

STREAMING MEDIA ASP AGREEMENT

THIS STREAMING MEDIA ASP AGREEMENT (the "Agreement") is made this 23rd 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.

