CITY OF MARGATE, FLORIDA

RESOLUTION NO. ___12-367___

A RESOLUTION OF THE CITY OF MARGATE,
FLORIDA, APPROVING "GRANICUS, INC. SERVICE
AGREEMENT", SOLE SOURCE PURCHASE OF GRANICUS
LEGISLATIVE MANAGEMENT SUITE, OPEN PLATFORM
SERVICES , AND MANAGED SERVICES; PROVIDING
FOR GRANT OF LICENSE; PROVIDING FOR PAYMENT,
PROVIDING FOR TERM; PROVIDING FOR RENEWAL.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF
MARGATE, FLORIDA:

SECTION 1:   That the City Commission of the City of
Margate, Florida, hereby approves "Granicus, Inc. Service
Agreement", and sole source purchase of Granicus Legislative
Management Suite, Open Platform Services Software, and Managed
Services.

SECTION 2: That the Mayor and City Manager are hereby
authorized and directed to execute the above Agreement on behalf
of the City of Margate, a copy of which is attached and made a
part of this Resolution.

SECTION 3:   That this Resolution shall become effective
immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 21st day of AUGUST, 2013.

ATTEST:

Leslie Wallace May (signature)

LESLIE WALLACE MAY, MMC
CITY CLERK

MAYOR FRANK B. TALERICO

RECORD OF VOTE

Ruzzano	Yes
Donahue	Yes
Simone	Yes
Peerman	Yes
Talerico	Aye

GRANICUS, INC. SERVICE AGREEMENT

THIS SERVICE AGREEMENT (the "**Agreement**"), dated as of <u>August 21</u>, 2013 (the "**Effective Date**"), is entered into between Granicus, Inc. ("**Granicus**"), a California Corporation, and the City of Margate, a municipal corporation (the "**City**").

A.   WHEREAS, Granicus is in the business of developing, licensing, and offering for sale various streaming media solutions specializing in Internet broadcasting, and related support services; and

B.   WHEREAS, Granicus desires to provide and City desires to (i) purchase the Granicus Solution as set forth in the Proposal, which is attached as Exhibit A, and incorporated herein by reference, (ii) engage Granicus to integrate its Granicus Software onto the City Website, (iii) use the Granicus Software subject to the terms and conditions set forth in this Agreement, and (iv) contract with Granicus to administer the Granicus Solution through the Managed Services set forth in Exhibit A.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, representations and warranties herein contained, the parties hereto agree as follows:

1.   <u>GRANICUS SOFTWARE AND MANAGED SERVICES.</u>

1.1   <u>Software and Services.</u> Subject to the terms and conditions of this Agreement, Granicus will provide City with the Granicus Software, and Managed Services that comprise the Granicus Solution as outlined in Exhibit A. "Managed Services" shall mean the services provided by Granicus to City as detailed in Exhibit A. "Managed Services Fee" shall mean the monthly cost of the Managed Services, as detailed in Exhibit A.

2.   <u>GRANT OF LICENSE.</u>

2.1   <u>Ownership.</u> Granicus, and/or its third party supplier, owns the copyright and/or certain proprietary information protectable by law in the Granicus Software.

2.2   <u>Use.</u> Granicus agrees to provide City with a revocable, non-transferable and non-exclusive license to access the Granicus Software listed in the Solution Description and a revocable, non-sublicensable, non-transferable and non-exclusive right to use the Granicus Software. All Granicus Software is proprietary to Granicus and protected by intellectual property laws and international intellectual property treaties. Pursuant to this Agreement, City may use the Granicus Software to perform its own work and work of its customers/constituents. Cancellation of the City's Managed Services will also result in the immediate termination of the City's Software license as described in Section 2.2 hereof.

2.3   <u>Limited Warranty; Exclusive Remedies</u>. Subject to Sections 6.1 and 6.2 of this Agreement, Granicus warrants that the Granicus Software, as provided by Granicus, will substantially perform in accordance with its applicable written specifications for as long as the City pays for and receives Managed Services. City's sole and exclusive remedy for any breach by Granicus of this warranty is to notify Granicus, with sufficient detail of the nonconformance, and provide Granicus with a reasonable opportunity to correct or replace the defective Granicus Software. City agrees to comply with Granicus' reasonable instructions with respect to the alleged defective Granicus Software.

2.4   Limitations. Except for the license in Section 2.2, Granicus retains all ownership and proprietary rights in and to the Granicus Software, and City is not permitted, and will not assist or permit a third party, to: (a) utilize the Granicus 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 the Granicus Software; (c) provide, disclose, or otherwise make available the Granicus Software, or copies thereof, to any third party; or (d) share, loan, or otherwise allow another Meeting Body, in or outside its jurisdiction, to use the Granicus Software, or copies thereof, except as expressly outlined in the Proposal.

3.   PAYMENT OF FEES

3.1   City agrees to pay all costs as outlined in Exhibit A.

3.2   Quarterly billing for Managed Services shall begin upon completion of deployment. City will be invoiced a pro-rated amount from the deployment completion date through the end of the quarter. Thereafter, City will be billed each January 1, April 1, July 1, and October 1. City agrees to pay all invoices from Granicus within thirty (30) days of receipt of invoice.

3.3   Granicus, Inc. shall send all invoices to:

Margate City Clerk
City of Margate
5790 Margate Boulevard
Margate, FL 33063

3.4   Upon renewal of this Agreement, Granicus may include (in which case City agrees to pay) a maximum increase of the current CPI percentage rate (as found at The Bureau of Labor and Statistics website http://www.bls.gov/CPI/) or three (3) percent a year on City's Managed Services Fee, whichever is larger.

3.5   Training Cancellation Policies. Granicus' policies on City cancellation of scheduled trainings are as follows:

(a)   Onsite Training. For any cancellations within forty-eight (48) hours of the scheduled onsite training, Granicus, at its sole discretion, may invoice the City for one hundred (100) percent of the purchased training costs and all travel expenses, including any incurred third party cancellation fees. Subsequent training will need to be purchased and scheduled at the previously quoted pricing.

(b)   Online Training. For any cancellations within twenty-four (24) hours of the scheduled online training, Granicus, at its sole discretion, may invoice the City for fifty (50) percent of the purchased training costs, including any incurred third party cancellation fees. Subsequent training will need to be purchased and scheduled at the previously quoted pricing.

3.6   Additions. Granicus, at its' sole discretion, may add features or functionality to existing product suite bundles for various reasons, including to enhance Granicus' offerings, or improve user satisfaction. During the initial period of this Agreement, the customer understands

that the use of these additional products is included in the originally agreed upon monthly managed services fees.

At contract renewal, the customer acknowledges that this added functionality may have additional monthly managed service charges associated with it and that monthly managed services rates on renewals may have a higher rate than preceding years.

4. CONTENT PROVIDED TO GRANICUS

4.1 Responsibility for Content. The City shall have sole control and responsibility over the determination of which data and information shall be included in the Content that is to be transmitted, including, if applicable, the determination of which cameras and microphones shall be operational at any particular time and at any particular location. However, Granicus has the right (but not the obligation) to remove any Content that Granicus believes violates any applicable law or this Agreement.

4.2 Restrictions. City shall not provide Granicus with any Content that: (i) infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights; (ii) violates any law, statute, ordinance or regulation, including without limitation the laws and regulations governing export control and e-mail/spam; (iii) is defamatory or trade libelous; (iv) is pornographic or obscene, or promotes, solicits or comprises inappropriate, harassing, abusive, profane, defamatory, libelous, threatening, indecent, vulgar, or otherwise objectionable or constitutes unlawful content or activity; (v) contains any viruses, or any other similar software, data, or programs that may damage, detrimentally interfere with, intercept, or expropriate any system, data, information, or property of another.

5. TRADEMARK OWNERSHIP. Granicus and City's Trademarks are listed in the Trademark Information exhibit attached as Exhibit D.

5.1 Each Party shall retain all right, title and interest in and to their own Trademarks, including any goodwill associated therewith, subject to the limited license granted to the City pursuant to Section 2 hereof. Upon any termination of this Agreement, each Party's right to use the other Party's Trademarks pursuant to this Section 5 terminates.

5.2 Each party grants to the other a non-exclusive, non-transferable (other than as provided in Section 5 hereof), limited license to use the other party's Trademarks as is reasonably necessary to perform its obligations under this Agreement, provided that any promotional materials containing the other party's trademarks shall be subject to the prior written approval of such other party, which approval shall not be unreasonably withheld.

6. LIMITATION OF LIABILITY

6.1 Warranty Disclaimer. Except as expressly provided herein, Granicus' services, software and deliverables are provided "as is" and Granicus expressly disclaims any and all express or implied warranties, including but not limited to implied warranties of merchantability, non-infringement of third party rights, and fitness for a particular purpose. Granicus does not warrant that access to or use of its software or services will be uninterrupted or error free. In the event of any interruption, Granicus' sole obligation shall be to use commercially reasonable efforts to restore access.

6.2 Limitation of Liabilities. To the maximum extent permitted by applicable law, Granicus and its suppliers and licensors shall not be liable for any indirect, special, incidental,

consequential, or punitive damages, whether foreseeable or not, including but not limited to: those arising out of access to or inability to access the services, software, content, or related technical support; damages or costs relating to the loss of: profits or revenues, goodwill, data (including loss of use or of data, loss or inaccuracy or corruption of data); or cost of procurement of substitute goods, services or technology, even if advised of the possibility of such damages and even in the event of the failure of any exclusive remedy. In no event will Granicus' and its suppliers' and licensors' liability exceed the amounts paid by City under this agreement regardless of the form of the claim (including without limitation, any contract, product liability, or tort claim (including negligence, statutory or otherwise).

7.   <u>CONFIDENTIAL INFORMATION & OWNERSHIP</u>.

      7.1   <u>Confidentiality Obligations</u>. Confidential Information shall mean all proprietary or confidential information disclosed or made available by the other party pursuant to this Agreement that is identified as confidential or proprietary at the time of disclosure or is of a nature that should reasonably be considered to be confidential, and includes but is not limited to the terms and conditions of this Agreement, and all business, technical and other information (including without limitation, all product, services, financial, marketing, engineering, research and development information, product specifications, technical data, data sheets, software, inventions, processes, training manuals, know-how and any other information or material), disclosed from time to time by the disclosing party to the receiving party, directly or indirectly in any manner whatsoever (including without limitation, in writing, orally, electronically, or by inspection); provided, however, that Confidential Information shall not include the Content that is to be published on the website(s) of City.

      7.2   Each party agrees to keep confidential and not disclose to any third party, and to use only for purposes of performing or as otherwise permitted under this Agreement, any Confidential Information. The receiving party shall protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. Each party agrees not to disclose the Confidential Information to any of its Representatives except those who are required to have the Confidential Information in connection with this Agreement and then only if such Representative is either subject to a written confidentiality agreement or otherwise subject to fiduciary obligations of confidentiality that cover the confidential treatment of the Confidential Information.

      7.3   <u>Exceptions</u>. The obligations of this Section 7 shall not apply if receiving party can prove by appropriate documentation that such Confidential Information (i) was known to the receiving party as shown by the receiving party's files at the time of disclosure thereof, (ii) was already in the public domain at the time of the disclosure thereof, (iii) entered the public domain through no action of the receiving party subsequent to the time of the disclosure thereof, or (iv) is required by law or government order to be disclosed by the receiving party, provided that the receiving party shall (i) notify the disclosing party in writing of such required disclosure as soon as reasonably possible prior to such disclosure, (ii) use its commercially reasonable efforts at its expense to cause such disclosed Confidential Information to be treated by such governmental authority as trade secrets and as confidential.

8.   <u>TERM</u>

      8.1   The term of this Agreement shall commence on the date hereof and shall continue in full force and effect for eighteen (18) months after the date hereof. This Agreement shall automatically renew for an additional three (3) terms of one (1) year each, unless either party

notifies the other in writing at least thirty (30) days prior to such automatic renewal that the party does not wish to renew this Agreement.

      8.2   <u>Rights upon Termination.</u> Upon any expiration or termination of this Agreement, and unless otherwise expressly provided in an exhibit to this Agreement:

      (a)   City's right to access or use the Granicus Solution, including Granicus Software, terminates and Granicus has no further obligation to provide any services;

      (b)   City has the right to keep any purchased hardware, provided that City removes and/or uninstalls any Granicus Software on such hardware. However, if City has received hardware as part of a Granicus Open Platform Suite solution ("Open Platform Hardware"), City understands that upon termination of this Agreement, City shall immediately return the Open Platform Hardware to Granicus, Inc. The Open Platform Hardware must be returned within fifteen (15) days of termination, and must be in substantially the same condition as when originally shipped, subject only to normal wear and tear; and

      (c)   City shall immediately return the Granicus Software and all copies thereof to Granicus, and within thirty (30) days of termination, City shall deliver a written certification to Granicus certifying that it no longer has custody of any copies of the Granicus Software.

      8.3   <u>Obligations upon Termination.</u> Upon any termination of this Agreement,

      (a)   the parties shall remain responsible for any payments that have become due and owing up to the effective date of termination;

      (b)   the provisions of 2.1, 2.4, 3, 4, 5, 6.1, 6.2, 7, 8.3, and 10 of the agreement, and applicable provisions of the Exhibits intended to survive, shall survive termination of this Agreement and continue in full force and effect;

      (c)   pursuant to the Termination or Expiration Options Regarding Content, Granicus shall allow the City limited access to the City's Content, including, but not limited to, all video recordings, timestamps, indices, and cross-referenced documentation. The City shall also have the option to order hard copies of the Content in the form of compact discs or other equivalent format; and

      (d)   Granicus has the right to delete Content within sixty (60) days of the expiration or termination of this Agreement.

9.   <u>PATENT, COPYRIGHT AND TRADE SECRET INFRINGEMENT.</u>

      9.1   <u>Granicus' Options.</u> If the Granicus Software becomes, or in Granicus' opinion is likely to become, the subject of an infringement claim, Granicus may, at its option and sole discretion, (i) obtain for City the right to continue to use the Granicus Software as provided in this Agreement; (ii) replace the Granicus Software with another software product that provides similar functionality; or (iii) if Granicus determines that neither of the foregoing options are reasonably available, Granicus may cease providing the applicable services or require that City cease use of and destroy the Granicus Software. In that event, and provided that City returns or destroys (and certify to such destruction of) all copies of the Granicus Software in City's possession or control, if

any, Granicus will refund to City all license fees paid by City under the current Agreement.

10.   MISCELLANEOUS.

10.1   Amendment and Waiver. This Agreement may be amended, modified, waived or canceled only in writing signed by each of the parties hereto or, in the case of a waiver, by the party waiving compliance. Any failure by either party to strictly enforce any provision of this Agreement will not be a waiver of that provision or any further default.

10.2   Governing Law. The laws of the State of Florida shall govern the validity, construction, and performance of this Agreement, without regard to its conflict of law principles.

10.3   Construction and Severability. Wherever possible, each provision of this Agreement shall be interpreted so that it is valid under applicable law. If any provision of this Agreement is held illegal or unenforceable, that provision will be reformed only to the extent necessary to make the provision legal and enforceable; all remaining provisions continue in full force and effect.

10.4   Independent Contractors. The parties are independent contractors, and no other relationship is intended by this Agreement.

10.5   Force Majeure. Other than payment obligations, neither party is responsible for any delay or failure in performance if caused by any event outside the reasonable control of the party, including without limitation acts of God, government regulations, shortage of supplies, act of war, act of terrorism, earthquake, or electrical, internet or telecommunications outage.

10.6   Closed Captioning Services. City and Granicus may agree that closed captioning or transcription services will be provided by a third party under this agreement.

10.7.   Granicus shall be fully responsible to City for all acts and omissions of Granicus' employees, Subcontractors, Suppliers and other persons directly or indirectly employed by its Subcontractors, suppliers, and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Work under a direct or indirect Contract with Granicus. Nothing in this Agreement shall create any Contractual relationship between City and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due any such Subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations.

All work performed for Granicus by a Subcontractor will be pursuant to an appropriate agreement between Granicus and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of this Agreement for the benefit of the City.

10.8.   Granicus agrees to indemnify, defend, save, and hold harmless the City, its officers and employees, from or on account of all damages, losses, including but not limited to reasonable attorneys' fees, liabilities and costs to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Granicus and person employed or utilized by Granicus in the performance of this Agreement.

10.9. No Waiver. No waiver of any provision, covenant or condition within this agreement, or of the breach of any provision, covenant or condition within this agreement shall be taken to constitute a waiver of any subsequent breach of such provision, covenant or condition.

10.10. Disputes. In the event a dispute shall arise between the parties to the Agreement the parties agree to work in good faith to resolve the dispute. If the parties cannot come to resolution within thirty (30) days, the parties agree to participate in mediation with a mutually selected mediator.

10.11 Litigation Venue. The parties waive the privilege of venue and agree that all litigation between them shall take place in the state courts of Broward County, Florida.

10.12. Waiver of Jury Trial. City and Granicus hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the construction of the work, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

10.13. Public Records. Granicus understands the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.
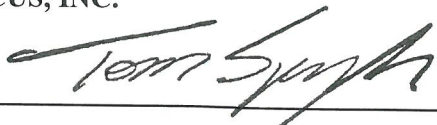
10.14. Compliance with Federal State and Local Laws. Granicus understands this Agreement is subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, record keeping, etc. City and Granicus agree to comply with and observe all applicable federal, state and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

This Agreement consists of this Service Agreement as well as the following exhibits, which are incorporated herein by reference as indicated:

Exhibit A: Proposal
Exhibit B: Support Information
Exhibit C: Hardware Exhibit
Exhibit D: Trademark Information
Exhibit E: Termination or Expiration Options Regarding Content

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives,

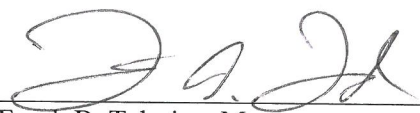GRANICUS, INC.

By: _____

Tom Spengler

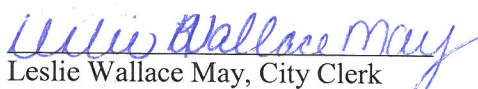Its: Chief Executive Officer

Address:

600 Harrison St, Suite 120

San Francisco, CA 94107

CITY OF MARGATE, FLORIDA

_____
Frank B. Talerico, Mayor
21 day of August , 2013

_____
Jerry A. Blough, City Manager
21 day of August , 2013

ATTEST:

_____
Leslie Wallace May, City Clerk
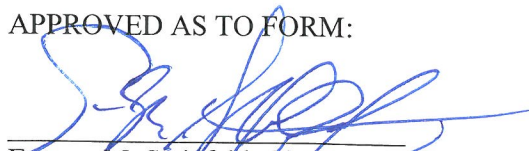21 day of August , 2013

APPROVED AS TO FORM:

_____
Eugene M. Steinfeld, City Attorney
21 day of August , 2013

EXHIBIT A

PROPOSAL

[The remainder of this page is left blank intentionally.]

EXHIBIT B

SUPPORT INFORMATION

1.   <u>Contact Information.</u> The support staff at Granicus may be contacted by the City at its mailing address, general and support-only telephone numbers, and via e-mail or the Internet.

    (a)   <u>Mailing Address.</u> Mail may be sent to the support staff at Granicus headquarters, located at 600 Harrison Street, Suite 120, San Francisco, California, 94107.

    (b)   <u>Telephone Numbers.</u> Office staff may be reached from 8:00 AM to 7:00 PM Pacific time at (415) 357-3618 or toll-free at (877) 889-5495. The technical support staff may be reached at (415) 357-3618 opt 1.

    (c)   <u>Internet and E-mail Contact Information.</u> The website for Granicus is http://www.granicus.com. E-mail may be sent to the support staff at customercare@granicus.com.

2.   <u>Recognized City Representatives</u>. Granicus strives to provide unparalleled support to its clients by ensuring that City staff is properly educated and is prepared to maximize its Granicus Solution. Any City Representative who wishes to participate and receive Granicus customer advocacy services shall participate in and complete the training program that is suited for the Granicus Solution. Once a City Representative completes the training, that Representative will be recognized in Granicus' internal system as qualified to receive support and ongoing education services. All City Representatives are eligible to receive technical support services, regardless of participation in the training program.

3.   <u>Support Policy.</u> When Granicus receives notification of an issue from City, a Granicus account manager or technical support engineer will respond directly to the City via phone or e-mail with (a) an assessment of the issue, (b) an estimated time for resolution, and (c) will be actively working to resolve the issue as appropriate for the type of issue. Notification shall be the documented time that Granicus receives the City's call or e-mail notifying Granicus of an issue or the documented time that Granicus notifies City there is an issue. Granicus reserves the right to modify its support and maintenance policies, as applicable to its customers and licensees generally, from time to time, upon reasonable notice.

4.   <u>Scheduled Maintenance.</u> Scheduled maintenance of the Granicus Solution will not be counted as downtime. Granicus will clearly post that the site is down for maintenance and the expected duration of the maintenance. Granicus will provide the City 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 City will be provided as much advance notice, if any, as possible under the circumstances.

5.   <u>Software Enhancements or Modifications.</u> The City may, from time to time, request that Granicus incorporate certain features, enhancements or modifications into the licensed Granicus Software. Subject to the terms and conditions to this exhibit and the Service Agreement, Granicus and City will use commercially reasonable efforts to perform all tasks in the Statement of Work ("**SOW**"). Upon the City's request for such enhancements/modifications, the City shall prepare a SOW for the specific project that shall define in detail the Services to be performed. Each such SOW signed by both parties is deemed incorporated in this exhibit by reference. Granicus shall submit a cost proposal including all costs pertaining to furnishing the City with the enhancements/modifications.

5.1   Documentation. After the SOW has been executed by each party, a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed project staffing, anticipated project schedule, and other information relevant to the project. Such enhancements or modifications shall become part of the licensed Granicus Software.

5.2   Acceptance. City understands that all work contemplated by this exhibit is on a "time-and-materials" basis unless otherwise stated in the SOW. Within ten (10) business days of Granicus' completion of the milestones specified in the SOW and delivery of the applicable enhancement/modification to City, City will provide Granicus with written notice of its acceptance or rejection of the enhancement/modification, based on the acceptance criteria set forth in the SOW. City agrees that it will not reject any enhancement/modification so long as it substantially complies with the acceptance criteria.

5.3   Title to Modifications. All such modifications or enhancements shall be the sole property of the Granicus.

6.   Limitation of Liability; Exclusive Remedy. IN THE EVENT OF ANY INTERRUPTION, GRANICUS' SOLE OBLIGATION, AND CITY'S EXCLUSIVE REMEDY, SHALL BE FOR GRANICUS TO USE COMMERCIALLY REASONABLE EFFORTS TO RESTORE ACCESS AS SOON AS REASONABLY POSSIBLE.

[End of Support Information]

EXHIBIT C

GRANICUS, INC.

HARDWARE EXHIBIT

THIS HARDWARE EXHIBIT is entered into by Granicus and City, as an attachment to the Service Agreement between Granicus and City, for the hardware components of the Granicus Solution (the "**Hardware**") provided by Granicus to City. This exhibit is an additional part of the Service Agreement and is incorporated therein by reference. Capitalized terms used but not defined in this exhibit have the meanings given in the Service Agreement.

1.   **Price**. The price for the Hardware shall be the price specified in the Proposal.

2.   **Delivery**. Any scheduled ship date quoted is approximate and not the essence of this exhibit. Granicus will select the shipment method unless otherwise mutually agreed in writing. Granicus retains title to the Hardware. Granicus retains title to and ownership of all Granicus Software installed by Granicus on the Hardware, notwithstanding the use of the term "sale" or "purchase."

3.   **Acceptance**. Use of the Hardware by City, its agents, employees or licensees, or the failure by City to reject the Hardware within fifteen (15) days following delivery of the Hardware, constitutes City's acceptance. City may only reject the Hardware if the Hardware does not conform to the applicable written specifications.

4.   **Service Response Time**. For Hardware issues requiring replacement, Granicus shall respond (via written or verbal acknowledgment) to the request made by the City within twenty-four (24) hours. If confirmed by Granicus that Hardware requires replacement, Granicus will deliver replacement hardware directly to the City after such confirmation via overnight shipping. The Hardware and software will be configured to the original specs of the City. Once the Hardware is received City's responsibilities will include:

    a.   Mount server on City rack (if applicable)

    b.   Connecting original network cables.

    c.   Connecting original audio and video cables (if applicable).

5.   **DISCLAIMER OF WARRANTIES**. NOTWITHSTANDING THE MAINTENANCE PROVIDED UNDER SECTION 7 BELOW, GRANICUS DISCLAIMS ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, OF MERCHANTABILITY AND AGAINST INFRINGEMENT, WITH RESPECT TO THE HARDWARE. NO PERSON IS AUTHORIZED TO MAKE ANY WARRANTY OR REPRESENTATION ON BEHALF OF GRANICUS.

6.   **LIMITATION OF LIABILITY**. GRANICUS SHALL NOT BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS EXHIBIT INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF GRANICUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT WILL GRANICUS'

LIABILITY TO CITY ARISING OUT OF OR RELATING TO THIS EXHIBIT EXCEED THE AMOUNT OF THE PRICE PAID TO GRANICUS BY CITY FOR THE HARDWARE.

7.   **Managed Hardware**. In the event of malfunction for Managed Hardware provided by Granicus, Granicus Hardware that is maintained as part of a managed Open Platform service will be repaired or replaced as part of the managed services as long as City is current with City's monthly subscription payment. The key features of the Managed Hardware are as follows:

- Robust support for hardware, O/S, and applications
- 7x24x365 phone, chat and email support from certified experts
- In the event of Hardware failure, Granicus will deliver overnight replacement hardware directly to the City.

Escalation management. Granicus provides the above mentioned services under City's acknowledgment that all Granicus tools, and systems will be installed by the manufacturer chosen by Granicus within the Managed Hardware, provided to the City. These software tools have been qualified by Granicus to allow the highest level of service for the City. While it is Granicus' intention to provide all clients with the same level of customer care and warranty, should the City decline these recommended tools, certain levels of service and warranty may not guaranteed.

8.   **Purchased Hardware Warranty**. For Hardware purchased from Granicus by City, Granicus will provide to City any warranty provided by the manufacturer with respect to the Hardware. Granicus shall repair or replace any Hardware provided directly from Granicus that fails to function properly due to normal wear and tear, defective workmanship, or defective materials as long as such Hardware is then under the manufacturer's warranty.

9.   **Use of Non-Approved Hardware**. The Granicus platform is designed and rigorously tested based on Granicus-approved Hardware. In order to provide the highest level of support, Granicus requires the use of Granicus-approved Hardware in your solution. While it is Granicus' intention to provide all clients with the same level of customer care and continuous software upgrades, Granicus does not make any guarantees whatsoever in the event City uses non-approved hardware.

10.   **City Changes to Managed Hardware Prohibited.** In the event changes are made by City to the managed hardware without the approval of Granicus, Granicus may charge City a one-time fee of two hundred fifty ($250.00) dollars to restore the system back to standard settings. Such changes may include, but are not limited to: operating system level changes; third party software installations; changes to Granicus software, and/or configurations; and/or changes to third party system and/or network monitoring tools.

[end of Hardware Exhibit]

TRADEMARK INFORMATION

Granicus Registered Trademarks ®

Granicus logo as a mark
Granicus®
MediaVault®
Mobile Encoder®
Outcast Encoder®
StreamReplicator®

Granicus Trademark Names ™

Integrated Public Record™
Intelligent Routing™
LinkedMinutes™
LiveManager™
MediaCenter™
MediaManager™
MeetingMember™
MeetingServer™
Simulcast Encoder™
VoteCast™
VoteCast™ Classic
VoteCast™ Touch

City Trademarks

EXHIBIT E

TERMINATION OR EXPIRATION OPTIONS REGARDING CONTENT

In case of termination by City or expiration of the Service Agreement, Granicus and the City shall work together to provide the City with a copy of its Content. The City shall have the option to choose one (1) of the following methods to obtain a copy of its Content:

- Option 1: Video/Audio files made available through optional media: data CD, external hard drive, or Granicus provided FTP site. A CSV, XML, and/or database file will be included providing clip information, and/or legislative content.

- Option 2: Provide the Content via download from MediaManager or from a special site created by Granicus. This option shall be provided free of charge.

- Option 3: Granicus shall provide the means to pull the content using the Granicus Application Programming Interface. This option shall be provided free of charge.

The City and Granicus shall work together and make their best efforts to transfer the Content within the sixty (60) day termination period. Granicus has the right to delete Content from its services after sixty (60) days.