

RESOLUTION NO.: 2013-R40 (AMENDED JUNE 11, 2013)
SPONSOR: COUNCILMEN KNODEL, AND
NEUGEBAUER, AND HUMPHREY
INTRODUCED: MAY 28, 2013 **ASSIGNED TO:** E-COUNCIL

A RESOLUTION AUTHORIZING THE CITY OF GREEN TO ENTER INTO A SERVICE AGREEMENT WITH GRANICUS, INC. FOR CITY COUNCIL'S E-COUNCIL PROJECT, AND DECLARING AN EMERGENCY.

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

WHEREAS, City Council has investigated various vendors who would provide software and training with respect to the operations of City Council and the review of Legislation along with other potential uses; and

WHEREAS, the City received a proposal from Granicus, Inc. for the Project; and

WHEREAS, City Council desires to purchase their software, use their software, intergrade their software onto the City's website, and obtain managed services and support of Granicus software.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, AND STATE OF OHIO, THAT:

SECTION ONE:

City Council approves and authorizes the Mayor to execute the Service Agreement between Granicus, Inc. and the City of Green. A complete copy of the Agreement is attached to this Resolution as Exhibit "A."

SECTION TWO:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in this formal action were in meetings open to the public, in compliance with all legal requirements.

SECTION THREE:

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

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Resolution 2013-R40 (AMENDED JUNE 11, 2013)

ADOPTED: June 25, 2013

Molly Kapeluck
Molly Kapeluck, Clerk

Dave France
Dave France, Council President

APPROVED: June 25, 2013

Richard G. Norton
Richard G. Norton, Mayor

COPIED _____
SVCE ZONE PARK ROAD ENG
LAW FIN MAY PLAN FIRE

ENACTED EFFECTIVE: June 25, 2013

ON ROLL CALL: Colopy - yes France - yes Humphrey - yes Knodel - yes
Neugebauer - yes Reed - yes Summerville - yes
Adopted 7-0

Suburbanite publication on June 30 and July 7, 2013

Molly Kapeluck
Molly Kapeluck, Clerk

06/05/2013 Approved as to form and content by Stephen J. Pruneski, Law Director SP 6/4/13

GRANICUS, INC. SERVICE AGREEMENT

THIS SERVICE AGREEMENT (the "Agreement"), dated as of May 14, 2013 (the "Effective Date"), is entered into between Granicus, Inc. ("Granicus"), a California Corporation, and the City of Green, Ohio (the "Client").

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 Client 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 Client 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. GRANICUS SOFTWARE AND MANAGED SERVICES.

1.1 Software and Services. Subject to the terms and conditions of this Agreement, Granicus will provide Client 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 Client as detailed in Exhibit A. "Managed Services Fee" shall mean the monthly cost of the Managed Services, as detailed in Exhibit A.

2. GRANT OF LICENSE.

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

2.2 Use. Granicus agrees to provide Client 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, Client may use the Granicus Software to perform its own work and work of its customers/constituents. Cancellation of the Client's Managed Services will also result in the immediate termination of the Client's Software license as described in Section 2.2 hereof.

2.3 Limited Warranty; Exclusive Remedies. 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 Client pays for and receives Managed Services. Client'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. Client 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 Client 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 Client agrees to pay all costs as outlined in Exhibit A.

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

3.3 Granicus, Inc. shall send all invoices to:

Name:
Title:
Address:

3.4 Upon renewal of this Agreement, Granicus may include (in which case Client 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 Client's Managed Services Fee, whichever is larger.

3.5 Training Cancellation Policies. Granicus' policies on Client 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 Client 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 Client 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 Client 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. Client 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 Client'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 Client 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 client 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. CONFIDENTIAL INFORMATION & OWNERSHIP.

7.1 Confidentiality Obligations. 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 Client.

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 Exceptions. 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. TERM

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.

