

**Meeting Date:** 7/22/2014

**Report Type:** Consent

**Report ID:** 2014-00546

**Title: Agreement: Video Streaming Services Contract Renewal**

**Location:** Citywide

**Recommendation:** Pass a Resolution authorizing the City Manager to execute a Consultant Professional Services Agreement with Granicus, Inc. to provide video streaming services for five years in an amount not to exceed \$214,860.

**Contact:** Stephanie Mizuno, Council-Clerk Operations Manager, (916) 808-7171; Shirley Concolino, City Clerk, (916) 808-7200, Office of the City Clerk

**Presenter:** None

**Department:** City Clerk

**Division:** City Clerk

**Dept ID:** 04001011

**Attachments:**

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Agreement/Contract

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**City Attorney Review**

Approved as to Form  
Gerald Hicks  
7/15/2014 3:13:25 PM

**Approvals/Acknowledgements**

Department Director or Designee: Shirley Concolino - 7/7/2014 2:18:02 PM

## Description/Analysis

**Issue Detail:** Approve the execution of a contract with Granicus to continue providing the City Council, staff, and the public with “on-demand” video streaming services.

**Policy Considerations:** The recommendations in this report are in accordance Sacramento City Code Chapter 3.64 and Administrative Policy No. 4102.

**Economic Impacts:** None.

**Environmental Considerations:** None.

**Sustainability:** Under Phase 1 of the City of Sacramento’s Climate Action Plan, all applicable “Green” technology initiatives will be considered prior to the purchase of IT equipment hardware and software.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** A contract with Granicus is required to provide system maintenance and technical support services for the City of Sacramento to continue providing video streaming services and to automate other administrative processes.

**Financial Considerations:** No additional funding is requested. The City Clerk’s operational budget has sufficient funds to support the continuation of this service. The Community Development Department and Department of Utilities cost share a small portion of the funding for their meeting bodies. These departments have sufficient funds to support their share of services.

**Local Business Enterprise (LBE):** No.

## **Background:**

In December of 2001, the City Council adopted a resolution authorizing the execution of an agreement with Granicus, Inc. for video streaming services.

Since deployment of the video streaming service in 2002, the City Clerk's Office has successfully provided the City Council, City staff and the public with "on demand" agendas, reports, resolutions, contracts, on-line viewing and archival viewing of City Council meetings and materials.

In July of 2010, the service contract was upgraded to include: video streaming of the Planning and Design Commission, Preservation Commission and Utilities Rate Advisory Commission; a mobile encoder for offsite video recording of meetings; open platform functionality (unlimited meeting bodies, unlimited users and mobile device streaming); government transparency suite (audio/video podcasting, iTunes integration); and managed services for replacement and maintenance of encoder hardware/software.

In addition to contract renewal of existing services, this contract will add a Board and Commission Application Suite module that will automate and modernize the City's management of boards and commissions. As with all Granicus features, this module will transform manual administrative activities to an automated process. The module will also provide the public with easy on-line access to board and commission information and open board positions.

This service provides the highest level of transparency and delivers the legislative process and board/commission information, in a modern and easy to access format, directly to our customers. The City Clerk is recommending approval of the service contract (Attachment A) with Granicus, Inc. for continuance of video streaming services.

This consultant professional services agreement is being recommended for sole brand approval in accordance with API 4102, as it is in the best interest of the City to continue the use of a currently utilized and proven service. Using a different vendor would require complete replacement of the current process and system and result in additional technical infrastructure and training costs that would be associated with a new service.

## **RESOLUTION NO. 2014-**

Adopted by the Sacramento City Council

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### **AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT WITH GRANICUS, INC. TO PROVIDE VIDEO STREAMING SERVICES**

#### **BACKGROUND:**

- A. In December of 2001, the City Council adopted a resolution executing a contract with Granicus, Inc. for video streaming services.
- B. The service contract with Granicus, Inc. has been upgraded from the original service to provide additional on demand, transparent and state of the art delivery of live and archived meeting content and materials of the City Council, Council Standing Committees, Planning and Design Commission and other City Advisory Boards.
- C. The City Council finds that the addition of a Board and Commission Application is in the best interest of the City as the service will modernize the board and commission process, and make information more transparent and available to the public.
- D. The City Council finds that the services provide are consistent with API 4102 in that the continued sole branding of the service is in the best interest of the City.
- E. The City Council of the City of Sacramento desires to continue providing video streaming services.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Manager is authorized to execute an agreement with Granicus, Inc. for video streaming services in an amount not to exceed \$214,860.00 for five years (or \$42,972.00 annually);
- Section 2. The agreement provides for an initial one (1) year term with an automatic renewal for four (4) annual terms under the same terms and conditions as contained in the Agreement.

PROJECT #: N/A  
PROJECT NAME: Renewal of Video Streaming Services  
DEPARTMENT: City Clerk's Office  
DIVISION: N/A

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT \*

THIS AGREEMENT is made at Sacramento, California, as of \_\_\_\_\_, by and between the CITY OF SACRAMENTO, a municipal corporation ("CITY"), and

**Granicus, Inc.**  
**600 Harrison Street, Ste. 120**  
**San Francisco, CA 94107**  
**Phone: (415) 357-3618**

("CONTRACTOR"), who agree as follows:

- Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
- Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
- Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
- General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of

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\* This form to be used for all professional services, except professional services related to a construction project and professional services performed by architects, landscape architects, professional engineers, or professional land surveyors.

this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**  
A Municipal Corporation

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

  
\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

**Attachments**

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E - Non-Discrimination in Employee Benefits

**CONTRACTOR:**

Granicus, Inc.  
NAME OF FIRM

912010420  
Federal I.D. No.

45883104  
State I.D. No.

121882  
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

- Individual/Sole Proprietor
- Partnership
- Corporation (*may require 2 signatures*)
- Limited Liability Company
- Other (*please specify: \_\_\_\_\_*)

\_\_\_\_\_  
**Signature of Authorized Person**

Tom Spengler, President  
Print Name and Title

\_\_\_\_\_  
Additional Signature (*if required*)

\_\_\_\_\_  
Print Name and Title



- d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
  - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
  - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
  - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
  - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
  - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
  6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
  7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.

8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Tom Spengler  
Print Name

President  
Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Stephanie Mizuno, Council-Clerk Operations Manager  
City of Sacramento, City Clerk's Office  
915 "I" Street, 5<sup>th</sup> Floor  
Sacramento, CA 95814-2608  
Email: smizuno@cityofsacramento.org  
Phone: 916-808-7171*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Tom Spengler, CEO/President  
Granicus, Inc.  
600 Harrison Street, Ste 120  
San Francisco, CA 94107  
Email: tspengler@granicus.com  
Phone: (415) 357-3618*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. **Professional Liability Insurance.** Professional Liability (Errors and Omissions) insurance is \_\_\_\_\_ is not X [check one] required for this Agreement. If required, such coverage must be continued for at least n/a year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. Conflict of Interest Requirements.

- A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;
- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: \_\_\_ yes  no [check one]

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (2) Cause these individuals to file with the CITY Representative the "assuming office" statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. **Scope of Services.** The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

Legislative bodies as used in this Agreement shall include the Sacramento City Council, Law and Legislation Committee, Personnel and Public Employees Committee, Audit Committee, Planning and Design Commission, and Preservation Commission, or any other City board, commission or committee that may in the future utilize the services of this Agreement as such Agreement may be amended from time to time.

5. **Time of Performance.** The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services.

Initial fees to set up and the Board and Commission Application System are included in the annual monthly managed service fees as described herein, and shall be for the month of installation/deployment through June 30, 2015.

The remaining annual monthly managed services fees described in Exhibit B, Section 2.A. shall be provided for the period August 1, 2014 through June 30, 2015.

This Agreement shall automatically renew for four (4) annual terms under the same terms and conditions, unless written notice of termination is given by either party as indicated in Attachment 1 to Exhibit A prior to the end of the then-existing term.

## Attachment 1 to Exhibit A

### Scope of Services

1. **Services:** The scope of services from Granicus includes monthly managed service (MMS) fees for services currently provided to CITY. The existing Granicus services include the open platform suite, government transparency suite, a full service video streaming solution that includes hardware, software, automated indexing capabilities, web site page design and integration, integration of legislative body agendas, a meeting minutes module, media center storage of video media, public comment and participation module, on-site user training, on-line user training, and 24/7 technical support and system monitoring. The Granicus modules of services and solutions (products) are as described below:

#### A. Granicus Open Platform

Granicus Open Platform is the foundation of all Granicus suites. The platform is designed to quickly boost transparency while keeping IT and staff investment to a minimum. Upgrading to Granicus Open Platform will provide City with the following benefits:

1. Full support of the encoder and replacement at the end of the life of the encoder.
2. Warranty provided by the manufacturer with respect to the Managed Hardware for an initial three year period. At the end of the initial three years, the continuing hardware needs of the City will be re-evaluated in accordance with evolving technology. The key features of the Managed Hardware are as follows:
  - Robust support for hardware, O/S and applications
  - 7x24x365 phone, chat and email support from certified experts
  - Replaceable parts include next day onsite installation and replacement
  - Escalation management
3. Streaming in H.264 codec. This codec is a new standard in video compression providing a “lighter weight” file, as well as universal compatibility with numerous players including Silverlight, Flash, and HTML5. Recommendations to change H.264 allows for more consistent viewing experience for citizens and staff across different web browsers and operating systems. It also provides ability to stream to mobile devices.
4. Unlimited users and groups within MediaManager, providing the ability to create as many users and groups with varying levels of access to content and commands in MediaManager.
5. Unlimited licensing for new meeting bodies. City will have ability to add as many new meeting bodies to its Granicus solution without incurring additional licensing fees.\*\* This includes use of E-Comment for any additional meeting bodies.

**\*\*Note: Additional fees charged** for creation and on-going support for new meeting body agendas and minute templates. Price determined by complexity of template. Additional licensing fees are required for the use of minutes maker (per meeting body). Minutes maker is not a mandatory requirement when adding new meeting bodies to Granicus. Services for additional meeting bodies for a maximum of \$8,060 in professional services, including training (depending on training and template needs of additional meeting bodies for minutes marking solution, up front professional services can be reduced drastically). Monthly managed service fee would be: (a)

1 additional meeting body, minutes (each) \$520/month; (b) 3 additional meeting bodies, minutes (each) \$490/month; or (c) 5+ additional meeting bodies, minutes (each) \$442/month.

6. City has the right to keep any purchased hardware, provided City removes and/or uninstalls any Granicus software on such hardware. However, if City has received hardware as part of a Granicus Open Platform suite solution ("Open Platform Hardware"), City understands that it is leasing the Open Platform Hardware. Upon termination of this Agreement, City 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 substantially the same condition as when originally shipped, subject to normal wear and tear.

#### 7. Future Possibilities of Open Platform Infrastructure

A. Legislative Management Suite – provides an end-to-end legislative workflow that streamlines the entire public meeting process. It gives elected officials an easy, more effective way to participate using touch-screen displays and it tightly integrates with the existing agenda process to improve accuracy and ensure an effective, more efficient meeting.

B. Public Display – helps the audience follow fast-paced meetings. Displays live meeting actions, including current agenda item, vote results, and speakers over large monitors both inside and outside the meeting chambers. Push this information to the Web or display results on TV through the cable feed.

#### B. Granicus Government Transparency Suite

This suite will provide the City with advanced features and functionality desired to bring public meetings online in as many formats as possible, maximizing cross platform and browser compatibility.

1. **iLegislate iPad App** – provides the ability to view agendas for upcoming meetings on the iPad. This includes all supporting documents, the ability to annotate individual agenda items, as well as bookmark agenda items.
2. **Audio Podcasting** – provides downloadable archived audio files which are also compatible with mobile devices and iTunes.
3. **Video Podcasting** – provides downloadable archived video files which are also compatible with mobile devices and iTunes.
4. **iTunes integration** – included with podcasting, City's podcasts will be registered with iTunes which provides the ability for the content to be searched in iTunes. This will create City's own iTunes landing page where content is automatically uploaded once meetings have been completed.
5. **Advanced Search** – allows for more detailed searching of archived content, similar to Google's advanced search function with "if/then/not" type parameter setting. Ability to search by spoken word via smi files and provide hyperlinks to exact time in video file of word or phrase being spoken.

#### C. MediaManager (Agenda/Minutes/Video Streaming)

The foundation of all Granicus solutions is MediaManager. This hosted, software as a service ("SaaS") solution provides advanced audio/video streaming management and delivery to hundreds of government agencies across the U.S. and Canada. It's the nation's leading government media platform for increasing transparency and enhancing communication. With MediaManager, agencies can instantly connect citizens to live, on-demand, and mobile-accessible media content, including public meetings, educational events, trainings, and community programs—anytime, anywhere. MediaManager also makes it easier for staff and citizens to access and keep on top of government and community issues by leveraging advanced streaming production tools like video indexing, synchronized digital documents, deep linking, and search.

**MediaManager™** is the hub of Granicus solutions. Public agencies can involve wider audiences in public meetings and educational and community programs live and on-demand with this easy-to-use, streaming media management and delivery application that is fully hosted and feature-rich.

#### D. MediaCenter Distribution

Today's public agencies need to build the capacity of their infrastructure to take full advantage of the growing potential of online communication. Granicus MediaCenter gives governments a robust, highly redundant hosted platform consisting of multiple, geographically separate data centers to support their dynamic and complex information delivery requirements—from streaming media, application delivery, and other interactive technologies.

**MediaCenter can:** Store and deliver streaming content from our world-class data centers; optimize application performance and availability; reach broad public audiences with fast and reliable information delivery; and meet the highest information security standards.

**Fully hosted and managed infrastructure: high availability and security.** Improve service delivery and minimize bandwidth consumption and costs by leveraging MediaCenter to ensure applications and data are highly available, redundant, and maintained through proactive health monitoring of servers and applications. The multiple, geographically separate data centers have a historical availability of 99.99%.

**Store and deliver high-quality live and on-demand streaming.** Deliver highly reliable and uninterrupted live and on-demand streaming to an unlimited number of users with a fully hosted streaming services. Instead of making costly investments in the network to support the global reach of r streaming content, MediaCenter servers host and redundantly store streaming content to optimize streaming performance and to back-up protection. Dynamically synchronizing streaming productions between the media management application, MediaCenter, and the other onsite media servers - MediaVault and StreamReplicator - ensures streaming storage and delivery as well as avoids unnecessary round trip latency.

**Ensure user productivity with Web-based tools and fast information routing.** MediaCenter ensures Web-based MediaManager is highly available to staff members or entire departments from any location with an internet connection. The Web platform allows staff and departments across the organization to easily control or share their media with other users or globally on a central application, from any location. Also, leverage MediaCenter's dynamic delivery channel for a range of media—public meetings, programs, internal training, and events—without adding or maintaining infrastructure. MediaCenter servers provide the basis for optimizing application and streaming delivery over the internet. To avoid costly internet congestion or network failure, the intelligent routing of media pushes government streams to users over the best routes—resulting in greater streaming performance.

#### E. Mobile Encoder

The Mobile Encoder provides mobile access to live event indexing tools; travel-friendly encoder to stream events from any location—internet not required; and live and on-demand streaming capabilities. Connect audiences to live and on-demand streaming—from any location. Involve citizens in meetings or special events that are held in off-site or hard-to-reach locations over the Web with Mobile Encoder. Simply connect your audio/video source to a laptop computer and stream the event to the Web live or on-demand, with or without an Internet connection. Video indexing in real-time can be performed and simplify user navigation through the archived content.

Leverage live meeting management from remote locations. Mobile Encoder leverages LiveManager functionality to give governments a simple user interface to automate meeting minutes creation and video indexing during events that are held in remote locations. As the meeting occurs, use the same functions available with Live Manager to capture agenda items, discussion notes, roll calls, motions, and votes—with the added benefit of mobility. Expand the reach of media management tools. Leverage MediaManager agenda tools at remote locations by loading agenda into Mobile Encoder before the event begins and then taking this information offline. After the event is complete and the video index points are created, simply upload the archive and timestamps back into MediaManager for editing or instant publishing to the Web.

#### F. Granicus Boards and Commissions Suite

The Boards and Commissions application is designed to help government agencies easily manage government body appointments, vacancies, and citizen applications online. Now, the public can easily see what boards and commissions exist and take the opportunity to apply for open seats quickly from the web. Traditionally, applying for boards and commissions is a paper-heavy and labor intensive process involving a lot of emails, phone calls, public notices, multiple systems and ongoing coordination throughout the year for governing bodies. This application simplifies the entire administrative process with online appointment workflows. There are even automated email form letters, and website widget builders to save time in the recruitment process.

Some of the key features it includes: Easily publish and promote open vacancies on their website and across social networks; Customize and design your citizen application template and leverage a seamless integration to any government website; Filter and qualify applicants using simple and effective search tools; Auto-generate communications and follow up for all steps of the application & appointment process; Intelligent dashboard for monitoring terms and vacancies with built in alert system; and Integrates seamlessly with Granicus' Legislative Management toolset.

#### **Set Up and Programming of Board/Commission Suite:**

The performance for the Board and Commission Suite timeline is based on Council approval of this agreement no later than July 22, 2014. The timeline would be no later than the following:

July 23, 2014	CITY to provide data for members to CONTRACTOR
July 25, 2014	CONTRACTOR to upload data into system for CITY to review
July 30, 2014	CITY and CONTRACTOR to approve completion of data upload
August 4, 2014	Training on system to begin
August 11, 2014	System read to launch to open portal

#### G. Monthly Managed Services (MMS) Defined

The monthly managed service fee pays for ongoing support and maintenance of the Granicus solution. Granicus provides a comprehensive Managed Services package with every solution to ensure long-lasting success with Granicus' technologies. The services portfolio is comprised of technical support, a fully hosted and managed infrastructure, and customer advocacy to maximize solutions performance. Granicus' skilled network engineers work around-the-clock to ensure applications are protected, operating smoothly, and continually without spending extra staff time or resources. City will also receive continual access to advanced learning tools and the hands-on support, knowledge, and expertise of Granicus' skilled Support Engineers and Customer Advocacy professionals.

**Technical Support Services and Maintenance** - Granicus' technical support professionals know the City's systems, network, staff, and expectations. If issues arise, Granicus offers Tier 1 dedicated technical support services 24/7/365 to ensure each case is addressed efficiently and effectively.

**Hosted Storage and Distribution** - Granicus provides media storage and delivery to maintain and deliver high-bandwidth streaming media or Web applications. The fully managed and hosted infrastructure offers unlimited bandwidth and the highest storage and security standards to ensure maximum availability of the data and applications.

**Proactive Systems Monitoring** - The remote, proactive systems monitoring ensures faster response time, predicts problems before they arise, and helps minimize the cost of IT support and maintenance.

**Upgrades and Innovation** - Ensure software is up-to-date with the latest security fixes, recommended updates, and feature release. Granicus will regularly update and provide fixes and enhancements to the solution. Granicus coordinates these onsite software upgrades to ensure they are completed on a schedule that is comfortable for the City and staff.

**Customer Advocacy** - To expand success with the technologies, Granicus provides personal and proactive customer advocacy. The advocacy team includes Account Managers and Trainers that are committed to aligning the Granicus solution with City's unique business needs.

**Granicus University** - Expand skills and learn best practices by taking advantage of online training courses offered through Granicus University. This program includes free access to Granicus library of live or on-demand Web trainings.

**Customer Service Portal** - Gain access to a rich on-demand portal of resources to help them attain highest level of success and satisfaction with Granicus solutions in the Customer Service Portal. Clients can instantly tap into rich learning materials to grow their skill set. They can also use self-service support resources to get more information about their products.

2. **Customer Service Response:** Granicus will provide 24/7 technical support and system monitoring. The CITY will report service/issue requests to Granicus who will document the request. Granicus will work with CITY to resolve service/issue requests as expeditiously as possible.

3. **Intellectual Property:** All intellectual property, including existing source code or additional source code written for the purpose of providing this system to the CITY, will be the sole property of Granicus. If Granicus were to cease operations during the contractual period, or was purchased by another company, or this Agreement was terminated, Granicus shall provide the CITY with the opportunity to gain possession of all videos and/or virtual documents relative to the City's legislative process that would allow the CITY to preserve the legislative record of the CITY.

3.1 **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.

3.2 **Limitation of Liabilities:** To the maximum extent permitted by applicable law, either party 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 either party's liability exceed the amounts paid 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). The limitation of liabilities specified in this section 3.2 shall not apply to claims arising out of or related to indemnity obligations under this Agreement.

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

4.1 **Limitations:** Except for the license granted above, Granicus retains all ownership and proprietary rights in and to the Granicus Software, and City is not permitted, and will not assist or permit a third party, absent Granicus' consent 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 legislative body, in or outside its jurisdiction, except the legislative bodies specified in this Agreement, to use the Granicus Software, or copies thereof.

5. **Termination of Services:** The CITY or Granicus may terminate this AGREEMENT, or modules of the managed services described in this Attachment, at any time without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses the Party's intent to terminate the AGREEMENT, or modules of the managed services. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party Terminates the AGREEMENT, Granicus shall discontinue the services, or module of services, as of the effective date of termination.

5.1 **Rights Upon Termination:** Upon any expiration or termination of this Agreement, and unless otherwise expressly provided in an exhibit to this Agreement: CITY's right to access or use the Granicus Solution, including Granicus Software, terminates and Granicus has no further obligation to provide any services; CITY has the right to keep any purchased Hardware, provided that CITY removes and/or uninstalls any Granicus Software on such Hardware; and CITY shall immediately return the Granicus Software and all copies thereof to Granicus, and within thirty (30) days of termination, CITY shall deliver a written certification to Granicus certifying that it no longer has custody of any copies of the Granicus Software.

5.2 **Obligations Upon Termination.** Upon any termination of this Agreement, the parties shall remain responsible for any payments that have become due and owing up to the effective date of termination; the provisions of certain sections of the agreement, and applicable provisions of the Exhibits intended to survive, shall survive termination of this Agreement and continue in full force and effect; pursuant to the Termination or Expiration Options Regarding Content, Granicus shall allow the CITY access to the CITY's Content, including, but not limited to, all video recordings, timestamps, indices, and cross-referenced documentation.

In case of termination by CITY or expiration of the service Agreement, Granicus and the CITY shall work together to provide the CITY with a copy of CITY's content. The CITY shall have the option to choose one of the following methods of reproduction: 1) Granicus will provide video files on a compact disc that contains the index and clip name data in CVS or XML format will be created and sent to the CITY. This option may result in additional charges to the CITY; 2) CITY will download content from MediaManager or from a special site created by Granicus. This option is free of charge; or 3) Granicus will provide a method to pull content from the Media Vault in CSV or XML format. This option is free of charge.

The CITY and Granicus shall work together and make their best efforts to transfer the content within the sixty (60) day termination period. Granicus has the right to delete Content sixty (60) days after the expiration or termination of this Agreement.

6. **Hosted Services:** The provided services are hosted services that are available to the CITY on a "pay for volume" basis. Additional meeting bodies and/or modules may be added by CITY and accepted by Granicus upon amendment of this AGREEMENT, and at an additional cost of the CITY.

**EXHIBIT B**

**PROFESSIONAL SERVICES AGREEMENT**

**FEE SCHEDULE/MANNER OF PAYMENT**

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$214,860.00 for five years (or \$42,972.00 annually) as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
  
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth below and in Attachment 1 to Exhibit B, attached hereto and incorporated herein.

**A. Monthly Managed Services (MMS) Fees**

Module Description	Month	Year
Media Manager		
- City Council/Standing Committees (Clerk)	\$600	\$7,200
- Planning/Design/Preservation Commissions (CDD)	\$300	\$3,600
- Utilities Rate Advisory Commission (Utilities)	\$100	\$1,200
View Page Upgrades	\$ 60	\$ 720
Media Center Distribution	\$245	\$ 2,940
Mobile Encoder	\$176	\$ 2,112
Managed Hardware (one machine + support)*	\$300	\$ 3,600
Open Platform Suite functionality	\$100	\$ 1,200
Government Transparency Suite functionality	\$450	\$ 5,400
**Board and Commission Suite	\$1,250	\$15,000
<b>Total Annual MMS Fees</b>		<b>\$42,972</b>

\* Open Platform is not available without managed hardware, nor is managed hardware available without Open Platform. H.264 streaming is available exclusively through the Open Platform/managed hardware.

\*\* See special pricing for Board and Commission Suite in Attachment 1 hereto.

3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
  
4. **Payments to CONTRACTOR.**
  - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
  
  - B. All invoices submitted by CONTRACTOR shall contain the following information:
    - (1) Job Name
    - (2) Description of services billed under this invoice, and overall status of project
    - (3) Date of Invoice Issuance
    - (4) Sequential Invoice Number
    - (5) CITY's Purchase Order Number
    - (6) Total Contract Amount
    - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
    - (8) Total Billed to Date
    - (9) Total Remaining on Contract
    - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
  
  - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

**City of Sacramento  
Sacramento City Clerk's Office  
New City Hall  
915 I Street, 5<sup>th</sup> Floor  
Sacramento, CA 95814-2608  
Attn: Stephanie Mizuno**

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

## **Attachment 1 to Exhibit B**

### **Cost of Services**

#### **BOARD AND COMMISSION SUITE:**

Installation Discount Promotion: Clients who enter into an agreement with Granicus to purchase the new Boards and Commissions Suite will receive a thirty percent (30%) discount on the new product's Monthly Managed Service fees (MMS) during the initial twelve (12) months of the agreement. The MMS fee discount will revert to one hundred percent (100%) of the regular price in year two (or at the end of the 12 month discount period, whichever is later) of the Agreement. MMS fees on client's current services are not affected by this discount.

The regular MMS fee for the Board and Commissions Suite is \$1,250.00 per month. The discounted MMS fee effective during the first twelve (12) months of the Agreement period is reduced by thirty percent (30%) [or \$375.00 per month] to \$875.00 per month.

Invoicing for MMS service fees for this new component shall begin upon completion of deployment. CITY will be invoiced a pro-rated (discount) amount from the deployment completion date through the end of June 30, 2015. Deployment is complete once the software is installed, tested and deemed to be ready for CITY'S use. The twelve (12) month discount period will start on the first month of billing and continue for twelve (12) months.

If the twelve (12) month discount period extends into year two (2) of the Agreement, CITY will be invoiced the discounted rate of \$875.00 for only those months remaining in the original twelve (12) month discount period. The remaining months within year two (2) of the Agreement shall be at the regular monthly rate (\$1,250.00).

#### **ANNUAL COST SERVICE TOTAL:**

The annual cost of services for the all system components is \$42,972.00 per year (or not to exceed \$214,860.00 for five years) as listed in Exhibit B, Section 2.A and shall be invoiced annually in July.

EXHIBIT C

NONPROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

  X   Not furnish any facilities or equipment for this Agreement; or

\_\_\_\_\_ furnish the following facilities or equipment for the Agreement [*list, if applicable*]:

**EXHIBIT D  
PROFESSIONAL SERVICES AGREEMENT**

**GENERAL PROVISIONS**

**1. Independent Contractor.**

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

- 2. Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the

Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.
7. **CONTRACTOR Information.**
  - A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of

documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

- 8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

**9. Term; Suspension; Termination.**

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
  - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
  - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

**10. Indemnity.**

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.

B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. **Insurance Requirements.** During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." \_\_\_\_\_ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

\_\_\_\_\_ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." \_\_\_\_\_ (CONTRACTOR initials)

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the CITY under Exhibit A, Section 2.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

\_\_\_\_\_ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

(1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

**12. Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".

B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
  - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for

this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
  - A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
  - B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
  - C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

## EXHIBIT E

### REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

#### INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

#### APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

#### DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

#### **CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION**

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee’s name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

#### **EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directly on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

## Attachment A



### **YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

On ..... (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for ..... (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

**You May . . .**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento  
Procurement Services Division  
5730 24<sup>th</sup> Street, Bldg. 1  
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:

- Reinstatement, injunctive relief, compensatory damages and punitive damages
- Reasonable attorney's fees and costs

## Attachment B



### **YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

**You May . . .**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento  
Procurement Services Division  
5730 24<sup>th</sup> Street, Bldg. 1  
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

### **Discrimination and Retaliation Prohibited.**

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

**You May Also . . .**

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.