

RESOLUTION NO. 2019-2619

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A SERVICE AGREEMENT WITH GRANICUS, LLC, FOR NOVUS AGENDA MANAGEMENT SOFTWARE; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) Commission wishes to increase efficiencies in the Town’s administration by implementing an agenda management system; and

WHEREAS, Granicus, LLC (“Contractor”) is in the business of developing, licensing and offering for sale various streamlining media solutions known as “Novus Agenda” specializing in agenda management software (the “Software”); and

WHEREAS, Contractor has provided a proposal and Service Agreement (the “Agreement”) for the Software, attached hereto as Exhibit “A”; and

WHEREAS, the Town Commission finds that the Agreement and approval of this Resolution is in the best interest and welfare of the residents of the Town and wishes to approve same in substantially the form attached hereto as Exhibit “A.”

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval. That the Town Commission approves the Agreement in substantially the form attached hereto as Exhibit “A.”

Section 3. Authorization. That the Town Manager is hereby authorized to further negotiate and execute the Agreement attached hereto as Exhibit “A,” subject to approval by the Town Attorney as to form, content, and legal sufficiency.

Section 4. Implementation. The Town Manager and/or designee are authorized to take any and all action necessary to implement the purposes of this Resolution and the Agreement.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED on this 10th day of September, 2019.

Moved By: Vice Mayor Gielchinsky
Second By: Commissioner Karukin

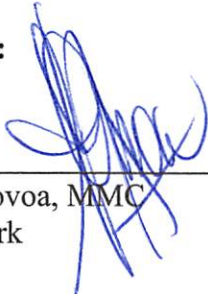
FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	<u>Absent</u>
Commissioner Michael Karukin	<u>Yes</u>
Commissioner Tina Paul	<u>Yes</u>
Vice Mayor Daniel Gielchinsky	<u>Yes</u>
Mayor Daniel Dietch	<u>Yes</u>



Daniel Dietch
Mayor

ATTEST:



Sandra Novoa, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

SERVICE AGREEMENT

THIS SERVICE AGREEMENT (the "Agreement") dated as of _____, 2019 (the "Effective Date"), is entered into between **GRANICUS, LLC**, a Minnesota Limited Liability Corporation (hereinafter "Granicus"), and the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation (hereinafter "Client" or "Town").

A. WHEREAS, Granicus is in the business of developing, licensing, and offering for sale various streaming media solutions known as "Novus Agenda" specializing in agenda management software, including an electronic solution designed to create, approve and track agenda and municipal meetings, and related support services; and

B. WHEREAS, Granicus desires to provide and Client desires to (i) purchase the NovusAgenda as set forth in the Proposal, which is attached as Exhibit A, and incorporated herein by reference, (ii) engage Granicus to integrate its NovusAgenda Software onto the Client Website, (iii) use the NovusAgenda Software subject to the terms and conditions set forth in this Agreement, and (iv) contract with Granicus to administer the NovusAgenda Solution through the Managed Services set forth in Exhibit A.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, representations and warranties herein contained, the parties hereto agree as follows:

1. NOVUSAGENDA SOFTWARE AND MANAGED SERVICES

1.1 Software and Services. Subject to the terms and conditions of this Agreement, Granicus will provide Client with the NovusAgenda Software, and Managed Services that comprise the NovusAgenda Solution as outlined in Exhibit A. "Managed Services" shall mean the services provided by Granicus to Client as detailed in Exhibit A. "Managed Services Fee" shall mean the annual cost of the Managed Services, as detailed in Exhibit A.

2. GRANT OF LICENSE

2.1 Ownership. Granicus owns the copyright and/or certain proprietary information protectable by law in the NovusAgenda Software.

2.2 Use. Granicus agrees to provide Client with the unlimited use, revocable, non-transferable, and non-exclusive license to access the NovusAgenda Software listed in the Solution Description and a revocable, non-sub licensable, non-transferable and non-exclusive right to use the NovusAgenda Software. All NovusAgenda Software is proprietary to Granicus and protected by intellectual property laws and international intellectual property treaties. Pursuant to this Agreement, Client may use the NovusAgenda Software to perform its own work and work of its customers/constituents. Cancellation of the Client's Managed Services will also result in the immediate termination of the Client's Software license as described in Section 2.2 hereof.

2.3 Limited Warranty; Exclusive Remedies. Subject to Sections 6.1 and 6.2 of this Agreement, Granicus warrants that the NovusAgenda Software, as provided by Granicus, will substantially perform in accordance with its applicable written specifications for as long as the Client pays for and receives Managed Services. Client's sole and exclusive remedy for any breach by Granicus of this warranty is to notify Granicus, with sufficient detail of the nonconformance, and provide Granicus with a reasonable opportunity to correct or replace the defective NovusAgenda Software. Client agrees to comply with Granicus' reasonable instructions with respect to the alleged defective NovusAgenda Software.

2.4 Limitations. Except for the license in Section 2.2, Granicus retains all ownership and proprietary rights in and to the NovusAgenda Software, and Client is not permitted, and will not assist or permit a third party, to: (a) utilize the NovusAgenda Software in the capacity of a service bureau on a time share basis; (b) reverse engineer, decompile or otherwise attempt to derive source code from the NovusAgenda Software; (c) provide, disclose, or otherwise make available the NovusAgenda Software, or copies thereof, to any third party; or (d) share, loan, or otherwise allow another meeting body outside its jurisdiction, to use the NovusAgenda Software, or copies thereof, except as expressly outlined in the Proposal.

3. PAYMENT OF FEES

3.1 Client agrees to pay all costs as outlined in Exhibit A.

3.2 After 30 days of commencement and kick-off of the pilot program, Granicus will process and deliver an invoice to Client for the Software Pricing and Remote Training Fees, which will be due and payable by Client 30 days thereafter (or 60 days after commencement and kickoff of the program). Thereafter, Client will be billed annually for the annual Software Pricing. Client agrees to pay all invoices from Granicus pursuant to the Florida Prompt payment Act or no later than within thirty (30) days of receipt of invoice.

For NovusAgenda, deployment is complete once the software is installed, tested and deemed by Granicus to be ready for Client's use.

3.3 Granicus, LLC. shall send all invoices to:

Town of Surfside
Attention: Town Manager
9293 Harding Avenue
Surfside, Florida 33154

3.4 Upon renewal of this Agreement, Granicus will include a maximum increase of seven (7) percent a year on Client's Managed annual Fee.

3.5 Training Usage Policies. Granicus has established best practice training plans around success with Granicus services, and Clients are encouraged to take advantage of all purchased training up-front in order to achieve the maximum amount of success with their services. All purchased remote training must be completed within sixty (60) days of the date of

the first date of training per service. Any purchased training not used during this sixty (60) day period will expire. If Client feels that it is necessary to obtain more training after the initial sixty (60) day period, Client may purchase additional training at that time.

3.6 Training Cancellation Policies. Granicus' policies on Client cancellation of scheduled trainings are as follows:

(a) Onsite Training. For any cancellations within forty-eight (48) hours of the scheduled onsite training, Granicus, at its sole discretion, may invoice the Client for one hundred (100) percent of the purchased training costs and all travel expenses, including any incurred third party cancellation fees. Subsequent training will need to be purchased and scheduled at the previously quoted pricing.

(b) Online Training. For any cancellations within forty-eight (48) hours of the scheduled online training, Granicus, at its sole discretion, may invoice the Client for fifty (50) percent of the purchased training costs, including any incurred third party cancellation fees. Subsequent training will need to be purchased and scheduled at the previously quoted pricing.

4. CONTENT PROVIDED TO GRANICUS

4.1 Responsibility for Content. The Client shall have sole control and responsibility over the determination of which data and information shall be included in the Content that is to be transmitted. However, Granicus has the right to (but not the obligation), after advance written notice to Client with information as to the objection to the information, remove any Content that Granicus believes violates any applicable law or this Agreement.

4.2 Restrictions. Client shall not provide Granicus with any Content that: (i) infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights; (ii) violates any law, statute, ordinance or regulation, including without limitation the laws and regulations governing export control and e-mail/spam; (iii) is defamatory or trade libelous; (iv) is pornographic or obscene, or promotes, solicits or comprises inappropriate, harassing, abusive, profane, defamatory, libelous, threatening, indecent, vulgar, or otherwise objectionable or constitutes unlawful content or activity; (v) contains any viruses, or any other similar software, data, or programs that may damage, detrimentally interfere with, intercept, or expropriate any system, data, information, or property of another.

5. TRADEMARK OWNERSHIP Granicus and Client's Trademarks are listed in the Trademark Information exhibit attached as Exhibit C.

5.1 Each Party shall retain all right, title and interest in and to their own Trademarks, including any goodwill associated therewith, subject to the limited license granted to the Client pursuant to Section 2 hereof. Upon any termination of this Agreement, each Party's right to use the other Party's Trademarks pursuant to this Section 5 terminates.

5.2 Each party grants to the other a non-exclusive, non-transferable (other than as provided in Section 5 hereof), limited license to use the other party's Trademarks as is reasonably

necessary to perform its obligations under this Agreement, provided that any promotional materials containing the other party's trademarks shall be subject to the prior written approval of such other party, which approval shall not be unreasonably withheld.

6. LIMITATION OF LIABILITY

6.1 Warranty Disclaimer. Except as expressly provided herein, Granicus' services, Software, software and deliverables are provided "as is" and Granicus expressly disclaims any and all express fitness for a particular purpose.

Granicus does not warrant that access to or use of the Software will be uninterrupted or error free. In the event of any interruption, Granicus will use commercially reasonable and timely efforts to restore access.

6.2 Limitation of Liabilities. To the maximum extent permitted by applicable law, Granicus and its suppliers and licensors shall not be liable for any indirect, special, incidental, consequential, or punitive damages, whether foreseeable or not, including, but not limited to: those arising out of access to or inability to access the services, software, content, or related technical support; damages or costs relating to the loss of: profits or revenues, goodwill, data (including loss of use or of data, loss or inaccuracy or corruption of data); or cost of procurement of substitute goods, services or technology, even if advised of the possibility of such damages and even in the event of the failure of any exclusive remedy. In no event will Granicus' and its suppliers' and licensors' liability exceed the amounts paid by client under this Agreement during the six (6) months immediately preceding the date the Client notifies Granicus in writing of the claim for direct damages.

7. CONFIDENTIAL INFORMATION & OWNERSHIP

7.1 Confidentiality Obligations. Confidential Information shall mean all proprietary or confidential information disclosed or made available by the other party pursuant to this Agreement that is identified as confidential or proprietary at the time of disclosure or is of a nature that should reasonably be considered to be confidential, and includes but is not limited to all business, technical and other information (including without limitation, all product, services, financial, marketing engineering, research and development information, product specifications, technical data, data sheets, software, inventions, processes, training manuals, know-how and any other information or material), disclosed from time to time by the disclosing party to the receiving party, directly or indirectly in any manner whatsoever (including without limitation, in writing, electronically, or by inspection); provided, however, that Confidential Information shall not include the Content that is to be published on the website(s) of Client.

7.2 Each party agrees to keep confidential and not disclose to any third party, and to use only for purposes of performing or as otherwise permitted under this Agreement, any Confidential Information. The receiving party shall protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. Each party agrees

not to disclose the Confidential Information to any of its Representatives except those who are required to have the Confidential Information in connection with this Agreement and then only if such Representative is either subject to a written confidentiality agreement or otherwise subject to fiduciary obligations of confidentiality that cover the confidential treatment of the Confidential Information.

7.3 Exceptions. The obligations of this Section 7 shall not apply if receiving party can prove by appropriate documentation that such Confidential Information (i) was known to the receiving party as shown by the receiving party's files at the time of disclosure thereof, (ii) was already in the public domain at the time of the disclosure thereof, (iii) entered the public domain through no action of the receiving party subsequent to the time of the disclosure thereof, or (iv) is required by law or government order to be disclosed by the receiving party, provided that the receiving party shall (i) notify the disclosing party in writing of such required disclosure as soon as reasonably possible prior to such disclosure, (ii) use its commercially reasonable efforts at its expense to cause such disclosed Confidential Information to be treated by such governmental authority as trade secrets and as confidential.

8. TERM

8.1 The term of this Agreement shall commence on the date hereof and shall continue in full force and effect for three (3) years after the date hereof. This Agreement shall automatically renew for an additional three (3) terms of one (1) year each, unless either party notifies the other in writing at least thirty (30) days prior to such automatic renewal that the party does not wish to renew this Agreement.

8.2 Rights Upon Termination. Upon any expiration or termination of this Agreement, and unless otherwise expressly provided in an exhibit to this Agreement:

(a) Client's right to access or use the NovusAgenda Solution, including Granicus Software, terminates and Granicus has no further obligation to provide any services;

(b) Client shall immediately return the Granicus Software and all copies thereof to Granicus, and within thirty (30) days of termination, Client shall deliver a written certification to Granicus certifying that it no longer has custody of any copies of the Granicus Software.

8.3 Obligations Upon Termination. Upon any termination of this Agreement,

(a) the parties shall remain responsible for any payments that have become due and owing up to the effective date of termination;

(b) the provisions of 2.1, 2.4, 3, 4, 5, 6.1, 6.2, 7, 8.3, and 10 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;

(c) pursuant to the Termination or Expiration Options Regarding Content, Granicus shall allow the Client limited access to the Client's Content, including, but not limited to, all video recordings, timestamps, indices, and cross-referenced documentation. The Client shall also have the option to order hard copies of the Content in the form of compact discs or other equivalent format; and

(d) Granicus has the right to delete Content within sixty (60) days of the expiration or termination of this Agreement.

9. PATENT, COPYRIGHT AND TRADE SECRET INFRINGEMENT

9.1 Granicus' Options. If the Granicus Software becomes, or in Granicus' opinion is likely to become, the subject of an infringement claim, Granicus may, at its option and sole discretion, (i) obtain for Client the right to continue to use the Software as provided in this Agreement; (ii) replace the Software with another software product that provides similar functionality; or (iii) if Granicus determines that neither of the foregoing options are reasonably available, Granicus may cease providing the applicable services or require that Client cease use of and destroy the Granicus Software. In that event, and provided that Client returns or destroys (and certify to such destruction of) all copies of the Granicus Software in Client's possession or control, if any, Granicus will refund all annual managed service fees paid by Client under the current agreement applicable to the period after the time Granicus ceases to provide the applicable software services or requires the Client to cease use of and destroy the Granicus Software.

10. INTERLOCAL AGREEMENT

10.1 This contract may be extended for use by other municipalities, school districts and governmental agencies. Any such usage by other entities must be in accordance with the Town Code, Charter, and/or procurement rules and regulations of the respective government entity.

9. INSURANCE

9.1 Granicus shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers including the Town as additional insured. Any insurance maintained by the Town shall be in excess of Granicus's insurance and shall not contribute to Granicus's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 9 and may be increased by the Town as it deems necessary or prudent.

9.2 Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Granicus.

The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

9.3 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of Granicus shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

9.4 Business Automobile Liability with minimum limits of \$500,000.00 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Hired and Non-Owned Vehicles.

9.5 Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

9.6 Certificate of Insurance. Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with respect to Professional Liability Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing any Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. Granicus shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.

9.7 Additional Insured. Except with respect to Professional Liability Insurance, the Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of Granicus in performance of this Agreement. Granicus's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Granicus's insurance. Granicus' insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

9.8 Deductibles. All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. Granicus shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

9.9 The provisions of this section shall survive termination of this Agreement.

10. NO DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

10.1 Granicus agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1984 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11248 as amended by Executive Orders 11375 and 12086.

10.2 Granicus will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/family status, or status with regard to public assistance. Granicus will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Granicus agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Town setting forth the provisions of this non-discrimination clause.

10.3 Granicus agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 708), which prohibits discrimination against the handicapped in any Federally assisted program.

11. ATTORNEYS' FEES AND WAIVER OF JURY TRIAL

11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

12. INDEMNIFICATION

12.1 Indemnification by Granicus. Granicus will defend Client 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 ("Claims") and shall pay all losses, damages, liabilities, settlements, judgments, awards, interest, civil penalties, and reasonable expenses

(collectively, "Losses," and including reasonable attorneys' fees and court costs), 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 or SOW. In the event of such a Claim, if Granicus determines that an affected Order or SOW is likely, or if the solution 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 or SOW, 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 or SOW with respect to the affected solution and refund to Client any prepaid fees for the then-remaining or unexpired portion of the Order or SOW term. Notwithstanding the foregoing, Granicus shall have no obligation to indemnify, defend, or hold Client harmless from any Claim to the extent it is based upon: (i) a modification to any solution by Client (or by anyone under Client's direction or control or using logins or passwords assigned to Client); (ii) a modification made by Granicus pursuant to Client's required instructions or specifications or in reliance on materials or information provided by Client; or (iii) Client's use (or use by anyone under Client's direction or control or using logins or passwords assigned to Client) of any Granicus Products and Services other than in accordance with this Agreement. This section sets forth Client'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.

12.2. Indemnification by Client. Subject to the provisions and monetary limitations of Section 768.28(5), Florida Statutes, which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by laws, Client 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) Client's (or that of anyone authorized by Client or using logins or passwords assigned to Client) use or modification of any Granicus Products and Services; (b) any Client content; or (c) Client's violation of applicable law."

12.3 Nothing in this Agreement is intended to act as a waiver of the Town's sovereign immunity rights, including those provided under section 768.28, Florida Statutes. The provisions of this section shall survive termination of this Agreement.

13. NOTICES/AUTHORIZED REPRESENTATIVES

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Town: Town Manager
 Town of Surfside
 9293 Harding Avenue
 Surfside, Florida 33154

With a copy to: Town Attorney

Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134

For Granicus: Contracts
408 St. Peter Street, Suite 600
St. Paul, MN 55102

14. GOVERNING LAW

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

15. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT

15.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

15.3 Granicus represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Granicus have been duly authorized, and this Agreement is binding on Granicus and enforceable against Granicus in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

16. OWNERSHIP AND ACCESS TO RECORDS; PUBLIC RECORDS

16.1 Granicus acknowledges and agrees that all data, information and materials prepared by Granicus and accepted and paid for by Town for use in brand, marketing or advertising programs, and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Granicus during the term of this Agreement (“Work Product”) belong to the Town. Granicus shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

16.2 All records, books, documents, data, deliverables, papers and financial information (the “Records”) that result from Granicus providing the Services to the Town under this Agreement shall be the property of the Town.

16.3 Granicus agrees to keep and maintain public records in Granicus 's possession or control in connection with Granicus's performance under this Agreement. Granicus additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Granicus shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

16.4 Upon request from the Town custodian of public records, Granicus shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

16.5 Unless otherwise provided by law, any and all records, including but not limited to reports and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

16.6 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of Granicus shall be delivered by Granicus to the Town Manager and/or his designee, at no cost to the Town, within seven (7) days. All such records stored electronically by Granicus shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, Granicus shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

16.7 Any compensation due to Granicus shall be withheld until all records are received as provided herein.

16.8 Granicus's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes

IF GRANICUS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GRANICUS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

**Custodian of Records: SANDRA NOVOA
TOWN CLERK**

Mailing address: 9293 Harding Avenue

Surfside, Florida 33154

Telephone number: (305) 861-4863 Ext. 226

Email: snova@townofsurfside.fl.gov

17. NON-ASSIGNABILITY AND NON-EXCLUSIVITY

17.1 This Agreement shall not be assignable by Granicus unless such assignment is first approved by the Town Manager and/or his designee. The Town is relying upon the apparent qualifications and expertise of Granicus, and such firm's familiarity with the Town's area, circumstances and desires.

17.2 Granicus hereby acknowledges that this Agreement is non-exclusive as to the Services being provided. The Town reserves the right to hire one or more additional individuals and/or firms to represent its interests and otherwise provide the Services. So as to maximize the benefit to the Town, the Town Manager and/or his designee may coordinate representation efforts by one or multiple firms to provide the Services.

18. SEVERABILITY

18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. INDEPENDENT CONTRACTOR

19.1 Granicus and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Town with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. COMPLIANCE WITH LAWS

20.1 Granicus shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement.

21. WAIVER

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this

Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. SURVIVAL OF PROVISIONS

22.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. PROHIBITION OF CONTINGENCY FEES

23.1 Granicus warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Granicus, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for Granicus , any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. PUBLIC ENTITY CRIMES AFFIDAVIT

24.1 Granicus shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

25. COUNTERPARTS

25.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

26. MOST FAVORED NATION

26.1 Granicus agrees that if, after the Effective Date of this Agreement, it enters into an agreement for the same or substantially similar scope of services with another local government in Florida which contains a term or condition, including fees, charges or costs, that are more favorable than the terms in the Agreement, the Town may provide Granicus with written notice explaining how the new agreement is for the same or substantially similar services and how the new agreement contains terms or conditions that are more favorable than the terms in this Agreement, and requesting to negotiate an amendment to this Agreement (a "New Agreement Notice"). The parties shall act in good faith to negotiate an amendment to this Agreement that addresses, in a manner that is fair and equitable to both parties, the matters raised by the Town in the New Agreement Notice. If the parties fail to reach agreement upon an amendment within ninety (90) days of the New Agreement Notice, then the Town shall have the right to terminate this Agreement without penalty or early termination fee, pursuant to Section 8 of this Agreement.

27. MISCELLANEOUS

27.1 Amendment and Waiver. This Agreement may be amended, modified, waived or canceled only in writing signed by each of the parties hereto or, in the case of a waiver, by the party waiving compliance. Any failure by either party to strictly enforce any provision of this Agreement will not be a waiver of that provision or any further default.

27.2 Governing Law. The laws of the State of Florida shall govern the validity, construction, and performance of this Agreement, without regard to its conflict of law principles. Venue for any litigation shall be in Miami-Dade County, Florida.

27.3 Construction and Severability. Wherever possible, each provision of this Agreement shall be interpreted so that it is valid under applicable law. If any provision of this Agreement is held illegal or unenforceable, that provision will be reformed only to the extent necessary to make the provision legal and enforceable; all remaining provisions continue in full force and effect.

27.4 Independent Contractors. The parties are independent contractors, and no other relationship is intended by this Agreement.

27.5 Force Majeure. Other than payment obligations, neither party is responsible for any delay or failure in performance if caused by any event outside the reasonable control of the party, including without limitation acts of God, government regulations, act of war, act of terrorism, earthquake, or electrical, internet or telecommunications outage.

27.6 Closed Captioning Services. Client and Granicus may agree that closed captioning or transcription services will be provided by a third party under this Agreement. In such case, Client expressly understands that the third party is an independent contractor and not an agent or employee of Granicus. Granicus is not liable for acts performed by such independent third party.

27.7 This Agreement consists of this Service Agreement as well as the following exhibits, which are incorporated herein by reference as indicated:

- Exhibit A: Proposal
- Exhibit B: Support Services
- Exhibit C: Trademark Information

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives,

GRANICUS, LLC, a Minnesota Limited Liability Company

By: _____

Name: Dawn Kubat

Title: Vice President of Legal

Date Executed: _____

Address

408 St. Peter Street, Suite 600

St. Paul, MN 55102

TOWN OF SURFSIDE, a Florida municipal corporation

By: _____

Guillermo Olmedillo, Town Manager

Date Executed: _____

Attest:

Sandra Novoa
Town Clerk

Approved as to Form and Legal Sufficiency:

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

**EXHIBIT A
PROPOSAL**

[The remainder of this page is left blank intentionally.]

EXHIBIT "B"

SUPPORT SERVICES

1. Contact Information. The support staff at Granicus may be contacted by the Client at its mailing address, general and support-only telephone numbers, and via e-mail or the Internet.

(a) Mailing Address. Mail may be sent to the support staff at Granicus headquarters, located at 408 St. Peter Street, Suite 600, St. Paul, MN 55102.

(b) Telephone Numbers. Office staff may be reached from 8:00 AM to 10:00 PM Eastern time at 1-800-314-0147.

(c) Internet and E-mail Contact Information. The website for Granicus is <http://www.granicus.com>. E-mail may be sent to the support staff at support@granicus.com.

2. Support Policy. When Granicus receives notification of an issue from Client, Granicus, Inc. customer advocate or technical support engineer will respond with notice that they will be actively working to resolve the issue. Granicus will make a good faith effort to give an assessment of the issue and an estimated time for resolution. Notification shall be the documented time that the Client either calls or e-mails Granicus to notify them of an issue or the documented time that Granicus notifies Client there is an issue. Granicus reserves the right to modify its support and maintenance policies, as applicable to its customers and licensees generally, from time to time, upon reasonable notice.

3. Scheduled Maintenance. Scheduled maintenance of the Granicus Solution will not be counted as downtime. Granicus will clearly post that the site is down for maintenance and the expected duration of the maintenance. All system maintenance will only be performed during these times, except in the case of an emergency. In the case that emergency maintenance is required, the Client will be provided as much advance notice, if any, as possible under the circumstances.

4. Software Enhancements or Modifications. The Client may, from time to time, request that Granicus incorporate certain features, enhancements or modifications into the licensed Granicus Software. Subject to the terms and conditions to this exhibit and the Service Agreement, Granicus and Client will use commercially reasonable efforts to perform all tasks in the Statement of Work ("SOW"). Upon the Client's request for such enhancements/modifications, the Client shall prepare a SOW for the specific project that shall define in detail the Services to be performed. Each such SOW signed by both parties is deemed incorporated in this exhibit by reference. Granicus shall submit a cost proposal including all costs pertaining to furnishing the Client with the enhancements/modifications.

4.1 Documentation. After the SOW has been executed by each party, a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed project staffing, anticipated project schedule, and other

information relevant to the project. Such enhancements or modifications shall become part of the licensed Granicus Software.

4.2 Acceptance. Client understands that all work contemplated by this exhibit is on a "time-and- materials" basis unless otherwise stated in the SOW. Within ten (10) business days of Granicus' completion of the milestones specified in the SOW and delivery of the applicable enhancement/modification to Client, Client will provide Granicus with written notice of its acceptance or rejection of the enhancement/modification, based on the acceptance criteria set forth in the SOW. Client agrees that it will not reject any enhancement/modification so long as it substantially complies with the acceptance criteria.

4.3 Title to Modifications. All such modifications or enhancements shall be the sole property of the Granicus.

5. Limitation of Liability; Exclusive Remedy. IN THE EVENT OF ANY INTERRUPTION, GRANICUS' SOLE OBLIGATION, AND CLIENT'S EXCLUSIVE REMEDY, SHALL BE FOR GRANICUS TO USE COMMERCIALY REASONABLE EFFORTS TO RESTORE ACCESS AS SOON AS REASONABLY POSSIBLE.

[End of Support Information]

EXHIBIT "C"

TRADEMARK INFORMATION

Granicus Registered Trademarks ®

@GRANICUS

Granicus logo as a mark

Granicus®

MediaVault® Mobile Encoder® Outcast Encoder® StreamReplicator®

Granicus Trademark Names™ Integrated Public Record™

Intelligent Routing™

LinkedMinutes™

LiveManager™ MediaCenter™ MediaManager™ MeetingMember™ MeetingServer™

Simulcast Encoder,... VoteCast™ VoteCast™ Classic VoteCast, Touch

Client Trademarks

Exhibit A

Granicus Pilot Proposal for Surfside, FL

The subscription start date will begin on the date of the first Kickoff call and will continue for 36 months. During the pilot period Surfside, FL will have the opportunity to evaluate the included Granicus Solutions (Solutions) and professional staff. After 60 days of experiencing the Solutions, an invoice will be processed for Surfside, FL.

If Surfside, FL chooses not to proceed with the Solutions, Surfside, FL must notify Granicus in writing of its intention not to proceed before the expiration of the 60-day pilot period.

Solutions may not be fully deployed within 60 days, but once the Kickoff call is complete, Granicus will move quickly to get tasks done, to allow Surfside, FL sufficient time for evaluation of the Solutions. It is vital that Surfside, FL respond quickly to requests for information, so Granicus can keep the project on time. The pilot does not allow for extensions or delays imposed by the Surfside, FL team.

Granicus Contact

Name: Bill Marshall

Phone: (202) 559-3037

Email: bill.marshall@granicus.com

Proposal Details

Quote Number: Q-65137

Prepared On: 8/8/2019

Valid Through: 9/20/2019

Pricing

Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)

Currency: USD

One-Time Fees

Solution	Billing Frequency	Quantity/Unit	One-Time Fee
Peak Agenda Management Standard Agenda Report	Upon Delivery	1 Each	\$0.00
Peak Agenda Management Standard Minutes Report	Up Front	1 Each	\$0.00
Peak Agenda Management Standard Cover Page Report	Upon Delivery	1 Each	\$0.00
SUBTOTAL:			\$0.00

One-Time Fees			
Solution	Billing Frequency	Quantity/Unit	One-Time Fee
Peak - Online Training	Upon Delivery	8 Hours	\$0.00
Peak - Setup and Configuration	Up Front	1 Hours	\$0.00
		SUBTOTAL:	\$0.00

Annual Fees for New Subscriptions			
Solution	Billing Frequency	Quantity/Unit	Annual Fee
Peak Agenda Management	Annual	1 Each	\$3,300.00
		SUBTOTAL:	\$3,300.00

Remaining Period(s)		
Solution(s)	Year 2	Year 3
Peak Agenda Management	\$3,531.00	\$3,778.17
SUBTOTAL:	\$3,531.00	\$3,778.17

Product Descriptions

Name	Description
Peak Agenda Management	Peak Agenda Management is a Software-as-a-Service (SaaS) solution that enables government organizations to simplify the agenda management and minutes recording process of the clerk's office. Peak Agenda Management allows clerks to streamline the way they compile and produce agendas and record minutes for public meetings and includes <ul style="list-style-type: none"> • Unlimited user accounts • Unlimited meeting bodies and meeting types • Access to one Granicus platform site • Access to one Peak Agenda Management site • Design services for one public view page portal • Design services for one Agenda report template • Design services for one Cover Page report template
Peak Agenda Management Standard Agenda Report	Professional service for designing an additional Peak agenda report.
Peak Agenda Management Standard Minutes Report	Professional service for designing an additional Peak minutes report.
Peak Agenda Management Standard Cover Page Report	Professional service for designing an additional Peak cover page report.
Peak - Online Training	Peak Agenda Management - Online Training is for online training for Peak Agenda Management, which allows clients to have online sessions with a Granicus trainer to learn how to use the system.
Peak - Setup and Configuration	Setup and configuration of Peak Agenda

Terms and Conditions

- 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 Surfside, FL to provide applicable exemption certificate(s).
- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- If submitting a Purchase Order, please include the following language: All pricing, terms and conditions of quote Q-65137 dated 8/8/2019 are incorporated into this Purchase Order by reference.

Agreement and Acceptance

By signing this document, the undersigned certifies they have authority to enter the agreement. The undersigned also understands the services and terms.

Billing Information

Name:

Phone:

Email:

Address:

Surfside, FL

Signature:

Name:

Title:

Date:



Peak Agenda Management

Streamlined, paperless agenda creation, approval and publishing

Peak Agenda Management allows staff to easily manage the agenda creation process from start to finish without the paper shuffling. Draft meeting agendas within configurable templates and submit through customized workflows to the correct departments, meeting bodies, and users. Peak's paperless integration prevents multiple versions of agendas getting shuffled around between different members - which often ends with inefficient use of meeting time spent catching up on the right documents.

Automated emails alert users that new items are up for review, and the intuitive calendar view makes it easy to manage one-time and recurring meetings. Electronically review, add and collaborate on agenda items, including attaching supporting documents and materials as needed. Once approved, agenda packets are generated into a single PDF for efficient online publishing or integration with Granicus' in-meeting and post-meeting legislative tools.



Paperless agenda review and collaboration



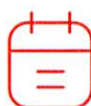
Access via web browser



Configurable agenda templates



Customizable approval workflows



Track agenda progress on dashboard and calendar



Publish to PDF