

Master Subscription Agreement

This Master Subscription Agreement ("**Agreement**") is made and entered into this 8th day of May, 2018, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as "County" or "Customer" and GovDelivery, LLC, a Minnesota Limited Liability Company d/b/a Granicus ("**Granicus**"), whose address is 408 Saint Peter Street, Suite 600, Saint Paul, Minnesota 55102, and is effective as of June 3, 2018 ("Effective Date"). Customer and Granicus may each be referred to herein as "Party" or collectively as "Parties".

WITNESSETH:

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

WHEREAS, the County desires to use the Granicus software subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

Customer accepts this Agreement by signing it with the approval of Customer's Board of Supervisors. In the event there is a conflict between this Agreement and any other contract Customer has for the Granicus Products and Services ("**Contract**"), the terms of the Contract shall prevail.

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

"Agreement Term" means the total time covered by the Initial Term and all Extension Terms for each Order, SOW or Exhibit under this Agreement, further specified in Section 7.1, and in any case ending not more than five years from the beginning of the Initial Term.

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

"Extension Term" any term that increases the length of the Initial Term of this Agreement, but in any case ending not more than five years from the beginning of the Initial Term.

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

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

"Initial Term" shall have the meaning specified in Section 7.1.

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

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

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

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

2. Ordering and Scope

- 2.1. Ordering Granicus Products and Services.** The Parties may execute one or more Order, SOW or Exhibit related to the sale and purchase of Granicus Products and Services. Each Order, SOW or Exhibit will generally include an itemized list of the Granicus Products and Services as well as the Order Term for such Granicus Products and Services. Each Order, SOW or Exhibit must, generally, be signed by the Parties; although, when a validly-issued purchase order by Customer accompanies the Order, SOW or Exhibit, then the Order, SOW or Exhibit need not be executed by the Parties. Each Order, SOW or Exhibit dated on or after the Effective Date shall be governed by this Agreement regardless of any pre-printed legal terms on each Order, SOW or Exhibit, and by this reference each such Order, SOW or Exhibit is incorporated herein.
- 2.2. Support.** Support related to standard Granicus Products and Services is included within the fees paid during the Order Term. Granicus may increase its Support obligations under this Agreement, so long as the functionality purchased by Customer is not materially diminished.
- 2.3. Future Functionality.** Customer acknowledges that any purchase hereunder is not contingent on the delivery of any future functionality or features.
- 2.4. Cooperative Purchasing.** To the extent permitted by law and approved by Customer, the terms of this Agreement and set forth in one or more Order, SOW or Exhibit may be extended for use by other municipalities, school districts and governmental agencies upon execution of an addendum or other signed writing setting forth all of the terms and conditions for such use. The applicable fees for additional municipalities, school districts or governmental agencies will be provided by Granicus to Customer and the applicable additional party upon written request.

3. Use of Granicus Products and Services and Proprietary Rights

- 3.1. Granicus Products and Services.** The Granicus Products and Services are purchased by Customer as subscriptions during an Order Term specified in each Order, SOW or Exhibit. Additional Granicus Products and Services may be added during an Order Term as described in Section 2.1.
- 3.2. Permitted Use.** Subject to the terms and conditions of this Agreement, Granicus hereby grants during each Order Term, and Customer hereby accepts, solely for its internal use, a worldwide, revocable, non-exclusive, non-transferrable right to use the Granicus Products and Services to the extent allowed in the relevant Order, SOW or Exhibit (collectively the “Permitted Use”). The Permitted Use shall also include the right, subject to the conditions and restrictions set forth herein, to use the Granicus Products and Services up to the levels limited in the applicable Order, SOW or Exhibit.
 - 3.2.1. Data Sources.** Data uploaded into Granicus Products and Services must be brought in from Customer sources (interactions with end users and opt-in contact lists). Customer cannot upload purchased contact information into Granicus Products and Services without Granicus’ written permission and professional services support for list cleansing. Granicus understands and acknowledges, however, that Customer is a government agency and intends to use Granicus for the purpose of publishing information required by law to be available to the public.
 - 3.2.2. Content.** Customer can only use Granicus Products and Services to share content that is created by and owned by Customer and/or content for related organizations provided that it is in support of other

organizations but not as a primary communication vehicle for other organizations that do not have a Granicus subscription. Any content deemed inappropriate for a public audience or in support of programs or topics that are unrelated to Customer, can be removed or limited by Granicus; provided, however, that Granicus must provide 10 days' advance written notice to Customer of Granicus' intention to remove or limit content, and Customer shall have the right to explain in writing why such content should not be removed or limited.

3.2.3. Granicus Communications Suite Subscriber Information

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

3.2.3.2. Data Obtained through the Granicus Advanced Network

3.2.3.2.1. Granicus offers a SaaS product, known as the Communications Cloud, which offers Direct Subscribers recommendations to subscribe to other Granicus customers' digital communication (the "Advanced Network"). When a Direct Subscriber signs up through one of the recommendations of the Advanced Network, that subscriber is a "Network Subscriber" to the agency it subscribed to through the Advanced Network.

3.2.3.2.2. Access to the Advanced Network is a benefit of the Communications Cloud subscription with Granicus. Network Subscribers are available for use only while Customer is under an active subscription with Granicus. Network Subscribers will not transfer to Customer upon termination of any Granicus Order, SOW or Exhibit. Customer shall not use or transfer any of the Network Subscribers after termination of its Order, SOW or Exhibit placed under this Agreement. All information related to Network Subscribers must be destroyed by Customer within 15 calendar days of the Order, SOW or Exhibit placed under this Agreement terminating.

3.2.3.2.3. Opt-In. During the last 10 calendar days of Customer's Order Term for the terminating Order, SOW or Exhibit placed under this Agreement, Customer may send an opt-in email to Network Subscribers that shall include an explanation of Customer's relationship with Granicus terminating and that the Network Subscribers may visit Customer's website to subscribe to further updates from Customer in the future. Any Network Subscriber that does not opt-in will not be transferred with the subscriber list provided to Customer upon termination.

3.3. Restrictions. Customer shall not:

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

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

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

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

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

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

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

3.5. Required Hardware. For Required Hardware purchased from Granicus by Customer, Granicus will provide to Customer a three (3) year warranty with respect to the Required Hardware. Within the three (3) year warranty period, Granicus shall repair or replace any Required Hardware provided directly from Granicus that fails to

function properly due to normal wear and tear, defective workmanship, or defective materials. Required Hardware warranty shall commence on the Effective Date of each applicable Order, SOW or Exhibit.

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

4. Payment

- 4.1. Fees.** Customer agrees to pay all fees, costs and other amounts as specified in each Order, SOW or Exhibit. Granicus reserves the right to suspend any Granicus Products and Services should there be a lapse in payment. A lapse in the term of each Order, SOW or Exhibit will require the payment of a setup fee to reinstate the subscription. All fees are exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is Customer's responsibility to provide applicable exemption certificate(s). Granicus shall submit invoices, either electronically or via mail, to the **County of Fresno, Internal Services Department (ISD), ATTN: Business Office, 333 W. Pontiac Way, Clovis, CA 93612**. In no event shall services performed under this Agreement be in excess of \$455,000 during the possible five-year term of this Agreement. Unless indicated otherwise in the applicable Order, SOW or Exhibit, the fees shall be invoiced by Granicus and paid by Customer as follows:

- 4.1.1. Products.** Product setup and annual fees are due at the beginning of the Initial Term, then annually at the beginning of any Extended Term or Order Term, within forty-five (45) days of receipt of invoice. Exhibit B of this Agreement identifies the list of products and services used in this Agreement. The "Outside-of-Scope Line Item – Monthly" identified in this Exhibit is the monthly service cost for Granicus to provide and support customization of products used by the County in this Agreement.
- 4.1.2. Services.** Services supporting Products shall be paid annually commencing upon the completion of the Product implementation, or the Product being ready for Customer's use. Fees shall be paid by Customer within forty-five (45) days of receipt of invoice.
- 4.1.3. Required Hardware.** For Required Hardware, delivery is complete once Customer receives Required Hardware components with the configured Granicus Product and Services.
- 4.1.4. Additional Products and Services.** The Director of Internal Services/Chief Information Officer ("Director") is authorized to issue on behalf of Customer later SOWs and Orders for additional products, services, or both, provided that such products, services, or both are offered by Granicus, related to their agenda management solutions, and, in the determination of the Director, will enhance Customer's provision of government services. Such later SOWs and Orders are subject to the terms and conditions of this Agreement. In no event shall the cumulative cost to Customer for such additional products, services, or both exceed \$52,949.86.
- 4.2. Disputed Invoiced Amounts.** Customer shall provide Granicus with detailed written notice of any amount(s) Customer reasonably disputes within thirty (30) days receipt of invoice for said amount(s) at issue. Granicus will not exercise its rights under 4.1 above if Customer has, in good faith, disputed an invoice and is diligently trying to resolve the dispute. Customer's failure to provide Granicus with notice of any disputed invoiced amount(s) shall be deemed to be Customer's acceptance of the content of such invoice.
- 4.3. Price Increases.** Upon each yearly anniversary of the beginning of the Initial Term during the term of this Agreement, the Granicus Product and Services fees shall automatically increase from the previous term's fees by ten (10) percent per year.

5. Representations, Warranties and Disclaimers

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

- 5.2. Warranties.** Granicus warrants that it takes all precautions that are standard in the industry to increase the likelihood of a successful performance for the Granicus Products and Services; however, the Granicus Products and Services are provided "AS IS" and as available.
- 5.3. Disclaimers.** EACH PARTY HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER WHETHER ORAL AND WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. GRANICUS DOES NOT WARRANT THAT GRANICUS PRODUCTS AND SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

6. Confidential Information

- 6.1. Confidential Information.** It is expected that either Party (disclosing Party) may disclose to the other Party (receiving Party) certain information which may be considered confidential and/or trade secret information ("Confidential Information"). Confidential Information shall include: (i) Granicus' Products and Services, (ii) non-public information if it is clearly and conspicuously marked as "confidential" or with a similar designation at the time of disclosure; (iii) non-public information of the disclosing Party if it is identified as confidential and/or proprietary before, during, or promptly after presentation or communication and (iv) any information that should be reasonably understood to be confidential or proprietary to the receiving Party, given the nature of the information and the context in which disclosed.
- 6.2. Exceptions.** Confidential Information shall not include information which: (i) is or becomes public knowledge through no fault of the receiving Party; (ii) was in the receiving Party's possession before receipt from the disclosing Party; (iii) is rightfully receiving by the receiving party from a third party without any duty of confidentiality; (iv) is disclosed by the disclosing Party without a duty of confidentiality on the third party; (v) is independently developed by the receiving Party without use or reference to the disclosing Party's Confidential Information; or (vi) is disclosed with the prior written approval of the disclosing Party.

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

- 6.3. Storage and Sending.** In the event that Granicus Products and Services will be used to store and/or send Confidential Information, Granicus must be notified in writing, in advance of the storage or sending. Should Customer provide such notice, Customer must ensure that that Confidential Information or sensitive information is stored behind a secure interface and that Granicus Products and Services be used only to notify people of updates to the information that can be accessed after authentication against a secure interface managed by Customer. Customer is ultimately accountable for the security and privacy of data held by Granicus on its behalf.
- 6.4. Return of Confidential Information.** Upon request of the disclosing Party, termination, or expiration of this Agreement, the receiving Party shall, to the extent commercially practicable, destroy the disclosing Party's Confidential Information and, at the disclosing Party's request, certify the same.

7. Term and Termination

- 7.1. Agreement Term.** The term of this Agreement shall be for a period of three (3) years, commencing on June 3, 2018, through and including June 2, 2021, unless otherwise terminated as provided in this Section 7 ("Initial Term"). This Agreement may be extended for two (2) additional consecutive twelve (12) month periods upon written approval of both parties no later than thirty (30) days prior to the first day of the next twelve (12) month extension period.
- 7.2.** The Director of Internal Services/Chief Information Officer or his or her designee is authorized to execute such written approval on behalf of Customer. Each Order, SOW or Exhibit will specify an Order Term for the Granicus Products and Services provided under the respective Order, SOW or Exhibit. In any case, the Order Term shall

not exceed the term of this agreement as defined in section 7.1. Customer's right to access or use the Granicus Products and Services will cease at the end of the Agreement Term; provided, however, that Customer's right to access or use a particular Granicus product or service will cease or at the end of a shorter Order Term that may be identified for a particular service or product within each Order, SOW or Exhibit, unless any Order Term is earlier terminated by a superseding Order, SOW, or Exhibit.

7.3. Termination. This Agreement may be terminated as follows:

- 7.3.1. Non-Allocation of Funds.** The terms of this Agreement, and the products and services to be provided thereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated, at any time, by giving Granicus thirty (30) days advance written notice.
- 7.3.2. Breach of Contract.** The County may immediately suspend or terminate this Agreement in whole or in part, where in the determination of the County there is:
 - (a) An illegal or improper use of funds;
 - (b) A failure to comply with any terms of this Agreement;
 - (c) A substantially incorrect or incomplete report submitted to the County;
 - (d) Improperly performed services.
- 7.3.3.** In no event shall any payment by the County constitute a waiver by the County of any breach of this Agreement or any default which may then exist on the part of Granicus. Neither shall such payment impair or prejudice any remedy available to the County with respect to the breach or default.
- 7.3.4. Without Cause.** Under circumstances other than those set forth above, this Agreement may be terminated by County upon the giving of ninety (90) days advance written notice of an intention to terminate to Granicus.

7.4. Effect of Termination. If this Agreement is terminated, all outstanding Orders, SOWs or Exhibits shall immediately terminate as of the Agreement termination date.

7.5. Rights and Obligations After Termination. In the event of expiration or termination of this Agreement, Customer shall immediately pay to Granicus all Fees due to Granicus through the date of expiration or termination. Upon any expiration or termination of this Agreement, and unless otherwise expressly provided in an exhibit to this Agreement:

- (a) County's right to access or use the Granicus Products and Services terminates and Granicus has no further obligation to provide any services;
- (b) County has the right to keep any purchased hardware, provided that County removes and/or uninstalls any Granicus Products and Services on such hardware. However, if County has received hardware as part of a Granicus Open Platform Suite solution ("Open Platform Hardware"), COUNTY understands that upon termination of this Agreement, County shall immediately return the Open Platform Hardware to Granicus. 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) County shall immediately return the Granicus Products and Services and all copies thereof to Granicus, and within thirty (30) days of termination, County shall deliver a written certification to Granicus certifying that it no longer has custody of any copies of the Granicus Products and Services.

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

8. Limitation of Liability

8.1. EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. UNDER NO CIRCUMSTANCES SHALL GRANICUS BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, GRANICUS SHALL NOT BE LIABLE FOR: (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF CUSTOMER DATA; (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (C) LOSS OF BUSINESS; (D) DAMAGES ARISING OUT OF ACCESS TO OR INABILITY TO ACCESS THE SERVICES, SOFTWARE, CONTENT, OR RELATED TECHNICAL SUPPORT; OR (E) FOR ANY MATTER BEYOND GRANICUS' REASONABLE CONTROL, EVEN IF GRANICUS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES.

8.2. LIMITATION OF LIABILITY. IN NO INSTANCE SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR OTHERWISE) EXCEED THE FEES PAID BY CUSTOMER FOR THE GRANICUS PRODUCTS AND SERVICES DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM FOR DIRECT DAMAGES. NEITHER PARTY MAY INSTITUTE AN ACTION IN ANY FORM ARISING OUT OF NOR IN CONNECTION WITH THIS AGREEMENT MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ARISEN. THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 4 ABOVE.

9. Indemnification

9.1. Indemnification by Granicus. Granicus will defend Customer from and against all losses, liabilities, damages and expenses arising from any claim or suit by a third party unaffiliated with either Party to this Agreement ("Claim") and shall pay all losses, damages, liabilities, settlements, judgments, awards, interest, civil penalties, and reasonable expenses (collectively, "Losses," and including without limitation costs and fees of litigation), to the extent arising out of any Claims by any third party that Granicus Products and Services infringe a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order, SOW or Exhibit. In the event of such a Claim, if Granicus determines that an affected Order, SOW or Exhibit is likely, or if the product or service is determined in a final, non-appealable judgment by a court of competent jurisdiction, to infringe a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order, SOW or Exhibit, Granicus will, in its discretion: (a) replace the affected Granicus Products and Services; (b) modify the affected Granicus Products and Services to render it non-infringing; or (c) terminate this Agreement or the applicable Order, SOW or Exhibit with respect to the affected product or service and refund to Customer any prepaid fees for the then-remaining or unexpired portion of the Subscription Order Term. Notwithstanding the foregoing, Granicus shall have no obligation to indemnify, defend, or hold Customer harmless from any Claim to the extent it is based upon: (i) a modification to any product or service by Customer (or by anyone under Customer's direction or control or using logins or passwords assigned to Customer); (ii) a modification made by Granicus pursuant to Customer's required instructions or specifications or in reliance on materials or information provided by Customer; or (iii) Customer's use (or use by anyone under Customer's direction or control or using logins or passwords assigned to Customer) of any Granicus Products and Services other than in accordance with this Agreement. This Section 9.1 sets forth Customer's sole and exclusive remedy, and Granicus' entire liability, for any Claim that the Granicus Products and Services or any other materials provided by Granicus violate or infringe upon the rights of any third party.

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

9.3. Defense. With regard to any Claim subject to indemnification pursuant to this Section 9: (a) the Party seeking indemnification ("Indemnified Party") shall promptly notify the indemnifying Party upon becoming aware of the Claim; (b) the indemnifying Party shall, at the election of the Indemnified Party, promptly assume sole defense and control of such Claim upon becoming aware thereof; and (c) the Indemnified Party shall reasonably cooperate with the indemnifying Party regarding such Claim. If the Indemnified Party has not elected that the indemnifying Party shall assume sole defense and control of the Claim, the indemnified Party may reasonably participate in such defense, at its expense, with counsel of its choice, but shall not settle any such Claim without

the indemnifying Party's prior written consent. The indemnifying Party shall not settle or compromise any Claim in any manner that imposes any obligations upon the indemnified Party without the prior written consent of the Indemnified Party.

10. Insurance

- 10.1. Insurance.** Without limiting the County's right to obtain indemnification from Granicus or any third parties, Granicus, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement.
- 10.2. Commercial General Liability.** Commercial General Liability ("CGL") Insurance with limits of no less than Two Million Dollars (\$2,000,000 per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy shall be issued on a per occurrence basis. County may require specific coverages including completed operations, products liability, contractual liability, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.
- 10.3. Automobile Liability.** Automobile Liability Insurance at least as broad as Insurance Services Office, Inc. ("ISO") Form Number CA 00 01 covering any auto (Symbol 1), or if Contractor has no owned autos, hired, (Symbol 8) and non-owned autos (Symbol 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage. Coverage shall include owned, non-owned and hired vehicles used in connection with this Agreement.
- 10.4. Technology Professional Liability (Errors and Omissions).** Technology Professional Liability (Errors and Omissions) with limits not less than \$2,000,000 per claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Granicus in this agreement and shall include but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses subject to policy limits.
- 10.5. Worker's Compensation.** A policy of Worker's Compensation insurance as may be required by the California Labor Code, with statutory limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- 10.6.** This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to County. If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.
- 10.7.** All of the insurance policies required above are to contain, or be endorsed to contain, the following provisions:
- 10.7.1. Additional Insured Status.** The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of Granicus including materials, parts, or equipment furnished in connection with such work or operations. Commercial general liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).
- 10.7.2. Primary Coverage.** For any claims related to this contract, Granicus' insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of Granicus' insurance and shall not contribute with it.

- 10.7.3. Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.
- 10.7.4. Waiver of Subrogation.** Granicus hereby grants to County a waiver of any right to subrogation which any insurer of Granicus may acquire against County by virtue of the payment of any loss under such insurance. Granicus agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not County has received a waiver of subrogation endorsement from the insurer.
- 10.7.5. Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the County. The County may require Granicus to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.
- 10.7.6. Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in California with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.
- 10.7.7. Claims Made Policies.** If any of the required policies provide claims-made coverage:
- 10.7.7.1.** The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
 - 10.7.7.2.** Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
 - 10.7.7.3.** If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to the contract effective date**, Granicus must purchase "extended reporting" coverage for a minimum of **five (5) years after completion of work.**
- 10.7.8. Verification of Coverage.** Granicus shall furnish to the County Internal Services Department, 333 West Pontiac Way, Clovis, California 93612, Certificates of Insurance and endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Granicus' obligation to provide them. County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- 10.7.9. Special Risks or Circumstances.** Subject to section 11.4 of this agreement, County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 10.8.** In the event Granicus fails to keep in effect at all times insurance coverage as herein provided, the County may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

11. General

- 11.1. Relationship of the Parties.** Granicus and Customer acknowledge that they operate independent of each other. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, agency, or employee/employer relationship between the Parties for any purpose, including, but not limited to, taxes or employee benefits. Each Party will be solely responsible for the payment of all taxes and insurance for its employees and business operations.
- 11.2. Subcontractors.** Granicus agrees that it shall be responsible for all acts and omissions of its permitted subcontractors (as provided in section 11.6) to the same extent Granicus would be responsible if committed directly by Granicus.
- 11.3. Headings.** The various section headings of this Agreement are inserted only for convenience of reference and are not intended, nor shall they be construed to modify, define, limit, or expand the intent of the Parties.
- 11.4. Amendments.** This Agreement may not be amended or modified except by a written instrument signed by authorized representatives of both Parties. Notwithstanding the foregoing, Granicus retains the right to

revise the policies referenced herein at any time, so long as the revisions are reasonable and consistent with industry practices, legal requirements, and the requirements of any third-party suppliers.

- 11.5. Severability.** To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 11.6. Assignment.** Notwithstanding any other provision of this agreement, neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, either voluntarily or by operation of law, without the prior written consent of the other Party (such consent not to be unreasonably withheld); provided, however, that either Party may assign this Agreement without the other Party's consent in the event of any successor or assign that has acquired all, or substantially all, of the assigning Party's business by means of merger, stock purchase, asset purchase, or otherwise. Any assignment or attempted assignment in violation of this Agreement shall be null and void.
- 11.7. No Third-Party Beneficiaries.** Subject to Section 11.6, this Agreement is binding upon, and insures solely to the benefit of the Parties hereto and their respective permitted successors and assigns; there are no third-party beneficiaries to this Agreement.
- 11.8. Audits and Inspections.** Granicus shall at any time during business hours, and as often as the County may deem necessary, make available to the County for examination all of its records and data with respect to the matters covered by this Agreement. Granicus shall, upon request by the County, permit the County to audit and inspect all of such records and data necessary to ensure Granicus' compliance with the terms of this Agreement. If this Agreement exceeds ten thousand dollars (\$10,000.00), Granicus shall subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Government Code Section 8546.7).
- 11.9. Public Records Act.** If the County receives a request under the California Public Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning with section 6250) ("CPRA") or a similar law to disclose any document that is in Granicus' possession but which the county may review, request, or obtain from Granicus under section 11.8 of this agreement, then County will promptly notify Granicus and request the responsive documents that may be in the possession of Granicus. The notification shall be in writing, which may include but is not limited to email addressed to the appropriate key person or persons. Upon receiving that notification, Granicus has five business days in which to provide responsive documents, use the procedure provided in section 11.9.1 of this agreement, or both. Granicus shall promptly inform County if Granicus believes that five business days are not sufficient time in which to respond. Granicus shall indemnify County for any award of costs or attorney's fees under the CPRA that results from Granicus' use of the procedure provided in section 11.9.1 of this agreement.
- 11.9.1.** If County for any reason requests any records, data, or documents from Granicus and Granicus believes that the responsive documents contain trade secrets, proprietary information, or other information that is subject to legal privilege or separate legally-enforceable obligation of Granicus to withhold, then Granicus may do the following:
- 11.9.1.1.** Granicus may redact the records or data before providing them, if that is practicable, or withhold the records or data if redaction is not practicable.
- 11.9.1.2.** If Granicus redacts or withholds any documents, it shall provide a privilege log describing what has been redacted or withheld and identifying the legal privilege or legally-enforceable obligation that is the reason for the redaction or withholding.
- 11.9.1.3.** If Granicus requests documents because of a CPRA request and Granicus redacts or withholds any documents, Granicus shall also identify the specific provision of the CPRA (by citation to the California Government Code) which Granicus believes would authorize County to redact or withhold the documents requested.

11.10. Notice. The persons and their addresses having authority to give and receive notices under this Agreement include the following:

COUNTY OF FRESNO

Internal Services Department
Robert W. Bash
Director of Internal Services/
Chief Information Officer
333 W. Pontiac Way
Clovis, CA 93612

CONTRACTOR

Granicus
Mark Hynes
Chief Executive Officer
408 Saint Peter Street, Suite 600
Saint Paul, MN 55102

11.10.1. Method of Delivery. All notices between County and Granicus provided for or permitted under this agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission.

11.10.1.1. A notice delivered by personal service is effective upon service to the recipient.

11.10.1.2. A notice delivered by first-class United States mail is effective three County business days after deposit in the United States mail, postage prepaid, addressed to the recipient.

11.10.1.3. A notice delivered by an overnight commercial courier service is effective on the County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient.

11.10.1.4. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of County business hours, then such delivery shall be deemed to be effective at the next beginning of a County business day), provided that the sender maintains a machine record of the completed transmission.

11.10.2. Claims Presentation. For all claims arising from or related to this agreement, nothing in this agreement establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

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

11.12. Choice of Law and Jurisdiction. Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California. The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

11.13. Disclosure of Self-Dealing Transactions. This provision is only applicable if Granicus is operating as a corporation (a for-profit or non-profit corporation) or if during the term of the agreement, Granicus changes its status to operate as a corporation. Members of Granicus' Board of Directors shall disclose any self-dealing transactions that they are a party to while Granicus is providing goods or performing services under this agreement. A self-dealing transaction shall mean a transaction to which Granicus is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit A and incorporated herein by reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

11.14. Headings. The headings and section titles in this Agreement are for convenience only and are not part of this agreement.

11.15. Severability. If anything in this Agreement is found by a court of competent jurisdiction to be unlawful or otherwise unenforceable, the balance of this agreement remains in effect.

- 11.16. No Waiver.** Payment, change, waiver, or discharge of any liability or obligation of Granicus under this Agreement on any one or more occasions is not a waiver of performance of any continuing or other obligation and does not prohibit enforcement by the County of any obligation on any other occasion.
- 11.17. Entire Agreement.** This Agreement, together with Exhibits A and B, sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written understandings, quotations, communications, and agreements. Granicus and Customer agree that Exhibit A and B are incorporated herein by this reference. In the event of possible conflict or inconsistency between such documents, the conflict or inconsistency shall be resolved by giving precedence in the following order: (1) the terms of this Agreement, not including Exhibits A and B; (2) Exhibits A and B. If Customer later issues any SOWs or Orders that are duly authorized by Customer, such later SOWs and Orders are subject to the terms and conditions of this Agreement as provided above.
- 11.18. Injunctive Relief.** Granicus is entitled to obtain injunctive relief if Customer's use of Granicus Products and Services is in violation of any restrictions set forth in this Agreement.
- 11.19. Counterparts.** This Agreement may be signed in counterparts, each of which is an original, and all of which together constitute this agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

CONTRACTOR


(Authorized Signature)

Dawn Kubat, VP of Legal
Print Name & Title

408 Saint Peter St, Ste 600

Saint Paul, MN 55102
Mailing Address

COUNTY OF FRESNO


Sal Quintero, Chairperson of the Board of
Supervisors of the County of Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 
Deputy

FOR ACCOUNTING USE ONLY:

ORG No.: 1020

Account No.: 7309

Requisition No.: 8905180718

Exhibit A - NOT APPLICABLE

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

(1) Company Board Member Information:			
Name:	NOT APPLICABLE		Date:
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	

Exhibit B



Procurement Vehicle: Direct
In Support of: Fresno County County CA

Quote Number: Q-22671
Quote Prepared On: 3/27/2018
Quote Valid Through: 6/30/2018
Payment Terms: Net 45

Granicus Contact:
Name: Josh Hurni
Phone: +1 7182080144
Email: joshua.hurni@granicus.com

Start Date: 6/3/2018
End Date: 6/2/2019

ANNUAL SUBSCRIPTION FEE

Product Name	Product Description	Invoice Schedule	Quantity	Annual Total
Government Transparency Suite	Government Transparency are the live in-meeting functions. Streaming of an event, pushing of documents, indexing of event, creation of minutes.	Annual	1 Each	\$6,930.00
Legistar	Legistar is a Software-as-a-Service (SaaS) solution that enables government organizations to automate the entire Legislative process of the clerk's office. By leveraging Legistar, the client will be able to easily manage the entire legislative process from drafting files, through assignment to various departments, to final approval. Legistar includes: <ul style="list-style-type: none"> • Unlimited user accounts • Unlimited meeting bodies and meeting types • Unlimited data storage and retention • Configuration services for one meeting body \type • One Legistar database • One InSite web portal • Design services for one agenda report template • Design services for one minute's report template 	Annual	1 Each	\$25,740.00
Outside-of-Scope Line Item - Monthly	Out-of-Scope monthly services	Annual	1 Each	\$330.00
Performance Accelerator Suite	Performance Accelerator Suite provides the ability to utilize the performance accelerator within a network. Requires Performance Accelerator or Virtual Performance Accelerator to distribute video/indexing/documents within a local network. This distribution is utilized to eliminate the bandwidth impact local viewers would have accessing data from the Granicus Data Center.	Annual	1 Each	\$5,610.00
Granicus Encoding Appliance Software (GT)	Granicus Encoding Appliance Software (GT) This includes the LiveManager Software solution where webcasts are started/stopped, agendas amended and indexed, votes and attendance recorded, and minutes created.	Annual	1 Each	\$1,320.00

Exhibit B



Procurement Vehicle: Direct
In Support of: Fresno County County CA

Product Name	Product Description	Invoice Schedule	Quantity	Annual Total
Meeting Efficiency Suite	<p>Meeting Efficiency is a hybrid Software-as-a-Service (SaaS) and Hardware-as-a-Service (HaaS) solution that enables government organizations to simplify the in-meeting management and post-meeting minutes creation processes of the clerk's office. By leveraging this solution, the client will be able to streamline meeting data capture and minutes production, reducing staff efforts and decreasing time to get minutes published. During a meeting, record roll calls, motions, votes, notes, and speakers, all indexed with video. Use the index points to quickly edit minutes, templates to format in Microsoft Word or HTML, and publish online with the click of a button. Meeting Efficiency includes:</p> <ul style="list-style-type: none"> • Unlimited user accounts • Unlimited meeting bodies • Unlimited storage of minutes documents • Access to one Granicus platform site • Access to the LiveManager software application for recording information during meetings • Access to the Word Add-in software component for minutes formatting in MS Word if desired • One MS Word or HTML minutes template (additional templates can be purchased if needed) 	Annual	1 Each	\$19,668.00
Open Platform Suite	Open Platform is access to MediaManager, upload of archives, ability to post agendas/documents, and index of archives. These are able to be published and accessible through a searchable viewpage.	Annual	1 Each	\$4,936.80
Legistar InSite Upgrade		Annual	1 Each	\$1,320.00
			TOTAL	\$65,854.80

FUTURE YEAR PRICING

Product Name	06/03/19 to 06/02/20	06/03/20 to 06/02/21	06/03/21 to 06/02/22	06/03/22 to 06/02/23
Government Transparency Suite	\$ 7,623.00	\$ 8,385.30	\$ 9,223.83	\$ 10,146.21
Legistar	\$ 28,314.00	\$ 31,145.40	\$ 34,259.94	\$ 37,685.93
Outside-of-Scope Line Item - Monthly	\$ 363.00	\$ 399.30	\$ 439.23	\$ 483.15
Performance Accelerator Suite	\$ 6,171.00	\$ 6,788.10	\$ 7,466.91	\$ 8,213.60
Granicus Encoding Appliance Software (GT)	\$ 1,452.00	\$ 1,597.20	\$ 1,756.92	\$ 1,932.61
Meeting Efficiency Suite	\$ 21,634.80	\$ 23,798.28	\$ 26,178.11	\$ 28,795.92
Open Platform Suite	\$ 5,430.48	\$ 5,973.53	\$ 6,570.88	\$ 7,227.97
Legistar InSite Upgrade	\$ 1,452.00	\$ 1,597.20	\$ 1,756.92	\$ 1,932.61
TOTAL:	\$ 72,440.28	\$ 79,684.31	\$ 87,652.74	\$ 96,418.01



TERMS AND CONDITIONS

- Payment terms: net 45
- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of **Fresno County County CA** to provide applicable exemption certificate(s).
- If submitting a Purchase Order instead of signing the quote, please include the following language: All pricing, terms and conditions of quote Q-22671 are incorporated into this Purchase Order by reference.

AGREEMENT AND ACCEPTANCE

Fresno County County CA

Billing Information

Signature: _____

Name: _____

Name: _____

Phone: _____

Title: _____

Email: _____

Date: _____

Address: _____
