

1 **BILL NO. S-25-07-23**

2 SPECIAL ORDINANCE NO. S-\_\_\_\_\_

3  
4 **AN ORDINANCE** approving the DISPATCH  
5 CONSOLE REPLACEMENT PROCUREMENT –  
6 QUOTE #36698 – (\$593,000.00) between XYBIX  
7 SYSTEMS, INC. and the City of Fort Wayne, Indiana,  
8 as a Special Procurement under I.C. 5-22-10 by and  
9 through its Consolidated Communication Partnership  
10 Department.

11 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON**  
12 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

13 **SECTION 1.** That the DISPATCH CONSOLE REPLACEMENT  
14 PROCUREMENT – QUOTE #36698 – between XYBIX SYSTEMS, INC. and the  
15 City of Fort Wayne, Indiana, as a Special Procurement under I.C. 5-22-10 by and  
16 through its Consolidated Communication Partnership Department, is hereby  
17 ratified, and affirmed and approved in all respects, respectfully for:

18 All labor, insurance, material, equipment, tools, power,  
19 transportation, miscellaneous equipment, etc., necessary for the  
20 replacement of twenty-nine (29) existing dispatch consoles;

21 involving a total cost of FIVE HUNDRED NINETY-THREE THOUSAND AND  
22 00/100 DOLLARS - (\$593,000.00) all as more particularly set forth in said  
23 DISPATCH CONSOLE REPLACEMENT PROCUREMENT – QUOTE #36698 –  
24 between XYBIX SYSTEMS, INC. which is on file in the Office of the Department of  
25 Purchasing, and is by reference incorporated herein, made a part hereof, and is  
26 hereby in all things ratified, confirmed and approved.  
27  
28  
29  
30

**SECTION 2.** That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney

Xybix Systems, Inc.  
8207 SouthPark Circle  
Littleton CO 80120  
Phone: 303-683-5656  
Fax: 303-683-5454  
meghand



Quote Number: 36698

Quote Date: 7/11/2025  
Revision: C  
Orig Create Date: 7/11/2025  
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Opp #: 0019539

Quote

Terms: NET 30

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**QUOTE TO:**

Acct: FORWAYFOIN

Fort Wayne/Allen County CCP  
100 E. Main St  
Suite 600  
Ft. Wayne IN 46802

Phone:  
Email:

**SHIP TO:**

Fort Wayne/Allen County CCP  
100 E. Main St  
Suite 600  
Ft. Wayne, IN 46802  
USA

Salesperson: AMANDA SCHWARTZ  
Phone: (720) 326-1165  
Email: amandas@xybix.com

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NASPO Contract: 00318

Eagle Line w/axys

Install Type: Standard, live Cutover (15)

Removal & Disposal: (29) qty.

\* Tariff Waived - Approved by SL

07.11.2025 - Updated panel system price, customer is reusing panel frames. - MND

07.11.2025- R8, Remove Drone positions from drawing, update quote to NASPO contract pricing/ TAN

06.19.2025 -Updated panel system price, customer is reusing panel frames. -kmr

06.19.2025: R7 - Moving forward with NO Panel Acrylic; R&D = 29; REMOVE Peds & Panel between OP21 & OP22 so there is an opening; REMOVE RRG between CTs & OP18; Cable Line update QTY 50 = FIRE 1 - 4 Monitor update (5-24s on bototm - 1-32 top); Dispatch (5-24s on bottom); SUP (5-24s on bottom, 3-24s top)- MND

06.09.2025 -Updated panel system price, customer is reusing panel frames. -kmr

6.6.2025 - Remove Lit Acrylic and etching, with PS light control, Updated cable selection to DP, quotes split into 2: 51% panel discount, Removal of Tariff Cost/TAN

#### TAXES:

Xybix is not registered to collect sales tax in the state of (IN) and any sales tax due on your transaction will need to be paid directly by you to your State agency (this is commonly referred to as USE Tax).

#### REMOVAL OF EXISTING:

All equipment and electrical must be removed from the existing workstations prior to removal. Removal is priced to take place during the installation of the new Xybix workstations.

Removal does not include any patch or paint needed for any part of the workstation that is permanently mounted to the wall currently.

Line	Part Num	Desc		Qty U/M	List Ea.	Disc. %	Disc. Price	Net Price
1.00	C-12343.	Panel System Priced by the Linear Foot: Grade 3 Fabric 12343-1-SS - 29-48in - 37.5 LF @ \$281.000/LF 12343-1-DS - 29-48in - 300.5 LF @ \$380.000/LF  Upper Tiles Fabric Color: TBD Grade 3 G2 Lower Tiles Fabric Color: TBD Grade 3 G2 Panel Trim Color: Black Panel System Reconfigure  Panel Frame Reuse Price reduced by \$22,814.00 off List Price  Panel Frames being reused below:  Panel Frame 48h x 18w Qty - 9 Panel Frame 48h x 24w Qty - 5 Panel Frame 48h x 30w Qty - 25 Panel Frame 48h x 36w Qty - 31 Panel Frame 48h x 42w Qty - 39	1	1.00 EA	\$101,913.50	51.00 %	\$49,937.62	\$49,937.62
2.00	14486-3D.	Adj. Table Worksurface - Corner Dual Surface - 66L x 66R - Cable Management Included	2	10.00 EA	\$2,719.00	51.00 %	\$1,332.31	\$13,323.10
2.01	14487-3D.	Adj. Table Worksurface - Corner Dual Surface - 84L x 84R - Cable Management Included	3	17.00 EA	\$2,780.00	51.00 %	\$1,362.20	\$23,157.40



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2.02	14377-3D.	Adj. Table Worksurface - Corner Dual Surface - 90L x 90R - Cable Management Included	4	2.00 EA	\$2,859.00	51.00 %	\$1,400.91	\$2,801.82
3.00	15701	L4 Table Base	5	10.00 EA	\$6,736.00	51.00 %	\$3,300.64	\$33,006.40
3.01	15702	L5 Table Base	6	19.00 EA	\$8,471.00	51.00 %	\$4,150.79	\$78,865.01
4.00	16744.	OP 5-8 Monitor Mount 3 - Rollervision - Corner Dual Surface - 66L x 66R  16676 - Std VESA Mount 2 HI 2 Knuckle Qty = 4 Total: \$3,440.00	7	4.00 EA	\$5,803.00	51.00 %	\$2,843.47	\$11,373.88
4.01	16744.	CALL TAKERS Monitor Mount 3 - Rollervision - Corner Dual Surface - 66L x 66R  16674 - Std VESA Mount Qty = 3 Total: \$1,050.00	8	6.00 EA	\$3,413.00	51.00 %	\$1,672.37	\$10,034.22
4.02	16744.	OP Monitor Mount 3 - Rollervision - Corner Dual Surface - 84L x 84R  16674 - Std VESA Mount Qty = 5 Total: \$1,750.00	9	13.00 EA	\$4,113.00	51.00 %	\$2,015.37	\$26,199.81
4.03	16744.	OP 1-4 Monitor Mount 3 - Rollervision - Corner Dual Surface - 84L x 84R  16674 - Std VESA Mount Qty = 5 Total: \$1,750.00 16675 - Std VESA Mount 2 HI 1 Knuckle Qty = 1 Total: \$479.00	68	4.00 EA	\$4,592.00	51.00 %	\$2,250.08	\$9,000.32
4.04	16744.	SUP Monitor Mount 3 - Rollervision - Corner Dual Surface - 90L x 90R  16674 - Std VESA Mount Qty = 2 Total: \$700.00 16676 - Std VESA Mount 2 HI 2 Knuckle Qty = 3 Total: \$2,580.00	10	2.00 EA	\$5,643.00	51.00 %	\$2,765.07	\$5,530.14
5.00	14349	Cable, Display Port, Male/Male, 25 ft, Black	63	105.00 EA	\$104.00	51.00 %	\$50.96	\$5,350.80
5.01	16130-8	Datadock 2 - Keyboard Snap-In Cable Organizer Includes: 8 - USB Ports 1 - RJ45 Port	11	29.00 EA	\$709.00	51.00 %	\$347.41	\$10,074.89
5.02	16874	Display Port Cable 20 ft M/M	64	50.00 EA	\$133.00	51.00 %	\$65.17	\$3,258.50

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OPEN MARKET								
5.03	15822	Lift Case additional Energy Chains NO PULL	12	2.00 EA	\$258.00	51.00 %	\$126.42	\$252.84
5.04	17039	Energy Chain, Monitor Surface to CPU Cabinet, 22-48, Igus	13	2.00 EA	\$320.00	51.00 %	\$156.80	\$313.60
OPEN MARKET								
5.05	11996	Cable, USB, Type A/Type A, 16 ft 4 in, Black, Booster	62	88.00 EA	\$125.00	51.00 %	\$61.25	\$5,390.00
6.00	17052	Power Bar, Grounding R56, 6 Outlet, 25 ft, Straight Plug, Includes Mounting Clips	14	18.00 EA	\$211.00	51.00 %	\$103.39	\$1,861.02
OPEN MARKET								
6.01	17069	Grounding Kit Xybix Install R56 Compliant	15	29.00 EA	\$1,874.00	51.00 %	\$918.26	\$26,629.54
OPEN MARKET								
6.02	17051	Power Bar, Grounding R56, 10 Outlet, 15 ft, Black Sticker, Includes Mounting Clips	16	29.00 EA	\$199.00	51.00 %	\$97.51	\$2,827.79
OPEN MARKET								
6.03	17050	Power Bar, Grounding R56, 10 Outlet, 15 ft, Orange Sticker, Includes Mounting Clips	17	29.00 EA	\$199.00	51.00 %	\$97.51	\$2,827.79
OPEN MARKET								
6.04	16891	Grommet, Round, 80 mm, Power Data, 2 AC Outlet, 1 USB Charge, 1 USB-C Charge, 1 CAT6, 1 HDMI, Black, 6 ft	18	6.00 EA	\$161.00	51.00 %	\$78.89	\$473.34
OPEN MARKET								
6.05	17005	Grounding Kit Install Tools	58	1.00 EA	\$0.00	0.00 %	\$0.00	\$0.00
OPEN MARKET								
7.00	16708.	Axys Control System with Fan Base Price: \$2,079.00 16707AXS - Heat - \$582.00 16709AXS - Task Lights - \$519.00 16772AXS - Axys Status Light 4 HI - \$1,790.00	19	29.00 EA	\$4,970.00	51.00 %	\$2,435.30	\$70,623.70
7.01	15560	Acrylic Cleaning Kit	20	3.00 EA	\$134.00	51.00 %	\$65.66	\$196.98
8.00	16909	Shelf, Under Surface, With Power, 1 AC Outlet, 1 USB Charge, 1 USB-C Charge, Metal, Black	25	29.00 EA	\$391.00	51.00 %	\$191.59	\$5,556.11



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Line	Part Num	Desc	Qty	U/M	List Ea.	Disc. %	Disc. Price	Net Price
OPEN MARKET								
10.00	12030-3D.	Return Worksurface - 42Wx23.5D	26	6.00 EA	\$491.00	51.00 %	\$240.59	\$1,443.54
10.01	12033-3D.	Return Worksurface - 18Wx36D	27	15.00 EA	\$656.00	51.00 %	\$321.44	\$4,821.60
10.02	12033-3D.	Return Worksurface - 30Wx36D	28	2.00 EA	\$656.00	51.00 %	\$321.44	\$642.88
10.03	12033-3D.	Return Worksurface - 36Wx36D	29	4.00 EA	\$656.00	51.00 %	\$321.44	\$1,285.76
10.04	12033-3D-FT.	Flip Top Return Worksurface - 39.25Wx36D	30	1.00 EA	\$656.00	51.00 %	\$321.44	\$321.44
10.05	12035-3D.	Return Worksurface - 72Wx36D	32	2.00 EA	\$1,183.00	51.00 %	\$579.67	\$1,159.34
10.06	12035-3D.	Return Worksurface - 78Wx36D DUAL PENINSULA	33	2.00 EA	\$1,183.00	51.00 %	\$579.67	\$1,159.34
10.07	12036-3D.	Return Worksurface - 108Wx36D DUAL PENINSULA	34	1.00 EA	\$1,541.00	51.00 %	\$755.09	\$755.09
10.08	12035-3D.	Return Worksurface - 70Wx39D	31	2.00 EA	\$1,183.00	51.00 %	\$579.67	\$1,159.34
10.09	12035-3D.	Return Worksurface - 72Wx39D	67	2.00 EA	\$1,183.00	51.00 %	\$579.67	\$1,159.34
11.00	17030	Cable Bridge, Corner, Left	35	22.00 EA	\$311.00	51.00 %	\$152.39	\$3,352.58
OPEN MARKET								
11.01	17031	Cable Bridge, Corner, Right	36	21.00 EA	\$311.00	51.00 %	\$152.39	\$3,200.19
OPEN MARKET								
11.02	15449-3D.	CPU Cabinet - ERGO ACCESS Back To Back 12Wx42H	37	2.00 EA	\$3,524.00	51.00 %	\$1,726.76	\$3,453.52
11.03	15450-3D.	CPU Cabinet - ERGO ACCESS Back To Back 18Wx42H	38	5.00 EA	\$4,063.00	51.00 %	\$1,990.87	\$9,954.35
11.04	15446-3D.	CPU Cabinet - ERGO ACCESS Tech Tower 12Wx42H Right Access	39	2.00 EA	\$1,923.00	51.00 %	\$942.27	\$1,884.54
11.05	15446-3D.	CPU Cabinet - ERGO ACCESS Tech Tower 12Wx42H Left Access	65	2.00 EA	\$1,923.00	51.00 %	\$942.27	\$1,884.54
11.06	15447-3D.	CPU Cabinet - ERGO ACCESS Tech Tower 18Wx42H Left Access	40	3.00 EA	\$2,088.00	51.00 %	\$1,023.12	\$3,069.36
11.07	15447-3D.	CPU Cabinet - ERGO ACCESS Tech Tower 18Wx42H Right Access	41	3.00 EA	\$2,088.00	51.00 %	\$1,023.12	\$3,069.36

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Line	Part Num	Desc	Qty	U/M	List Ea.	Disc. %	Disc. Price	Net Price
11.08	13636-3D.	CPU Cabinet - Under Work Surface 18Wx34.5D with Sliding Shelf	43	2.00 EA	\$1,693.00	51.00 %	\$829.57	\$1,659.14
11.09	13623-3D.	CPU Cabinet - Under Work Surface 36Wx34.5D with Sliding Shelf	44	4.00 EA	\$2,139.00	51.00 %	\$1,048.11	\$4,192.44
11.10	15489-3D-FT.	CPU Cabinet - ERGO ACCESS Under Work Surface 39.25Wx34.5D With Flip Top Hinge	42	1.00 EA	\$1,846.00	51.00 %	\$904.54	\$904.54
12.00	12425-3D.	Drawer Pedestal - Fixed - Bookcase Left - 30W - 12-12 Drawers 18W 22D	45	1.00 EA	\$1,339.00	51.00 %	\$656.11	\$656.11
12.01	12425-3D.	Drawer Pedestal - Fixed - Bookcase Right - 30W - 12-12 Drawers 18W 22D	46	1.00 EA	\$1,339.00	51.00 %	\$656.11	\$656.11
12.02	11867-3D.	Drawer Pedestal - Fixed - Single - 18W - 12-12 Drawers 18W 22D	47	21.00 EA	\$1,257.00	51.00 %	\$615.93	\$12,934.53
12.03	13641-3D.	Drawer Pedestal - Fixed - Bookcase Left - 36W - 12-12 Drawers 18W 22D	48	2.00 EA	\$1,480.00	51.00 %	\$725.20	\$1,450.40
12.04	13641-3D.	Drawer Pedestal - Fixed - Bookcase Right - 36W - 12-12 Drawers 18W 22D	49	2.00 EA	\$1,480.00	51.00 %	\$725.20	\$1,450.40
13.00	11844-3D.	Rotating Resource Guide - Under Worksurface 36 in	50	6.00 EA	\$3,188.00	51.00 %	\$1,562.12	\$9,372.72
16.00	12920-3D.	Lateral File - 42W3 Drawer 42H	51	6.00 EA	\$2,759.00	51.00 %	\$1,351.91	\$8,111.46
18.00	10005	Support, Table Leg	52	2.00 EA	\$97.00	51.00 %	\$47.53	\$95.06
18.01	16877.	Under Surface Support Bars Priced by Linear Foot: 8.6ft	53	1.00 EA	\$464.40	51.00 %	\$227.56	\$227.56
OPEN MARKET								
90.00	16139	Installers Kit Eagle Line	54	29.00 EA	\$0.00	0.00 %	\$0.00	\$0.00
99.00	Other	Other Charges & Services	55	1.00 EA	\$0.00	0.00 %	\$0.00	\$0.00

**Line (55) - Miscellaneous Charge -**

Description	Ext. Price
1.) Freight - 2 Full Truck	7,312.94
2.) Installation	89,813.63
3.) Removal & Disposal x29	12,450.00



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List Price Total:					\$988,475.90			
			Lines Total:					\$484,353.19
			Line Miscellaneous Charges					
			Total:					\$109,576.57
			Taxes Total:					\$0.00
			Quote Total:					\$593,929.76

Note 1:

All quoted taxes are estimated. Any applicable taxes, fees, permits, etc. must be added to this quote.

Note 2:

Where installation is listed on quote it is based in non-union labor and on one trip for installation only. Client is responsible for coordination of Technicians and other Vendors/Contractors. Waiting time will be charged at the rate of \$75 per man hour straight time and \$115 per man hour for OT plus subsistence expenses.

Additionally, this quote is based upon a remodel in an existing space and/or new building - completely finished with a Certificate of Occupancy. Any project where the General Contractor is still on the job is subject to additional charges.

We appreciate this opportunity to provide this quote. Our goal is to substantially improve working conditions for your valuable staff. We look forward to meeting with you to review this proposal in detail. In the meantime please don't hesitate to call us with any questions.



**COOPERATIVE PURCHASING MASTER AGREEMENT**

**No. 00318**

**PUBLIC SAFETY COMMUNICATIONS PRODUCTS, SERVICES AND SOLUTIONS**

*For Use by Eligible Purchasing Entities*

**By and Between**

**STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES**

**and**

**ERGO FLEX SYSTEMS, INC.  
DBA: XYBIX SYSTEMS, INC.**

**Dated January 1, 2022**

**COOPERATIVE PURCHASING MASTER AGREEMENT**

**No. 00318**

**PUBLIC SAFETY COMMUNICATIONS PRODUCTS, SERVICES AND SOLUTIONS**

**FOR**

**CATEGORY 10 DISPATCH CONSOLE FURNITURE**

This Cooperative Purchasing Master Agreement ("Cooperative Purchasing Master Agreement") is made and entered into by and between Enterprise Services acting by and through the State of Washington ("Enterprise Services") and ErgoFlex Systems, Inc. a Colorado corporation ("Contractor") and is dated and effective as of January 1, 2022.

**RECITALS**

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish Cooperative Purchasing Master Agreements for goods and services to support Washington state agencies. *See* RCW 39.26.050(1). The Washington State Legislature has authorized Enterprise Services to make these Cooperative Purchasing Master Agreements available, pursuant to agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agency or entity, public benefit nonprofit organizations, or any tribes located in the State of Washington. *See* RCW 39.26.050(1) & (2).
- B. The Washington State Legislature also has authorized Enterprise Services to participate in, sponsor, conduct, or administer certain cooperative purchasing agreements for the procurement of goods or services. *See* RCW 39.26.060(1). One of the approaches that Enterprise Services utilizes to participate in cooperative purchasing agreements with other states is NASPO ValuePoint.
- C. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO). The NASPO ValuePoint purchasing cooperative program is led by state procurement officers from member states. NASPO ValuePoint does not award contracts; rather, it assists states, for an administrative fee, in their collaboration pertaining to solicitations and the resulting master agreements.
- D. Pursuant to the NASPO ValuePoint cooperative purchasing model, a state serves as the 'lead state' to conduct a competitive procurement in compliance with that state's procurement laws and award a cooperative purchasing master agreement with a contractor for the specified goods or services. States (including the District of Columbia and the organized territories of the United States), including the lead state, then may participate in that cooperative purchasing master agreement by executing a Participating Addendum. Until a Participating Addendum is executed by the applicable state (a 'participating entity'), no agency or other eligible organization (a 'purchasing entity') may purchase pursuant to the cooperative purchasing master agreement. Under Washington law, at the time of solicitation, states may provide supplemental substantive terms and conditions to inform the competitive procurement. In addition, pursuant to their Participating Addendum, states may require certain administrative terms and conditions



(e.g., a vendor management fee for sales within the state, state registration and reporting). Contractor, however, has no obligation to condition execution of a Participating Addendum on substantive terms and conditions that were not competitively procured.

- E. Enterprise Services, as part of a cooperative purchasing competitive governmental procurement, with administrative support from NASPO ValuePoint, issued Competitive Solicitation No. 00318 dated November 16, 2020 regarding Public Safety Communications Products, Services and Solutions ("Public Safety Radio"). Sixteen (16) states indicated an intent to utilize the resulting Cooperative Purchasing Master Agreement.
- F. Enterprise Services and a stakeholder team consisting of representatives from Washington, California, Alaska, Oregon, Montana, Tennessee, Colorado and Nevada evaluated all responsive bids to the Competitive Solicitation and identified Contractor as an Apparent Successful Bidder for the Category identified above.
- G. Enterprise Services determined that entering into this Cooperative Purchasing Master Agreement will meet the cooperative purchasing needs and be in the best interest of the State of Washington.
- H. The purpose of this Cooperative Purchasing Master Agreement is to enable Participating or Purchasing Entities to purchase Public Safety Radio products and services, in the awarded Category as set forth herein.

## **AGREEMENT**

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **TERM.** The term of this Master Agreement begins January 1, 2022 and ends on December 31, 2026; provided, however that, the contract term shall be extended for twenty-four (24) months if, in Enterprise Services' sole, reasonable judgement, which shall occur no later than June 30, 2025, Contractor meets the following performance metrics:
  - Reports: Contractor provides timely and accurate reports as detailed in this Master Agreement and Participating Addendums; and
  - Administrative Fee Payments: Contractor provides timely and accurate Administrative Fee payments as detailed in this Master Agreement and Participating Addendums.

Notwithstanding any provision to the contrary, to effectuate a smooth transition for Participating States and Purchasing Entities for Public Safety Communications Products, Services and Solutions to begin on January 1, 2022, Contractor shall provide implementation and transition support to Participating States who wish to utilize the Master Agreement, beginning upon the date such Participating State and Contractor executes a Participating Addendum. For the avoidance of doubt, no orders for products or services shall be made under this Agreement prior to January 1, 2022.

2. **PARTICIPANTS AND SCOPE.** This Cooperative Purchasing Master Agreement may be utilized under the following conditions:

- 2.1. **PARTICIPATING ENTITIES.** Contractor may not sell Public Safety Radio products and services under this Cooperative Purchasing Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The terms and conditions set forth in the Cooperative Purchasing Master Agreement are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented, or amended by a Participating Addendum; *Provided*, however, that no Participating Addendum shall operate to alter or modify any substantive terms of this Cooperative Purchasing Master Agreement which were solicited and procured pursuant to a competitive procurement. By way of illustration and not limitation, Participating Entities may include unique administrative, delivery, and invoicing requirements, as well as entity-specific confidentiality requirements and similar entity-specific administrative requirements in purchase Orders utilizing this Cooperative Purchasing Master Agreement.
- 2.2. **PURCHASING ENTITIES.** Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order or other commitment document against the Cooperative Purchasing Master Agreement and becomes financially committed to the purchase.
- 2.3. **PARTICIPATING ADDENDUM.** Obligations under this Cooperative Purchasing Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive or other process to determine which Cooperative Purchasing Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum as instructed by the Lead State to support documentation of participation and posting in appropriate databases.
- 2.4. **PURCHASING ENTITY RIGHTS.** Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Cooperative Purchasing Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Cooperative Purchasing Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Cooperative Purchasing Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. Contractor will apply the charges and invoice each Participating Entity individually.
- 2.5. **PARTICIPATING ADDENDUM APPROVAL.** Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

### 3. SCOPE – INCLUDED GOODS/SERVICES AND PRICE.

- 3.1. CONTRACT SCOPE. Pursuant to this Cooperative Purchasing Master Agreement, Contractor is authorized to sell only those Public Safety Radio Products and Services in the category above posted on the NASPO ValuePoint website. Contractor shall not represent to any Participating or Purchasing Entity under this Cooperative Purchasing Master Agreement that Contractor has contractual authority to sell any Public Safety Radio Products beyond those approved and posted on the NASPO ValuePoint website.
- 3.2. MINIMUM WARRANTY FOR INCLUDED GOODS/SERVICES. Notwithstanding any provision to the contrary, Contractor agrees to and is providing a minimum warranty of no less than one (1) year for any goods/services included in this Cooperative Purchasing Master Agreement. Such minimum warranty begins when the goods/services are accepted by Purchasing Entity or as agreed by Purchasing Entity in its ordering documentation. Such minimum warranty includes all firmware and software updates within warranty period. Parts and related software will be free from defects in material and workmanship for one (1) year. If a product fails because of a defect in workmanship or materials within one (1) year from the date of acceptance by Purchasing Entity, manufacture shall repair or replace the product or part with a new product or part without charge to Purchasing Entity.
- 3.3. ADDITIONAL WARRANTY OPTIONS – See ErgoFlex Systems Products/Services Pricing Document on the NASPO ValuePoint website for descriptions and pricing for all available warranty options.
- 3.4. AVAILABLE SERVICES – See ErgoFlex Products/Services Pricing Document on the NASPO ValuePoint website for descriptions and pricing for all available services.
- 3.5. ABILITY TO MODIFY SCOPE OF COOPERATIVE PURCHASING MASTER AGREEMENT. Subject to mutual agreement between the parties, Enterprise Services, acting as the lead state, reserves the right to modify the Public Safety Radio Products included in this Cooperative Purchasing Master Agreement; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this competitively procured Cooperative Purchasing Master Agreement. In no event shall such modification, if authorized by Enterprise Services, limit the requirement for cooperative purchasing agreements to be subject to competitive procurement.
- 3.6. PRODUCT UPDATES. Upon approval, Contractor may update their products/pricelist on a semi-annual basis. Contractor must submit to the Lead Contract Administrator a revised product/pricelist highlighting changes and include an effective date of the change. At no time during the contract term shall products be deleted from the products/pricelist. Discontinued products/services must be struck-through and highlighted for ease of review process. Product/pricelist updates must be submitted for review and approval to the Lead Contract Administrator thirty (30) days prior to the effective date of the change. All products/pricelist will be posted on the NASPO ValuePoint website.

Product updates for January 1st through June 30<sup>th</sup> must be submitted to Lead State Contract Administrator by June 1<sup>st</sup> to be eligible for product updates effective July 1<sup>st</sup>. Product updates for July 1<sup>st</sup> through December 31<sup>st</sup> must be submitted to the Lead State Contract Administrator by December 1<sup>st</sup> to be eligible for product updates effective January 1<sup>st</sup>. Additional product updates may be considered for approval with proper 30 day notice at the discretion of the Lead State.



Semi-Annual	Submitted By	Effective Date
January 1-June 30	June 1 <sup>st</sup>	July 1 <sup>st</sup>
July 1-December 31	December 1 <sup>st</sup>	January 1 <sup>st</sup>

- 3.7. **ECONOMIC ADJUSTMENTS.** All pricing must be guaranteed for the first year of the Cooperative Purchasing Master Agreement. Following the guarantee period, any request for price increases must be for an equal guarantee period (1 year), and must be submitted to the Lead State at least thirty (30) calendar days prior to the effective date. The Lead State will review a documented request for an MSRP price list increase only after the Price Guarantee Period.

Requests for price increases must include sufficient documentation supporting the request and demonstrating the reasonableness of the adjustment when comparing the current price list to the proposed price list. Documentation may include: the manufacturer's national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, Index data and other information to support and justify the increase. The price increase must not produce a higher profit margin than the original contract, and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the published manufacturer's price list. No retroactive price increases will be allowed.

**Price Reductions.** In the event of a price decrease in any category of product at any time during the contract in an OEM's published manufacturer's price list, including renewal options, the Lead State shall be notified immediately. All published manufacturer's price list price reductions shall be effective upon the notification provided to the Lead State.

Enterprise Services reserves the right to request clarification and justification for requested Economic Adjustments.

Economic Price Adjustment requests for January 1<sup>st</sup> through June 30<sup>th</sup> must be submitted to Lead State Contract Administrator by June 1<sup>st</sup> to be eligible for product updates effective July 1<sup>st</sup>. Product updates for July 1<sup>st</sup> through December 31<sup>st</sup> must be submitted to the Lead State Contract Administrator by December 1<sup>st</sup> to be eligible for product updates effective January 1<sup>st</sup>.

Semi-Annual	Submitted By	Effective Date
January 1-June 30	June 1 <sup>st</sup>	July 1 <sup>st</sup>
July 1-December 31	December 1 <sup>st</sup>	January 1 <sup>st</sup>

- 3.8. **PRICE CEILING.** Although Contractor may offer lower prices, including volume discounts, to Purchasing Entity, during the term of this Cooperative Purchasing Master Agreement, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth approved and posted on the NASPO ValuePoint website.
- 3.9. **COOPERATIVE PURCHASING MASTER AGREEMENT INFORMATION.** Enterprise Services shall maintain and provide information regarding this Cooperative Purchasing Master Agreement, including scope and pricing, to eligible Purchasing Entity.
- 3.10. **CONTRACTOR RESPONSIBILITIES.** Contractor shall be responsible for successful performance of the Cooperative Purchasing Master Agreement and also for the successful performance of any

and all of their partners. Contractor is to be the sole point of contact as applicable by Cooperative Purchasing Master Agreement with regard to contractual matters, payment of any and all charges resulting from the purchase of the products and maintenance of the product for the term of the Cooperative Purchasing Master Agreement unless otherwise specified by a Participating State in a Participating Addendum and/or the Cooperative Purchasing Master Agreement. Contractor must be able to receive, process, and invoice orders unless the Participating State has agreed to assign these functions to a partner. Contractor will be responsible for compliance with requirements under the Cooperative Purchasing Master Agreement, even if requirements are delegated to partners. Contractor and partners must not in any way represent themselves in the name of the Lead State, NASPO ValuePoint or Participating States.

4. **CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Cooperative Purchasing Master Agreement and at the time any order is placed pursuant to this Cooperative Purchasing Master Agreement. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.
  - 4.1. **QUALIFIED TO DO BUSINESS.** Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington. Contractor further represents and warrants that, within fifteen (15) days of executing any Participating Addendum and prior to making any sales pursuant to such Participating Addendum, Contractor shall be in good standing and qualified to do business in such state and that Contractor properly shall have registered to do business in such state, shall possess and shall keep current all required licenses and/or approvals, and that it shall be current, in full compliance, and have paid all applicable taxes owed to such state.
  - 4.2. **SUSPENSION & DEBARMENT.** Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
  - 4.3. **QUALITY OF GOODS OR SERVICES.** Contractor represents and warrants that any goods and/or services sold pursuant to this Cooperative Purchasing Master Agreement shall be merchantable, shall conform to this Cooperative Purchasing Master Agreement and Purchasing Entity's Purchase Order, shall be fit and safe for the intended purposes, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered and the services provided free of liens and encumbrances and that the same do not infringe any third party patent. Upon breach of warranty, Contractor will repair or replace (at no charge to Purchasing Entity) any goods and/or services whose nonconformance is discovered and made known to the Contractor. If, in Purchasing Entity's judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual

damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

- 4.4. WAGE VIOLATIONS. Contractor represents and warrants that, during the term of this Cooperative Purchasing Master Agreement and the three (3) year period immediately preceding the award of the Cooperative Purchasing Master Agreement, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- 4.5. PAY EQUALITY. Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Cooperative Purchasing Master Agreement and any Purchasing Entity hereunder similarly may suspend or terminate its use of the Cooperative Purchasing Master Agreement and/or any agreement entered into pursuant to this Cooperative Purchasing Master Agreement.
- 4.6. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Cooperative Purchasing Master Agreement, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 4.7. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Purchasing Entity's employees.
- 4.8. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Cooperative Purchasing Master Agreement, Contractor shall maintain an accurate profile in WEBS.



- 4.9. STATEWIDE PAYEE DESK. Contractor represents and warrants that it is registered with the Washington Statewide Payee Desk, which registration is a condition to payment.
- 4.10. COOPERATIVE PURCHASING MASTER AGREEMENT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Cooperative Purchasing Master Agreement with eligible Purchasing Entity and to ensure that those entities that utilize this Cooperative Purchasing Master Agreement are eligible Purchasing Entity. Contractor understands and acknowledges that neither Enterprise Services nor Purchasing Entity are endorsing Contractor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services, any Purchasing Entity, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.
- 4.11. COOPERATIVE PURCHASING MASTER AGREEMENT TRANSITION. Contractor represents and warrants that, in the event this Cooperative Purchasing Master Agreement or a similar contract, is transitioned to another contractor (e.g., Cooperative Purchasing Master Agreement expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.
- 4.12. SUB-CONTRACTORS, AUTHORIZED RESELLERS/DEALERS. MANUFACTURER'S REPRESENTATIVE (PARTNERS). If utilizing partners, Contractor is responsible for such partners providing products and services, as well as warranty and maintenance services for any product or solution such partners provide pursuant to this Cooperative Purchasing Master Agreement. Pursuant to their applicable Participating Addendum, each Participating Entity may allow or disallow Contractor to utilize Partners. Only partners approved by the Participating Entity may be utilized. The Participating Entity will define the process to add and remove partners in their Participating Addendum.

## 5. USING THE COOPERATIVE PURCHASING MASTER AGREEMENT – PURCHASES.

- 5.1. ORDERING REQUIREMENTS. Eligible Purchasing Entity shall order goods and/or services from this Cooperative Purchasing Master Agreement, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchasing Entity but, at a minimum, including the use of a purchase order. When practicable, Contractor and Purchasing Entity also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchasing Entity Order"). All order documents must reference the Cooperative Purchasing Master Agreement number. The terms of this Cooperative Purchasing Master Agreement shall apply to any Purchase Order and, in the event of any conflict, the terms of this Cooperative Purchasing Master Agreement shall prevail. Notwithstanding any provision to the contrary, in no event shall any 'click-agreement,' software or web-based application terms and conditions, or other agreement modify the terms and conditions of this Cooperative Purchasing Master Agreement.

- (a) All order documents must, at a minimum, reference
  - The Cooperative Purchasing Master Agreement number;
  - The place and requested time of delivery;
  - A billing address;

- The name, phone number, and address of the Participating Entity representative;
- (b) All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Participating Entity's purchasing office, or to such other individual identified in writing in the Order.
- (c) Orders must be placed pursuant to this Cooperative Purchasing Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days thereafter.
- (d) Notwithstanding the expiration, cancellation or termination of this Cooperative Purchasing Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Cooperative Purchasing Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Cooperative Purchasing Master Agreement may not be placed after the expiration or termination of this Cooperative Purchasing Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

5.2. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of goods and/or services will be made as required by this Cooperative Purchasing Master Agreement, the Purchase Order used by Purchasing Entity, or as otherwise mutually agreed in writing between the Purchasing Entity and Contractor. The following apply to all deliveries:

- (a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall occur during Purchasing Entity's normal work hours and within the time period mutually agreed in writing between Purchasing Entity and Contractor at the time of order placement. Deliveries to be off-loaded at Purchasing Entity's receiving dock or designated job site by Contractor.
- (b) Contractor shall ship all goods purchased pursuant to this Master Agreement to Purchasing Entity's specified destination. Shipping charges must be mutually agreed to between Purchasing Entity and Contractor, and shall be added as a separate line item on the Contractor's invoice. Contractor shall bear all risk of loss, damage, or destruction of the goods ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchasing Entity's fault or negligence. Ownership transfers to the Purchasing Entity upon delivery.
- (c) All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

- (d) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Cooperative Purchasing Master Agreement shall be identified by the Cooperative Purchasing Master Agreement number set forth on the cover of this Cooperative Purchasing Master Agreement and the applicable Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.
- (e) Purchasing Entities may return unopened or unused (non-specialty or customized) Public Safety Radio products within ten (10) business days of receipt for full credit, minus any freight or restocking fee. In such event, Contractor is responsible for shipping costs pertaining to any defective Public Safety Radio Products that are returned.

5.3. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or services purchased under this Cooperative Purchasing Master Agreement are subject to Purchasing Entity's reasonable inspection, testing, and approval at Purchasing Entity's destination. Such inspection and approval shall be determined within thirty (30) days of delivery. Purchasing Entity reserves the right to reject and refuse acceptance of goods and/or services that are not in accordance with this Cooperative Purchasing Master Agreement and Purchasing Entity's Purchase Order. If there are any apparent defects in the goods and/or services at the time of delivery, Purchasing Entity will notify Contractor within five (5) business days. At Purchasing Entity's option, and without limiting any other rights, Purchasing Entity may require Contractor to, consistent with the warranty terms, repair or replace, at Contractor's expense, any or all of the damaged goods and/or services or, at Purchasing Entity's option, Purchasing Entity may note any damage to the goods and/or services on the receiving report, decline acceptance, and deduct the cost of rejected goods and/or services from final payment. Payment for any goods under such Purchase Order shall not be deemed acceptance of the goods.

- (a) Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Cooperative Purchasing Master Agreement. Products that do not meet specifications may be rejected as mutually agreed between Purchasing Entity and Contractor. Failure to reject upon receipt, however, does not relieve Contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when the Public Safety Radio Products are put to use. Acceptance of such Public Safety Radio Products may be revoked in accordance with the provisions of the applicable commercial code, and Contractor shall be liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of any Public Safety Radio Products rejected and returned, or for which Acceptance is revoked.
- (b) If any Public Safety Radio Products do not conform to the specifications, the Purchasing Entity may require the Contractor to repair or replace the Public Safety Radio Product in conformity with the specifications.

5.4. ON SITE REQUIREMENTS. While on Purchasing Entity's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchasing Entity's physical, fire, access, safety, and other security requirements.



- 5.5. **INSTALLATION.** Installation shall be performed by Contractor or Sub-Contractor, in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. Purchasing Entity reserves the right to require Contractor or Sub-Contractor to repair any damage caused during installation or provide full compensation as determined by Purchasing Entity.
- 5.6. **CONFIDENTIALITY; SAFEGUARDING OF INFORMATION.** Contractor shall not use or disclose any information concerning Enterprise Services/the State of Washington or Purchasing Entity's information which may be classified as confidential, for any purpose not directly connected with the administration of this Cooperative Purchasing Master Agreement, except with prior written consent of Enterprise Services (or the applicable Purchasing Entity), or as may be required by law.
- 5.7. **TREATMENT OF ASSETS.** Title to all property furnished by any Participating State and/or Purchasing Entity shall remain with such Participating State and/or Purchasing Entity, as applicable. Any property of any Participating State and/or Purchasing Entity furnished to Contractor shall, unless otherwise provided herein or approved by such Participating State and/or Purchasing Entity, be used only for the performance of this Cooperative Purchasing Master Agreement. Contractor shall be responsible for damages as a result of any loss or damage to property of any Participating State and/or Purchasing Entity to the extent it results from the negligence of Contractor or to the extent it results from the failure on the part of Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances. If any such Participating State and/or Purchasing Entity property is lost, destroyed, or damaged, Contractor immediately shall notify such Participating State and/or Purchasing Entity and shall take all reasonable steps to protect the property from further damage. Contractor shall surrender to such Participating State and/or Purchasing Entity all property of such Participating State and/or Purchasing Entity prior to settlement upon completion, termination, or cancellation of this Cooperative Purchasing Master Agreement. Title to all property furnished by Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Purchasing Entity upon delivery of such property by Contractor to the Purchasing Entity. Title to other property, the cost of which is reimbursable to Contractor under this Contract, shall pass to and vest in the Purchasing Entity upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchasing Entity in whole or in part, whichever first occurs. All reference to Contractor under this clause shall also include Contractor's employees, agents or subcontractors. Title to software shall not pass to Purchasing Entity but shall be licensed. All reference to Contractor under this clause shall also include Contractor's employees, agents or subcontractors.
- 5.8. **SOFTWARE LICENSE AGREEMENT.** If the public safety communications equipment ordered and delivered under the term and conditions of this Cooperative Purchasing Master Agreement requires software or firmware to operate, Purchasing Entity and Contractor will mutually agree to Contractor's Software License Agreement that will apply to such transactions. Contractor's software license agreement shall not conflict with the terms and conditions of this Cooperative Purchasing Master Agreement or specific security requirements of Purchasing Entity.
- 5.9. **SUBSCRIPTION SERVICES AGREEMENT.** If the public safety communications equipment ordered and delivered under the term and conditions of this Contract requires subscription services to operate, Purchasing Entity and Contractor will mutually agree to Contractor's Software License

Agreement that will apply to such transactions. Contractor's Subscription Services Agreement shall not conflict with the terms and conditions of this Master Agreement or the specific security requirements of Purchasing Entity.

## 6. INVOICING & PAYMENT.

6.1. **CONTRACTOR INVOICE.** Contractor shall submit to Purchasing Entity's designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:

- Cooperative Purchasing Master Agreement No. 00318
- Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative)
- Contractor's Federal Tax Identification Number
- Date(s) of delivery
- Applicable goods/services
- Invoice amount; and
- Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Cooperative Purchasing Master Agreement prices, less discounts or lower negotiated costs. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

6.2. **PAYMENT.** Payment is the sole responsibility of, and will be made by, the Purchasing Entity. Payment is due within thirty (30) days of invoice. If Purchasing Entity fails to make timely payment(s), Contractor may invoice Purchasing Entity in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.

6.3. **OVERPAYMENTS.** Contractor promptly shall refund to Purchasing Entity the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchasing Entity shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchasing Entity may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.

6.4. **NO ADVANCE PAYMENT.** No advance payment shall be made for the products and services furnished by Contractor pursuant to this Cooperative Purchasing Master Agreement; *Provided*, however, that the parties agree that maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

6.5. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.

6.6. **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Cooperative Purchasing Master Agreement. Failure to do so shall constitute breach of this Cooperative Purchasing Master Agreement. Unless otherwise agreed, Purchasing Entity shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. In regard to federal excise taxes, Contractor shall include

federal excise taxes only if, after thirty (30) calendar days written notice to Purchasing Entity, Purchase has not provided Contractor with a valid exemption certificate from such federal excise taxes.

## **7. CONTRACT MANAGEMENT.**

- 7.1. **CONTRACT ADMINISTRATION & NOTICES.** Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Cooperative Purchasing Master Agreement. Enterprise Services' contract administrator shall provide Cooperative Purchasing Master Agreement oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Cooperative Purchasing Master Agreement. The parties may change contractor administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**Enterprise Services**  
Attn: Contract Administrator 00318  
Washington Dept. of Enterprise Services  
PO Box 41411  
Olympia, WA 98504-1411  
Tel: (360) 407-2218  
Email: [DESContractsTeamCypress@des.wa.gov](mailto:DESContractsTeamCypress@des.wa.gov)

**ErgoFlex Systems, Inc.**  
Attn:  
8207 Southpark Circle  
Littleton, CO 80120  
Tel: 3036835656  
Email: [kenc@xybix.com](mailto:kenc@xybix.com)

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 7.2. **CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE.** Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchasing Entity issues pertaining to this Cooperative Purchasing Master Agreement.
- 7.3. **LEGAL NOTICES.** Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**Enterprise Services**  
Attn: Legal Services Manager  
Washington Dept. of Enterprise Services  
PO Box 41411  
Olympia, WA 98504-1411  
Email: [greg.tolbert@des.wa.gov](mailto:greg.tolbert@des.wa.gov)

**ErgoFlex Systems, Inc.**  
Attn:  
8207 Southpark Circle  
Littleton, CO 80120  
Email: [kenc@xybix.com](mailto:kenc@xybix.com)

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

## 8. NASPO VALUEPOINT SUMMARY AND DETAILED USAGE REPORTS.

- 8.1. SUMMARY SALES DATA. Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Cooperative Purchasing Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- 8.2. DETAILED SALES DATA. Contractor also shall report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Participating Entity name; (4) Participating Entity bill-to and ship-to locations; (4) Participating Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; and (8) line item description, including product number if used. Reports are due on a quarterly basis and must be received by the Enterprise Services and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to Enterprise Services and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by Enterprise Services and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Cooperative Purchasing Master Agreement.
- 8.3. NASPO VALUEPOINT EXECUTIVE SUMMARY. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.
- 8.4. REPORT OWNERSHIP. Timely submission of these reports is a material requirement of the Cooperative Purchasing Master Agreement. Enterprise Services and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.
- 8.5. CONFIDENTIALITY OF DETAILED SALES DATA AND PARTICIPATING ADDENDA. Participating Addenda, as well as Orders or transaction data relating to Orders under this Cooperative Purchasing Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates, shall be Confidential Information. Contractor shall hold Confidential Information in confidence and shall not transfer or otherwise disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Cooperative Purchasing Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Cooperative Purchasing Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.



## **9. NASPO VALUEPOINT COOPERATIVE PROGRAM MARKETING AND PERFORMANCE REVIEW**

- 9.1. **NASPO VALUEPOINT COOPERATIVE PROGRAM.** Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Cooperative Purchasing Master Agreement, including the competitive nature of NASPO ValuePoint procurements, the Cooperative Purchasing Master Agreement and Participating Addendum process, and the manner in which qualifying entities can participate in the Cooperative Purchasing Master Agreement.
- 9.2. **LOGOS.** NASPO VALUEPOINT logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- 9.3. **ANNUAL SUPPLIER BUSINESS REVIEW.** Contractor agrees to participate in an annual supplier performance review at a location (virtual or in-person) selected by Enterprise Services and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees. The 2022 Annual Supplier Business Review requires in-person attendance. Any subsequent Annual Supplier Business Review meetings may be attended virtually or in-person.

## **10. ADMINISTRATIVE FEES.**

- 10.1. **CONTRACTOR** shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint ADMINISTRATIVE Fee of one-quarter of one percent (0.25%) of the quarterly sales by participating state. The NASPO ValuePoint administrative fee is not negotiable. This fee may not be adjusted in any Participating Addendum. This fee is to be included as part of the pricing submitted with the bid.
- 10.2. Some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. The fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Cooperative Purchasing Master Agreement. The Contractor may adjust the Cooperative Purchasing Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee set forth above shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

## **11. RECORDS RETENTION & AUDITS.**

- 11.1. **RECORDS RETENTION.** Contractor shall maintain books, records, documents, and other evidence pertaining to this Cooperative Purchasing Master Agreement and orders placed by Purchasing Entity under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Cooperative Purchasing Master Agreement or final payment for any order placed by a Purchasing Entity against this Cooperative Purchasing Master Agreement, whichever is later; *Provided*, however, that if any

litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- 11.2. **AUDIT.** Upon reasonable advance written notice, Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records associated with this Cooperative Purchasing Master Agreement to ensure that Contractor has properly invoiced Purchasing Entity and that Contractor has paid all applicable vendor management fees. Accordingly, Contractor shall permit Enterprise Services, any Purchasing Entity, and any other duly authorized agent of a governmental agency, to audit, inspect examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Cooperative Purchasing Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Cooperative Purchasing Master Agreement or final payment for any order placed by a Purchasing Entity against this Cooperative Purchasing Master Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 11.3. **OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES.** Without limiting any other remedy available to any Purchasing Entity, Contractor shall reimburse Purchasing Entity for any overpayments inconsistent with the terms of this Cooperative Purchasing Master Agreement or orders, at a rate of 100% of such overpayments, found as a result of the examination of the Contractor's records.

## **12. INSURANCE.**

- 12.1. **REQUIRED INSURANCE.** During the Term of this Cooperative Purchasing Master Agreement, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit A – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for goods/services and no additional payment shall be made.
- 12.2. **WORKERS COMPENSATION.** Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Cooperative Purchasing Master Agreement. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.
- 12.3. **INSURANCE CERTIFICATE.** Prior to commencement of performance, Contractor shall provide to Enterprise Services a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to Enterprise Services that (1) names the State of Washington and Enterprise Services as additional insureds, (2) provides for written notice of cancellation delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations

are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

- 13. PUBLIC INFORMATION.** This Cooperative Purchasing Master Agreement, all related documents, and all records created as a result of the Cooperative Purchasing Master Agreement are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56. In addition, Participating Addendums and related records shall be subject to public disclosure as required by applicable law pertaining to such Purchasing Entity. Consistent with the Public Records Act, to the extent that any such Contractor document or record – in whole or in part – includes information exempted or protected from disclosure by the Public Records Act, Contractor may mark such document or record – the exempted or protected portions only – with the specific basis for protection under the Public Records Act. In the event that Enterprise Services receives a public records disclosure request that pertains to such properly marked documents or records, Enterprise Services shall notify Contractor of such disclosure request and of the date that the records will be released to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining such disclosure. In the event Contractor fails to file a motion for a court order enjoining such disclosure, Enterprise Services shall release the requested documents on the date specified. Contractor's failure properly to identify exempted or protected information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are protected or exempt from disclosure.

#### **14. DEFAULTS AND REMEDIES**

- 14.1. SUSPENSION & TERMINATION FOR DEFAULT.** Enterprise Services may suspend Contractor's operations under this Cooperative Purchasing Master Agreement immediately by written cure notice of any default. Contractor may be required to submit a written cure plan within five (5) business days of Suspension notification. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's right under this Cooperative Purchasing Master Agreement. All of Contractor's obligations to Enterprise Services and Purchasing Entity survive termination of Contractor's rights under this Cooperative Purchasing Master Agreement, until such obligations have been fulfilled.
- 14.2. DEFAULT.** Each of the following events shall constitute default of this Cooperative Purchasing Master Agreement by Contractor:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Cooperative Purchasing Master Agreement;
  - (b) Contractor breaches any representation or warranty provided herein; or
  - (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.
- 14.3. REMEDIES FOR DEFAULT.**
- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Cooperative Purchasing Master Agreement are in addition to all other available remedies.
  - (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasing

Entity replacement goods and/or services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Cooperative Purchasing Master Agreement price and the replacement or cover price for identical equipment or services, as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement. Enterprise Services or Purchasing Entity will mitigate damages and provide Contractor with detailed invoices substantiating the charges.

- (c) Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Cooperative Purchasing Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, either Party shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order. Nothing in this Cooperative Purchasing Master Agreement shall be construed to limit the rights and remedies available to either Party under the applicable commercial code.

14.4. LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Purchasing Entity be liable to the other for exemplary or punitive damages.

14.5. GOVERNMENTAL TERMINATION.

- (a) Termination for Withdrawal of Authority. Enterprise Services may suspend or terminate this Cooperative Purchasing Master Agreement if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Cooperative Purchasing Master Agreement; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Participating Entity or Purchasing Entity from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor. Contractor will be entitled to seek a change order to the extent Contractor provides documentary evidence that Contractor has incurred additional costs as a result of the suspension including costs to demobilize and remobilize the project.
- (b) Termination for Convenience. Enterprise Services, for convenience, may terminate this Cooperative Purchasing Master Agreement; *Provided*, however, that such termination for convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for convenience shall not relieve any Participating Entity or Purchasing Entity from payment for goods and/or services



already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for convenience, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor.

## **15. CLAIMS.**

15.1. **ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES.** Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents to the extent caused by its operations under this Cooperative Purchasing Master Agreement. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. If responsibility can be substantiated as Contractor fault, Contractor shall pay for all damage to any Purchasing Entity's property resulting directly or indirectly from its acts or omissions under this Cooperative Purchasing Master Agreement, to the extent attributable to negligence by Contractor or its agents.

15.2. **THIRD-PARTY CLAIMS; INDEMNITY.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Enterprise Services, any Purchasing Entity, and NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint) (NASPO) and their respective employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Contractor or its successors, agents, and subcontractors under this Cooperative Purchasing Master Agreement, except to the extent such claims are caused by Enterprise Services, any Purchasing Entity, or NASPO's negligence. Contractor shall take all steps needed to keep Purchasing Entity's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Cooperative Purchasing Master Agreement or in any other document executed in conjunction with this Cooperative Purchasing Master Agreement.

16. **DISPUTE RESOLUTION.** The parties shall cooperate to resolve any dispute pertaining to this Cooperative Purchasing Master Agreement efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

## **17. GENERAL PROVISIONS.**

17.1. **TIME IS OF THE ESSENCE.** Time is of the essence for each and every provision of this Cooperative Purchasing Master Agreement.

17.2. **COMPLIANCE WITH LAW.** Contractor shall comply with all applicable law.

- 17.3. INTEGRATED AGREEMENT. This Cooperative Purchasing Master Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 17.4. AMENDMENT OR MODIFICATION. Except as set forth herein, this Cooperative Purchasing Master Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 17.5. AUTHORITY. Each party to this Cooperative Purchasing Master Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Cooperative Purchasing Master Agreement and that its execution, delivery, and performance of this Cooperative Purchasing Master Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 17.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Cooperative Purchasing Master Agreement. Neither party is an agent of the other party nor authorized to obligate it.
- 17.7. ASSIGNMENT. Contractor may not assign its rights under this Cooperative Purchasing Master Agreement without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to Enterprise Services within thirty (30) days, Contractor may assign its rights under this Cooperative Purchasing Master Agreement in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Cooperative Purchasing Master Agreement notwithstanding any prior assignment of its rights.
- 17.8. BINDING EFFECT; SUCCESSORS & ASSIGNS. This Cooperative Purchasing Master Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 17.9. ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES. Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Cooperative Purchasing Master Agreement, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 17.10. FEDERAL FUNDS. To the extent that any Purchasing Entity uses federal funds to purchase goods and/or services pursuant to this Cooperative Purchasing Master Agreement, such Purchasing Entity shall specify, with its order, any applicable requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery.
- 17.11. SEVERABILITY. If any provision of this Cooperative Purchasing Master Agreement is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Cooperative Purchasing Master Agreement, and to this end the provisions of this Cooperative

Purchasing Master Agreement are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Cooperative Purchasing Master Agreement.

- 17.12. **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Cooperative Purchasing Master Agreement, nor shall any purported oral modification or rescission of this Cooperative Purchasing Master Agreement by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 17.13. **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Cooperative Purchasing Master Agreement shall survive and remain in effect following the expiration or termination of this Cooperative Purchasing Master Agreement, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 17.14. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Cooperative Purchasing Master Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules. The validity, construction, and effect of any Participating Addendum pertaining to the Cooperative Purchasing Master Agreement or Order placed pursuant to such Participating Addendum shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- 17.15. **JURISDICTION & VENUE.** In the event that any action is brought to enforce any provision of this Cooperative Purchasing Master Agreement, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington; *Provided*, however, that venue for any claim, dispute, or action concerning any Order placed against the Cooperative Purchasing Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.
- 17.16. **SOVEREIGN IMMUNITY.** In no event shall this Cooperative Purchasing Master Agreement, any Participating Addendum or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court.
- 17.17. **ATTORNEYS' FEES.** Should any legal action or proceeding be commenced by either party in order to enforce this Cooperative Purchasing Master Agreement or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable

attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery, or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.

- 17.18. **FAIR CONSTRUCTION & INTERPRETATION.** The provisions of this Cooperative Purchasing Master Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Cooperative Purchasing Master Agreement. Each party hereto and its counsel has reviewed and revised this Cooperative Purchasing Master Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Cooperative Purchasing Master Agreement. Each term and provision of this Cooperative Purchasing Master Agreement to be performed by either party shall be construed to be both a covenant and a condition.
- 17.19. **FURTHER ASSURANCES.** In addition to the actions specifically mentioned in this Cooperative Purchasing Master Agreement, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Cooperative Purchasing Master Agreement including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Cooperative Purchasing Master Agreement.
- 17.20. **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Cooperative Purchasing Master Agreement in their entirety.
- 17.21. **CAPTIONS & HEADINGS.** The captions and headings in this Cooperative Purchasing Master Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Cooperative Purchasing Master Agreement nor the meaning of any provisions hereof.
- 17.22. **ELECTRONIC SIGNATURES.** An electronic signature of this Cooperative Purchasing Master Agreement or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Cooperative Purchasing Master Agreement or such other ancillary agreement for all purposes.



17.23. COUNTERPARTS. This Cooperative Purchasing Master Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Cooperative Purchasing Master Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Cooperative Purchasing Master Agreement.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES

By: Elena McGrew  
Elena McGrew  
Its: Acting Statewide Enterprise Procurement  
Manager

ERGO FLEX SYSTEMS INC. DBA XYBIX SYSTEMS, INC.  
A COLORADO CORPORATION

By: Kenneth R Carson  
Kenneth R Carson  
Its: Executive Vice President

## INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Cooperative Purchasing Master Agreement, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
  - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
  - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
  - c. **EMPLOYERS' LIABILITY (STOP GAP) INSURANCE.** Employers' liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized Purchasing Entity (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Cooperative Purchasing Master Agreement, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Cooperative Purchasing Master Agreement, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall

furnish to Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Cooperative Purchasing Master Agreement number stated on the cover of this Cooperative Purchasing Master Agreement.** All certificates of Insurance and any related insurance documents shall be delivered to Enterprise Services by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as Enterprise Services may specify in writing:

US Mail: Contracts & Procurement – Cooperative Purchasing Master Agreement Insurance Certificate  
**Cooperative Purchasing Master Agreement No. 00318 – Public Safety Communications Products, Services and Solutions**  
Attn: Team Cypress  
Washington Dept. of Enterprise Services  
PO Box 41411  
Olympia, WA 98504-1411

Email: [DESContractsTeamCypress@des.wa.gov](mailto:DESContractsTeamCypress@des.wa.gov)

*Note:* For Email notice, the Email Subject line must state:  
**Cooperative Purchasing Master Agreement Insurance Certificate – Cooperative Purchasing Master Agreement No. 00318 – Public Safety Communications Products, Services and Solutions**

5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchasing Entity. All insurance or self-insurance of the State of Washington and/or Purchasing Entity shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchasing Entity for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation without at least thirty (30) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Cooperative Purchasing Master Agreement number stated on the cover of this Cooperative Purchasing Master Agreement.

9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Cooperative Purchasing Master Agreement.

# COUNCIL DIGEST SHEET

## RFPs , BIDS, OTHER PROJECTS

Name of Project	Dispatch Console Replacement
Awarded To	Xybix Systems Inc.
Amount	\$593,929.76
Number of Registrants	
Number of Bidders	
Required Attachments	RFPs – attach Award Matrix; Bids- Tab Sheet, or Contract

## EXTENSIONS

Date Last Bid Out	
# Extensions Granted To Date	

## SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	NASPO Contract: 00318
Sole Source/ Compatibility Justification	

## BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>If no, explain below</i>
If not lowest, explain	



# COUNCIL DIGEST SHEET

## COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	
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## DESCRIPTION OF PROJECT / NEED

<i>Identify need for project &amp; describe project; attach supporting documents as necessary.</i>	Disptch Console Replacement-Equipment is used 24/7/365-equipment is Deteriorating and has become costly to repair.

## REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	

## FUNDING SOURCE

<i>Account Information.</i>	445CCP4 5444

July 16, 2025

RE: Xybix Dispatch Console Replacements

Dear Council Members:

As part of our 2025 Capital Improvement Plan (CIP) budget, we identified three major projects for completion within the 911 Communications Center. One of these projects is the replacement of twenty-nine (29) existing dispatch consoles that are used 24/7/365, which are now showing signs of age, are no longer under warranty, and have become increasingly costly to maintain on an individual basis.

The original budget allocation for the 29-dispatch console replacements was \$701,000, based on a quote received from Xybix, the vendor that originally installed the consoles when the center was constructed in 2014. This amount was approved and included in the 2025 CIP budget.

However, upon receiving an updated quote from Xybix, we found the cost had increased substantially and exceeded the allocated budget. A detailed review of the quote revealed several components that were not necessary for our current operational needs. These items were subsequently removed from the scope of the project to bring the cost back within budget. The final revised quote with government pricing included from Xybix is now \$593,929.76.

Given Xybix's original involvement in the initial installation, their familiarity with our infrastructure, and their ability to provide government pricing, this project was not put out for bid.

We are requesting approval of this purchase as it represents a strategic and cost-effective solution for the CCP, preserving both continuity and value.

Please feel free to contact us with any questions or for additional information.

Sincerely,

Susan Rarey & Brody Ruble