

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated February 1, 2018 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Granicus, Inc., a California corporation ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

### RECITALS

A. Contractor provides streaming media solutions that include hardware, software, automated indexing capabilities, voting systems, website page design and integration with City Council agendas, a meeting minutes module, and related support services.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City is reviewing the proposals for automated agenda management and desires to retain Contractor to continue performing the services described herein during such review period in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

#### **1. Contractor's Services.**

A. Scope of Services. Contractor shall perform the services described in the Scope of Services (the "Services"), attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be Josh Hurni (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's Services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Standard of Performance. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

D. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Contractor or under its supervision,

and all personnel engaged in the work shall be qualified to perform such Services.

E. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

F. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

**2. Term of Agreement.** The term of this Agreement shall be from the Effective Date through February 1, 2019, unless sooner terminated as provided in Section 12 of this Agreement or extended.

**3. Compensation.**

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Contractor monthly fees in accordance with the Approved Fee Schedule attached hereto as **Exhibit A**. In no event shall Contractor be paid more than \$49,500 during the term of this Agreement (the "Maximum Compensation").

B. Expenses. The amount set forth in paragraph 3.A. above shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

C. Additional Services. City shall not allow any claims for Additional Services performed by Contractor, unless the City Council or City Representative, if applicable, and the Contractor Representative authorize the additional Services in writing prior to Contractor's performance of the additional Services or incurrence of additional expenses. Any additional Services or expenses authorized by the City Council or City Representative shall be compensated at the rates set forth in **Exhibit A**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional Services and expenses in accordance with Section 4 of this Agreement.

**4. Method of Payment.**

A. Invoices. Contractor shall submit to City an invoice, on a quarterly basis for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the Maximum Compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor.

C. Audit of Records. Contractor shall make all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this

Agreement available during Contractor's regular working hours to City for review and audit by City.

**5. Independent Contractor.** Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

**6. Information and Documents.**

A. Contractor covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

B. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor.

D. Contractor's covenants under this Section 6 shall survive the expiration or termination of this Agreement.

**7. Conflicts of Interest.** Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar Services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section 7 into any subcontract that Contractor executes in connection with the performance of this Agreement.

**8. Indemnification.**

**A. Indemnities for Third Party Claims.**

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or

indemnification arising under this subparagraph A.2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 8 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties.

B. Workers Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section 8, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 8 shall survive the expiration or termination of this Agreement.

E. Limitation of Liability. Exclusion of consequential and related damages. Under no circumstances shall Granicus be liable for any special, indirect, punitive, incidental, or consequential damages, whether an action is in contract or tort and regardless of the theory of liability, even if a party has been advised of the possibility of such damages. Further, Granicus shall not be liable for: (a) error or interruption of use or for loss or inaccuracy or corruption of customer data; (b) cost of procurement of substitute goods, services or technology; (c) loss of business; (d) damages arising out of access to or inability to access the services, software, content, or related technical support; or (e) for any matter beyond Granicus' reasonable control, even if Granicus has been advised of the possibility of any of the foregoing losses or damages.

Limitation of liability. In no instance shall either party's liability to the other party for direct damages under this agreement (whether in contract or tort or otherwise) exceed the fees paid by customer for the Granicus products and services during the six (6) months immediately preceding the date the damaged party notifies the other party in writing of the claim for direct damages.

## **9. Insurance.**

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$100,000.00 per accident for bodily injury and property damage and \$300,000 in the aggregate or a \$300,000 combined single limit. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section 9.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

4) Professional Liability Insurance or Errors and Omissions Insurance with minimum limits of \$1,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 9 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 9.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 9 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 9 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby

waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 9 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section 9 is canceled or reduced in coverage or limits, Contractor shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 9 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 9, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 9. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 9.

## **10. Mutual Cooperation.**

A. City's Cooperation. City shall provide Contractor with all pertinent Data, documents and other requested information as is reasonably available for Contractor's

proper performance of the Services required under this Agreement.

B. Contractor's Cooperation. In the event any claim or action is brought against City relating to Contractor's performance of Services rendered under this Agreement, Contractor shall render any reasonable assistance that City requires.

**11. Records and Inspections.** Contractor shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

**12. Termination of Agreement.**

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Contractor at least 90 calendar days before the termination is to be effective. Contractor may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 30 calendar days before the termination is to be effective.

B. Obligations upon Termination. Contractor shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Contractor, City shall pay Contractor based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the Services required by this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation.

**13. Force Majeure.** Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

**14. Default.**

A. Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating



Contractor for any work performed after the date of default.

B. If the City Manager or his delegate determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Contractor with written notice of the default. Contractor shall have 30 calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

**15. Notices.** Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Contractor's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:

Attn: Sanford W. Taylor  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266  
Telephone: (310) 802-5067  
Email: staylor@citymb.info

If to Contractor:

Mark Hynes  
Granicus, Inc.  
707 17th Street, Suite 4000  
Denver, Colorado 80202  
Telephone: (720)240-9586  
Email: ar@granicus.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney  
1400 Highland Avenue  
Manhattan Beach, CA 90266  
Telephone: (310) 802-5061  
Email: qbarrow@citymb.info

**16. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

**17. Prohibition of Assignment and Delegation.** Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this

Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

**18. No Third Party Beneficiaries Intended.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**19. Waiver.** No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

**20. Final Payment Acceptance Constitutes Release.** The acceptance by Contractor of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Contractor for anything done, furnished or relating to Contractor's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, sub-contractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Contractor, its employees, sub-contractors and agents.

**21. Corrections.** In addition to the above indemnification obligations, Contractor shall correct, at its expense, all errors in the work which may be disclosed during City's review of Contractor's report or plans. Should Contractor fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Contractor. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Contractor under this Agreement up to the amount of the cost of correction.

**22. Non-Appropriation of Funds.** Payments to be made to Contractor by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Contractor's services beyond the current fiscal year, the Agreement shall cover payment for Contractor's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at

the conclusion of such fiscal year.

**23. Exhibits.** Exhibit A constitutes part of this Agreement and is incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

**24. Entire Agreement and Modification of Agreement.** This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

**25. Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

**26. Word Usage.** Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

**27. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

**28. Business Days.** "Business days" means days Manhattan Beach City Hall is open for business.

**29. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior or federal court with geographic jurisdiction over the City of Manhattan Beach.

**30. Attorneys' Fees.** In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs incurred in connection therewith, in addition to all other relief to which that Party may be entitled.

**31. Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and

continue in full force and effect.

**32. Counterparts.** This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

**33. Corporate Authority.** Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

**34. Grant of License.**

A. Ownership. Contractor, and/or its third party supplier, owns the copyright and/or certain proprietary information protectable by law in Contractor's software.

B. Use. Contractor agrees to provide City with a revocable, non-transferable and non-exclusive license to access Contractor's Software identified in this Exhibit A ("Software") and a revocable, non-sublicensable, non-transferable and non-exclusive right to use Contractor's Software. Contractor's Software is proprietary to Contractor and protected by intellectual property laws and international intellectual property treaties. Pursuant to this Agreement, City may use the Contractor's Software to perform its own work, including City's work with its constituents.

C. Limitations. Except for the license granted to City pursuant to this Agreement, Contractor retains all ownership and proprietary rights in and to Contractor's Software, and City is not permitted, and will not assist or permit a third party, to: (a) utilize Contractor's Software in the capacity of a service bureau or on a time share basis; (b) reverse engineer, decompile or otherwise attempt to derive source code from Contractor's Software; (c) provide, disclose, or otherwise make available Contractor's Software, or copies thereof, to any third party; or (d) share, loan, or otherwise allow another entity, in or outside its jurisdiction, to use Contractor's Software, or copies thereof, except as expressly outlined in this Agreement.

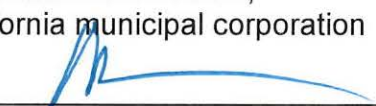
**35. Patent, Copyright and trade Secret Infringement.** If Contractor's Software becomes, or in Contractor's opinion is likely to become, the subject of an infringement claim, Contractor may, at its option and sole discretion, (i) obtain for City the right to continue to use Contractor's Software as provided in this Agreement; (ii) replace Contractor's Software with another software product that provides similar functionality; or (iii) if Contractor determines that neither of the foregoing options are reasonably available, Contractor may terminate this Agreement and refund any prepaid fees to City for which it has not received the services.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,  
a California municipal corporation

By:   
Name: Bruce Moe  
Title: City Manager

ATTEST:

By:  2-22-18  
Name: Liza Tamura  
Title: City Clerk

APPROVED AS TO FORM:


By:   
Name: Quinn M. Barrow  
Title: City Attorney

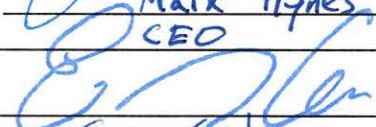
APPROVED AS TO CONTENT:

By:   
Name: Steve Charelian  
Title: Acting Finance Director

Contractor:

Granicus, Inc,  
a California corporation

By:   
Name: Mark Hynes  
Title: CEO

By:   
Name: Eric Gibson  
Title: CFO



Procurement Vehicle: Direct  
In Support of: Manhattan Beach, CA

Quote Number: Q-18463  
Quote Prepared On: 12/4/2017  
Quote Valid Through: 1/3/2018  
Payment Terms: Net 30

**Granicus Contact:**  
Name: Ryan McClain  
Phone: +1 8044849161  
Email: ryan.mcclain@granicus.com

### ONE-TIME FEE

Product Name	Product Description	Invoice Schedule	Quantity	One-Time Total
Granicus Encoding Appliance Hardware - SDI (AMAX) (GT)	AMAX Encoder with Osprey SDI Card. Used to pass commands and data from LiveManager that include Start/Stop of webcast, indexing, and document display. Also serves to distribute video and captions to be distributed to the CDN or Performance Accelerator.	50% Up Front 50% Upon Delivery	1 Each	\$3,500.00
US Shipping Charge C - Large Item	US shipping of a large item	Up Front	1 Each	\$125.00
Granicus Encoding Appliance Hardware Configuration (GT)	Remote configuration and deployment of an encoding appliance.	Milestones	1 Each	\$875.00
Performance Accelerator Installation Services	Remote configuration and deployment of the Performance Accelerator.	Milestones	1 Each	\$0.00
Performance Accelerator Hardware (Purchase)	Performance Accelerator (Standard) Server is hardware utilized to distribute video/indexing/documents within a local network. This distribution is utilized to eliminate the bandwidth impact local viewers would have accessing data from the Granicus Data Center.	50% Up Front 50% Upon Delivery	1 Each	\$3,600.00
US Shipping Charge C - Large Item	US shipping of a large item	Up Front	1 Each	\$125.00
<b>TOTAL:</b>				<b>\$8,225.00</b>

### ANNUAL SUBSCRIPTION FEE

Product Name	Product Description	Invoice Schedule	Quantity	Annual Total
Portable Encoder	Ongoing Service fee for Portable Encoder hardware.	Quarterly	1 Each	\$2,568.00





Procurement Vehicle: Direct  
In Support of: Manhattan Beach, CA

Product Name	Product Description	Invoice Schedule	Quantity	Annual Total
<b>Granicus Encoding Appliance Software (GT)</b>	Granicus Encoding Appliance Software (GT) This includes the LiveManager Software solution where webcasts are started/ stopped, agendas amended and indexed, votes and attendance recorded, and minutes created.	Quarterly	0 Each	\$0.00
<b>Government Transparency Suite</b>	Government Transparency are the live in-meeting functions. Streaming of an event, pushing of documents, indexing of event, creation of minutes.	Quarterly	1 Each	\$19,573.81
<b>Government Transparency Managed Services Hardware (GT)</b>	The managed equipment solution offers an encoding appliance that is fully managed and maintained by Granicus.	50% Up Front 50% Upon Delivery	1 Each	\$0.00
<b>VoteCast Station for Meeting Efficiency Suite (ME)</b>		Quarterly	1 Each	\$0.00
<b>Meeting Efficiency Suite</b>	<p>Meeting Efficiency is a hybrid Software-as-a-Service (SaaS) and Hardware-as-a-Service (Haas) solution that enables government organizations to simplify the in-meeting management and post-meeting minutes creation processes of the clerk's office. By leveraging this solution, the client will be able to streamline meeting data capture and minutes production, reducing staff efforts and decreasing time to get minutes published. During a meeting, record roll calls, motions, votes, notes, and speakers, all indexed with video. Use the index points to quickly edit minutes, templates to format in Microsoft Word or HTML, and publish online with the click of a button.</p> <p>Meeting Efficiency includes:</p> <ul style="list-style-type: none"> <li>• Unlimited user accounts</li> <li>• Unlimited meeting bodies</li> <li>• Unlimited storage of minutes documents</li> <li>• Access to one Granicus platform site</li> <li>• Access to the LiveManager software application for recording information during meetings</li> <li>• Access to the Word Add-in software component for minutes formatting in MS Word if desired</li> <li>• One MS Word or HTML minutes template (additional templates can be purchased if needed)</li> </ul>	Quarterly	1 Each	\$0.00



Procurement Vehicle: Direct  
In Support of: Manhattan Beach, CA

Product Name	Product Description	Invoice Schedule	Quantity	Annual Total
Open Platform Suite	Open Platform is access to MediaManager, upload of archives, ability to post agendas/documents, and index of archives. These are able to be published and accessible through a searchable viewpage.	Quarterly	1 Each	\$3,880.89
Legistar	<p>Legistar is a Software-as-a-Service (SaaS) solution that enables government organizations to automate the entire Legislative process of the clerk's office. By leveraging Legistar, the client will be able to easily manage the entire legislative process from drafting files, through assignment to various departments, to final approval. Legistar includes:</p> <ul style="list-style-type: none"><li>• Unlimited user accounts</li><li>• Unlimited meeting bodies and meeting types</li><li>• Unlimited data storage and retention</li><li>• Configuration services for one meeting body\type</li><li>• One Legistar database</li><li>• One InSite web portal</li><li>• Design services for one agenda report template</li><li>• Design services for one minute's report template</li></ul>	Quarterly	1 Each	\$2,571.21
VoteCast Package for Meeting Efficiency Suite (7 seats)		Quarterly	1 Each	\$7,626.96





Product Name	Product Description	Invoice Schedule	Quantity	Annual Total
<b>Citizen Participation Suite</b>	<p>The Granicus Citizen Participation suite provides the ability to involve the community throughout the legislative process and produce better outcomes. The Citizen Participation suite also reduces staff time by providing the ability to effortlessly collect, manage, and prioritize citizen input. The software provides a convenient way for citizens to voice their feedback and participate online. Granicus Citizen Participation includes:</p> <ul style="list-style-type: none"> <li>• Unlimited user signup</li> <li>• SpeakUp tool</li> <li>• eComment tool</li> <li>• Ability for citizens to sign up and participate in online projects, discussions, forums, ideas, surveys, and meetings</li> <li>• Spam protection through CAPTCHA</li> <li>• Profanity filters</li> <li>• Role permissions for administrators</li> <li>• Idea module</li> <li>• Discussion module</li> <li>• Forum module</li> <li>• Projects module</li> <li>• Survey module</li> <li>• Meetings module</li> <li>• Reporting on a module by module basis</li> <li>• Ability to request, speak, or comment on agenda items</li> </ul>	Quarterly	1 Each	\$0.00
<b>Granicus Encoding Appliance Software (GT)</b>	<p>Granicus Encoding Appliance Software (GT) This includes the LiveManager Software solution where webcasts are started/ stopped, agendas amended and indexed, votes and attendance recorded, and minutes created.</p>	Quarterly	1 Each	\$1,200.00
<b>Performance Accelerator Suite</b>	<p>Performance Accelerator Suite provides the ability to utilize the performance accelerator within a network. Requires Performance Accelerator or Virtual Performance Accelerator to distribute video/indexing/documents within a local network. This distribution is utilized to eliminate the bandwidth impact local viewers would have accessing data from the Granicus Data Center.</p>	Quarterly	1 Each	\$2,400.00



Procurement Vehicle: Direct  
In Support of: Manhattan Beach, CA

Product Name	Product Description	Invoice Schedule	Quantity	Annual Total
Upgrade to SDI 720p Streaming	Upgrade to SDI 720p Streaming (requires Digital encoder and HD feed)	Quarterly	1 Each	\$1,200.00
TOTAL:				\$41,020.87