

BOF Citizen Correspondence - 4/18 Meeting

----- Original message -----

**From:** James D McNair III <jmcnair3@comcast.net>  
**Sent:** Monday, April 16, 2018 6:47 AM  
**To:** Robert Tarlov  
**Subject:** non appropriation clause of opengov software

Dear Chairman Tarlov,

Congratulations to the Board of Finance to secure getting the BOS to finally approve the opengov agreement. In reviewing their April 13, 2018 meeting package, the BOS made the contract revisions public. There is some public concern about clause 7.3

*Termination. If either party materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days after notice by the non-breaching party (ten (10) days in the case of nonpayment), the non-breaching party may terminate this Agreement immediately upon notice. Additionally, Customer 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 OPENGOV SOFTWARE SERVICES AGREEMENT Confidential OpenGov Rev. 2018.01 as defined below. An "Event of Nonappropriation" occurs when: a) prior to each Anniversary Date, Customer uses all efforts that are lawful and within Customer's official power, to secure the appropriate funds for the next year's Fees, including indicating the Software Services serve an essential purpose to Customer; and b) prior to each Anniversary Date, Customer has not acquired products or services or issued a request for proposals for similar products or services during this period which are similar to the Software Services or has not hired any third party or allowed its own employees to use other services in place of the Software Services. Customer shall permit OpenGov to assist with the efforts in a) above, including providing OpenGov with direct access to Customer's applicable appropriations team.*

Given our first referendums historically have a significant probability of failing, there is a concern the opengov funding will be first on the chopping block from the BOS. The question is if the BOF has the line item authority to ensure the opengov is not cut. Or at least not cut until there are multiple defeats or BOF decides to terminate funding. Can the BOF offer some insight how they plan to address that circumstance?

Thanks in advance of your time and cooperation,

James McNair  
Publisher ; Colchestercitizenswatch.com

From: Robert Tarlov <BOFChair@colchesterct.gov>  
Date: 4/16/18 1:38 PM (GMT-05:00)  
To: James D McNair III <jmcnair3@comcast.net>  
Subject: Re: non appropriation clause of opengov software

James,

That copy below is not the latest clause, and the latest clause may not be the final clause. Our attorney did not like the wording in the clause below which was added a week ago at the Town's request. That attorney rewrote it and I submitted that to OpenGov last Thursday. Open Gov came back with some changes to that on Friday morning and that is what is in the motion that is "subject to review by counsel".

This clause is not unique to the OpenGov agreement. A non-appropriation clause is standard on any contract or lease as we cannot obligate future budgets.

As you know the Board of Selectmen is not involved in creating or approving the budget. If a referendum does not pass, the budgets go back to the Board of Finance.

In creating the budget, it has always been my understanding that on the town budget, BOF has line item authority and that this comes from the General Statutes. Someone mentioned that we lost that authority in the revised Charter, but I see no changes in that area. There was a minor change in authority after the budgets are passed, as previously it needed BoF authority to transfer when salary items were involved. No longer.

If budgets go down, at some point Board of Finance might be forced to choose between this software and other services. In my opinion (as well as Moody's), both budgets are lean and any meaningful reductions needed to put another budget forward will require a reduction in services, which could include OpenGov. Whether that might occur after a first referendum, or a second or third, would be up to the members of the Board of Finance.

Rob Tarlov, Chairman, Board of Finance  
860-608-4293

**From:** jmcnair3 <jmcnair3@comcast.net>  
**Sent:** Monday, April 16, 2018 2:00 PM  
**To:** Robert Tarlov  
**Subject:** Re: non appropriation clause of opengov software

Thanks.

But most ask what agreement did BOS approve? The clause I sent was part of the BOS agenda packet.

From: Robert Tarlov <BOFChair@colchesterct.gov>  
Date: 4/16/18 4:53 PM (GMT-05:00)  
To: jmcnair3 <jmcnair3@comcast.net>  
Subject: Re: non appropriation clause of opengov software

The agenda package was posted on the web site at noon on Thursday.

I sent revised agreement with changes and a new non-appropriation clause, crafted by our attorney after his review, to OpenGov at 1:54 pm on Thursday.

OpenGov send t me back that agreement with their changes at 7:50 pm on Thursday.

I forwarded that to Art at 7:30 on Friday morning.

I think the meeting minutes and motion show that the agreement had been changed to reflect the changes that our attorney requested.

The attorney reviewed changes and accepted the agreement today.

Rob Tarlov, Chairman, Board of Finance  
860-608-4293

**From:** jmcnair3 <jmcnair3@comcast.net>  
**Sent:** Monday, April 16, 2018 5:31 PM  
**To:** Robert Tarlov  
**Subject:** Re: non appropriation clause of opengov software

Is the agreement going to be posted or can It get new clause? Thx

Sent from my Verizon, Samsung Galaxy smartphone

**From:** Robert Tarlov  
**Sent:** Tuesday, April 17, 2018 4:48 AM  
**To:** jmcnair3  
**Subject:** Re: non appropriation clause of opengov software

I am assuming the final clause is what I got Thursday night, but not absolutely sure yet. The attorney might have made some changes on the final review, but if he did, I understand, that OpenGov is OK with the final version and Art was to sign.

This was as of Thursday night:

*7.3 Termination. If either party materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days after notice by the non-breaching party (ten (10) days in the case of non-payment), the non-breaching party may terminate this Agreement immediately upon notice. Providing at least ten (10) days notice prior to the annual anniversary date of the Agreement ("Anniversary Date"). Customer may terminate this agreement if they are unable to pay such Fees as may lawfully be made from funds budgeted and appropriated so long as Customer has not acquired products or services or issued a request for proposals for similar products or services during this period which are similar to the Software Services.*

The final agreement, I would think is still in the First Selectmen's office. Once Art signs it, I would assume it goes to the Town Clerk's office.

Rob Tarlov, Chairman, Board of Finance  
860-608-4293

---

**From:** deee bouchard <deeedeee1963@yahoo.com>  
**Sent:** Monday, April 16, 2018 3:58 PM  
**To:** Robert Tarlov  
**Subject:** BOF Budget Workshops

Dear Rob,

I was trying to read/review minutes and the audio files of the BOF Budget Workshops held on April 9th and April 11th, but they have not been posted on-line.  
Can you please look into when these public meeting minutes & audio files will be posted for the public to review.

Thank you,  
Deanna Bouchard

[Sent from Yahoo Mail for iPhone](#)

**From:** Robert Tarlov  
**Sent:** Tuesday, April 17, 2018 4:45 AM  
**To:** deee bouchard  
**Subject:** Re: BOF Budget Workshops

Deanna,

The audio tapes are posted.

The 4/09 minutes were posted last night. The 4/11 minutes should be posted today.

Thanks for letting me know.

Rob

Rob Tarlov, Chairman, Board of Finance  
860-608-4293

---