

## STREAMING MEDIA ASP AGREEMENT

**THIS STREAMING MEDIA ASP AGREEMENT** (the "Agreement") is made this 23<sup>rd</sup> day of November, 2004 (the "Effective Date"), by and between the CITY OF BELLEVUE, a municipal corporation of the State of Washington, (hereinafter referred to as "City"), and GRANICUS, INCORPORATED, a corporation organized and existing under the laws of the State of California, (hereinafter referred to as "Granicus"), with offices at 74 Tehama, San Francisco, CA 94105.

**WHERE AS**, Granicus has developed and provides the Granicus Streaming Media Solution that specializes in Internet Broadcasting that includes: MediaManager Basic; MediaManager Enterprise Edition; MediaManager MinutesMaker; MediaVault; StreamReplicator; Mobile Encoder; the fully developed version of the Training Module that is in development, and; certain hardware, and/or installation, set-up, customization and related services, and;

**WHERE AS**, The City desires to (i) purchase the Granicus Streaming Media Solution and certain hardware to facilitate streaming and distribution of various media, including live video and audio content, and (ii) engage Granicus to integrate the Granicus Streaming Media Solution with and onto the City's existing website, and (iii) contract with Granicus to develop the custom applications to the Granicus software as provided herein, and; (iv) to contract with Granicus to administer the Granicus Streaming Media Solution through the Granicus Managed Services Plan (collectively the "Project").

**NOW THEREFORE**, in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

### 1. NATURE AND TERM OF THE AGREEMENT

1.1 This Agreement is for the delivery, installation, configuration, provisioning, implementation, testing, acceptance, training and maintenance of the Granicus Streaming Media Solution and the Granicus Managed Services Plan (the "Project Work" ) as described in Attachment A – Project Scope of Work and the Granicus response to City of Bellevue RFP 04-34 (dated September 10, 2004) attached as Exhibit 1 to Attachment A. The Granicus Streaming Media Solution is based on software and interfaces licensed to the City by Granicus pursuant to the terms and conditions of this Agreement.

1.2 This Agreement shall commence on the Effective Date and shall continue for a period of thirty-six (36) months unless and until it is earlier terminated pursuant to Section 13 below. Thereafter, this Agreement shall automatically renew for additional terms of one (1) year each, unless either party notifies the other in writing at least 60 days prior to such automatic renewal that it does not wish to renew this Agreement.

### 2. RIGHTS GRANTED

2.1 The City recognizes and agrees that access to and the right to use the Granicus Streaming Media Solution is not sold and that the City shall not take any right, title or interest therein, except as provided below.

2.2 Subject to the terms of this Agreement, Granicus hereby grants the City:

2.2.1 A revocable, non-transferable and non-exclusive subscription account to access the Media Management Software;

2.2.2 A revocable, non-sublicensable, non-transferable and non-exclusive subscription right to use the Media Management Software.

2.3 The City will access and use the Granicus Media Management Software through a web interface via the Internet. In the event that Granicus discontinues operations, Granicus agrees to provide the City with the application binary code and a permanent, non-revocable, Right To Use license for the Media Management Software so that the City may manage and maintain the Media Management Software in its own application environment. Thereafter the City will be responsible, at its own expense, to create and maintain the application environment.

2.4 Any upgrades, updates, modifications, customizations, interfaces or enhancements to the Granicus Streaming Media Solution software product(s) provided or made available to the City by Granicus, in accordance with the terms of this Agreement shall be considered subject to and included in the rights granted by this Agreement.

2.5 The City's right to access and use the Granicus Streaming Media Solution is revocable only upon termination of this Agreement as provided herein or the City's cancellation of the Managed Services.

### **3. METHOD OF PAYMENT**

3.1 The City agrees to pay the Non-Recurring Costs for the Granicus Streaming Media Solution as set forth in Attachment A – Project Scope of Work. The parties have agreed to the following method of payment:

3.1.1 Upon the Effective Date of this Agreement, Granicus shall submit an invoice to the City and the City shall pay to Granicus, in accordance with the City of Bellevue Contracting Policy and Procedures and other provisions agreed to herein, an amount equal to twenty percent (20%) of the total price, as specified in Attachment A.

3.1.2 Upon completion of delivery, installation, configuration, provisioning, implementation and training, Granicus shall submit an invoice to the City and the City shall pay to Granicus, in accordance with the City of Bellevue Contracting Policy and Procedures and other provisions agreed to herein, an amount equal to thirty percent (30%) of the total price, as specified in Attachment A.

3.1.3 Upon successful completion of the 30-day In Operation Test, as provided in Attachment A – Project Scope of Work, Granicus shall submit an invoice and the City shall pay to Granicus, in accordance with the City of Bellevue Contracting Policy and Procedures and other provisions agreed to herein, all but eight thousand dollars (\$8,000) of the remaining total price, as specified in Attachment A.

3.1.4 Upon execution of the Certificate of final Acceptance as provided Section 7.2 below, Granicus shall submit an invoice and the City shall pay to Granicus, in accordance with the City of Bellevue Contracting Policy and Procedures and other provisions agreed to herein, the final eight thousand dollars (\$8,000) of the total price, as specified in Attachment A.

3.2 No payment, including final payment, shall be construed as acceptance of defective products, hardware, service or incomplete work, and Granicus shall remain responsible and liable for full performance in strict compliance with the terms and conditions of this Agreement.

3.3 The City agrees to pay the Recurring Monthly Costs (RMC) for the Granicus Managed Services Plan as set forth in Attachment A – Project Scope of Work. In the event of a termination of the Managed Services Plan by the City, pursuant to the provisions of Section 13.1.1 below, within the first twelve (12) months from the Effective Date of this Agreement, the City will be responsible for paying the amount(s) due for the remainder of the first year.

3.4 All undisputed amounts due and payable to Granicus hereunder shall, if not paid within thirty (30) days of the City's receipt of invoice, bear interest at the rate of one percent (1%) per month, or the highest rate permitted by law, whichever is less. The City shall notify Granicus of any disputed amount within twenty (20) business days of receipt of the applicable invoice. Granicus will delay the imposition of interest penalties until the parties have resolved the disputed invoice. If the parties are unable to resolve a dispute within sixty (60) days of the dispute, it shall be submitted to mediation in accordance with the provisions of the dispute resolution section below as to the disputed invoice only. Neither Granicus nor its subcontractors shall delay or suspend performance of any Project Work hereunder pending resolution of any disputed amount.

3.5 It is understood and acknowledged that the City's sole obligation with respect to payments is to pay Granicus amounts invoiced and properly payable under this Agreement. To the extent that Granicus engages any subcontractor(s) in connection with its performance under this Agreement, Granicus shall be solely responsible to make payments to such subcontractor(s) and Granicus shall secure lien releases and provide copies to the City.

3.6 Acceptance by Granicus of the last payment from the City shall operate as a release of all claims for payment by Granicus and any subcontractors or other persons supplying labor or materials used in the performance of any work under a supplement/purchase order and if appropriate provide any lien releases.

#### **4. SALES, USE AND PROPERTY TAX**

4.1 The City shall pay all applicable sales, use, value added and similar taxes to Granicus, and Granicus shall remit all such taxes, if imposed by local and/or state authorities on all software, hardware, and other taxable goods purchased by the City under this Agreement. All such taxes currently known to Granicus and the City have been included in the Contract Price.

4.2 Granicus shall remit all applicable state, local or Federal taxes including, but not limited to, state and local Business and Occupational tax, taxes on Granicus' gross or net income and personal property taxes levied or assessed on personal property to which City does not hold title.

#### **5. DELIVERY AND INSTALLATION**

5.1 In addition to any other duties set forth in this Agreement including Attachment A -- Project Scope of Work, Granicus shall:

5.1.1 Manage all Project Work for the delivery, installation, configuration, provisioning, implementation, training, and testing of the Granicus Streaming Media Solution and

the performance of all of the services in connection therewith as described in, and in conformance with, Attachment A - Project Scope of Work. With respect to delivery, installation and implementation, Granicus shall comply with state, Federal, and industry standards for such items, and;

5.1.2 Provide, review, and approve all technical specifications with respect to the City's hardware and equipment to ascertain compatibility with the Granicus Streaming Media Solution requirements and specifications, and;

5.1.3 Assist the City in determining whether and when the Granicus Streaming Media Solution is ready for use in live operations and assist the City in performing all testing to determine whether the modules of the Granicus Streaming Media Solution conforms to and provides the functionality described in Attachment A - Project Scope of Work and is ready for live operations, and;

5.1.4 Make available to the City any upgrades or updates of, and modifications, customization, interfaces or enhancements to the Granicus Streaming Media Solution, when such upgrades or updates of, and modifications, customization, interfaces or enhancements are being made available to other licensees of the Granicus Streaming Media Solution, pursuant to the terms of this Agreement and the Granicus response to City of Bellevue RFP 04-34, and;

5.1.5 Ensure that the functionality and operations of the Granicus Streaming Media Solution shall not be diminished or impaired by the installation of any such upgrades or updates of, and modifications, customization, interfaces or enhancements to the Granicus Streaming Media Solution, and;

5.1.6 Provide the City with training as specified in Attachment A - Project Scope of Work. Such training is to be provided on a mutually agreed upon schedule between the City and Granicus as specified in the Attachment A. Training materials are to be provided in advance of the scheduled training date(s), and;

5.1.7 Work in cooperation with City staff and/or various other contractors of the City. Granicus agrees to coordinate and cooperate with all City staff and contractors, as may be necessary, to assure timely and successful implementation of the Granicus Streaming Media Solution according to Attachment A - Project Scope of Work.

5.2. Granicus shall perform the duties described in Attachment A - Project Scope of Work, as supplemented above, in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in the performance thereof. Having regard to Attachment A - Project Scope of Work, Granicus shall, in consultation with the City, determine the manner and means by which such duties shall be performed. Granicus shall respond expeditiously to any inquiries from the City or its contractors pertaining to this Agreement and/or the delivery, installation, configuration, provisioning, implementation training, and testing of the Granicus Streaming Media Solution.

## **6. INSPECTION**

All Project Work performed by Granicus shall be subject to inspection by the City on a periodic basis. Granicus shall assist in any such inspection by the City to allow a determination of Granicus compliance with Attachment A - Project Scope of Work. Such inspections shall not unduly interfere with the performance of Granicus under this Agreement. If the City reasonably determines that the

performance of Granicus is not in compliance with the requirements of this Agreement, the City may require Granicus to correct the performance at no additional cost to the City.

## **7. ACCEPTANCE**

7.1 The City and Granicus shall jointly conduct such test(s) of the Granicus Streaming Media Solution as shall be reasonably required to determine and demonstrate, to the City's satisfaction, that each module, interface, integration and/or customization, of the Granicus Streaming Media Solution conforms to and provides the functionality described in Attachment A – Project Scope of Work and the Granicus response to Bellevue RFP 04-34 is ready for use in live operations. If, after such test(s), the City determines to its satisfaction that the module(s), interface(s), integration and/or customization of the Granicus Streaming Media Solution conforms to and provides the described functionality, the parties will jointly execute an acceptance certificate for the module(s), interface(s) integration and/or customization.

7.2 At such time that the City shall reasonably determine that all of the module(s), interface(s), integration and/or customization for the Granicus Streaming Media Solution, including the Training Module and the integration with the Optika Acorde document management system have been delivered, the parties will jointly execute a Certificate of Final Acceptance. For the purposes of this Agreement, the Certificate of Final Acceptance shall demonstrate that Granicus has delivered and that the City has accepted as delivered the Granicus Streaming Media Solution as promised and contemplated in Attachment A – Project Scope of Work and the Granicus response to Bellevue RFP 04-34

## **8. GRANICUS AND SUBCONTRACTORS**

8.1 Granicus may enter into subcontracts with third parties for its performance of any part of its duties and obligations, provided that in no event shall the existence of a subcontract release or reduce the liability of Granicus to the City for any breach in the performance of any Granicus duties.

8.2 Granicus shall ensure, with written documentation, that the City is an intended third-party beneficiary with the right to enforce the terms of any agreement between Granicus and any subcontractor(s) used by Granicus pertaining to the Project Work and licenses provided for under this Agreement. Failure to obtain a written agreement naming the City as a third party beneficiary shall be considered a material breach of this Agreement.

## **9. CITY PROPERTY**

9.1 Granicus shall at all times protect the City's property from injury or loss arising in connection with any of the Project Work under this Agreement. If provided access, either locally or via remote access, to the City's network, Granicus shall prevent loss of files and data on the City's servers due to acts of Granicus or its subcontractor(s). Granicus shall treat as confidential all information related to remote access, including instructions, user IDs, and passwords. In no case shall Granicus allow a third party (i.e. not employed or engaged by Granicus) to remotely connect to the City's network.

9.2 Granicus and any subcontractor(s) shall adhere to the requirements of the City's Technology Usage Policy and the Resource Usage and Security Policy, attached hereto as Attachment C.

9.3 The City shall own all right, title and interest in and to all City content including, without limitation, all intellectual property rights relating thereto. To the extent that any such City content is

protectable by copyright, any contribution by Granicus to the City content shall be deemed a "work made for hire" under the copyright laws of the United States

## 10. REPRESENTATIONS AND WARRANTIES

10.1 Granicus Authority. Granicus represents and warrants that (i) Granicus has the power and authority to enter into and perform this Agreement (ii) and that this Agreement, when executed and delivered, shall be a valid and binding obligation of Granicus enforceable in accordance with its terms, and (iii) Granicus and its employees and representatives engaged in the Project shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the services and obligations under this Agreements.

10.2 Granicus Responsibility. Granicus represents and warrants that it will be the primary point of contact for the Project and all Project Work. Granicus shall be responsible for coordinating the delivery, installation, provisioning, implementation and testing of the Granicus Streaming Media Solution and for taking all commercially reasonable action(s) to cause the Project Work to be successfully completed and to conform to and be delivered as provided in the applicable warranty statement(s) or other documents attached hereto and incorporated herein by reference.

10.3 Warranty of Performance. Granicus warrants to the City that the Granicus Streaming Media Solution will perform in accordance with the description of the functions and capabilities as described in Attachment A - Project Scope of Work and as described in the Granicus response to City of Bellevue RFP 04-34, provided that the deliverables are properly used in accordance with the Granicus documentation and instructions.

10.4 Granicus Intellectual Property Rights. Granicus represents and warrants that: (i) it is and will be either the sole author of, or duly licensed and authorized to use, all works employed by Granicus in the Granicus Streaming Media Solution software products and any upgrades, updates, modifications, customizations, interfaces or enhancements thereto; (ii) it has and will have full and sufficient right to assign or grant the rights and/or licenses in the Granicus Streaming Media Solution software products and any upgrades, updates, modifications, customizations, interfaces or enhancements thereto as provided in this Agreement, and; (iii) the Granicus Streaming Media Solution software products provided to City does not and will not infringe any patents, copyrights, trademarks, or other intellectual property rights (including trade secrets), privacy or similar rights of any third party, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against Granicus (or, insofar as Granicus is aware, any entity from which Granicus has obtained such rights).

10.5 City Content. The City represents and warrants that it shall not provide to Granicus, or permit to be provided to Granicus, any audio or video content that infringes or violates any third parties' intellectual property rights, rights of publicity or rights of privacy, that contains any illegal material, that contains or any gambling or sexually explicit material, or that violates any Federal, state or local laws, regulations or statutes.

10.6 Surreptitious Code. Granicus represents and warrants that no copy of the Granicus Streaming Media Solution software product(s) provided to the City contains or will contain any "self-help code" or any "unauthorized code". As used in this Agreement, "self-help code" means any back door, time bomb, drop dead device, or other software routine designed by, or for the use of, Granicus, to disable a computer program automatically with the passage of time or under the positive control of Granicus or any other third person. "Self-help code" does not include software routines in a computer program, if any,

designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support. As used in this Agreement, "unauthorized code" means any virus, Trojan horse, worm or other software routines or equipment components designed by, or used by Granicus, to permit unauthorized access, or to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term "unauthorized code" does not include "self-help code".

10.7 Year 2000 Compliance. Granicus represents and warrants that the Granicus Streaming Media Solution software product(s) shall at all times be Year 2000 Compliant, which means that: (i) the licensed software and all upgrades, updates, customization, interfaces, enhancements and modifications shall, with normal use, record, store, process, and present all calendar dates prior to, through and after January 1, 2000; (ii) all leap years shall be calculated correctly; (iii) correct results shall be produced in forward and backward date calculation spanning century boundaries.

10.8 Project Work. Granicus represents and warrants that all Project Work shall be provided on a timely basis in accordance with the schedule included in Attachment A – Project Scope of Work, with a reasonable standard of care, in a workmanlike and professional manner, consistent with generally accepted industry standards and each of the human resources assigned to perform services for the City shall be fully qualified, experienced, and technically trained. For security purposes, Granicus shall provide written waivers to permit the City to conduct background investigations of any of its employees assigned to the Project, at the City's request.

10.9 Compatibility. Granicus represents and warrants that the Granicus Streaming Media Solution software product(s) are compatible with the City's computing environment, including database software, network, and platforms, as described in this Agreement and City of Bellevue RFP 04-34. Granicus further represents and warrants that each upgrade, update, modification, customization, interface or enhancement to the Granicus Streaming Media Solution shall be compatible with the licensed software delivered by Granicus and will run in City's operating environment.

10.10 Quiet Enjoyment. Granicus represents and warrants that the Granicus Streaming Media Solution is the sole and exclusive property of Granicus or that Granicus is authorized to provide full use of the Granicus Streaming Media Solution to the City as provided herein and that Granicus Streaming Media Solution is not subject to any lien, claim, or encumbrance inconsistent with any of City's rights under this Agreement and that City is entitled to, and shall be able to enjoy quiet possession and use the Granicus Streaming Media Solution without interruption by Granicus or its agents.

10.11 Adequate Resources. Granicus represents and warrants that it has the resources, personnel, expertise and corporate infrastructure available to deliver and support the delivery, installation, configuration, provisioning, implementation, testing, acceptance and maintenance of the Granicus Streaming Media Solution and meet any milestones and/or deadlines imposed by the Project Agreements.

10.12 RFP Compliance. Granicus represents and warrants all claims, especially of functionality and service levels, in its response to RFP 04-34 and all subsequent meetings with any City personnel involved in the selection process. Granicus recognizes that the City has based the awarding of this contract on the product and services representations given by Granicus to the City in its response to the City's Request for Proposal, RFP 04-34 (attached as Exhibit 1 to Attachment A).

10.13 Minimum Specifications. Granicus represents and warrants that the Granicus Streaming Media Solution software product(s) provided by Granicus shall meet or exceed the minimum specifications set forth in any Granicus informational materials or design specifications.

## 11. Managed Service Plan Service Level Agreement

11.1 For the Managed Services, as provided in Attachment A – Project Scope of Work and the Granicus response to Bellevue RFP 04-34 (attached as Exhibit 1 to Attachment A) Granicus commits to a goal of service availability of 99.99%. All Granicus managed MediaCenter components of the Granicus managed services are included in the determination of service availability.

11.2 Service Availability Measurement and Remedies - Service downtime is measured based on the total outage time of the affected Granicus service. Service downtime shall exist when the City is unable to access the service due to a failure involving one or more of the components and Granicus records such a failure in the Granicus trouble ticket system. Service downtime is measured from the time the trouble ticket is opened to the time the affected service is again operational and available to the City. Upon the City's written request to Granicus, made within five (5) business days of the last day of the month, Granicus shall provide a log of service downtime. Granicus agrees to provide a service credit equal to the pro-rated charges for one day of service for each day in which cumulative service downtime exceeded one hour.

11.3 Service credits will not be available to the City in cases which the services are unavailable as a result of (i) the negligence, acts or omissions of the City, its employees, agents or its end users; (ii) the failure or malfunction of equipment, applications or systems not owned or controlled by Granicus; (iii) circumstances or causes beyond the control of Granicus, including Force Majeure excusable delay event(s) as herein described.

## 12. INSURANCE AND INDEMNIFICATION

12.1 For all Project Work performed under this Agreement Granicus agrees to comply with Attachment B – Insurance Requirements. Granicus shall provide a certificate of insurance, acceptable to the City, evidencing coverage in adherence to the City's insurance requirements.

12.2 Indemnification by Granicus. Granicus agrees to protect, indemnify, defend and hold harmless the City and the City's agents, officers, employees, successors and assigns, from and against all losses based upon, arising out of, or in connection with any untrue representation of, or breach of warranty by Granicus in any part of this Agreement or any nonfulfillment of any covenant, promise, duty, obligation, agreement or undertaking of Granicus of any part of this Agreement. Granicus shall protect, indemnify, defend, and hold harmless the City and the City's agents, officers, employees, successors and assigns, against any claim or legal action (whether or not such claim or action is frivolous) arising out of a claim of infringement of patent, copyrights, or other intellectual property rights, or misappropriation of trade secrets, in connection with the City's use of the Granicus Streaming Media Solution software products (including any third party software incorporated into the licensed software by Granicus) and any upgrades, updates, modifications, customization, interfaces or enhancements thereto. Granicus shall protect, indemnify, defend, and hold the City harmless against all expenses, liabilities, costs, settlements or judgments, including attorney fees at trial and at appeal, in connection with any such third party claims or actions. The City agrees to notify Granicus in writing of such claim or suit promptly after the pleading, demand letter, or other notice is served upon the City.

12.2.1 Granicus shall have the right to conduct any defense and/or settlement in any such action; provided that, if in any suit arising from such claim, the continued use of the Granicus Streaming Media Solution software products for the purpose intended is enjoined or



threatened to be enjoined by any court of competent jurisdiction, Granicus shall, at its expense: (a) first procure for the City the right to continue using the Granicus Streaming Media Solution software product(s), or upon failing to procure such right; (b) replace or modify the Granicus Streaming Media Solution software product(s) so it becomes non-infringing. The specific indemnity contained in this paragraph shall survive any termination of this Agreement.

12.2.2 Granicus shall not enter into any settlement that obligates the City to incur any expense, adversely impacts the City's rights under this Agreement or interferes with the operation of the City's business without the City's prior written consent, and further provided, that the City shall have the right to be represented by independent counsel of the City's own choosing in connection with such claim or suit. The City shall, at the expense of Granicus, cooperate with Granicus in the defense of such suit; provided, however, that the City shall not be required to take any action which would require the City to disclose attorney - City communications, confidential information, or otherwise contrary to the City's best interests.

12.3 Indemnification by the City. The City agrees to indemnify and defend Granicus and its respective officers, directors, shareholders, agents, successors and assigns, from and against any claim that the City's content infringes or violates any third party intellectual property rights, rights of publicity or rights of privacy, including, without limitation, any claims arising out of the failure of the City to properly maintain any required warnings and disclaimers; any claim that the City content contains any defamatory material or any gambling or sexually explicit material or any other claim of personal injury with respect to the City's content; any claim that the City content violates any Federal, state, local laws, regulations or statutes.

### 13. TERMINATION

13.1 Termination. this Agreement may be terminated, in whole or in part, pursuant to the following terms and conditions:

13.1.1 By the City, upon sixty (60) days written notice, subject to the payment provisions as provided in Section 3.3;

13.1.2 By either party if there has been a material default or breach on the part of the other party in any of its representations, warranties, covenants or obligations contained in this Agreement and such default or breach is not cured within 30 days following written notice from the non-breaching party;

13.1.3 By either party immediately on written notice to the other party in the event the other party shall file a petition for a liquidation in bankruptcy, be declared bankrupt, make an assignment for the benefit of creditors, go into liquidation or receivership, or otherwise lose legal control of its business;

13.1.4 If there is a change in ownership, provided the terminating party provides written notice of intent to terminate prior to, or within 60 days after, such change in ownership, unless, prior to consummating, or concurrently with the consummation of, any change in ownership the acquiring party provides a written statement of agreement to be bound by all of the terms and conditions of this Agreement and such written statement agreement is accepted by the other party.

13.2 Notwithstanding the foregoing, once the City has paid in full the agreed amount for the Granicus Streaming Media Solution as stipulated in Attachment A - Project Scope of Work, the licensing

rights granted hereunder for the Granicus Streaming Media Solution software products and any upgrades, updates, modifications, customizations, interfaces or enhancements thereto shall not terminate unless there is a material breach of the City's obligations under the licensing grant or non-disclosure sections of this Agreement. Granicus may not terminate any license granted under this Agreement due to non-payment if the City (i) reasonably and in good faith disputes the amount that is due; and (ii) pays all amounts that are not reasonably in dispute.

#### **14. DISPUTE RESOLUTION AND REMEDIES**

14.1 The parties desire, if possible, to resolve disputes, controversies and claims ("Disputes") arising out of this Agreement without litigation. To that end, upon written notification of Dispute by a party to the other, each party shall appoint a knowledgeable, responsible management representative to meet and negotiate in good faith to resolve any Dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The discussions shall be left to the discretion of the representatives. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any action or proceeding arising under or concerning this Agreement without the concurrence of all parties. Documents identified in or provided with such communications, which are not identified as being prepared for purposes of the negotiations are not so exempted and may, if otherwise admissible, be admitted in evidence in any such action or proceeding.

14.2 If negotiations do not resolve the Dispute within thirty (30) days, the matter shall be submitted to non-binding mediation by a mediator mutually acceptable to the parties. Such mediation shall be conducted pursuant to the rules and procedures of mediation promulgated by the American Arbitration Association at the time the Dispute is submitted for mediation. The parties shall equally share the fees of the mediation and the mediator.

14.3 If mediation does not resolve the Dispute within sixty (60) days the Dispute shall be submitted to the parties' respective legal departments for further action,

14.4 Notwithstanding the foregoing, either party shall be entitled to commence legal proceedings seeking such preliminary, interim or conservatory measures, including mandatory, declaratory or injunctive relief as may be necessary to define or protect the rights and enforce the obligations contained herein pending the final settlement or adjudication of a Dispute.

14.5 The parties acknowledge that a breach of this Agreement shall result in irreparable and continuing damage and cannot be adequately compensated for by money damages and agree that specific performance is an appropriate remedy for any breach or threatened breach hereof. Accordingly, in addition to any other remedies available to a party at law, in equity or by statute, the parties (i) consent to the issuance of any injunctive relief or the enforcement of other equitable remedies against it (without bond or other security) to compel performance of any of the terms of this Agreement, and (ii) waive any defenses thereto, including without limitation, the defenses of failure of consideration, breach of any other provision of this Agreement, and availability of relief in damages. All remedies, whether under this Agreement, provided by law, or otherwise, shall be cumulative and not alternative.

14.6 Granicus shall not delay or suspend performance of any Project Work pending resolution of any Dispute.

**15. NON-WAIVER**

The non-enforcement of any provision of this Agreement, or failure to insist on strict compliance with any of the terms, covenants or conditions hereof, shall not be deemed a waiver of any right granted under this Agreement; nor shall any waiver of any right granted hereunder on one occasion be deemed a waiver at any other time. A waiver to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent is in writing signed by both parties.

**16. CHOICE OF LAW AND VENUE**

This Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Washington without regard to its conflict of laws provisions and not including the United Nations Convention on Contracts for the International Sale of Goods if such convention would otherwise be applicable. Any action or proceeding arising under this Agreement shall be subject to the jurisdiction of the State or Federal Courts for King County, Washington.

**17. INCLUDED PARTIES**

As provided in the City of Bellevue Request for Proposals RFP # 04-34, Granicus will accept orders from and furnish the Software Products, hardware and services as proposed in its response to RFP# 04-34 to any governmental agency or other public entity authorized to use the proposal pursuant to any interlocal or other such agreement, at prices not to exceed those prices specified in the Granicus response to RFP # 04-34.

**18. ASSIGNMENT AND SUBCONTRACTS**

Neither this Agreement nor any rights or obligations herein may be assigned by either party, by operation of law or otherwise, without the written consent of the other party. This Agreement shall be binding on and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and permitted assigns.

**19. MODIFICATION OR RENEGOTIATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if Federal, state and/or local revisions of any applicable laws or regulations make changes in this Agreement necessary.

**20. NON-DISCLOSURE**

The parties mutually agree to be bound by the terms and conditions of a non-disclosure agreement. The terms and conditions are under separate agreement found in Attachment D - Non-Disclosure Agreement.

## 21. NOTICES

All notices required to be given under this Agreement shall be made in writing by (a) first-class mail, postage prepaid, certified, return receipt, (b) by regularly scheduled overnight delivery, return receipt, (c) by facsimile or e-mail followed immediately by first-class mail, or (d) by personal delivery, to the address set forth herein, or such other address as provided in writing. Such notices shall be deemed given upon proof of receipt or five (5) days after mailing a notice.

Notices shall be sent to:

City of Bellevue  
Attention: David Kerr, Transportation  
PO Box 90012  
Bellevue, WA 98009-9012  
Fax: (425) 452-2817  
E-mail: dkerr@ci.bellevue.wa.us

CC: City of Bellevue  
Attention: City Clerk  
PO Box 90012  
Bellevue, WA 98009-9012  
Fax: (425) 452-7937  
E-mail: cityclerk@ci.bellevue.wa.us

Granicus, Incorporated  
Attention: Tom Spengler, CEO  
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Fax: (415) 522-5215  
E-mail: tom@granicus.com

CC: Granicus, Incorporated  
Attention: Emery Jones, Chief Financial Officer  
74 Tehama  
San Francisco, CA 94105  
Fax: (415) 522-5215  
E-mail: emery@granicus.com

## 22. FORCE MAJEURE / EXCUSABLE DELAY

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from unforeseen circumstances, including but not limited to delay of carriers, complete or partial shutdown of plant, unavailability of equipment or software from suppliers, acts of God, war, riot or insurrection, embargoes, acts of government, civil or military authorities, catastrophe, fire, floods, strikes, shortages of transportation, or material acts of a public enemy, or the actions or omissions of the other party or its officers, directors, employees, agents and/or other similar occurrences beyond the non-performing party's reasonable control. In the event of such delay, performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay, provided that such time shall not exceed ten (10) days without City's express written consent. Granicus shall notify the City of the occurrence of an event or circumstance described in this provision promptly upon receiving actual notice of such event or circumstance. City will be entitled to rely upon the remedies found within this Agreement for any material breach. If there is a delay due to Force Majeure, Attachment A - Project Scope of Work schedule will be adjusted to accommodate such delay.

## 23. INDEPENDENT CONTRACTOR RELATIONSHIP

Granicus and the City intend that an independent contractor-client relationship will be created with this Agreement. The City is interested only in the results to be achieved, and conduct and control of the work will lie solely with Granicus. Granicus shall not be considered an agent or employee of the City for any purpose, and the employees of Granicus are not entitled to any of the benefits that the City provides for its employees. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the City. Granicus shall pay when due, all salaries and

wages of its employees and subcontractors and Granicus accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Granicus nor employees or subcontractors of Granicus are entitled to state retirement or leave benefits. Granicus agrees to protect, defend, indemnify, and save harmless the City for any claim or liability for taxes or benefits for employees of Granicus

## **24. DISCRIMINATION AND COMPLIANCE WITH LAWS AND REGULATIONS**

24.1 Granicus agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by Federal, state or local law or ordinance, except for a bona fide occupational qualification.

24.2 Granicus shall comply with all Federal, state and local laws and ordinances applicable to the work to be done under this Agreement, including where applicable Bellevue City Code.

24.3 Violation of this section shall be a material breach of this Agreement and grounds for cancellation, termination or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

## **25. ENTIRE AGREEMENT**

This Agreement and its Attachments and Exhibits thereto represent the entire agreement between the parties and the final expression of their agreement with respect to the subject matter of this Agreement and shall supersede all prior written agreements, oral agreements, representations, understandings or negotiations with respect to the matters covered by this Agreement. The following list of documents and their sources are hereby incorporated by reference as if fully set forth, as forming an integral part of this Agreement:

- Streaming Media ASP Software License Agreement
- Attachment A - Project Scope of Work
- Attachment B - Insurance Requirements and Certificate
- Attachment C - Technology Usage Policy and Resource Usage and Security Policy
- Attachment D - Non-Disclosure Agreement
- Granicus Response to RFP #04-34 (Exhibit 1 to Attachment A)

These documents represent the basis for all mutual understandings and communications between Granicus and the City. In the event terms or conditions in two or more documents are in conflict, there is a need for clarification or guidance, or there is a question concerning the intent of the parties, then these documents will be looked at in their entirety as if it were one document.

## **26. SEVERABILITY**

In the event that any clause of this Agreement is found by a court validly asserting jurisdiction to be invalid or otherwise unenforceable, that clause will be considered void to the extent it is contrary to the applicable law, but such a finding shall not affect the validity of any other clause of the Agreement, and the rest of the Agreement shall remain in full force and effect.

**27. SURVIVAL**


The representations and warranties of Granicus made pursuant to this Agreement shall survive the delivery, installation, configuration, provisioning, implementation and acceptance of the Granicus Streaming Media Solution, the payment of the purchase price, and the termination of this Agreement. The rights and obligations of the parties pursuant to the warranty, indemnification, non-disclosure, ownership of content, intellectual property rights, remedies, choice of law and any other provision of this Agreement to the extent that provision creates an indemnity obligation, or provides for rights or remedies after termination, shall survive the termination of this Agreement.

**28. AUTHORITY**

Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have executed this Agreement so as to make it effective as of the date first written above.

**CITY OF BELLEVUE**

  
Accepted By (Signature)

Edward R. Oberg  
Printed Name

Title: Deputy City Manager  
(City Manager or Designee)

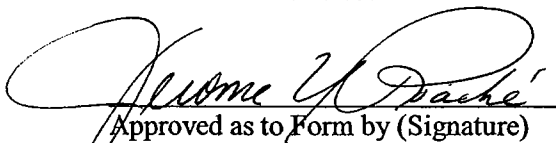
**GRANICUS, INCORPORATED**

  
Accepted By (Signature)

Tom Spengler  
Printed Name

Title: CEO

**CITY OF BELLEVUE**

  
Approved as to Form by (Signature)

Title: Asst City Attorney

**Received**  
NOV 23 2004  
Contracting Services

# Attachment A

## PROJECT SCOPE OF WORK

### 1 Introduction

#### 1.1 Document Purpose

This document is the scope of work for implementing the Granicus Streaming Media Solution for the City of Bellevue. The scope of work is the reference point for communications between the City of Bellevue and Granicus, Inc regarding responsibilities and schedules.

#### 1.2 Granicus Streaming Media Solution Overview

The system will support the City's video on demand users by providing the indexing and archival of video content accessible through the City's Intranet and Internet site.

The Granicus system will improve access to video content by providing the availability of searchable archives. Sections of content (i.e. meetings) will be indexed and/or archived so it can be retrieved at anytime using a simple keyword search. Documents (staff reports, agenda's, minutes, etc.) can be synchronized and linked to audio and video archive available through the City's web site. Agenda items can be indexed in real time, archived, and then automatically published to the City's web site.

Upon completion of the implementation and the City's acceptance of the Granicus Streaming Media Solution Granicus will provided complete monitoring and maintenance of the city's on-site hardware and 24/7 technical and user support for the Granicus Streaming Media Solution

The Granicus Streaming Media Solution, including all components and functionality, and the Managed Services Plan are explained in detail in the Granicus response to City of Bellevue RFP 04-34 (dated September 10, 2004), attached as Exhibit 1 to this Attachment A and hereby incorporated by reference as if fully set forth.

#### 1.3 Descriptions

The Granicus Streaming Media Solution includes six main components, as more fully set out in Exhibit 1:

- MediaManager™ consists of proprietary web-based software tools designed to efficiently organize and manage streaming content. These tools control broadcast activity, user account management, live event management, and usage reporting.
- Outcast™ allows for live event scheduling, automatic web publishing, live indexing, slides, closed captioning, and automatic archiving and file transfer to distribution servers.

