

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
GRANICUS, LLC**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of the 1st day of June, 2021 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and GRANICUS, LLC, a Minnesota limited liability company ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to purchase Consultant's products and services relating to website design and implementation and a staff directory widget update, as more fully described herein; and

B. WHEREAS, Section 2-165(b)(5) of the Costa Mesa Municipal Code permits the City to purchase services through cooperative purchasing agreements and programs; and

C. WHEREAS, National Cooperative Purchasing Alliance (NCPA) awarded a cooperative purchasing agreement, Agreement No. 01-115, to Consultant, for Software and SaaS Solutions; and

D. WHEREAS, City desires to utilize Agreement No. 01-115 as authorized by Section 2-165(b)(5) of the Costa Mesa Municipal Code to purchase the products and services set forth herein; and

E. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

F. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

G. WHEREAS, no official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in Consultant's Proposal, attached hereto as Exhibit "A" and incorporated herein.

1.2. Use of Products. City's use of Consultant's Products is subject to the following terms:

- (a) **Permitted Use.** Subject to the terms and conditions of this Agreement, Consultant hereby grants during the term of City's subscription, a worldwide, revocable, non-exclusive, non-transferrable right to use the Products to the extent allowed in the relevant order or scope of work solely for City's internal use.
- (b) **Data Sources.** City may only upload data related to individuals that originates with or is owned by City. Data purchased from third parties may not be used with the Products without Consultant's prior written consent and list cleansing services provided by Consultant for an additional fee. Consultant will not sell, use, or disclose any personal information provided by City for any purpose other than performing services subject to this Agreement.
- (c) **Passwords.** Passwords are not transferable to any third party. City is responsible for keeping all passwords secure and all use of the products accessed through City's passwords.
- (d) **Third-Party Contractors.** City may permit its third-party contractors to access and use the Products solely on behalf of, and for the benefit of, City, so long as: (i) such third-party contractor agrees to comply fully with this Agreement as if it were City; (ii) City remains responsible for each third-party contractor's compliance with this Agreement and any breach thereof; and (iii) all use of the Products and any metered use or transactions includes licenses and use allocated to third party contractors. All rights granted to any third-party contractor terminate immediately upon conclusion of the services rendered to City that gives rise to such right. Upon termination of such rights, third party contractor must immediately cease all use of the Products, un-install and destroy all confidential or proprietary Consultant information in its possession and City must certify its compliance with this section in writing upon Consultant's request.
- (e) **Content.** "Content" means text, data, graphics, personal information or any other material: (i) displayed or published on City's website; (ii) provided by City to Consultant to perform services; or (iii) uploaded into the Products for use by City or end users of the Products. City can only use Products to share Content that is created by or owned by City and/or Content for affiliated organizations provided that use by City 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 Product. Consultant is not responsible for any Content used, uploaded or migrated by City or any third party.
- (f) **Products.** As used herein, "Products" means the products and services made available to City pursuant to this Agreement, which may include products and services accessible for use by City on a subscription basis ("Software-as-a-Service" or "SaaS"), other required equipment components or other required hardware, as specified in the Order.
- (g) **Advertising.** Products will not be used to promote products or services available for sale through City or any third party without Consultant's prior

written consent. Upon Consultant's request, City will provide a copy of any agreement between City and a third party that compensates City for the right to have information included in Content distributed or made available through Products for Consultant review prior to granting such approval.

- (h) **Restrictions.** City will not:
- (i) Use or permit any end user to use the 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 Products, network services or network equipment, including unsolicited advertising or chain letters, propagation of computer worms and viruses, or use of the Products to make unauthorized entry into any other device accessible via the network or Products;
 - (ii) Use the Products as a door or signpost to another server;
 - (iii) Disassemble, decompile, reverse engineer or make derivative works of the Products;
 - (iv) Rent, lease, lend, or host the Products to or for any third party, or disclose the Products to any third party except as otherwise permitted in this Agreement or an order or statement of work;
 - (v) Use the 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
 - (vi) Modify, adapt, or use the Products to develop any software application intended for resale which uses or competes with the Products in whole or in part.
- (i) **Feedback.** Consultant may use any suggestion, enhancement request, recommendation, correction or other feedback provided by City or any end user relating to the Products or use thereof without need for permission or consent or the payment of fees or attribution to City or end user.

1.3. **Professional Practices.** All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also represents that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement of which it becomes aware.

1.4. **Performance to Satisfaction of City.** Consultant agrees to perform all the work in a professional and workmanlike manner in accordance with industry standards and any specifications set forth in Exhibit A. Evaluations of the work will be done by the City Manager or

his or her designee. If the work breaches the foregoing warranty, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and, if Consultant fails to meet the foregoing warranty after reperformance of the work, then;
- (c) Terminate the Agreement as hereinafter set forth.

1.5. **Warranty.** Consultant shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all third party claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.6. **Non-Discrimination.** In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.7. **Non-Exclusive Agreement.** Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.8. **Delegation and Assignment.** This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense. Notwithstanding the foregoing, Consultant may assign its rights under this Agreement in full, without the City's prior written consent, in the event of any successor or assign that has acquired all, or substantially all, of the Consultant's business by means of a merger, acquisition, stock purchase, asset purchase or otherwise. Consultant shall provide written notice to City of any such assignment.

1.9. **Confidentiality.** Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be

returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. **Compensation.** Consultant's total compensation shall not exceed Forty-Five Thousand Six Hundred Dollars (\$45,600.00) ("Total Compensation"). Consultant shall be paid on a milestone basis as follows:

- (a) Milestone 1 – Execution of Agreement. City will pay Consultant 40% of the Total Compensation upon execution of this Agreement;
- (b) Milestone 2 – Draft Homepage Design. City will pay Consultant 20% of the Total Compensation upon Consultant's delivery to City of the draft homepage design concepts;
- (c) Milestone 3 – Implementation of Main Website. City will pay Consultant 20% of the Total Compensation upon implementation of the main website into the VCMS on a Consultant-hosted development server; and
- (d) Milestone 4 – Completion. City will pay Consultant the remaining 20% of the Total Compensation upon the earlier of twenty-one (21) days after completion of the services set forth herein or completion of training of City personnel.

2.2. **Additional Services.** Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City Manager or designee, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. **Method of Billing.** Consultant may invoice the City on a milestone basis upon completion of the milestones set forth herein. City shall pay Consultant's invoice within thirty (30) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. **Records and Audits.** Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

3.0. TIME OF PERFORMANCE

3.1. **Commencement and Completion of Work.** Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within thirty (30) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for the later of a period of one (1) year, ending on May 31, 2022, or upon completion of the professional services described in Exhibit A, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. Both parties have the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing no less than ninety (90) days advance written notice to the non-terminating party, provided that if the termination is for cause due to a party's breach of this Agreement and the breaching party cures such breach within the ninety (90) day notice period, the Agreement will not be terminated. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement specifically and exclusively for City including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury

with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

- (b) Business automobile liability for hired and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.
- (e) In the event of any termination, suspension, cancellation, or material change in coverage, Consultant shall provide no less than thirty (30) days advance written notice to the City.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (c) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.

- (d) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Granicus, LLC
408 St. Peter Street, Suite 600
St. Paul, MN 55102
Tel: (323) 422-9710
Attn: Contracts

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5000
Attn: City Manager

Courtesy copy to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Dept. | Purchasing

6.5. **Drug-Free Workplace Policy.** Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "B" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. **Attorneys' Fees.** In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. **Assignment.** Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement. Notwithstanding the foregoing, Consultant may assign its rights under this Agreement in full, without the City's prior written consent, in the event of any successor or assign that has acquired all, or substantially all, of the Consultant's business by means of a merger, acquisition, stock purchase, asset purchase or otherwise.

6.9. **Indemnification and Hold Harmless; Limitation of Liability.**

(a) **Indemnification and Hold Harmless.** Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all third party claims, actions, suits or other legal proceedings brought against the City,

its elected officials, officers, agents and employees to the extent caused by the negligent or wrongful acts, errors or omissions of the Consultant, its employees, and/or authorized subcontractors in the performance of this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

(b) Limitation of Liability. In no event will Consultant's liability to City under this Agreement exceed the fees paid by the City pursuant to this Agreement.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any third party claims of failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for any third party claims relating to the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement specifically and exclusively for City, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation

as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement or any Exhibit incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.21. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.22. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.23. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.24. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.25. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in

respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.26. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.27. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

6.28. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CONSULTANT

Signature
MARK HYNES, CEO

[Name and Title]

Date: 6/24/2021

CITY OF COSTA MESA

Lori Ann Farrell Harrison
City Manager

Date: _____

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management

Date: _____

DEPARTMENTAL APPROVAL:

Brenda Green
City Clerk

Date: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CONSULTANT

[Signature]
Signature
MARR HYNES, CEO
[Name and Title]

Date: 6/24/2021

CITY OF COSTA MESA

[Signature]
Lori Ann Farrell Harrison
City Manager

Date: 06/24/21

ATTEST:

[Signature] 6/29/2021
Brenda Green
City Clerk



APPROVED AS TO FORM:

[Signature]
Kimberly Hall Barlow
City Attorney

Date: 6/24/2021

APPROVED AS TO INSURANCE:

[Signature]
Ruth Wang
Risk Management

Date: 6/24/21

DEPARTMENTAL APPROVAL:

[Signature]
~~Brenda Green~~ SUSAN Price
City Clerk ~~Assistant~~ City Manager

Date: 6/24/21

APPROVED AS TO PURCHASING:



Carol Molina
Finance Director

Date: 6/24/21

EXHIBIT A
CONSULTANT'S PROPOSAL



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

THIS IS NOT AN INVOICE

Order Form
Prepared for
Costa Mesa, CA

**Procurement Vehicle: NCPA (01-115)
In Support of: Costa Mesa, CA**

ORDER DETAILS

Prepared By: Andrew Murray
Phone: (202) 407-7435
Email: andrew.murray@granicus.com
Order #: Q-126693
Prepared On: 05/18/2021
Expires On: 06/30/2021

ORDER TERMS

Currency: USD
Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)
Period of Performance: 6/1/2021- 5/31/2022

Order #: Q-126693
Prepared: 05/18/2021

PRICING SUMMARY

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

One-Time Fees			
Solution	Billing Frequency	Quantity/Unit	One-Time Fee
govAccess – Website Design and Implementation - Trailblazer	Milestones - 40/20/20/20	1 Each	\$45,600.00
Staff Directory widget update	Milestones - 40/20/20/20	1 Each	\$0.00
SUBTOTAL:			\$45,600.00

PRODUCT DESCRIPTIONS

Solution	Description
<p>govAccess – Website Design and Implementation - Trailblazer</p>	<p>Website Design and Implementation - Trailblazer provides a citizen focused website and includes:</p> <ul style="list-style-type: none"> • Advanced UX Consultation, which may include one (1) or more of the following: <ol style="list-style-type: none"> 1. One (1) site analytics report 2. One (1) heatmap analysis 3. One (1) internal stakeholder survey 4. One (1) community stakeholder survey 5. One (1) remote user testing of top tasks • Three (3) customer landing page consultation • Fully customized homepage wireframe • Fully responsive design • Custom mobile homepage or standard mobile responsive homepage • Video background or standard rotating image carousel (switchable at any time) • Up to three (3) customer experience features - Choose from Granicus' library including service finder, geo finder, or data visualization banner • Programming/CMS Implementation • Migrate up to 200 webpages • Up to ten (10) forms converted into the new CMS • One (1) day of on-site consultation / training to be applied towards additional project management or training (two (2) of three (3) days must be consecutive)
<p>Staff Directory widget update</p>	<p>Staff Directory widget update Granicus will create a copy of the Staff Directory widget and change the text on the widget's frontend email popup box saying " Please use this form to contact the staff member. This email will be sent directly to [staff member's name]." with "This email will be sent directly to the City Manager's Office."</p>

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.
- 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 Costa Mesa, CA to provide applicable exemption certificate(s).
- Granicus certifies that it will not sell, retain, use, or disclose any personal information provided by Client for any purpose other than the specific purpose of performing the services outlined within this Agreement.
- 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.
- Billing Frequency Notes (Milestones - 40/20/20/20): An initial payment equal to 40% of the total; A payment equal to 20% of the total upon Granicus' delivery of the draft homepage design concepts to the client; A payment equal to 20% of the total upon implementation of the main website into the VCMS on a Granicus-hosted development server; and A payment equal to 20% of the total upon completion; provided, however that the client has completed training. If the client has not completed training, then Granicus shall invoice the client at the earlier of: completion of training or 21 days after completion.

EXHIBIT B
CITY COUNCIL POLICY 100-5

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
 - B. Establishing a Drug-Free Awareness Program to inform employees about:

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

1. The dangers of drug abuse in the workplace;
 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.