to be duly executed as of the date of the last party to sign.

OpenGov, Inc.

By:  \_\_\_\_\_  
VP of Finance

SNOHOMISH COUNTY

By:  \_\_\_\_\_  
Snohomish County Executive Ken Klein  
Executive Director

<b>COUNCIL USE ONLY</b>	
Approved	<u>12/13/2023</u>
ECAF #	<u>2023-1064</u>
MOT/ORD	<u>Motion 23-453</u>



## **Exhibit A-4 Orange Advantage Scope of Work**

### **Orange Advantage Support Subscription**

Beginning January 1, 2024, Cartegraph shall provide sixty-four (64) hours of professional services annually to the County's Public Works Department, Department of Conservation and Natural Resources, and Airport. The deliverables will be defined, and agreed upon, by both County and Cartegraph's project managers. Deliverables may include, but will not be limited to the following:

- Training
- Configuration
- Reports
- Automations
- Dashboards
- Consultation
- Imports
- Other services as mutually agreed upon by both County and Cartegraph's project managers

Cartegraph shall provide all services remotely via audio, video, and web conferences unless otherwise noted. The Orange Advantage Scope of Work does not include Work Product.

### **Exclusions**

The following service items are not included in the Orange Advantage Scope of Work:

- Implementation of Cartegraph service for the County Airport.

## Exhibit C-5 Orange Advantage Payment Schedule

### Investment Summary

The County shall pay Cartegraph for the following for line items for an Orange Advantage support subscription:

Year 8 - 1/1/2024 - 8/31/2024 - Subscription

No.	Product	Code	Quantity	Price
1	Orange Advantage (64 Hours)	CGORNG	1	USD 12,333.33
<b>Term 8 - 1/1/2024 - 8/31/2024 - Subscription TOTAL:</b>				USD 12,333.33

Year 9 - 9/1/2024 - 8/31/2025 - Subscription

No.	Product	Code	Quantity	Price
1	Orange Advantage (96 Hours)	CGORNG	1	USD 18,500.00
<b>Term 4 - 9/1/2024 - 8/31/2025 - Subscription TOTAL:</b>				USD 18,50.00

Year 10 - 9/1/2025 - 8/31/2026 - Subscription

No.	Product	Code	Quantity	Price
1	Orange Advantage (96 Hours)	CGORNG	1	USD 18,500.00
<b>Term 5 - 9/1/2025 - 8/31/2026 - Subscription TOTAL:</b>				USD 18,500.00

Summary By Term - Includes Services & Subscriptions

Total Year 8	USD 12,333.33
Total Year 9	USD 18,500.00
Total Year 10	USD 18,500.00
<b>TOTAL</b>	<b>USD 49,333.33</b>

**Investment Notes:**

- Any applicable taxes are not included.
- Pricing does not include any applicable Esri ArcGIS licenses.

**Payment Terms and Conditions**

In consideration for the Solutions provided by Cartegraph to County, County agrees to pay Cartegraph the Fees as described below.

**DELIVERY**

Beginning January 1, 2024, Cartegraph will provide the Solution Subscriptions and/or Services as detailed in Exhibit C-5.

**SOLUTION SERVICES SCHEDULING**

Solution Services will be scheduled and delivered beginning January 1, 2024, which will be considered the County's notification for Cartegraph to proceed. County agrees to work with Cartegraph to schedule Services in a timely manner.

**SOLUTION SUBSCRIPTION INVOICING**

County shall be provided with the ability to access and use the Solution Subscription beginning January 1, 2024. The fee for Year 8 as described in this Exhibit C-5 shall be invoiced upon execution of Amendment No. 6.

Payment for Year 9 and Year 10 renewal terms will be due in annual installments prior to the anniversary of September 1<sup>st</sup> in the amount(s) that follow:

- Year 8: \$12,333.33
- Year 9: \$18,500.00
- Year 10: \$18,500.00

**PAYMENT TERMS**

- All payments are due Net 30 days from receipt of a correctly completed invoice.
- All payments are to be in U.S. Dollars.
- For customers in the United States, any applicable taxes required at the time of invoice will be determined based on the laws and regulations of the taxing authority(s) governing the County.