STAFF REPORT

MEETING
DATE: October 24, 2017

TO: City Council

FROM: Scott Sanders, Technology Manager

PRESENTER: Scott Sanders, Technology Manager

SUBJECT: APPROVE THE MASTER SUBSCRIPTION AGREEMENT AND SERVICE LEVEL AGREEMENT WITH GRANICUS INC. IN THE TOTAL AMOUNT OF $113,315.45 FOR UPGRADED SERVICES AND AUTHORIZE THE CITY MANAGER TO EXECUTE SAME

REQUEST

Approve the Master Subscription Agreement and Service Level Agreement with Granicus Inc. in the total amount of $113,315.45 for upgraded services and authorize the City Manager to execute same.

DISCUSSION

In conjunction with the audiovisual equipment upgrade scheduled for November 15 to December 22, 2017, the City will need to upgrade the equipment and services used to stream meetings over the Internet, for both the live and on-demand viewers. Pricing for these upgrades is detailed below:

High Definition Granicus equipment:
Quote Q-12963: $8,225.00
Tax 639.00
Total – one-time costs $8,864.00

Upgraded Granicus Services
Quote Q-12963: $113,315.45
Total – three-year term: $113,315.45

FISCAL IMPACT

Funding for the audiovisual equipment upgrade was approved on June 13, 2017 as part of the City’s FY2017/2018 Capital Improvement Budget. Funding for Granicus services is included in the City’s IT Division Operational budget. No additional funding is required.

RECOMMENDATION

Approve the Master Subscription Agreement and Service Level Agreement with Granicus Inc. in the total amount of $113,315.45 for upgraded services and authorize the City Manager to execute same.
**ALTERNATIVE**

1. Council could direct staff to pursue alternative solutions or to disapprove of the project.

**ATTACHMENTS**

1. Master Subscription Agreement
2. Service Level Agreement
3. Granicus, Inc. – Quote Q-12963
This Master Subscription Agreement ("Agreement") is made by and between the party procuring Granicus Products and Services ("Customer") and GovDelivery, LLC, a Minnesota Limited Liability Company d/b/a Granicus ("Granicus"). Customer and Granicus may each be referred to herein as "Party" or collectively as "Parties".

By accessing the Granicus Products and Services, Customer accepts this Agreement. In the event there is a conflict between this Agreement and any other contract Customer has for the Granicus Products and Services ("Contract"), the terms of the Contract shall prevail. Due to the rapidly changing nature of digital communications, this Agreement may be updated from time to time to mutually acceptable terms and with 180 days advance notice.

1. Definitions. In addition to terms defined elsewhere in this Agreement, the following terms shall have the meaning specified:

"Agreement Term" means the total time covered by the Initial Term and all Extension Terms for each Order, SOW or Exhibit under this Agreement, further specified in Section 7.1.

"Exhibit" means any exhibit referenced herein and attached hereto.

"Extension Term" any term that increases the length of the Initial Term of this Agreement.

"Fees" mean the fees charged by Granicus for the Granicus Products and Services as identified on each Order, SOW or Exhibit and, unless otherwise stated in each Order, SOW or Exhibit, invoiced upon commencement of the Order Term.

"Granicus Products and Services" means the products and services made available to Customer pursuant to this Agreement, which may include Granicus products, services, application software accessible for use by Customer on a subscription basis ("SaaS"), Granicus professional services, content from any professional services or other required equipment components ("Required Hardware"), as specified in each Order, SOW or Exhibit.

"Initial Term" shall have the meaning specified in the Order, SOW or Exhibit between Granicus and Customer for the first duration of performance that Customer has access to Granicus Products and Services.

"Order" means a written order, proposal, or purchase document in which Granicus agrees to provide and Customer agrees to purchase specific Granicus Products and Services.

"Order Term" shall mean the then-current duration of performance identified on each Order, SOW or Exhibit, for which Granicus has committed to provide, and Customer has committed to pay for, Granicus Products and Services.

"Required Hardware" shall mean the required equipment components specified in each Order, SOW or Exhibit.

"Statement of Work" or "SOW" means a written order, proposal, or purchase document that is signed by both Parties and describes the Granicus Products and Services to be provided and/or performed by Granicus. Each Order, SOW or Exhibit shall describe the Parties’ performance obligations and any assumptions or contingencies associated with the implementations of the Granicus Products and Services, as specified in each Order, SOW or Exhibit placed hereunder.

"Support" means the ongoing support and maintenance services performed by Granicus related to the Granicus Products and Services as specified in each Order, SOW or Exhibit placed between the Parties.

2. Ordering and Scope

2.1. Ordering Granicus Products and Services. The Parties may execute one or more Order, SOW or Exhibit related to the sale and purchase of Granicus Products and Services. Each Order, SOW or Exhibit will generally include an
itemized list of the Granicus Products and Services as well as the Order Term for such Granicus Products and Services. Each Order, SOW or Exhibit must, generally, be signed by the Parties; although, when a validly-issued purchase order by Customer accompanies the Order, SOW or Exhibit, then the Order, SOW or Exhibit need not be executed by the Parties. Each Order, SOW or Exhibit dated on or after the Effective Date shall be governed by this Agreement regardless of any pre-printed legal terms on each Order, SOW or Exhibit, and by this reference is incorporated herein.

2.2. Support. Basic support related to standard Granicus Products and Services is included within the fees paid during the Order Term. Granicus may update its Support obligations under this Agreement, so long as the functionality purchased by Customer is not materially diminished.

2.3. Future Functionality. Customer acknowledges that any purchase hereunder is not contingent on the delivery of any future functionality or features.

2.4. Cooperative Purchasing. To the extent permitted by law and approved by Customer, the terms of this Agreement and set forth in one or more Order, SOW or Exhibit may be extended for use by other municipalities, school districts and governmental agencies upon execution of an addendum or other signed writing setting forth all of the terms and conditions for such use. The applicable fees for additional municipalities, school districts or governmental agencies will be provided by Granicus to Customer and the applicable additional party upon written request.

3. Use of Granicus Products and Services and Proprietary Rights

3.1. Granicus Products and Services. The Granicus Products and Services are purchased by Customer as subscriptions during an Order Term specified in each Order, SOW or Exhibit. Additional Granicus Products and Services may be added during an Order Term as described in Section 2.1.

3.2. Permitted Use. Subject to the terms and conditions of this Agreement, Granicus hereby grants during each Order Term, and Customer hereby accepts, solely for its internal use, a worldwide, revocable, non-exclusive, non-transferrable right to use the Granicus Products and Services to the extent allowed in the relevant Order, SOW or Exhibit (collectively the “Permitted Use”). The Permitted Use shall also include the right, subject to the conditions and restrictions set forth herein, to use the Granicus Products and Services up to the levels limited in the applicable Order, SOW or Exhibit.

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

3.2.2. Granicus Communications Suite Subscriber Information

3.2.2.1. Data Provided by Customer. Data provided by Customer and contact information gathered through Customer’s own web properties or activities will remain the property of Customer (“Direct Subscriber”), including any and all personally identifiable information (PII). Granicus will not release the data without the express written permission of Customer, unless required by law.

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

3.3.1. Access or use any portion of Granicus Products and Services, except as expressly allowed by this Agreement or each Order, SOW or Exhibit placed hereunder;

3.3.2. Disassemble, decompile, or otherwise reverse engineer all or any portion of the Granicus Products and Services;

3.3.3. Use the Granicus Products and Services for any unlawful purposes;

3.3.4. Export or allow access to the Granicus Products and Services in violation of U.S. laws or regulations;

3.3.5. Except as expressly permitted in this Agreement, subcontract, disclose, rent, or lease the Granicus Products and Services, or any portion thereof, for third party use; or

3.3.6. Modify, adapt, or use the Granicus Products and Services to develop any software application intended for resale which uses the Granicus Products and Services in whole or in part.

3.4. Customer Feedback. Customer hereby grants to Granicus an irrevocable, non-exclusive, perpetual, royalty-free transferrable license, with right to sublicense, to use and incorporate into the Granicus Products and Services any suggestion, enhancement, request, recommendation, correction or other feedback provided by Customer relating to the use of the Granicus Products and Services.

3.5. Required Hardware. For Required Hardware purchased from Granicus by Customer, Granicus will provide to Customer a three (3) year warranty with respect to the Required Hardware. Within the three (3) year warranty period, Granicus shall repair or replace any Required Hardware provided directly from Granicus that fails to function properly due to normal wear and tear, defective workmanship, or defective materials. Required Hardware warranty shall commence on the Effective Date of each applicable Order, SOW or Exhibit.

3.6. Reservation of Rights. Subject to the limited rights expressly granted hereunder, Granicus and/or its licensors reserve all right, title and interest in the Granicus Products and Services, the documentation and resulting product including all related intellectual property rights. Further, no implied licenses are granted to Customer.

4. Payment

4.1. Fees. Customer agrees to pay all fees, costs and other amounts as specified in each Order, SOW or Exhibit. Granicus reserves the right to suspend any Granicus Products and Services should there be a lapse in payment. A lapse in the term of each Order, SOW or Exhibit will require the payment of a setup fee to reinstate the subscription. All fees are exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is Customer’s responsibility to provide applicable exemption certificate(s). Unless indicated otherwise in the applicable Order, SOW or Exhibit, the fees shall be invoiced by Granicus and paid by Customer as follows:

4.1.1. Products. Product setup and annual fees are due at the beginning of the Initial Term, then annually at the beginning of any Extended Term or Order Term, within thirty (30) days of receipt of invoice.

4.1.2. Services. Services supporting Products shall be paid annually commencing upon the completion of the Product implementation, or the Product being ready for Customer’s use. Fees shall be paid by Customer within thirty (30) days of receipt of invoice.

4.1.3. Required Hardware. For Required Hardware, delivery is complete once Customer receives Required Hardware components with the configured Granicus Product and Services.

4.2. Disputed Invoiced Amounts. Customer shall provide Granicus with detailed written notice of any amount(s) Customer reasonably disputes within thirty (30) days receipt of invoice for said amount(s) at issue. Granicus will not exercise its rights under 4.1 above if Customer has, in good faith, disputed an invoice and is diligently trying to resolve the dispute. Customer’s failure to provide Granicus with notice of any disputed invoiced amount(s) shall be deemed to be Customer’s acceptance of the content of such invoice.

4.3. Price Increases. Any price increases not negotiated in advance shall be provided by Granicus to Customer at least thirty (30) days prior to the end of the Order Term. Upon each yearly anniversary during the term of this Agreement (including the Initial Term, all Extended Terms, and all Order Terms), the Granicus Product and Services fees shall automatically increase from the previous term’s fees by three (3) percent per year.
5. **Representations, Warranties and Disclaimers**

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

5.2. **Warranties.** Granicus warrants that it takes all precautions that are standard in the industry to increase the likelihood of a successful performance for the Granicus Products and Services; however, the Granicus Products and Services are provided “AS IS” and as available.

5.3. **Disclaimers.** EACH PARTY HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER WHETHER ORAL AND WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. GRANICUS DOES NOT WARRANT THAT GRANICUS PRODUCTS AND SERVICES WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

6. **Confidential Information**

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

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

Confidential Information of disclosing Party may be disclosed in response to a valid court order or other legal process, only to the extent required by such order or process and, if allowed by law, only after the recipient has given the owner written notice of such court order or other legal process promptly and the opportunity for the owner to seek a protective order or confidential treatment of such Confidential Information.

6.3. **Storage and Sending.** In the event that Granicus Products and Services will be used to store and/or send Confidential Information, Granicus must be notified in writing, in advance of the storage or sending. Should Customer provide such notice, Customer must ensure that Confidential Information or sensitive information is stored behind a secure interface and that Granicus Products and Services be used only to notify people of updates to the information that can be accessed after authentication against a secure interface managed by Customer. Customer is ultimately accountable for the security and privacy of data held by Granicus on its behalf.

6.4. **Return of Confidential Information.** Upon request of the disclosing Party, termination, or expiration of this Agreement, the receiving Party shall, to the extent commercially practicable and legally permissible, destroy the disclosing Party’s Confidential Information and, at the disclosing Party’s request, certify the same.

7. **Term and Termination**

7.1. **Agreement Term.** The Agreement Term shall begin on the Effective Date and continue through the latest date of the Order Term of each Order, SOW or Exhibit under this agreement, unless otherwise terminated as provided in this Section 7. Each Order, SOW or Exhibit will specify an Order Term for the Granicus Products and
Services provided under the respective Order, SOW or Exhibit. Customer’s right to access or use the Granicus Products and Services will cease at the end of the Order Term identified within each Order, SOW or Exhibit, unless either extended or earlier terminated as provided in this Section 7. At the end of the Order Term, SOW or Exhibit, the Granicus Products and Services will continue on a monthly basis at existing contracted rates until the Parties negotiate a new agreement or renewal with a specified Extension Term.

7.2. Effect of Termination. If the Parties agree to terminate this Agreement and an Order, SOW or Exhibit is still in effect at the time of termination, then the terms and conditions contained in this Agreement shall continue to govern the outstanding Order, SOW or Exhibit until termination or expiration thereof. If the Agreement is terminated for breach, then unless otherwise agreed to in writing, all outstanding Orders, SOWs or Exhibits shall immediately terminate as of the Agreement termination date. Unless otherwise stated in this Agreement, in no event shall Customer be entitled to a refund of any prepaid fees upon termination.

7.3. Termination for Cause. The non-breaching Party may terminate this Agreement upon written notice if the other Party is in material breach of this Agreement and fails to cure such breach within thirty (30) days after the non-breaching Party provides written notice of the breach. A Party may also terminate this Agreement immediately upon notice if the other Party: (a) is liquidated, dissolved, or adjudged to be in a state of bankruptcy or receivership; (b) is insolvent, unable to pay its debts as they become due, makes an assignment for the benefit of creditors or takes advantage or any law for the benefit of debtors; or (c) ceases to conduct business for any reason on an ongoing basis leaving no successor in interest. Granicus may, without liability, immediately suspend or terminate any or all Orders issued hereunder if any Fees owed under this Agreement are past due pursuant to Section 4.1.

7.4. Rights and Obligations After Termination. In the event of expiration or termination of this Agreement, Customer shall immediately pay to Granicus all Fees due to Granicus through the date of expiration or termination.

7.5. Survival. All rights granted hereunder shall terminate the latter of the termination or expiration date of this Agreement, or each Order, SOW or Exhibit. The provisions of this Agreement with respect to warranties, liability, and confidentiality shall survive termination of this Agreement and continue in full force and effect.

8. Limitation of Liability

8.1. 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.

8.2. 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 TWELVE (12) MONTHS IMMEDIATELY PROCEEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM FOR DIRECT DAMAGES. NEITHER PARTY MAY INSTITUTE AN ACTION IN ANY FORM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ARISEN. THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER’S PAYMENT OBLIGATIONS UNDER SECTION 4 ABOVE.
9. Indemnification

9.1. Indemnification by Granicus. Granicus will defend Customer from and against all losses, liabilities, damages and expenses arising from any claim or suit by a third party unaffiliated with either Party to this Agreement ("Claims") and shall pay all losses, damages, liabilities, settlements, judgments, awards, interest, civil penalties, and reasonable expenses (collectively, "Losses," and including reasonable attorneys' fees and court costs), to the extent arising out of any Claims by any third party that Granicus Products and Services infringe a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order, SOW or Exhibit. In the event of such a Claim, if Granicus determines that an affected Order, SOW or Exhibit is likely, or if the Solution is determined in a final, non-appealable judgment by a court of competent jurisdiction, to infringe a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order, SOW or Exhibit, Granicus will, in its discretion: (a) replace the affected Granicus Products and Services; (b) modify the affected Granicus Products and Services to render it non-infringing; or (c) terminate this Agreement or the applicable Order, SOW or Exhibit with respect to the affected Solution and refund to Customer any prepaid fees for the then-remaining or unexpired portion of the Subscription Order Term. Notwithstanding the foregoing, Granicus shall have no obligation to indemnify, defend, or hold Customer harmless from any Claim to the extent it is based upon: (i) a modification to any Solution by Customer (or by anyone under Customer’s direction or control or using logins or passwords assigned to Customer); (ii) a modification made by Granicus pursuant to Customer’s required instructions or specifications or in reliance on materials or information provided by Customer; or (iii) Customer’s use (or use by anyone under Customer’s direction or control or using logins or passwords assigned to Customer) of any Granicus Products and Services other than in accordance with this Agreement. This Section 9.1 sets forth Customer’s sole and exclusive remedy, and Granicus’ entire liability, for any Claim that the Granicus Products and Services or any other materials provided by Granicus violate or infringe upon the rights of any third party.

9.2. Indemnification by Customer. Customer shall defend, indemnify, and hold Granicus harmless from and against any Claims, and shall pay all Losses, to the extent arising out of or related to (a) Customer’s (or that of anyone authorized by Customer or using logins or passwords assigned to Customer) use or modification of any Granicus Products and Services; (b) any Customer content; or (c) Customer’s violation of applicable law.

9.3. Defense. With regard to any Claim subject to indemnification pursuant to this Section 9: (a) the Party seeking indemnification shall promptly notify the indemnifying Party upon becoming aware of the Claim; (b) the indemnifying Party shall promptly assume sole defense and control of such Claim upon becoming aware thereof; and (c) the indemnified Party shall reasonably cooperate with the indemnifying Party regarding such Claim. Nevertheless, the indemnified Party may reasonably participate in such defense, at its expense, with counsel of its choice, but shall not settle any such Claim without the indemnifying Party’s prior written consent. The indemnifying Party shall not settle or compromise any Claim in any manner that imposes any obligations upon the indemnified Party without the prior written consent of the indemnified Party.

10. General

10.1. Relationship of the Parties. Granicus and Customer acknowledge that they operate independent of each other. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, agency, or employee/employer relationship between the Parties for any purpose, including, but not limited to, taxes or employee benefits. Each Party will be solely responsible for the payment of all taxes and insurance for its employees and business operations.

10.2. Subcontractors. Granicus agrees that it shall be responsible for all acts and omissions of its subcontractors to the same extent Granicus would be responsible if committed directly by Granicus.

10.3. Headings. The various section headings of this Agreement are inserted only for convenience of reference and are not intended, nor shall they be construed to modify, define, limit, or expand the intent of the Parties.

10.4. Amendments. This Agreement may not be amended or modified except by a written instrument signed by authorized representatives of both Parties. Notwithstanding the foregoing, Granicus retains the right to
revise the policies referenced herein at any time, so long as the revisions are reasonable and consistent with industry practices, legal requirements, and the requirements of any third-party suppliers.

10.5. **Severability.** To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

10.6. **Assignment.** Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, either voluntarily or by operation of law, without the prior written consent of the other Party (such consent not to be unreasonably withheld); provided, however, that either Party may assign this Agreement without the other Party’s consent in the event of any successor or assign that has acquired all, or substantially all, of the assigning Party’s business by means of merger, stock purchase, asset purchase, or otherwise. Any assignment or attempted assignment in violation of this Agreement shall be null and void.

10.7. **No Third-Party Beneficiaries.** Subject to Section 10.6, this Agreement is binding upon, and ensures solely to the benefit of the Parties hereto and their respective permitted successors and assigns; there are no third-party beneficiaries to this Agreement.

10.8. **Notice.** Other than routine administrative communications, which may be exchanged by the Parties via email or other means, all notices, consents, and approvals hereunder shall be in writing and shall be deemed to have been given upon: (a) personal delivery; (b) the day of receipt, as shown in the applicable carrier’s systems, if sent via FedEx, UPS, DHL, or other nationally recognized express carrier; (c) the third business day after sending by U.S. Postal Service, First Class, postage prepaid, return receipt requested; or (d) sending by email, with confirmed receipt from the receiving party.

10.9. **Force Majeure.** Neither Party shall be in breach of this Agreement solely due to breach caused by circumstances beyond the control and without the fault or negligence of the Party failing to perform. Such causes include but are not limited to acts of God, wars, fires, floods, government regulations, shortage or supplies, acts of terrorism, or strikes.

10.10. **Choice of Law and Jurisdiction.** This Agreement shall be governed by and interpreted under the laws of the State of California, without reference to the State’s principles of conflicts of law. The parties expressly consent and submit to the exclusive jurisdiction of the state and federal courts of Marin County, California.

10.11. **Entire Agreement.** This Agreement, together with all Orders, SOWs or Exhibits referenced herein, sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written understandings, quotations, communications, and agreements. Granicus and Customer agree that any and all Orders, SOWs or Exhibits are incorporated herein by this reference. In the event of possible conflict or inconsistency between such documents, the conflict or inconsistency shall be resolved by giving precedence in the following order: (1) the terms of this Agreement; (2) Exhibits (excluding orders) hereto; (3) Orders; and (4) all other SOWs or other purchase documents.

10.12. **Reference.** Notwithstanding any other terms to the contrary contained herein, Customer grants Granicus the right to use Customer’s name and logo in customer lists and marketing materials.

10.13. **Injunctive Relief.** Granicus is entitled to obtain injunctive relief if Customer’s use of Granicus Products and Services is in violation of any restrictions set forth in this Agreement.
1.1 **Up-Time Guarantee.** Granicus, Inc. represents and warrants a 99.9% up-time guarantee per month for its hosted services. Granicus, Inc. will provide notification of any system-wide outages within one hour from the time the issue is first recognized by our operations team. Notifications will be posted on status.granicusops.com. Email notifications can be subscribed to from that page.

1.2 **Contacting Granicus.** The Customer Care staff at Granicus, Inc. may be contacted by the customer via Internet, email, or telephone.

### Contact Information

<table>
<thead>
<tr>
<th>Contact Method</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online (recommended in most cases)</td>
<td>www/granicus.com/createacase</td>
</tr>
<tr>
<td>Email (recommended if you do not have Internet access)</td>
<td><a href="mailto:customercare@granicus.com">customercare@granicus.com</a></td>
</tr>
<tr>
<td>Phone (recommended for urgent issues)</td>
<td>(877) 889-5495 ext.1</td>
</tr>
</tbody>
</table>

### Support Hours (Mountain Time)

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Hours</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular Hours</td>
<td>6:00AM – 6:00 PM</td>
<td>Monday - Friday</td>
</tr>
<tr>
<td>Urgent After Hours</td>
<td>6:00 PM – 11:00 PM</td>
<td>Monday - Friday</td>
</tr>
<tr>
<td>Emergency On Call</td>
<td>6:00 AM – 6:00 PM</td>
<td>Saturday and Sunday</td>
</tr>
</tbody>
</table>

1.3 **Maintenance Services/Response Times.** Granicus, Inc. maintenance services and response times will be in accord with the levels and response times set forth below:

(a) **Level 1: Emergency.** No parts of the Granicus Suite are functional for the customer, and workflow is severely impacted.

     Granicus, Inc. will respond to all Level 1 problems within one (1) hour of notification by the customer of occurrence.

(b) **Level 2: Severely Impaired.** One or multiple components of the customer’s Granicus Solution are not functioning as intended and customer is not able to complete their workflow in any capacity.

     Granicus, Inc. will respond to all Level 2 problems within four (4) hours of notification by the customer of occurrence.

(c) **Level 3: Impaired.** One or more components of the Granicus Suite is not functioning as intended, or the customer is unable to complete their workflow in a timely manner. Typically, this includes video files not uploading, document template configuration changes, and other time-sensitive issues.

     Granicus, Inc. will respond to all Level 3 problems within one (1) business day of notification by the customer of occurrence.
(d) Level 4: General. Cases that are non-urgent in nature. Customer can perform the necessary duties they need with their suite of Granicus products.

Granicus, Inc. will respond to all Level 4 problems within three (3) business days of notification by the customer of occurrence.

A response by Granicus, Inc. means that a Granicus, Inc. Customer Care engineer will respond directly to the customer via phone or e-mail with an assessment of the issue. Notification shall be the documented time that the customer either calls or e-mails Granicus, Inc. to notify them of an issue or the documented time that Granicus, Inc. notifies the customer there is an issue.

1.4 Hardware Replacement. For hardware issues requiring replacement, Granicus, Inc. shall respond to the request made by the customer within 1 business day. Hardware service repair or replacement will occur within 4 business days of the request by the customer, not including the time it takes for the part to ship and travel to the customer. The customer shall grant Granicus, Inc. or its representatives access to the equipment for the purpose of repair or replacement at reasonable times. Granicus, Inc. will keep the customer informed regarding the time frame and progress of the repairs or replacements.

1.5 Penalties. For failure to meet the 99.9% uptime guarantee:

One (1) day of managed service per hour exceeding the allowed downtime per month, not including any downtime as defined in Scheduled Maintenance in Section 1.5.

For failure to respond within the defined service response times:

Level 1: one day of managed service per hour past the one hour response time required.
Level 2: one day of managed service per hour past the four hour response time required.
Level 3: one day of managed service per day past the one day response time required.
Level 4: one day of managed service per day past the three day response time required.

Under no circumstances shall the amount of penalty in a given calendar month exceed the total contracted monthly services fee.

1.6 Scheduled Maintenance. Scheduled maintenance of the Granicus Solution will not be counted as downtime, and will only take place between 10:00 PM and 4:00 AM Mountain time on Fridays. The reason for this maintenance window is it allows Granicus staff to continue to monitor and test the production system through the weekend, helping ensure a smooth maintenance deployment. Granicus, Inc. will provide the customer with at least two (2) days prior notice for any scheduled maintenance. All system maintenance will only be performed during these times, except in the case of an emergency. In the case that emergency maintenance is required, the customer will be provided as much advance notice as possible. Granicus, Inc. will clearly post that the site is down for maintenance and the expected duration of the maintenance. Notifications will be posted on status.granicusops.com and can be subscribed to from that page.
<table>
<thead>
<tr>
<th>Product Name</th>
<th>Product Description</th>
<th>Invoice Schedule</th>
<th>Quantity</th>
<th>One-Time Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Granicus Encoding Appliance Hardware - SDI (AMAX) (GT)</td>
<td>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.</td>
<td>50% Up Front 50% Upon Delivery</td>
<td>1.00</td>
<td>$3,500.00</td>
</tr>
<tr>
<td>Granicus Encoding Appliance Hardware Configuration (GT)</td>
<td>Remote configuration and deployment of an encoding appliance.</td>
<td>Milestones</td>
<td>1.00</td>
<td>$875.00</td>
</tr>
<tr>
<td>US Shipping Charge C - Large Item</td>
<td>US shipping of a large item</td>
<td>50% Up Front 50% Upon Delivery</td>
<td>1.00</td>
<td>$125.00</td>
</tr>
<tr>
<td>Performance Accelerator Installation Services</td>
<td>Remote configuration and deployment of the Performance Accelerator.</td>
<td>Milestones</td>
<td>1.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Performance Accelerator Hardware (Purchase)</td>
<td>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.</td>
<td>50% Up Front 50% Upon Delivery</td>
<td>1.00</td>
<td>$3,600.00</td>
</tr>
<tr>
<td>US Shipping Charge C - Large Item</td>
<td>US shipping of a large item</td>
<td>50% Up Front 50% Upon Delivery</td>
<td>1.00</td>
<td>$125.00</td>
</tr>
</tbody>
</table>

**TOTAL:** $8,225.00
## ANNUAL SUBSCRIPTION FEE

<table>
<thead>
<tr>
<th>Product Name</th>
<th>Product Description</th>
<th>Invoice Schedule</th>
<th>Quantity</th>
<th>Annual Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Platform Suite</td>
<td>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.</td>
<td>Annual</td>
<td>1.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Government Transparency Suite</td>
<td>Government Transparency are the live in-meeting functions. Streaming of an event, pushing of documents, indexing of event, creation of minutes.</td>
<td>Annual</td>
<td>1.00</td>
<td>$9,409.05</td>
</tr>
</tbody>
</table>
| Meeting Efficiency Suite      | Meeting Efficiency is a hybrid Software-as-a-Service (SaaS) and Hardware-as-a-Service (HaaS) solution that enables government organizations to simplify the in-meeting management and post-meeting minutes creation processes of the clerk’s office. By leveraging this solution, the client will be able to streamline meeting data capture and minutes production, reducing staff efforts and decreasing time to get minutes published. During a meeting, record roll calls, motions, votes, notes, and speakers, all indexed with video. Use the index points to quickly edit minutes, templates to format in Microsoft Word or HTML, and publish online with the click of a button. Meeting Efficiency includes:  
  • Unlimited user accounts  
  • Unlimited meeting bodies  
  • Unlimited storage of minutes documents  
  • Access to one Granicus platform site  
  • Access to the LiveManager software application for recording information during meetings  
  • Access to the Word Add-in software component for minutes formatting in MS Word if desired  
  • One MS Word or HTML minutes template (additional templates can be purchased if needed) | Annual           | 1.00     | $10,057.95  |
<table>
<thead>
<tr>
<th>Product Name</th>
<th>Product Description</th>
<th>Invoice Schedule</th>
<th>Quantity</th>
<th>Annual Total</th>
</tr>
</thead>
</table>
| Boards and Commissions (City)| Boards and Commissions is a Software-as-a-Service (SaaS) solution that enables government organizations to simplify the citizen application and appointment to boards process of the clerk’s office.

Boards and Commissions includes:

- Unlimited user accounts
- Unlimited boards, commissions, committees, and subcommittees
- Unlimited storage of citizen applications
- Access to one Granicus platform site
- Access to one Boards and Commissions site
- Access to customizable, embeddable iFrame websites for displaying information to citizens
- Access to a customizable online citizen application form including board-specific questions
- Customizable forms for board details, appointment details, and internal tracking details.
- Pre-designed document PDFs for applications, board details and rosters, and vacancy reports
- Downloadable spreadsheets for easy reporting
- Optional custom templates for document or report generation (additional upfront charge applies) | Annual           | 1.00       | $6,489.00  |
## Citian Participation Suite

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:

- Unlimited user signup
- SpeakUp tool
- eComment tool
- Ability for citizens to sign up and participate in online projects, discussions, forums, ideas, surveys, and meetings
- Spam protection through CAPTCHA
- Profanity filters
- Role permissions for administrators
- Idea module
- Discussion module
- Forum module
- Projects module
- Survey module
- Meetings module
- Reporting on a module by module basis
- Ability to request, speak, or comment on agenda items

### Invoice Schedule

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Quantity</th>
<th>Annual Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual</td>
<td>1.00</td>
<td>$2,336.04</td>
</tr>
</tbody>
</table>

## Government Transparency Managed Services Hardware (GT)

The managed equipment solution offers an encoding appliance that is fully managed and maintained by Granicus.

### Invoice Schedule

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Quantity</th>
<th>Annual Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>50% Up Front</td>
<td>1.00</td>
<td>$3,568.95</td>
</tr>
<tr>
<td>50% Upon Delivery</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## 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.

### Invoice Schedule

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Quantity</th>
<th>Annual Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual</td>
<td>1.00</td>
<td>$1,200.00</td>
</tr>
</tbody>
</table>
## Performance Accelerator Suite

Performance Accelerator Suite provides the ability to utilize the performance accelerator within a network. Requires Performance Accelerator or Virtual Performance Accelerator to distribute video/indexing/documents within a local network. This distribution is utilized to eliminate the bandwidth impact local viewers would have accessing data from the Granicus Data Center.

<table>
<thead>
<tr>
<th>Product Name</th>
<th>Invoice Schedule</th>
<th>Quantity</th>
<th>Annual Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance Accelerator Suite</td>
<td>Annual</td>
<td>1.00</td>
<td>$2,400.00</td>
</tr>
</tbody>
</table>

## Upgrade to SDI 720p Streaming

Upgrade to SDI 720p Streaming (requires Digital encoder and HD feed)

<table>
<thead>
<tr>
<th>Product Name</th>
<th>Invoice Schedule</th>
<th>Quantity</th>
<th>Annual Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upgrade to SDI 720p Streaming</td>
<td>Annual</td>
<td>1.00</td>
<td>$1,200.00</td>
</tr>
</tbody>
</table>

**TOTAL:** $36,660.99

## FUTURE YEAR PRICING

<table>
<thead>
<tr>
<th>Product Name</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Platform Suite</td>
<td>$ 0.00</td>
<td>$ 0.00</td>
</tr>
<tr>
<td>Government Transparency Suite</td>
<td>$ 9,691.32</td>
<td>$ 9,982.06</td>
</tr>
<tr>
<td>Meeting Efficiency Suite</td>
<td>$ 10,359.69</td>
<td>$ 10,670.48</td>
</tr>
<tr>
<td>Boards and Commissions (City)</td>
<td>$ 6,683.67</td>
<td>$ 6,884.18</td>
</tr>
<tr>
<td>Citizen Participation Suite</td>
<td>$ 2,406.12</td>
<td>$ 2,478.30</td>
</tr>
<tr>
<td>Government Transparency Managed Services Hardware (GT)</td>
<td>$ 3,676.02</td>
<td>$ 3,786.30</td>
</tr>
<tr>
<td>Granicus Encoding Appliance Software (GT)</td>
<td>$ 1,236.00</td>
<td>$ 1,273.08</td>
</tr>
<tr>
<td>Performance Accelerator Suite</td>
<td>$ 2,472.00</td>
<td>$ 2,546.16</td>
</tr>
<tr>
<td>Upgrade to SDI 720p Streaming</td>
<td>$ 1,236.00</td>
<td>$ 1,273.08</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td>$ 37,760.82</td>
<td>$ 38,893.64</td>
</tr>
</tbody>
</table>

## TERMS AND CONDITIONS

- All fees are due at the beginning of the period of performance. Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of Novato, CA to provide applicable exemption certificate(s).
**AGREEMENT AND ACCEPTANCE**

<table>
<thead>
<tr>
<th>Novato, CA</th>
<th>Billing Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Signature:</strong> __________________________</td>
<td><strong>Name:</strong> __________________________</td>
</tr>
<tr>
<td><strong>Name:</strong> __________________________</td>
<td><strong>Phone:</strong> __________________________</td>
</tr>
<tr>
<td><strong>Title:</strong> __________________________</td>
<td><strong>Email:</strong> __________________________</td>
</tr>
<tr>
<td><strong>Date:</strong> __________________________</td>
<td><strong>Address:</strong> __________________________</td>
</tr>
</tbody>
</table>

**Novato, CA**

**Billing Information**

**Signature:** __________________________

**Name:** __________________________

**Phone:** __________________________

**Email:** __________________________

**Address:** __________________________