



CITY OF NORTH PORT PROCUREMENT FORM COMPETITIVE EXEMPTIONS



Please indicate: Visa Purchase Purchase Order

Single Purchase (For current FY) Blanket Purchase (Ongoing purchases for current FY) Change Order Amendment

DEPARTMENT/DIVISION: City Manager / Communications

NAME OF REQUESTOR: Jason Bartolone

If Applicable: COMMISSION MEETING DATE: 11/8/22 AGENDA ITEM NUMBER: 22-3650

Section 2-403 - Exemptions of the City of North Port Procurement Code states that certain procurements shall not be subject to competitive requirements in the judgment of the Purchasing Agent.

A. Please describe all products and/or services to be procured under this exemption:

(If additional space is needed, please attach a separate memo)

Professional services and subscription fees for the redesign and improvements to the City's website.

B. Briefly explain why it is in the best interest of the City to procure under this exemption:

(If additional space is needed, please attach a separate memo)

Granicus, LLC is the vendor for the design, hosting and maintenance of the City's website, Legistar and other City platforms. As such, Granicus has intimate knowledge of the integration of all the City's other systems into the site, as well as an understanding of the City's operations as they are accessed and operate through their platform.

Granicus, LLC has offered the use of National Cooperative Purchasing Alliance (NCPA) Contract No. 01-115 for these services in Order No. Q-172994 under the Master Subscription Agreement for NCPA 01-0115.

C. Vendor Information

Vendor Name: Granicus, LLC Vendor Number: 7315

Address: 408 Saint Peter Street, Ste. 600, St. Paul, MN 55102

Contact: Bill Marshall Phone: 202-559-3037 Email: bill.marshall@granicus.com



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D. Please select one of the following:

Piggyback (Departments may utilize another municipality, county, or other governmental agency contract). The requesting department must provide the following documentation: copy of the solicitation and addendum, tabsheet/price-sheet, vendor submittal, entity approval (either stated in the solicitation or letter from vendor) agenda approval and contract as back-up documentation. Purchasing may request additional information if needed.

Name of Entity: _____ Contract Number: _____

Start Date: _____ End Date: _____

Is a fee required to utilize this contract? Yes No If yes, how much? _____
 Vendor-Paid City-Paid

State of Florida Contract: The requesting department must provide the following documentation: copy of the tab sheet/price sheet, agenda approval and contract ***Further price negotiations may be conducted with state-awarded vendor per F.S. 287.056(2) ***

Number: _____ Name/Category: _____

Start Date: _____ End Date: _____

Florida Sheriff's Association Bid: The requesting department must provide the following documentation: copy of the tab sheet/price sheet, agenda approval and contract

Number: _____ Name/Category: _____

Start Date: _____ End Date: _____

Joint Cooperative: The requesting department must provide the following documentation: copy of the solicitation and addendum, tab sheet/price sheet, vendor submittal, agenda approval and contract

Lead Entity: National Cooperative Purchasing Alliance _____ Contract Number: **01-115**

Start Date: **12/08/2020** End Date: **12/31/2023**

Code Exemption* (Specify):

*For list of exemptions, see page 3



CITY OF NORTH PORT PROCUREMENT FORM COMPETITIVE EXEMPTIONS



Sec. 2-403. - Exemptions.

- (a) (2) Procurement contracts between the city and nonprofit organizations, other governments or other public entities.
- (3) Procurement of:
- a. Dues and memberships in trade and professional organizations.
 - b. Subscriptions for periodicals, books, maps or training videos.
 - c. Real property, real estate brokering, or appraising.
 - d. Abstract of titles for real property; title insurance.
 - e. Works of art for public display or artistic services.
 - f. Advertising.
 - g. Medical, dental and other medically related services performed by a health care professional.
 - h. Room or board for social service clients.
 - i. Room and board for employees on city business.
 - j. Funeral related services.
 - k. Water, sewer, electrical, cable television or other utility services.
 - l. Personnel, including but not limited to part-time or temporary services.
 - m. Academic program reviews or lectures by individuals.
 - n. Auditing services and financial services.
 - o. Legal services.
 - p. Social services.
 - q. Lobbying services.
 - r. Goods, materials and equipment whose cost has been incorporated as part of a competitively bid project.

Vendor Tracking:



Check if Vendor Documents Current

YTD Dept Exp. (Inclusive): \$ 135,232.00

To be completed by Purchasing:

YTD City Wide Exp. (Inclusive): \$ _____



CITY OF NORTH PORT PROCUREMENT FORM COMPETITIVE EXEMPTIONS



PURCHASE DETAILS

Please provide the amount of the purchase for this product or service: \$ 135,232.00

Account # 001-0850-512-3105 Project # _____ Subtotal \$ 98,200.00
 Account # 001-0710-516-5400 Project # _____ Subtotal \$ 37,032.00
 Account # _____ Project # _____ Subtotal \$ _____
 Account # _____ Project # _____ Subtotal \$ _____

Line Item No.	Description	Unit of Measure	Quantity	Unit Price	Extended Price
1	Website Improvements: Government Experience Cloud (SERVE) Set-up, Configuration, Training	LS	98,200.00	1.00	98,200.00
2	Annual Subscription: Government Experience Cloud (SERVE)	EA	37,032.00	1.00	37,032.00
Shipping (FOB Destination)					
Total					135,232.00

Attach Additional Pages if Necessary

I approve the competitive exemption procurement(s) as requested

herein: Requesting Department Director: See CM Signature below Date: _____

Budget Administrator: _____ Date: _____

Purchasing: _____ Date: _____

Finance Director (If applicable): _____ Date: _____

Assistant City Manager (If applicable): N/A Date: _____

City Manager (If applicable): Jerome Fletcher Date: _____

Digitally signed by Jerome Fletcher
DN: DC=northport, DC=city, OU=Departments, OU=CityManager, CN=Jerome Fletcher, E=fletcher@cityofnorthport.com
Reason: I am the author of this document
Location: your signing location here
Date: 2022.10.27 11:06:02-0400
Print PDF Release Version: 11.1.0

Print Form **Clear All Fields**



408 Saint Peter Street, Suite 600
Saint Paul, MN 55102
United States

THIS IS NOT AN INVOICE

Order Form
Prepared for
North Port, FL

Procurement Vehicle: NCPA (01-115) In Support of: North Port, FL

ORDER DETAILS

Prepared By: Bill Marshall
Phone: (202) 559-3037
Email: bill.marshall@granicus.com
Order #: Q-172994
Prepared On: 08/18/2022
Expires On: 11/11/2022

ORDER TERMS

Currency: USD
Payment Terms: Net 45 (Payments for subscriptions are due at the beginning of the period of performance.)
Current Billing Term End Date: 09/30/2023
Period of Performance: The Agreement will begin on 11/09/2022 and will continue through the end of the then current billing term, and will continue for an additional 48 months thereafter.

The subscription includes the following domain(s) and subdomain(s):
<https://www.cityofnorthport.com/>

Communications Cloud Tier:

for up to 99999 potential users.



PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

Terminating Subscriptions		
Solution	Quantity/Unit	Prior Annual Fee
govAccess for Traditional visionLive	0 Each	\$10,007.29
SUBTOTAL:		\$10,007.29

Upon 11/09/2022, annual fees for the terminating subscription(s) shall cease. Any pre-paid fees for the terminating subscription(s) after 11/09/2022 will be prorated from 11/09/2022 to the end of the Client's then-current billing term, credited, and such credit applied to the annual fees for new subscriptions.

Client will continue to have access to and use the terminating solution until the new subscription(s) is/are deployed.

Upon the deployment of Client's new solution as determined at Granicus' sole discretion, Granicus shall remove access to the Client's terminating subscription(s).

One-Time Fees			
Solution	Billing Frequency	Quantity/Unit	One-Time Fee
Government Experience Cloud (SERVE) – Set-up, Configuration, & Training	Up Front	1 Each	\$98,200.00
SUBTOTAL:			\$98,200.00

New Subscription Fees			
Solution	Billing Frequency	Quantity/Unit	Annual Fee
Government Experience Cloud (SERVE)	Annual	1 Each	\$37,032.00
SUBTOTAL:			\$37,032.00

Please note, annual fees for new subscriptions will be prorated from 11/09/2022 to align to Client's then-current billing term. Exceptions include Recurring Captioning Services, SMS, and Targeted Messages.

FUTURE YEAR PRICING

Solution(s)	Period of Performance			
	Year 2	Year 3	Year 4	Year 5
Government Experience Cloud (SERVE)	\$39,624.24	\$42,397.94	\$45,365.79	\$48,541.40

PRODUCT DESCRIPTIONS

Government Experience Cloud (SERVE) Inclusions

The Cloud is a Software-as-a-Service (SaaS) solution that enables government organizations to connect with more people. By leveraging the Cloud, the client will be able to utilize a number of different outreach mediums, including email, SMS/text messages, RSS feeds, and social media integration to connect with its target audiences. The Cloud includes:

- Unlimited email sends with industry-leading delivery and management of all bounces
- Support to upload and migrate existing email lists
- Access to participate in the GovDelivery Network
- Ability to send mass notifications to multiple devices
- 24/7 system monitoring, email and phone support during business hours, auto-response to inbound messages from end users, and emergency support
- Text-to-subscribe functionality
- Up to 2 Web-hosted training sessions annually
- Up to 50 administrators
- Up to 1 GovDelivery account(s)
- Access to a complete archive of all data created by the client for 18 months (rolling)
- Up to 3 hours of message template and integration development
- Up to 100 subscription topics
- Up to 100,000 SMS/text messages per year from a shared short code within the United States*

*International numbers are not supported. SMS/text messages not used in the period of performance will not carry over to the following year.

Government Experience Cloud (SERVE) Inclusions

The Cloud is a Software-as-a-Service (SaaS) solution that enables government organizations to connect with more people. By leveraging the Cloud, the client will be able to utilize a number of different outreach mediums, including email, SMS/text messages, RSS feeds, and social media integration to connect with its target audiences. The Cloud setup and configuration includes:

- The implementation consultant will be assigned to Recipient during the setup process for up to 90 days
- Unlimited access to Web-based recorded trainings and online help for administrations on the following topics: standard Messaging, the GovDelivery Network, Automation, Mobile and Analytics
- Up to 2 Web-hosted training sessions that must be used within 180 days of Kickoff
- Up to 5 hours of message template and integration development that must be used within 90 days of Kickoff

Provides a balance of Product knowledge and industry best practices to a specific audience. Sessions are delivered by product experts via videoconferencing technology.

The Advanced Cloud Module gives government communicators better insight into the needs of citizens and improves their ability to enhance online transactions, promote behavior change through public awareness, and improve citizen engagement. The Advanced Cloud Module adds streamlined marketing capabilities that incorporate greater degrees of audience segmentation, personalization, message testing, and mobile engagement. The Advanced Cloud Module includes:

- Dynamic segmentation around bulletins, engagement, and question (e.g. zip code)
- Canned campaigns for re-engagement and new subscriber onboarding
- Testing: Simple (A/B, 10/10/80)

A subscription for the Advanced Cloud Module is dependent on an active license for the GovDelivery Communications Cloud.

Government Experience Cloud (SERVE) Inclusions

Implementation includes:

- Access to an implementation consultant for up to 90 days
- Access to online training documentation around advanced account functions and capabilities
- Up to 2 Web-hosted training sessions within 180 days of kickoff
- Up to 5 hours of message template and integration development within 90 days of kickoff

The implementation process takes four to six weeks, on average, depending on the availability of stakeholders and/or current GovDelivery Communications Cloud experience.

Provides a balance of Product knowledge and industry best practices to a specific audience. Sessions are delivered by product experts via videoconferencing technology.

The OpenCities platform allows you to launch modern, easy to use websites that evolve to put the needs of your community at the centre. The SaaS License includes:- All OpenCities out of the box functionality (excluding optional/premium modules priced separately)- Platform setup and full project management- Managed cloud hosting via Microsoft AzureGov- Ongoing security updates- Ongoing product updates and enhancements- WCAG AA Accessibility maintained perpetually- 99.9% up-time guarantee and 24/7 support for Priority 1 issues (per SLA)- Comprehensive SLA and Support Ticketing systemSee full service agreement for details.

Government Experience Cloud (SERVE) Inclusions

Updating your website's Information Architecture (IA) is key to improving the overall user experience. Our IA process involves website data analysis, user research and user testing, and other best-practice methodologies that serve to seamlessly bridge your goals with user needs. This effort will result in a strategic and scalable approach to content priorities, a development of a navigation structure for your new site, and the creation of an actionable implementation strategy for your existing content. Activities include:

- Kickoff: Align on goals, expectations, timelines, and deliverables
- Data Audit: We'll review surveys, Google Analytics, and any other piece of data to get a sense of how the website is currently utilized, what the user priorities are, and how the current content is meeting their needs.
- User engagement: Conduct up to one (1) card sort with up to forty (40) external users OR up to one (1) tree test with up to forty (40) external users

Deliverable:

- Recommendations & Implementation Report. Includes new Information Architecture map, connecting individual pages to their new categories and location in the site tree Assumptions:
- Covers analysis and IA for sites with up to 2,500 URLs.
- Three-month period of performance to be completed within the contract period.
- Does NOT include a content audit.
- Does NOT include content creation.
- Client sources external users for testing. • Does NOT include document review.

This is a design package tailored for unique city requirements. Requires scoping by implementation.

OpenCities training session for up to 20 people, covering one of these topics: 1. Site Admin training 2. Content Publisher Training3. Power Publisher training

Installation and setup of OpenCities SaaS, including an assigned Project Manager during the implementation phase.

Setup and configuration of OpenCities Imperva Security License

Government Experience Cloud (SERVE) Inclusions

Digital transformation is more than just creating PDFs as online services. It's about creating a digital experience that starts long before the user gets to the online form.

GXG experience strategists will help your team think about your top services through a user experience lens, focusing on journey mapping, user stories, content improvement, user testing, and smart forms that include workflows and smart logic, learning how to support an improved user experience from the start. The Digital Services Academy lays the foundation for better government websites, empowered teams, and engaged users. Activities include:

- Insights Session. One (1) 30-min virtual meeting prior to the DSA with GXG and client to align on goals, dates, participants, and services.
- Services review. Following the Insights Session, GXG will review each service selected to validate workshop feasibility.
- Digital Services Academy. At least one GXG team member will be virtual with your team to facilitate up to three (3), 2.5-hour workshops over the course of one week, on Monday, Wednesday and Friday, for example.

Assumptions:

- Sold as Firm Fixed Price (not Time & Materials).
- Assumes a 1-month level of effort to be completed within the contract period.
- Assumes the client has manual PDFs or use another digital tool.
- No more than 20 participants for each session. Each participant should attend all three sessions.
- NOT for clients that mainly use third-party applications for all services.
- NOT for clients that have a centralized content creation model.

Government Experience Cloud (SERVE) Inclusions

Content is the most important element of a website. We believe in using best practices to standardize and promote consistency. There's no better time to completely revamp your content than when you're updating your website and moving to a new CMS. We'll teach your team how to undeniably sound like the agency and focus on the user, helping you mature your communications and services over time. Services include:

- Workshop kick off: align on goals, dates, and participants / services
- Services review: review every service selected to confirm workshop feasibility
- One 3-hour workshop (remote)

Sold as Firm Fixed Price (not Time & Materials). Assumes a 2-week level of effort to be completed within the contract period. Assumes the client has manual PDFs or use another digital tool. NOT for clients that mainly use third party applications for all services. NOT for clients that have a centralized content creation model (1-2 Content Authors/Publishers for the entire website)

Client understands and agrees that completion of website design services provided herein fulfills Granicus' obligation to deliver a basic graphic redesign of the website.

Government Experience Cloud is a purpose-built software-as-a-service (SaaS) solution that helps local government transform the resident experience to better connect, engage, and serve constituents by increasing workflow efficiencies and maximizing existing technology investments, such as integrations into traditional back-office enterprise solutions. The SERVE edition is an outcome focused solution that reduces costs by prioritizing moving expensive interactions with government - calls, in-person visits and downloadable PDFs - to easy-to-use self service interactions backed by data.

Government Experience Cloud (SERVE) Inclusions

Content Migration Delivery: Once we have agreed upon a strategy and a timeline, our team of migrators will work to deliver your project by the designated deadline. At the end, you will receive:

- Access to the system with all agreed pages moved over
- A recap document that details anything your team should know about what we migrated as well as recommendations

Client Responsibilities:

- Completion of an AIM Spreadsheet (provided by OpenCities) listing all pages in hierarchical order classified as either Archive, Improve or Migrate (or purchase the Content Rationalization package add on)
- Identify individual or team with the ability to clarify questions and promptly make decisions about migration questions
- Provide a desired folder structure for files (if contracted)

What's IN scope?

- 400 pages of content migrated and audited/corrected to align with ADA standards OR 600 pages of content migrated as it exists today and is managed within your current CMS
- Documents/images (if contracted)

What's NOT in scope?

- Anything within an iFrame or embedded HTML content
- Dynamic content pulled from other systems
- Content not managed within CMS
- JavaScript, CSS, or other custom code
- Interactive web forms and/or single page applications
- Written content within image/diagram
- Content contained inside a PDF file
- Documents and images on pages marked "Archive"

Government Experience Cloud (SERVE) Inclusions

OpenForms training session for up to 20 people.

GRANICUS ADVANCED NETWORK AND SUBSCRIBER INFORMATION

- **Granicus Communications Suite Subscriber Information.**
 - Data provided by the Client and contact information gathered through the Client's own web properties or activities will remain the property of the Client ('Direct Subscriber'), including any and all personally identifiable information (PII). Granicus will not release the data without the express written permission of the Client, unless required by law.
 - Granicus shall: (i) not disclose the Client's data except to any third parties as necessary to operate the Granicus Products and Services (provided that the Client hereby grants to Granicus a perpetual, non-cancelable, worldwide, non-exclusive license to utilize any data, on an anonymous or aggregate basis only, that arises from the use of the Granicus Products by the Client, whether disclosed on, subsequent to, or prior to the Effective Date, to improve the functionality of the Granicus Products and any other legitimate business purpose, including the right to sublicense such data to third parties, subject to all legal restrictions regarding the use and disclosure of such information).
- **Data obtained through the Granicus Advanced Network.**
 - Granicus offers a SaaS product, known as the Communications Cloud, that offers Direct Subscribers recommendations to subscribe to other Granicus Client's digital communication (the 'Advanced Network'). When a Direct Subscriber signs up through one of the recommendations of the Advanced Network, that subscriber is a 'Network Subscriber' to the agency it subscribed to through the Advanced Network.
 - Network Subscribers are available for use while the Client is under an active subscription with Granicus. Network Subscribers will not transfer to the Client upon termination of any Granicus Order, SOW, or Exhibit. The Client shall not use or transfer any of the Network Subscribers after termination of its Order, SOW, or Exhibit placed under this agreement. All information related to Network Subscribers must be destroyed by the Client within 15 calendar days of the Order, SOW, or Exhibit placed under this agreement terminating.
 - Opt-In. During the last 10 calendar days of the Client's subscription, the Client may send an opt-in email to Network Subscribers that shall include an explanation of the Client's relationship with Granicus terminating and that the Network Subscribers may visit the Client's website to subscribe to further updates from the Client in the future. Any Network Subscriber that does not opt-in will not be transferred with the subscriber list provided to the Client upon termination.

UPDATES TO SHARED SHORT CODES FOR SMS/TEXT MESSAGING (US CLIENTS ONLY):

- Granicus will be migrating all clients with SMS/Text Messaging Solutions using a shared short code option to a unique standard toll-free number within the United States (International numbers not supported). Short Codes are recommended for Text-to-Subscribe functionalities, if enabled where available, for an additional fee.
- Client must have explicit opt-in for all destinations sent to and adhere to all CTIA guidelines for the duration of its use.



TERMS & CONDITIONS

- The terms and Conditions of the Agreement 01-115 effective December 8th 2020 between Granicus and NCPA govern this Quote and are incorporated herein by reference, including the Master Agreement and all exhibits thereto.
- Upon the effective date, this Agreement shall supersede and replace any previous agreement between the parties for the Terminating and/or Existing Subscriptions listed herein. All such prior agreements between the parties are hereby void and of no force and effect.
- This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of North Port, FL to provide applicable exemption certificate(s).
- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- Client will be invoiced for use of any product or service measured or capped by volume or amount of usage that exceeds the permitted amount set forth in this Quote at the same cost or rate set forth herein.
- **Updates to Shared Short Codes for SMS/Text Messaging:**
Granicus will be migrating all clients with SMS/Text Messaging Solutions using a shared short code option to a unique standard toll-free number within the United States (International numbers not supported). Short Codes are recommended for Text-to-Subscribe functionalities, if enabled where available, for an additional fee. Client must have explicit opt-in for all destinations sent to and adhere to all CTIA guidelines for the duration of its use.
- Notwithstanding anything to the contrary, Granicus reserves the right to adjust pricing at any renewal in which the volume has changed from the prior term without regard to the prior term's per-unit pricing.



Order Form
North Port, FL

BILLING INFORMATION

Billing Contact:		Purchase Order Required?	[] - No [] - Yes
Billing Address:		PO Number: <i>If PO required</i>	
Billing Email:		Billing Phone:	

If submitting a Purchase Order, please include the following language:

The pricing, terms, and conditions of quote Q-172994 dated 08/18/2022 are incorporated into this Purchase Order by reference and shall take precedence over any terms and conditions included in this Purchase Order.

AGREEMENT AND ACCEPTANCE

By signing this document, the undersigned certifies they have authority to enter the agreement. The undersigned also understands the services and terms.

North Port, FL

Signature:	
Name:	
Title:	
Date:	

Granicus, LLC

Signature:	
Name:	Brendan Stierman
Title:	Manager, Contracts
Date:	10/21/2022

City of North Port, Florida – American Rescue Plan Act (ARPA) Contract Addendum

Notice: The contract or purchase order to which this addendum is attached is made using federal assistance provided to the City of North Port, Florida by the US Department of Treasury under the American Rescue Plan Act (“ARPA”), Sections 602(b) and 603(b) of the Social Security Act, Pub. L. No. 117-2 (March 11, 2021).

The following terms and conditions apply to you, the contractor or vendor, as a contractor of the City of North Port, according to ARPA and its implementing regulations as established by the Treasury Department.

1. Equal Opportunity. Contractor shall comply with the following federal Executive Orders (“EO”): EO 11246, “Equal Employment Opportunity,” as amended by EO 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Minority and Women Business Enterprises (if applicable to this Contract) Contractor hereby agrees to comply with the following when applicable: The requirements of EO 11625 and EO 12432 (concerning Minority Business Enterprise), and EO 12138 (concerning Women’s Business Enterprise), **when applicable.** Accordingly, the Contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- a. Including qualified women’s business enterprises and small and minority businesses on solicitation lists;
- b. Assuring that women’s enterprises and small and minority businesses are solicited whenever they are potential sources;
- c. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business, and women’s business enterprises;
- d. Where the requirement permits, establishing delivery schedules which will encourage participation by women’s business enterprises and small and minority business;
- e. Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce; and
- f. If any subcontracts are to be let, requiring the prime Contractor to take the affirmative steps in a through e above.

For the purposes of these requirements, Contractor may rely upon business classifications made by (i) the Small Business Enterprise Program of Pinellas County, (ii) the Office of Supplier Diversity of the State of Florida, or (iii) a similar government program.

2. Suspension and Debarment. (applies to all purchases.)

(A) This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Contractor is required to verify that none of Contractor’s principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

(B) The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(C) This certification is a material representation of fact relied upon by the City of North Port. If it is later determined that the contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(D) The Contractor agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended. (Applies to all purchases.)

Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Purchases over \$100,000 - Contractors must sign the certification on the last page of this addendum

4. Access to Records. (applies to all purchases.)

(A) The Contractor agrees to provide the City of North Port, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means or to copy excerpts and transcriptions as reasonably needed, and agrees to cooperate with all such requests.

(B) The Contractor agrees to provide the Treasury Department or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(C) No language in this contract is intended to prohibit audits or internal reviews by the Treasury Department or the Comptroller General of the United States.

5. Rights to Inventions Made Under a Contract or Agreement. Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any applicable implementing regulations.

6. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333) (applies only to purchases over \$100,000, when laborers or mechanics are used.) Where applicable, all contracts in excess of \$100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704 of the Contract Work Hours and Safety Standards Act, as

supplemented by Department of Labor regulations (29 CFR part 5). Under Section 3702 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

7. Clean Air Act & Federal Water Pollution Control Act (applies to purchases of more than \$150,000.)

(A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(B) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(C) The Contractor agrees to report each violation of the Clean Air Act and the Water Pollution Control Act to the City of North Port and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(D) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

8. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (Huawei and ZTE)

Contractor is prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by **Huawei Technologies Company or ZTE Corporation** (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

9. Buy USA - Domestic Preference for Certain Procurements Using Federal Funds. Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

10. Procurement of Recovered Materials: (applies only if the work involves the use of materials)

(A) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

(B) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(C) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

11. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

12. Increasing Seat Belt Use in the United States. Pursuant to EO 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for your employees when operating company-owned, rented or personally owned vehicles.

13. Reducing Text Messaging While Driving. Pursuant to EO 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and establish workplace safety policies to decrease accidents caused by distracted drivers.

- This form is required only for purchases of more than \$100,000 -

31 CFR Part 21 – Restrictions on Lobbying - CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of their knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL](#), "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Ch. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Date:

Signature of Contractor’s authorized official

DocuSigned by:

 0E342585D3714DF...

10/21/2022

(Print name of person signing above)

Brendan Stierman

(Print title of person signing above)

Contracts Manager



Master Subscription Agreement

This Master Subscription Agreement (“**Agreement**”) is made by and between the party procuring Granicus Products under NCPA 01-115 (“**Client**”) and Granicus, LLC (“**Granicus**”).

1. Ordering and Scope

- 1.1. Ordering Granicus Products.** The parties will enter into a binding order, proposal or purchase document (each, an “**Order**”), setting forth the products and services made available to Client pursuant to NCPA 01-115 and this Agreement which may include online or cloud subscription services, on-premise software, or required equipment or hardware components (the “**Granicus Products**”), and may enter into statements of work (“**SOW**”) setting forth corresponding professional or consulting services related to the Granicus Products. The parties may execute one or more Orders or SOWs under this Agreement, each Order or SOW becoming effective when executed by both parties or upon delivery and acceptance of purchase orders referencing the Order or SOW and this Agreement. Each Order and SOW will constitute a separate agreement between the parties related to the sale and purchase of Granicus Products. Each Order or SOW will generally include an itemized list of the Granicus Products as well as the Order Term for such Granicus Products.
- 1.2. Support.** Basic support and maintenance services provided to Client for Granicus Products (“**Support**”) is included in the fees paid for the Granicus Product subscription or maintenance during the Term. Granicus may update its Support obligations under this Agreement, so long as the level of Support agreed to by the parties is not materially diminished due to such modification.
- 1.3. Future Functionality.** Client acknowledges that any purchase hereunder is not contingent on the delivery of any future functionality or features.
- 1.4. Cooperative Purchasing.** To the extent permitted by law the terms of this Agreement may be extended for use by other municipalities, school districts and governmental agencies. Orders and SOWs entered into by such third parties are independent agreements between the third party and Granicus and do not affect this Agreement or any Order or SOW between Granicus and Client.

2. Use Rights

- 2.1. License.** Subject to the terms and conditions of this Agreement, Granicus hereby grants to Client a non-exclusive, non-transferable right and license to use the Granicus Products for its internal purposes during the Term, subject to any additional rights and restrictions set forth in the applicable Order or SOW. This grant of rights is not a sale of the Granicus Products. Granicus and its third-party providers reserve all rights not expressly granted to Client in this Agreement. In addition to the license terms set forth in this Agreement, certain third-party products may be subject to additional terms and conditions, set forth in Exhibit A, below, which will apply to such third-party products in addition to the terms of this Agreement.
- 2.2. Use of Granicus Products.**
 - 2.2.1. Data Sources.** Client may only upload data related to individuals that originates with or is owned by Client. Data purchased from third parties may not be used with the Granicus Products without Granicus’ prior written consent and list cleansing services provided by Granicus for an additional fee. Granicus will not sell, use, or disclose any personal information provided by Client for any purpose other than performing services subject to this Agreement.

- 2.2.2. Passwords.** Passwords are not transferable to any third party. Client is responsible for keeping all passwords secure and all use of the Granicus Products accessed through Client's passwords.
- 2.2.3. Third Party Contractors.** Client may permit its third party contractors to access and use the Granicus Products solely on behalf of, and for the benefit of, Client, so long as: (i) contractor agrees to comply fully with this Agreement as if it were Client; (ii) Client remains responsible for each contractor's compliance with this Agreement and any breach thereof; and (iii) all use of the Granicus Products and any metered or transactions includes licenses and use allocated to contractors. All rights granted to any contractor terminate immediately upon conclusion of the services rendered to Client that gives rise to such right. Upon termination of such rights, contractor must immediately cease all use of the Granicus Products, un-install and destroy all confidential or proprietary Granicus information in its possession, and Client must certify its compliance with this section in writing upon Granicus' request.
- 2.2.4. Content.** "Content" means text, data, graphics, personal information or any other material: (i) displayed or published on Client's website; (ii) provided by Client to Granicus to perform services; or (iii) uploaded into Granicus Products for use by Client or end users of the Granicus Products. Client can only use Granicus Products to share Content that is created by or owned by Client and/or Content for affiliated organizations provided that use by Client for affiliated organizations is in support only, and not as a primary communication vehicle for other organizations that do not have a separate license to a Granicus Product. Granicus is not responsible for any Content used, uploaded or migrated by Client or any third party.
- 2.2.5. Advertising.** Granicus Products will not be used to promote products or services available for sale through Client or any third party without Granicus' prior written consent. Upon Granicus' request, Client will provide a copy of any agreement between Client and a third party that compensates Client for the right to have information included in Content distributed or made available through Granicus Products for Granicus review prior to granting such approval.
- 2.2.6. Granicus Subscriber Information for Communications Cloud Suite only**
- 2.2.6.1. Data Provided by Client.** Data provided by Client and contact information gathered through Client's own web properties or activities will remain the property of Client ("Direct Subscriber"), including any personal information.
- 2.2.6.2.** Granicus will not disclose Direct Subscriber data except as required by law, or to third parties solely as necessary to operate the Granicus Products.
- 2.2.6.3.** Data generated by use of the Granicus Products, including system data and data derived from Content in an aggregated and anonymized form is not Direct Subscriber data and may be used by Granicus for its business purposes including product improvements and development, subject to any applicable laws governing the use and disclosure of such data.
- 2.2.6.4. Data Obtained through the Granicus Advanced Network**
- 2.2.6.4.1.** Communications Cloud, a Granicus Product, offers Direct Subscribers the opportunity to subscribe to digital communications offered by other Granicus clients (the "Advanced Network"). When a Direct Subscriber registers on the Advanced Network, that subscriber is a "Network Subscriber" to the agency it subscribed to through the Advanced Network.

2.2.6.4.2. Network Subscribers are not Direct Subscribers and are only available for use while Client is under an active GovDelivery Communications Cloud subscription. Network Subscribers will not transfer to Client upon termination of Client's subscription, and Client must delete all information related to Network Subscribers within fifteen (15) days of expiration or termination of Client's access to the Advanced Network. Client is permitted to send an email inviting Network Subscribers to subscribe to updates directly from Client in the last ten (10) days of Client's subscription term. Network Subscribers that do not engage with Client directly will not be included in any subscriber list provided to Client upon conclusion of Client's subscription.

2.3. Restrictions. Client will not:

- 2.3.1.** Use or permit any end user to use the Granicus Products to store or display adult content, promote illegal or immoral activities, send or store infringing, obscene, threatening or unlawful or tortious material or disrupt others use of the Granicus Products, network services or network equipment, including unsolicited advertising or chain letters, propagation of computer worms and viruses, or use of the Granicus Products to make unauthorized entry into any other device accessible via the network or Granicus Products;
- 2.3.2.** Use the Granicus Products as a door or signpost to another server;
- 2.3.3.** Disassemble, decompile, reverse engineer or make derivative works of the Granicus Products;
- 2.3.4.** Rent, lease, lend, or host the Granicus Products to or for any third party, or disclose the Granicus Products to any third party except as otherwise permitted in this Agreement or an Order or SOW;
- 2.3.5.** Use the Granicus Products in violation of any applicable law, rule, or regulation, including violation of laws regarding the processing, use, or disclosure of personal information, or violation of any United States export control or regulation, United States embargo, or denied parties prohibitions; or
- 2.3.6.** Modify, adapt, or use the Granicus Products to develop any software application intended for resale which uses or competes with the Granicus Products in whole or in part.

2.4. Client Feedback. Granicus may use any suggestion, enhancement request, recommendation, correction or other feedback provided by Client relating to the Granicus Products or use thereof without need for permission or consent or the payment of fees or attribution to Client.

3. Payment

- 3.1. Fees.** Client will pay all fees, costs and other amounts as specified in each Order or SOW. Annual fees are due upfront according to the billing frequency specified in each Order or SOW. Granicus may suspend Client's access to any Granicus Products if there is a lapse in payment not remedied promptly upon notice to Client. A lapse in the Term of each Order or SOW will require the payment of a setup fee to reinstate the subscription. All fees are exclusive of applicable value-added tax (VAT), which, if any, will be included in the invoice.
- 3.2. Payment.** Client will remit payment of the fees due within thirty (30) days of receipt of an accurate invoice from Granicus, or if Client is subject to different payment terms imposed by applicable regulation, such required payment duration. Any disputed amounts will be identified in writing to Granicus within the payment period or be deemed accurate and payable.
- 3.3. Purchase Orders.** Upon request, Granicus will reference a purchase order number on its invoices if Client provides the corresponding purchase order information to Granicus prior to generating the invoice. Client agrees that a failure to provide Granicus with purchase order

information will not relieve Client of its obligations to provide payment in accordance with this section.

3.4. Price Increases. Subject to any prices separately negotiated by the parties, Granicus will provide notice of price increases at least thirty (30) days prior to the end of the current Term, which will become effective as of the next Renewal Term. Price increases will not exceed ten percent (10%) over the prior annual Term's fees.

4. Representations, Warranties and Disclaimers

4.1. Representations. Each Party represents that it has validly entered into this Agreement and has the legal power to do so.

4.2. Warranties. Granicus warrants that it has the rights necessary to grant to Client the license granted in this Agreement, and that it will perform its obligations in a professional and workmanlike manner in accordance with industry standards.

4.3. Client represents and warrants that all Content is owned or properly licensed by Client for use with the Granicus Products or services provided under this Agreement, and that the Content does not infringe or misappropriate the intellectual property, privacy, moral or other rights of any third party.

4.4. Disclaimers. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 4, THE GRANICUS PRODUCTS ARE PROVIDED "AS IS" AND GRANICUS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. GRANICUS DOES NOT WARRANT THAT GRANICUS PRODUCTS WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

5. Confidential Information

5.1. Confidential Information. It is expected that one party (Disclosing Party) may disclose to the other party (Receiving Party) certain information which may be considered confidential and/or trade secret information ("Confidential Information"). Confidential Information will include: (i) Granicus' Products; (ii) non-public information if it is clearly and conspicuously marked as "confidential" or with a similar designation at the time of disclosure; (iii) non-public information of the Disclosing Party if it is identified as confidential and/or proprietary before, during, or promptly after presentation or communication; and (iv) any information that should be reasonably understood to be confidential or proprietary to the Receiving Party, given the nature of the information and the context in which disclosed.

(a) Subject to applicable law, each Receiving Party will receive and hold any Confidential Information in strict confidence and will: (a) protect and safeguard the Confidential Information against unauthorized use, publication or disclosure; (b) not reveal, report, publish, disclose, transfer, copy or otherwise use any Confidential Information except as specifically authorized by the Disclosing Party; (c) not use any Confidential Information for any purpose other than in performance of this Agreement; (d) restrict access to Confidential Information to those of its advisors, officers, directors, employees, agents, consultants, contractors and lobbyists who have a need to know, who have been advised of the confidential nature thereof, and who are under express written obligations of confidentiality or under obligations of confidentiality imposed by law or rule; and (e) exercise at least the same standard of care and security to protect the confidentiality of the Confidential

Information received by it as it protects its own confidential information, but no less than a reasonable degree of care.

- (b) If a Receiving Party is requested or required in a judicial, administrative, or governmental proceeding to disclose any Confidential Information, it will notify the Disclosing Party as promptly as practicable so that the Disclosing Party may seek an appropriate protective order or waiver for that instance, unless such notification is prohibited by law or judicial order.

5.2. Exceptions. Confidential Information will not include information which: (i) is or becomes public knowledge through no fault of the Receiving Party; (ii) was in the Receiving Party's possession before receipt from the Disclosing Party; (iii) is rightfully received by the Receiving party from a third party without any duty of confidentiality; (iv) is disclosed by the Disclosing Party without any duty of confidentiality on the third party; (v) is independently developed by the Receiving Party without use or reference to the Disclosing Party's Confidential Information; or (vi) is disclosed with the prior written approval of the Disclosing Party.

5.3. Storage and Sending. If Granicus Products will be used to store or send Confidential Information, Client will notify Granicus in writing, in advance of the storage or sending. If Client provides such notice, Client will ensure that Confidential Information is stored behind a secure firewall and that Granicus Products be used only to notify people of updates to the information, but that accessing the Confidential Information is permitted only after authentication and access through the secure firewall managed by Client.

5.4. Return of Confidential Information. Each Receiving Party will return or destroy the Confidential Information immediately upon written request by the Disclosing Party; provided, however, that each Receiving Party may retain one copy of the Confidential Information in order to comply with applicable laws and the terms of this Agreement, and may retain archival copies in strict confidence in accordance with Receiving Party's standard document retention policies for the duration of any retention requirements.

5.5. Disclosing Party may be irreparably damaged if the obligations under this Section 5 are not enforced and as such may not have an adequate remedy in the event of a breach by Receiving Party of its obligations hereunder. The parties agree, therefore, that Disclosing Party is entitled to seek, in addition to other available remedies, an injunction restraining any actual, threatened or further breaches of the Receiving Party's obligations under this Section 5 or any other appropriate equitable order or decree.

6. Term and Termination

6.1. Agreement Term. This Agreement will begin on the Effective Date and continue in effect until all Orders and SOWs are expired or terminated unless otherwise terminated as provided in this Section 6. The initial term of each Order or SOW will be as specified therein (the "**Initial Term**") and will automatically renew for additional one (1) year terms unless otherwise terminated as set forth below (each, a "**Renewal Term**"), the Initial Term and all Renewal Terms being the "**Term**".

6.2. Termination. Either party may terminate this Agreement or any Order or SOW by written notice to the other party if the other party materially breaches this Agreement or applicable Order or SOW and fails to cure such breach within thirty (30) days after receipt of such notice, or such other time as agreed to in writing by the parties. Orders and SOWs may be terminated at the end of the Initial Term or each Renewal Term with ninety (90) days prior written notice to the other party.

- 6.3. Effect of Termination.** Upon expiration or termination of an Order or SOW for any reason: (i) Client's right to access and use the Granicus Products will immediately cease (except for perpetual licenses granted under an Order, which will continue to be governed by this Agreement for the duration of the license); (ii) Client will promptly remit any fees due and owing to Granicus under all Orders and SOWs; and (iii) the parties will return or destroy any Confidential Information of the other party in its possession, and certify upon request to the other party of compliance with the foregoing.
- 6.4. Survival.** Sections 4 (Representations, Warranties and Disclaimers), 5 (Confidential Information), 6 (Term and Termination), 7 (Limitation of Liability), 9.11 (Choice of Law and Jurisdiction) and any other section that by its nature is intended to survive termination of this Agreement will survive and continue in full force and effect.

7. Limitation of Liability

- 7.1. EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** EXCEPT FOR LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL GRANICUS BE LIABLE FOR ANY: (I) SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; OR (II) LOSS OR DAMAGE TO PROFITS, SALES, BUSINESS, GOODWILL OR ANTICIPATED SAVINGS, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.2. LIMITATION OF LIABILITY.** EXCEPT FOR CLIENT'S BREACH OF SECTION 2.3 OR OBLIGATION TO PAY FEES DUE, EACH PARTY'S TOTAL LIABILITY, IN TORT (INCLUDING NEGLIGENCE) CONTRACT OR OTHERWISE RELATING TO THIS AGREEMENT AND ANY ORDER OR SOW HERETO, WILL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE FEES PAID BY CLIENT FOR THE GRANICUS PRODUCTS DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM. NEITHER PARTY MAY INSTITUTE AN ACTION IN ANY FORM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ARISEN.

8. Indemnification

- 8.1. Indemnification by Granicus.** Granicus will defend, indemnify and hold Client harmless from and against all losses, liabilities, damages and expenses including reasonable attorney fees (collectively, "Losses") arising from any claim or suit by an unaffiliated third party that the Granicus Products as delivered to Client and when used in accordance with this Agreement and the applicable SOW or Order infringes a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order or SOW (a "Claim").
- 8.2.** Granicus will have control of the defense and reserves the right to settle any Claim. Client must notify Granicus promptly of any Claim and provide reasonable cooperation to Granicus, upon Granicus' request and at Granicus' cost, to defend such Claim. Granicus will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of an indemnified party not otherwise covered by this indemnification without indemnified party's prior consent. Client may elect to participate in the defense of any claim with counsel of its choosing at its own expense.
- 8.3.** If the Granicus Products are subject to a claim of infringement or misappropriation, or if Granicus reasonably believes the Granicus Products may be subject to such a Claim, Granicus reserves the right, in its sole discretion, to: (i) replace the affected Granicus Products with non-infringing functional equivalents; (ii) modify the affected Granicus Products to render it non-infringing; or (iii) terminate this Agreement or the applicable Order or SOW with respect to the affected

Granicus Product and refund to Client any prepaid fees for the then-remaining or unexpired portion of the Order or SOW Term.

- 8.4.** Granicus will have no obligation to indemnify, defend, or hold Client harmless from any Claim to the extent it is based upon: (i) a modification to the Granicus Product by Client (or by anyone under Client's direction or control or using logins or passwords assigned to Client); (ii) a modification made by Granicus pursuant to Client's required instructions or specifications or in reliance on materials or information provided by Client; (iii) combination with the Granicus Products with non-Granicus software or data; or (iv) Client's use (or use by anyone under Client's direction or control or using logins or passwords assigned to Client) of any Granicus Products other than in accordance with this Agreement. This section 8 sets forth Client's sole and exclusive remedy, and Granicus' entire liability, for any Claim that the Granicus Products or any other materials provided by Granicus violate or infringe upon the rights of any third party.

9. General

- 9.1. Relationship of the Parties.** Granicus and Client acknowledge that they operate independent of each other. Nothing in this Agreement will be deemed or construed to create a joint venture, partnership, agency, or employee/employer relationship between the Parties for any purpose, including, but not limited to, taxes or employee benefits. Each Party will be solely responsible for the payment of all taxes and insurance for its employees and business operations.
- 9.2. Applicable Law.** Each party will, at all times, exercise its rights and perform its obligations under this Agreement in compliance with all applicable law, rules, and regulations.
- 9.3. Headings.** The various section headings of this Agreement are inserted only for convenience of reference and are not intended, nor will they be construed to modify, define, limit, or expand the intent of the Parties.
- 9.4. Amendments.** This Agreement may only be amended or modified by a written instrument signed by authorized representatives of both Parties.
- 9.5. Severability.** To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 9.6. Assignment.** Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, either voluntarily or by operation of law, without the prior written consent of the other Party (such consent not to be unreasonably withheld); provided, however, that either Party may assign this Agreement without the other Party's consent in the event of any successor or assign that has acquired all, or substantially all, of the assigning Party's business by means of merger, stock purchase, asset purchase, or otherwise. Any assignment or attempted assignment in violation of this Agreement will be null and void.
- 9.7. No Third-Party Beneficiaries.** Subject to Section 9.7 this Agreement is binding upon, and insures solely to the benefit of the Parties hereto and their respective permitted successors and assigns; there are no third-party beneficiaries to this Agreement.
- 9.8. Notice.** Other than routine administrative communications, which may be exchanged by the Parties via email or other means, all notices, consents, and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery; (ii) the day of receipt, as shown in the applicable carrier's systems, if sent via FedEx, UPS, DHL, or other nationally recognized express carrier; (iii) the third business day after sending by U.S. Postal Service, First Class, postage prepaid, return receipt requested; or (iv) sending by email, with confirmed receipt from the

receiving party. Either Party may provide the other with notice of a change in mailing or email address in which case the mailing or email address, as applicable, for that Party will be deemed to have been amended.

- 9.9. Force Majeure.** Any delay in the performance by either party of its obligations hereunder will be excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such Party, including, without limitation, any act of God; any fire, flood, or weather condition; any computer virus, worm, denial of service attack; any earthquake; any act of a public enemy, war, insurrection, riot, explosion or strike; provided, that written notice thereof must be given by such Party to the other Party within twenty (20) days after occurrence of such cause or event.
- 9.10. Choice of Law and Jurisdiction.** This Agreement shall be governed by and interpreted under the laws of the State of Minnesota, without reference to the State's principles of conflicts of law. The Parties expressly consent and submit to the exclusive jurisdiction of the state and federal courts of Ramsey County, MN.
- 9.11. Entire Agreement.** This Agreement, together with all Orders or SOWs referenced herein, sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written understandings, quotations, communications, and agreements. Any conflict between the Agreement and any other documents will be resolved in the following order: (i) this Agreement; (ii) Orders and SOWs; (iii) Granicus' response to Client's request for RFI, RFP, RFQ (if this Agreement results from such solicitation); and (iv) Client's RFI, RFP, RFQ, or other solicitation. Any pre-printed or standard terms on any purchase order or ordering document issued by Client are hereby expressly disclaimed and do not apply.
- 9.12. Reference.** Notwithstanding any other terms to the contrary contained herein, Client grants Granicus the right to use Client's name and logo in Client lists and marketing materials.

EXHIBIT A-THIRD PARTY TERMS

ClearCaster Terms & Conditions

The ClearCaster products are subject to the following terms:

Permitted Use. Granicus hereby grants during each Order Term or as otherwise specified in the Order, and Customer hereby accepts, solely for its internal use, a worldwide, revocable, non-exclusive, non-transferrable right to use the ClearCaster products to the extent allowed in the relevant Order (collectively the “Permitted Use”). The Permitted Use shall also include the right, subject to the conditions and restrictions set forth herein, to use the ClearCaster products up to the levels limited in the applicable Order.

Data Sources. Data uploaded into ClearCaster products must be brought in from Customer sources (interactions with end users and opt-in contact lists). Customer cannot upload purchased contact information into the ClearCaster products without Granicus’ written permission and professional services support for list cleansing.

Passwords. Passwords are not transferable to any third party. Customer is responsible for keeping all passwords secure and all use of the the ClearCaster products accessed through Customer’s passwords.

Content. Customer can only use the ClearCaster products to share content that is created by and owned by Customer and/or content for related organizations provided that it is in support of other organizations but not as a primary communication vehicle for other organizations that do not have a Granicus subscription. Any content deemed inappropriate for a public audience or in support of programs or topics that are unrelated to Customer, can be removed or limited by Granicus.

Disclaimers. Any text, data, graphics, or any other material displayed or published on Customer’s website must be free from violation of or infringement of copyright, trademark, service mark, patent, trade secret, statutory, common law or proprietary or intellectual property rights of others. Granicus is not responsible for content migrated by Client or any third party.

Advertising. The ClearCaster products shall not be used to promote products or services available for sale through Customer or any third party unless approved in writing, in advance, by Granicus. Granicus reserves the right to request and review the details of any agreement between Customer and a third party that compensates Customer for the right to have information included in Content distributed or made available through the ClearCaster products prior to approving the presence of Advertising within the ClearCaster products.

Restrictions. Customer shall not:

- Misuse any Granicus resources or the ClearCaster products or cause any disruption, including but not limited to, the display of pornography or linking to pornographic material, advertisements, solicitations, or mass mailings to individuals who have not agreed to be contacted;
- Use any process, program, or tool for gaining unauthorized access to the systems, networks, or accounts of other parties, including but not limited to, other Granicus customers;

- Customer must not use the Granicus products, services or the ClearCaster products in a manner in which system or network resources are unreasonably denied to other Granicus clients;
- Customer must not use the services or ClearCaster products as a door or signpost to another server.
- Access or use any portion of the ClearCaster products, except as expressly allowed by this Order;
- Copy, distribute, sublicense, or otherwise share, software provided on the ClearCaster products;
- Disassemble, decompile, or otherwise reverse engineer all or any portion of the ClearCaster products; or add or remove software on the ClearCaster products without Granicus consent;
- Use the ClearCaster products for any unlawful purposes;
- Export or allow access to the ClearCaster products in violation of U.S. laws or regulations;
- Except as expressly permitted in this Order, subcontract, disclose, rent, or lease the ClearCaster products, or any portion thereof, for third party use; or
- Modify, adapt, or use the ClearCaster products to develop any software application intended for resale which uses the ClearCaster products in whole or in part.

Customer Feedback. Customer assigns to Granicus any suggestion, enhancement, request, recommendation, correction or other feedback provided by Customer relating to the use of the ClearCaster products. Granicus may use such submissions as it deems appropriate in its sole discretion.

Reservation of Rights. Subject to the limited rights expressly granted hereunder, Granicus and/or its licensors reserve all right, title and interest in the ClearCaster products, the documentation and resulting product including all related intellectual property rights. Further, no implied licenses are granted to Customer. The Granicus name, the Granicus logo, and the product names associated with the services are trademarks of Granicus or its suppliers, and no right or license is granted to use them.

License to Content; Access. Customer hereby grants Granicus and its vendors a limited right and license to view, access, use, modify, adapt, reproduce, transmit, distribute, display, and disclose Content for the sole purpose of providing the ClearCaster products. Customer agrees that Granicus and its vendors may remotely access the ClearCaster products for the sole purpose of providing Granicus products and services, and the ClearCaster products.

Warranties and Disclaimers. The ClearCaster products are provided "AS IS" and as available. EACH PARTY HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER WHETHER ORAL AND WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER GRANICUS NOR ITS SUPPLIERS WARRANT THAT THE CLEARCASTER PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS NOR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

Notwithstanding the foregoing and subject to payment of all applicable fees, Granicus will provide a three (3) year warranty with respect to required hardware. Within the three (3) year warranty period, Granicus shall repair or replace any required hardware provided directly from Granicus that fails to function properly due to normal wear and tear, defective workmanship, or defective materials.

Tab 2 – NCPA Administration Agreement

This Administration Agreement is made as of December 8, 2020, by and between National Cooperative Purchasing Alliance (“NCPA”) and Granicus, LLC (“Vendor”).

Recitals

WHEREAS, Region 14 ESC has entered into a certain Master Agreement dated December 8, 2020, referenced as Contract Number 01-115, by and between Region 14 ESC and Vendor, as may be amended from time to time in accordance with the terms thereof (the “Master Agreement”), for the purchase of Software and SaaS Solutions;

WHEREAS, said Master Agreement provides that any state, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution, other government agency or nonprofit organization (hereinafter referred to as “public agency” or collectively, “public agencies”) may purchase products and services at the prices indicated in the Master Agreement;

WHEREAS, NCPA has the administrative and legal capacity to administer purchases under the Master Agreement to public agencies;

WHEREAS, NCPA serves as the administrative agent for Region 14 ESC in connection with other master agreements offered by NCPA

WHEREAS, Region 14 ESC desires NCPA to proceed with administration of the Master Agreement;

WHEREAS, NCPA and Vendor desire to enter into this Agreement to make available the Master Agreement to public agencies on a national basis;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained in this Agreement, NCPA and Vendor hereby agree as follows:

◆ General Terms and Conditions

- The Master Agreement, attached hereto as Tab 1 and incorporated herein by reference as though fully set forth herein, and the terms and conditions contained therein shall apply to this Agreement except as expressly changed or modified by this Agreement.
- NCPA shall be afforded all of the rights, privileges and indemnifications afforded to Region 14 ESC under the Master Agreement, and such rights, privileges and indemnifications shall accrue and apply with equal effect to NCPA under this Agreement including, but not limited to, the Vendor’s obligation to provide appropriate insurance and certain indemnifications to Region 14 ESC.
- Vendor shall perform all duties, responsibilities and obligations required under the Master Agreement in the time and manner specified by the Master Agreement.
- NCPA shall perform all of its duties, responsibilities, and obligations as administrator of purchases under the Master Agreement as set forth herein, and Vendor acknowledges that NCPA shall act in the capacity of administrator of purchases under the Master Agreement.
- With respect to any purchases made by Region 14 ESC or any Public Agency pursuant to the Master Agreement, NCPA (a) shall not be construed as a dealer, re-marketer, representative, partner, or agent of any type of Vendor, Region 14 ESC, or such Public Agency, (b) shall not be obligated, liable or responsible (i) for any orders made by Region

14 ESC, any Public Agency or any employee of Region 14 ESC or Public Agency under the Master Agreement, or (ii) for any payments required to be made with respect to such order, and (c) shall not be obligated, liable or responsible for any failure by the Public Agency to (i) comply with procedures or requirements of applicable law, or (ii) obtain the due authorization and approval necessary to purchase under the Master Agreement. NCPA makes no representations or guaranties with respect to any minimum purchases required to be made by Region 14 ESC, any Public Agency, or any employee of Region 14 ESC or Public Agency under this Agreement or the Master Agreement.

- The Public Agency participating in the NCPA contract and Vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the Public Agency and Vendor. NCPA, its agents, members and employees shall not be made party to any claim for breach of such agreement.

◆ **Term of Agreement**

- This Agreement shall be in effect so long as the Master Agreement remains in effect, provided, however, that the obligation to pay all amounts owed by Vendor to NCPA through the termination of this Agreement and all indemnifications afforded by Vendor to NCPA shall survive the term of this Agreement.

◆ **Fees and Reporting**

- The awarded vendor shall electronically provide NCPA with a detailed quarterly report showing the dollar volume of all sales under the contract for the previous quarter. Reports are due on the fifteenth (15th) day after the close of the previous quarter. It is the responsibility of the awarded vendor to collect and compile all sales under the contract from participating members and submit one (1) report. The report shall include at least the following information as listed in the example below:

Entity Name	Zip Code	State	PO or Job #	Sale Amount

Total _____

- Each quarter NCPA will invoice the vendor based on the total of sale amount(s) reported. From the invoice the vendor shall pay to NCPA an administrative fee based upon the tiered fee schedule below. Vendor’s annual sales shall be measured on a calendar year basis. Deadline for term of payment will be included in the invoice NCPA provides.

<u>Annual Sales Through Contract</u>	<u>Administrative Fee</u>
0 - \$30,000,000	2%
\$30,000,001 - \$50,000,000	1.5%
\$50,000,001+	1%

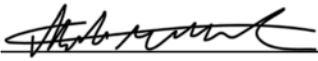
- Supplier shall maintain an accounting of all purchases made by Public Agencies under the Master Agreement. NCPA and Region 14 ESC reserve the right to audit the accounting for a

period of four (4) years from the date NCPA receives the accounting. In the event of such an audit, the requested materials shall be provided at the location designated by Region 14 ESC or NCPA. In the event such audit reveals an under reporting of Contract Sales and a resulting underpayment of administrative fees, Vendor shall promptly pay NCPA the amount of such underpayment, together with interest on such amount and shall be obligated to reimburse NCPA's costs and expenses for such audit.

◆ General Provisions

- This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.
- Awarded vendor agrees to allow NCPA to use their name and logo within website, marketing materials and advertisement. Any use of NCPA name and logo or any form of publicity regarding this contract by awarded vendor must have prior approval from NCPA.
- If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement or to recover any administrative fee and accrued interest, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which such party may be entitled.
- Neither this Agreement nor any rights or obligations hereunder shall be assignable by Vendor without prior written consent of NCPA, provided, however, that the Vendor may, without such written consent, assign this Agreement and its rights and delegate its obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or business related to this Agreement, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all assigned obligations of its assignor under this Agreement.
- This Agreement and NCPA's rights and obligations hereunder may be assigned at NCPA's sole discretion, to an existing or newly established legal entity that has the authority and capacity to perform NCPA's obligations hereunder
- All written communications given hereunder shall be delivered to the addresses as set forth below.

National Cooperative Purchasing Alliance:

Name: Matthew Mackel
Title: Director, Business Development
Address: PO Box 701273
Houston, TX 77270
Signature: 
Date: December 8, 2020

Vendor:

Granicus, LLC
Name: Spencer Lasley
Title: Contracts Manager
Address: 408 St. Peter Street, Suite 600
St. Paul, MN 55102
Signature: 
Date: 11/06/2020

Tab 9 – Required Documents

- ◆ Clean Air and Water Act / Debarment Notice
- ◆ Contractors Requirements
- ◆ Antitrust Certification Statements
- ◆ Required Clauses for Federal Funds Certifications
- ◆ Required Clauses for Federal Assistance by FTA
- ◆ State Notice Addendum


Tab 9 – Required Documents

CLEAN AIR AND WATER ACT / DEBARMENT NOTICE

Clean Air and Water Act & Debarment Notice

I, the Vendor, am in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as Amended (42 U.S. C. 1857 (h), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15 as required under OMB Circular A-102, Attachment O, Paragraph 14 (1) regarding reporting violations to the grantor agency and to the United States Environment Protection Agency Assistant Administrator for the Enforcement.

I hereby further certify that my company has not been debarred, suspended or otherwise ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension", as described in the Federal Register and Rules and Regulations

Potential Vendor	Granicus, LLC
Print Name	Mark Hynes
Address	408 St Peter St, Suite 600
City, State, Zip	Saint Paul, Minnesota, 55102
Authorized signature	
Date	11/06/2020

CONTRACTORS REQUIREMENTS

Contractor Requirements

Contractor Certification Contractor's Employment Eligibility

By entering the contract, Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA), and all other federal and state immigration laws and regulations. The Contractor further warrants that it is in compliance with the various state statutes of the states it is will operate this contract in.

Participating Government Entities including School Districts may request verification of compliance from any Contractor or subcontractor performing work under this Contract. These Entities reserve the right to confirm compliance in accordance with applicable laws.

Should the Participating Entities suspect or find that the Contractor or any of its subcontractors are not in compliance, they may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

The offeror complies and maintains compliance with the appropriate statutes which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

Contractor shall comply with governing board policy of the NCPA Participating entities in which work is being performed

Fingerprint & Background Checks

If required to provide services on school district property at least five (5) times during a month, contractor shall submit a full set of fingerprints to the school district if requested of each person or employee who may provide such service. Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy. The district shall conduct a fingerprint check in accordance with the appropriate state and federal laws of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the district. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

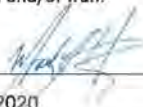
The offeror shall comply with fingerprinting requirements in accordance with appropriate statutes in the state in which the work is being performed unless otherwise exempted.

Contractor shall comply with governing board policy in the school district or Participating Entity in which work is being performed

Business Operations in Sudan, Iran

In accordance with A.R.S. 35-391 and A.R.S. 35-393, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan and/or Iran.

Authorized signature



Mark Hynes, CEO

Date

11/06/2020

ANTITRUST CERTIFICATION STATEMENTS**Antitrust Certification Statements (Tex. Government Code § 2155.005)**

I affirm under penalty of perjury of the laws of the State of Texas that:

- (1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;
- (2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- (3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law; and
- (4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Company name	Granicus, LLC
Address	408 St Peter St, Suite 600
City/State/Zip	Saint Paul, Minnesota, 55102
Telephone No.	800-314-0147
Fax No.	
Email address	contracts@granicus.com
Printed name	Mark Hynes
Position with company	Chief Executive Officer
Authorized signature	

Required Clauses for Federal Funds Certifications

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. The following certifications and provisions may be required and apply when a Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

APPENDIX II TO 2 CFR PART 200

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision

for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended— Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee

of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by Participating Agency for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When Participating Agency expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

To the extent purchases are made with Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration funds, offeror certifies that its products comply with all applicable provisions of the Buy America Act and agrees to provide such certification or applicable waiver with respect to specific products to any Participating Agency upon request. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Required Clauses for Federal Assistance provided by FTA

ACCESS TO RECORDS AND REPORTS

Contractor agrees to:

- a) Maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract or any extensions thereof except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Public Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
- b) Permit any of the foregoing parties to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts with regard to the Project and to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed for the purpose of audit and examination.

FTA does not require the inclusion of these requirements of Article 1.01 in subcontracts. Reference 49 CFR 18.39 (i)(11).

CIVIL RIGHTS / TITLE VI REQUIREMENTS

- 1) Non-discrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332, Contractor or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, marital status age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 2) Equal Employment Opportunity. The following Equal Employment Opportunity requirements apply to this Contract:
 - a. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit Law at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable Equal Employment Opportunity requirements of U.S. Dept. of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR, Parts 60 et seq., and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, marital status, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 - b. Age. In accordance with the Age Discrimination in Employment Act (ADEA) of 1967, as amended, 29 U.S.C. Sections 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act", 29 CFR Part 1625, prohibit employment discrimination by Contractor against individuals on the basis of age, including present and prospective

employees. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

- c. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Contractor agrees that it will comply with the requirements of the Equal Employment Opportunity Commission (EEOC), "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR, Part 1630, pertaining to employment of persons with disabilities and with their responsibilities under Titles I through V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions.
 - d. Segregated Facilities. Contractor certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under the Contractor's control where segregated facilities are maintained. As used in this certification the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. Contractor agrees that a breach of this certification will be a violation of this Civil Rights clause.
- 3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the regulations relative to non-discrimination on the grounds of race, color, creed, sex, disability, age or national origin.
 - 4) Sanctions of Non-Compliance. In the event of Contractor's non-compliance with the non-discrimination provisions of this Contract, Public Agency shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to: 1) Withholding of payments to Contractor under the Contract until Contractor complies, and/or; 2) Cancellation, termination or suspension of the Contract, in whole or in part.

Contractor agrees to include the requirements of this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

DISADVANTAGED BUSINESS PARTICIPATION

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "*Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*", therefore, it is the policy of the Department of Transportation (DOT) to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of DOT-assisted contracts.

- 1) Non-Discrimination Assurances. Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy as public agency deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13(b)).

- 2) Prompt Payment. Contractor is required to pay each subcontractor performing Work under this prime Contract for satisfactory performance of that work no later than thirty (30) days after Contractor's receipt of payment for that Work from public agency. In addition, Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this Contract is satisfactorily completed and any liens have been secured. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of public agency. This clause applies to both DBE and non-DBE subcontractors. Contractor must promptly notify public agency whenever a DBE subcontractor performing Work related to this Contract is terminated or fails to complete its Work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that Work through its own forces, or those of an affiliate, without prior written consent of public agency.
- 3) DBE Program. In connection with the performance of this Contract, Contractor will cooperate with public agency in meeting its commitments and goals to ensure that DBEs shall have the maximum practicable opportunity to compete for subcontract work, regardless of whether a contract goal is set for this Contract. Contractor agrees to use good faith efforts to carry out a policy in the award of its subcontracts, agent agreements, and procurement contracts which will, to the fullest extent, utilize DBEs consistent with the efficient performance of the Contract.

ENERGY CONSERVATION REQUIREMENTS

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plans issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq.* and 41 CFR Part 301-10.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Contract between public agency and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by the DOT, as set forth in the most current FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any public agency requests that would cause public agency to be in violation of the FTA terms and conditions.

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

Agency and Contractor acknowledge and agree that, absent the Federal Government's express written consent and notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract Work is being performed.

In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

State Notice Addendum

The National Cooperative Purchasing Alliance (NCPA), on behalf of NCPA and its current and potential participants to include all county, city, special district, local government, school district, private K-12 school, higher education institution, state, tribal government, other government agency, healthcare organization, nonprofit organization and all other Public Agencies located nationally in all fifty states, issues this Request for Proposal (RFP) to result in a national contract.

For your reference, the links below include some, but not all, of the entities included in this proposal:

http://www.usa.gov/Agencies/State_and_Territories.shtml

<https://www.usa.gov/local-governments>