

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF NEW ORLEANS  
AND  
GRANICUS, LLC.  
RFP PURSUANT TO M-17-454  
MEETING MANAGEMENT SERVICES**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by Helena Moreno, City Council President (the “**City**”), and Granicus, LLC., represented by Dawn Kubat, Vice President of Legal (the “**Contractor**”). The City and the Contractor may sometimes be collectively referred to as the “**Parties**.” The Agreement is effective as March 1, 2020 (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, on October 6, 2017, the City Council issued a request for proposals pursuant to Council Motion, M-17-454 seeking a technology services company to provide a turn-key, comprehensive, scalable, and flexible voting system, agenda preparation and document management system in addition to video streaming with High Definition capacity solution for the City of New Orleans (the “**RFP**”), which garnered five qualified responses, including that of the Contractor; and

**WHEREAS**, pursuant to M-18-557, and due to considerable passage of time without making a selection, on December 20, 2018 the Council allowed each respondent an opportunity to provide a supplementary response, allowing the Council to explore industry-wide technology improvements and pricing adjustments; and

**WHEREAS**, the Contractor submitted proposals responsive to both the RFP and Supplementary RFP dated November 2, 2017 and January 25, 2019 respectively, and the City Council has selected the Contractor to perform the professional services described in the RFP.

**NOW THEREFORE**, the City and the Contractor agree as follows:

**ARTICLE I - THE CONTRACTOR’S OBLIGATIONS**

**A. Services**. The Contractor will provide the following software solutions and services in accordance with a schedule to be approved by the City:

**Product Description**

- 1. Boards and Commissions** – Boards and Commissions is a Software-as-a-Service (SaaS) solution that enables government organizations to simplify the citizen application and appointment to boards process of the clerk’s office. Boards and Commissions includes:
  - Unlimited user accounts
  - Unlimited boards, commissions, committees, and subcommittees
  - Unlimited storage of citizen applications
  - Access to one Granicus platform site
  - Access to one Boards and Commissions site

- Access to customizable, embeddable iFrame websites for displaying information to citizens
  - Access to a customizable online citizen application form including board-specific questions
  - Customizable forms for board details, appointment details, and internal tracking details.
  - Pre-designed document PDFs for applications, board details and rosters, and vacancy reports
  - Downloadable spreadsheets for easy reporting
  - Optional custom templates for document or report generation (additional upfront charge applies)
2. **Government Transparency Suite** – Government Transparency are the live in-meeting functions. Streaming of an event, pushing of documents, indexing of event, creation of minutes.
  3. **Boards and Commissions - Data Import** – Import legacy data into Boards and Commissions to have access to historical data from a previous system used prior to buying Boards and Commissions.
  4. **Open Platform Suite** – Open Platform is access to Media Manager, upload of archives, ability to post agendas/ documents, and index of archives. These are able to be published and accessible through a searchable viewpage.
  5. **Boards and Commissions - Setup and Configuration** – Setup and configuration for Boards and Commissions
  6. **Meeting Efficiency Suite** – Meeting Efficiency is a hybrid Software-as-a-Service (SaaS) and Hardware-as-a-Service (HaaS) solution that enables government organizations to simplify the in-meeting management and post-meeting minutes creation processes of the clerk’s office. By leveraging this solution, the client will be able to streamline meeting data capture and minutes production, reducing staff efforts and decreasing time to get minutes published. During a meeting, record roll calls, motions, votes, notes, and speakers, all indexed with video. Use the index points to quickly edit minutes, templates to format in Microsoft Word or HTML, and publish online with the click of a button. Meeting Efficiency includes:
    - Unlimited user accounts
    - Unlimited meeting bodies
    - Unlimited storage of minutes documents
    - Access to one Granicus platform site
    - Access to the LiveManager software application for recording information during meetings
    - Access to the Word Add-in software component for minutes formatting in MS Word if desired
    - One MS Word or HTML minutes template (additional templates can be purchased if needed)

7. **Legistar** – Legistar is a Software-as-a-Service (SaaS) solution that enables government organizations to automate the entire Legislative process of the clerk’s office. By leveraging Legistar, the client will be able to easily manage the entire legislative process from drafting files, through assignment to various departments, to final approval. Legistar includes:
- Unlimited user accounts
  - Unlimited meeting bodies and meeting types
  - Unlimited data storage and retention
  - Configuration services for one meeting body\type
  - One Legistar database
  - One InSite web portal
  - Design services for one agenda report template
  - Design services for one minute’s report template
8. **VoteCast Standard Package (Tablet) (ME)** – VoteCast is a hybrid Software-as-a-Service (SaaS) and Hardware-as-a-Service (HaaS) solution that enables government organizations to streamline the meeting process for both the clerk's office as well as elected officials. By leveraging this solution, the client will be able to automate meeting data capture and display – improving accuracy and keeping all attendees informed of meeting proceedings. Available on a variety of hardware as well as the iLegislate platform, elected officials can use their touchscreens or tablets to motion, second, vote, and request to speak. This data automatically populates to the clerk software (LiveManager) ensuring accuracy and reducing workload. As action items occur during the meeting, TVs or projectors hooked up to VoteCast Display will automatically show the current agenda item, motion on the floor, vote result, and speaker timer as well as speaker name. VoteCast includes:
- Unlimited user accounts
  - Unlimited meeting bodies
  - Access to one Granicus platform site
  - Access to the VoteCast software application for elected officials
  - Access to the VoteCast Display software application to output meeting proceedings to TVs or projectors in the meeting room
9. **Legistar Needs Analysis and Configuration Services** – Implementation includes:
- Access to an implementation consultant until project acceptance
  - Access to existing Web-based recorded trainings around standard account functions and capabilities
  - Up to five two-hour needs analysis calls with a business analyst

*The implementation process takes three to six months, on average, depending on the availability of stakeholders.*

10. **Granicus Encoding Appliance Software (GT)** – Granicus Encoding Appliance Software (GT) This includes the LiveManager Software solution where webcasts

are started/stopped, agendas amended and indexed, votes and attendance recorded, and minutes created.

11. **Legistar - Setup and Configuration** – Legistar Project Management and Development Services is the professional service time for deploying a Legistar system.
12. **Performance Accelerator Suite** – Performance Accelerator Suite provides the ability to utilize the performance accelerator within a network. Requires Performance Accelerator or Virtual Performance Accelerator to distribute video/indexing/documents within a local network. This distribution is utilized to eliminate the bandwidth impact local viewers would have accessing data from the Granicus Data Center.
13. **Legistar - Onsite Training** – Legistar - Onsite Training is for onsite training for Legistar, which allows clients to have a Granicus trainer onsite to show them how to use the system.  
*Onsite Training includes travel, meals and lodging expenses.*
14. **Legistar (Admin) Online Training** – Legistar Admin - Online Training is for online training for Legistar Administration, which allows clients to have online sessions with a Granicus trainer to learn how to use the system.
15. **Legistar Add-On MuniCode Integration** – Legistar Add-On - MuniCode Integration is for the Legistar\MuniCode integration which allows a user on InSite to search Legistar and MCC information simulataneously via a federated search. Searching on a key word will return results from both systems.
16. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the RFQ AND/OR RFP; the Contractor’s Supplementary proposal dated January 25, 2019.
17. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;
18. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;
19. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;
20. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within 30 days after the approval of the associated plan change or amendment; and
21. Cooperate with the City and any person performing work for the City.

The City’s officers and employees are not authorized to request or instruct the Contractor to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

**B. Compliance with Laws.** The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances.

**C. Invoices.**

1. The Contractor must submit invoices annually (unless agreed otherwise between the parties to this Contract) to the City electronically, via its supplier portal, for goods and/or services provided under this Contract upfront. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information: contract or purchase order number issued by the City, and the name of the city department to be invoiced. The City may require changes to the form or the content of the invoice. The City may also require additional supporting documentation to be submitted with invoices.

**D. Records and Reporting.**

2. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

3. The Contractor will identify any reporting requirements, including the frequency, method and contents.

4. The Contractor is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

**E. Audit and Inspection.**

5. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.

6. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**F. Insurance.**

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

**A. Minimum Requirements:**

- i. Workers' Compensation & Employers Liability Insurance in compliance

with the applicable Workers' Compensation Act(s). Statutory and Employers Liability Insurance, with limits of not less than \$500,000 per accident for bodily injury or disease.

- ii. Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, abuse and molestation and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
- iii. Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance shall include all non-owned and hired vehicles.
- iv. Cyber Liability Insurance to the Contractors profession, with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations of the Contractor and shall include, but not limited to claims involving Network Interruption, Security and Privacy, extortion and release of private information.
- v. Professional (Errors & Omission) Liability Insurance appropriate to the Contractors profession with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement.
- vi. The policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor. Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Contractor must procure and evidence full extended reporting period (ERP) coverage.

**B. Other Insurance Provisions:** The insurance policies are to contain, or be endorsed, to contain, the following provisions:

- i. Additional Insured Status: The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance including the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement, General liability insurance coverage can be provided in the form of an endorsement to the Contractors insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all of the requirements stated herein. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA

70112. The Additional Insured box shall be marked “Y” or Commercial General Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers Liability and Property.

- ii. Primary Coverage: For any claims related to this agreement, the Contractors insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractors coverage.
- iii. Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this agreement.
- iv. Waiver of Subrogation: The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this agreement.
- v. Notice of Cancellation: Contractor will provide the City with 30-day prior written notice in the event of any cancellation or material change to any policy of insurance required by this Agreement.
- vi. Acceptability of Insurers: Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

2. The Contractor will provide the City’s Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref. : CEA) within 10 calendar days of the Effective Date and at any other time at the City’s request the following documents:

- a. Proof of coverage for each policy of insurance required by this Agreement;
- b. Copy of the fully executed Agreement;
- c. Copies of all policies of insurance, including all policies, forms, and endorsements; and
- d. Statements disclosing any policy aggregate limit.

3. Without notice from the City, the Contractor will:

- a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
- b. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
- c. Notify the City’s Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

### **G. Indemnity.**

1. Contractor will defend the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (the "Indemnified Parties) from and against all losses, liabilities, damages and expenses arising from any claim or suit by a third part unaffiliated with their Party to this Agreement ("Claims") and shall pay all losses, damages, liabilities, settlements, judgements, awards, interest, civil penalties, and reasonable expenses (collectively "Losses" and including reasonable attorneys' fees and court costs), to the extent arising out of any Claims by any third party that the Contractor's goods and services infringe a U.S. copyright or U.S. patent. When necessary or desirable to resolve issues of infringement raised in a Claim, Contractor may, in its discretion: (a) replace or modify the goods and services provided hereunder with non-infringing equivalents, provided there is no material diminution or alteration in the quality or overall functionality of the goods and services; or (b) terminate this Agreement with respect to the affected good or service and refund to the City any prepaid fees for the then-remaining term. Notwithstanding the foregoing, Contractor shall have no obligation to indemnify, defend, or hold City harmless from any Claim to the extent it is based upon: (i) a modification to any good or service by the City (or by anyone under City's direction or control or using logins or passwords assigned to the City); (ii) a modification made by Granicus pursuant to the City's required instructions or specifications or in reliance on materials or information provided by the City; or (iii) the City's use (or use by anyone under the City's direction or control or using logins or passwords assigned to the City) of any Contract goods and services other than in accordance with this Agreement.

In addition to the foregoing, Contractor will indemnify, defend, and hold harmless the Indemnified Parties from and against all losses, liabilities, damages and expenses arising from any claim or suit by Contractor's employees that arises from the performance of this Agreement.

2. **Limitation.** The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. **Independent Duty.** The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

4. **Expenses.** Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

### **H. Limitation of Liability.**



- 1. EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** UNDER NO CIRCUMSTANCES SHALL CONTRACTOR BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, CONTRACTOR SHALL NOT BE LIABLE FOR: (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF CLIENT DATA; (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY; (C) LOSS OF BUSINESS; (D) DAMAGES ARISING OUT OF ACCESS TO OR INABILITY TO ACCESS THE SERVICES, SOFTWARE, CONTENT, OR RELATED TECHNICAL SUPPORT; OR (E) FOR ANY MATTER BEYOND THE CONTRACTOR'S REASONABLE CONTROL, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES.
- 2. LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO THE INDEMNITY OBLIGATIONS IMPOSED PURSUANT TO THIS AGREEMENT, IN NO INSTANCE SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT EXCEED THE FEES PAID BY THE CITY FOR THE CONTRACTOR GOODS AND SERVICES DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM FOR DIRECT DAMAGES. CONTRACTOR SHALL NOT BE RESPONSIBLE FOR ANY LOST PROFITS OR OTHER DAMAGES, INCLUDING DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR ANY OTHER DAMAGES, HOWEVER CAUSED. 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 CITY KNEW OR SHOULD HAVE KNOWN THE CAUSE OF ACTION HAS ARISEN.

## **ARTICLE II - REPRESENTATIONS AND WARRANTIES**

- A. The Contractor represents and warrants to the City that:
  1. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;
  2. The Contractor has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;
  3. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;

4. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Contractor's performance of this Agreement;

5. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;

6. The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor or its operations;

7. The Contractor has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

8. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Contractor and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

**B. *Convicted Felon Statement.*** The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

**C. *Non-Solicitation Statement.*** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

**D. *Employee Verification.*** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

**E.** The Contractor acknowledges that the City is relying on these representations and warranties and Contractor's expertise, skill, and knowledge and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City.

### **ARTICLE III - THE CITY'S OBLIGATIONS**

A. **Administration.** The City will:

1. Administer this Agreement through the New Orleans City Council (the “Department”);
2. Provide the Contractor documents and staff support deemed necessary for the Contractor’s performance of any work required under this Agreement;
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor; and

B. **Payment.** The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor’s certified invoices, except:

1. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Contact have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of a properly submitted invoice via the City’s supplier portal.
2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;
3. The City may set off any amounts due to the Contractor against any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and
4. All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.
5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.
6. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

**ARTICLE IV - COMPENSATION**

A. **Rate of Compensation.**

1. The City will pay the Contractor in accordance with the following rate:

<b>One-Time Fees</b>			
<b>Solution</b>	<b>Billing Frequency</b>	<b>Quantity/Units</b>	<b>One-Time Fee</b>
Boards and Commissions - Data Import	Upon Delivery	10 hours	\$2,250
Boards & Commissions - Setup and Configuration	Upon Delivery	1 Hour	\$0
Legistar Needs Analysis and Configuration Services	Upon Delivery	24 Each	\$5,400
Legistar - Setup and Configuration	Upon Delivery	36 Each	\$8,100

Legistar - Onsite Training	Upon Delivery	3 Days	\$7,500
Legistar (Admin) - Online Training	Upon Delivery	4 Hours	\$900
Legistar - Add-On - Municode Intergration	Up Front	1	\$0
			<b>\$24,150</b>

<b>Annual Fees for Renewing Subscriptions</b>			
<b>Solution</b>	<b>Billing Frequency</b>	<b>Quantity/Units</b>	<b>One-Time Fee</b>
Government Transparency Suite	Annual	1 Each	\$10,400
Open Platform suite	Annual	1 Each	\$0
Meeting Efficiency Suite	Annual	1 Each	\$9,644.40
VoteCast Standard Package (tablet) (ME)	Annual	1 Each	\$6,480
Granicus Appliance Encoding Software	Annual	3 Each	\$3,600
Performance Accelerator	Annual	1 Each	\$4,501
			<b>\$34,625.40</b>

<b>Annual Fees for New Subscriptions</b>			
<b>Solution</b>	<b>Billing Frequency</b>	<b>Quantity/Units</b>	<b>One-Time Fee</b>
Boards & Commissions	Annual	1 Each	\$10,800
Legistar	Annual	1 Each	\$13,424.40
Legistar Add-On - Municode Integration	Annual	1 Each	\$1,200
			<b>\$25,424.40</b>

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

3. The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

**B. Maximum Amount.** The maximum aggregate amount payable by the City under this Agreement is **\$84,500.00**.

**ARTICLE V - DURATION AND TERMINATION**

A. **Initial Term.** The term of this agreement shall be for 1 year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

B. **Extension.** This Agreement may be extended at the option of the City, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for 4 additional one-year terms.

C. **Termination for Convenience.** Either Party may terminate this Agreement at any time during the term of the Agreement by giving the non-terminating Party written notice of the termination at least sixty (60) calendar days before the intended date of termination.

D. **Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

E. **Termination for Cause.** Either Party may terminate this Agreement immediately for cause by sending written notice to the non-terminating Party. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective sixty (60) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

F. **Suspension.** The City may suspend this Agreement at any time and for any reason by giving ten (10) business day's written notice to the Contractor. The Contractor will resume work upon 5 business day's written notice from the City.

#### **ARTICLE VIII – LIVING WAGES**

To the fullest extent permitted by law, the Contractor agrees to abide by City Code sections 70-801, *et seq.*, which requires payment of a wage to covered employees equal to the amounts defined in the Code ("**Living Wage**"). If the Contractor fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.

#### **ARTICLE X - NON-DISCRIMINATION**

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or

mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, 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. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

**B. Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

**C. Incorporation into Subcontracts.** The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

**D.** The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

#### **ARTICLE XI - INDEPENDENT CONTRACTOR**

**A. Independent Contractor Status.** The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

**B. Exclusion of Worker's Compensation Coverage.** The City will not be liable to the Contractor, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

**C. Exclusion of Unemployment Compensation Coverage.** The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

**D. Waiver of Benefits.** The Contractor, as an independent contractor, will not receive

from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

## ARTICLE XII - NOTICE

A. *In General.* Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

City Council Chief of Staff  
City of New Orleans  
Attn: David Gavliniski  
1300 Perdido Street, Suite 1E06  
New Orleans, LA 70112

&

City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112

2. To the Contractor:

Dawn Kubat  
408 St. Peter Street, Suite 600  
St. Paul, MN 55102

B. *Effectiveness.* Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. *Notification of Change.* Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

## ARTICLE XIII - ADDITIONAL PROVISIONS

A. *Amendment.* No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. *Assignment.* This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent. Notwithstanding the forgoing, Contractor may assign its rights in full under this Agreement without the City's prior written consent in the event of any successor or assign that has acquired all, or substantially all, of the Contractor's business by means of a merger, stock purchase, asset purchase, or otherwise. The Contractor will notify the City of such assignment at least sixty (60) days prior to the assignment

and allow the City to terminate the Agreement.

C. **Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

D. **Conflicting Employment.** To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, the Contractor will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Contractor will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

E. **Construction of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

F. **Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

G. **Jurisdiction.** The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

H. **Limitations of the City's Obligations.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

I. **No Third Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

J. **Non-Exclusivity.** This Agreement is non-exclusive and the Contractor may provide services to other clients.

K. **Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

L. **Ownership Interest Disclosure.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no



other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after 30 days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**M. Ownership of Records.** Upon final payment, all data collected and all products of work prepared, created or modified by Contractor in the performance of this Agreement solely and exclusively, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Contractor's consent and for no additional consideration to the Contractor.

**N. Prohibition of Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

**O. Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

**P. Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

**Q. Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

**R. Subcontractor Reporting.** The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

**S. Survival of Certain Provisions.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction and choice of law, and shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

**T. Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

#### **ARTICLE XIV – COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

#### **ARTICLE XV - ELECTRONIC SIGNATURE AND DELIVERY**

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

**[SIGNATURES CONTAINED ON NEXT PAGE]**

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY:   
HELENA MORENO, CITY COUNCIL PRESIDENT

Executed on this 15<sup>th</sup> of April, 2020

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Andrew Gregorian

GRANICUS, LLC.

BY:   
Dawn, Kubat, Vice President of Legal

41-1941088  
FEDERAL TAX I.D. OR SOCIAL SECURITY NO.