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City of Delray Beach

Master Services Agreement

Version 1 | November 23, 2022

Master Services Agreement

This Master Services Agreement (the “**MSA**”) is effective as of _____, 2023 (the “**Effective Date**”) by and between ROK Technologies, LLC (“**ROK**”) and City of Delray Beach (“**Client**”). ROK and Client are each individually referred to herein as a “**Party**” and collectively as the “**Parties**.” This MSA shall govern the Parties’ relationship as more fully described in Statements of Work (each, an “**SOW**”) agreed upon between the Parties pursuant to the terms of this MSA. This MSA anticipates the execution of various written SOWs and the following terms shall apply to such SOWs. The MSA, SOW and all exhibits, addendums and/or amendments thereto are collectively referred to herein as the “**Agreement**.”

1. RECITALS.

- A. ROK is in the business of architecting, hosting, and managing the infrastructure for geographical information system—or “GIS”—computing systems for its business clients.
- B. Client seeks to hire ROK to provide certain Services in relation to Client’s own GIS Platform, and ROK desires to provide the same pursuant to the terms and conditions of this Agreement.
- C. NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

2. SELECT DEFINITIONS.

- A. “**Client’s Platform**” or the “**Platform**” means the collection of Client data and applications managed by ROK pursuant to this Agreement.
- B. “**Managed Services**” means the management of Client’s Platform by ROK pursuant to a Service Level Agreement.
- C. “**Non-Tenant**” means Client if Client’s Platform is not hosted by ROK—for example, if Client engages a third-party cloud service provider such as AWS or Azure, or, uses on-premises or similar Client-owned equipment to host Client’s Platform and contracts with ROK for Managed Services only.
- D. “**Professional Services**” means any and all Services rendered by ROK to Client pursuant to an SOW other than Managed Services, such as consultation, data assessment, and recommendations, and so forth.
- E. “**Services**” means any and all Services rendered by ROK to Client pursuant to an SOW, including all Managed Services and Professional Services.
- F. “**Tenant**” means Client if Client’s Platform is hosted by ROK on ROK’s cloud-based systems.
- G. “**Service Level Agreement**” or “**SLA**” means a type of SOW that sets forth the specific terms applicable to ROK’s provision of Managed Services.

3. SERVICES.

- A. **Services.** Services will be provided by ROK pursuant to the terms and conditions of this

Agreement and any applicable SOW—including, where applicable, a Service Level Agreement.

- B. **Subcontractors.** ROK may use subcontractors (under separate contract to ROK) to perform the Services, or portion(s) thereof.

4. SOWs.

- A. **Form of SOW.** ROK will not proceed with performing Services until both Client and ROK have signed the applicable SOW. Each SOW, once signed by both Parties, will become a part of this Agreement. Each SOW must be in writing and should include, at a minimum:
 - i. Description of Services and deliverables in sufficient detail to gauge the successful progress and completion of the Services;
 - ii. Period of duration, expected date(s) of completion (by phase/milestone or entire project) or delivery of deliverables, and/or other performance timetable;
 - iii. If applicable, designated means of performance, including identification of any particular roles or individuals required to participate in the Services;
 - iv. Resources required from Client for performance of the Services, such as access to particular information, systems, or environments, involvement of specific personnel, and so forth;
 - v. If applicable, acceptance criteria and testing period, permissible reasons for rejection and ROK's duty to remedy the same, if any;
 - vi. Fees owed to ROK for the Services, along with method of computation (e.g., fixed fee or hourly rate) and timing/conditions of payment (e.g., milestone-based);
 - vii. Description and estimated amounts of any significant reimbursable expenses expected to be incurred; and
 - viii. Identification of the Client department responsible for overseeing the project and Client employee designated as project owner.
- B. **Amendment.** SOWs may only be amended by a written document signed by each Party's authorized representative, and per the change management procedures set forth therein.
- C. **Governance.** Each SOW will, upon execution by both of the Parties hereto, be incorporated into and become part of this Agreement. In the event of any conflict between this Agreement and any SOW, the terms and conditions of the applicable SOW shall control as to the specific deliverables and Services addressed in said SOW, and this Agreement shall control as to all other matters.

5. PRICING.

- A. **Pricing.** Prices for Services will be specified in one of the following, as applicable to the Services to be provided:
 - i. Those specified in ROK's then-current price list, less any applicable discount at the time of ROK's acceptance of an SOW;
 - ii. Those specified in a written price quotation submitted by ROK; or
 - iii. Those specified in the SOW; or

- iv. Incidental extra fees agreed-upon by the Parties from time to time (for example, additional work authorized outside business hours or weekends).
 - 1. Premium rates outside normal business hours during the business week will be billed at one and one-half times the agreed upon labor rate.
 - 2. Premium rates on weekends and US holidays will be billed at twice the agreed upon labor rate.

B. **Taxes.** All prices are exclusive of any taxes, fees, duties or other applicable amounts. Client shall pay the taxes related to Services purchased pursuant to this Agreement, or Client shall present an exemption certificate acceptable to the taxing authorities upon request. Applicable taxes, if any, will be billed as a separate item on the invoice. ROK reserves the right to increase the fees for Services in the event Client determines any withholding tax obligation prevents ROK from receiving the specified prices for such Services pursuant to Section 5(a) above.

6. PAYMENT AND INVOICING.

- A. **Payment.** Unless otherwise indicated in an SOW, payment terms are net 30 days. Any sum not paid by Client within sixty (60) days from the date of the invoice will bear interest from the date of the invoice until paid at the maximum rate permitted by law.
- B. All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes. Client shall not be subject to late charges for past due amounts in excess of one percent (1%) as provided for in Fla. Stat. Sec. 218.74. Prices applicable to Client do not include applicable state and local sales, use, and related taxes. Client is exempt from state and local sales and use taxes and shall not be invoiced for the same. Upon request, Client will provide ROK with proof of tax-exempt status.
- C. **Invoicing.** As set forth below, ROK will invoice Client depending on the type of Services:
 - i. For Managed Services, unless otherwise agreed by the Parties in the applicable SOW, ROK will invoice Client for such Services, and payment will be due, in advance of performance of the same.
 - ii. For Professional Services, ROK will invoice Client per the SOW's invoicing schedule. Invoices may contain multiple milestones or a single invoice at the start or end of the project. Unless otherwise mutually agreed upon in writing or via a change management procedure, the total invoiced amounts for SOW milestones shall not exceed the total amount agreed upon in the SOW. If a SOW does not contain a milestone schedule, ROK will invoice Professional Services performed under such SOW as set forth in such SOW.
- D. **Deposit.** ROK reserves the right to charge Client a deposit for payment on any SOW.
- E. **Disputed Charges.** Written notice of any disputed charge must be received by ROK within thirty (30) days of the date of issuance of the invoice in question or Client forfeits the right to dispute the charge. This notice must include the invoice number in dispute, the item(s) and amount(s) disputed and a complete description of the basis for Client withholding payment. Notice of any disputed charge does not release Client from the obligation of paying any remaining balance of the invoice under the terms specified. Upon resolution of

the disputed charge, ROK will issue a credit memo or Client will pay the total amount outstanding referenced by the dispute. Any disputed charge resolved in ROK's favor shall be liable to accrue late payment fees based on the terms of purchase.

- F. **Collections.** If payment has not been received within the three-month period after the due date, ROK will have no other option but to undertake collection and enforcement efforts. If collection and enforcement efforts are undertaken by ROK, Client shall be liable for all costs thereof, including reasonable attorneys' fees. If Client is in arrears on any invoice, ROK may, upon giving notice, apply any deposit thereto and suspend, withhold or terminate further performance of Services until all arrearages are brought current.

7. TERM AND TERMINATION.

- A. **Term.** The term of this Agreement will commence on the Effective Date and, unless terminated pursuant to this Section 7 by Client or terminated by City of Pembroke Pines, shall remain in effect until April 19, 2023 or (2) sixty (60) days after completion of all rights and obligations by each Party under any SOW, so long as no other SOWs are outstanding. If the City of Pembroke Pines renews or extends its Agreement, this Agreement shall automatically renew or extend.
- B. **Termination.** This Agreement, and any Services being performed hereunder, may be terminated immediately by either Party upon written notice:
- i. If the other Party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written notice to the breaching Party if the breaching Party fails to cure such breach within such period;
 - ii. If the other Party: ceases, or threatens to cease to carry on business as a going concern; or becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver or similar officer is appointed with respect to the whole or a substantial part of its assets; or an event similar to any of the foregoing occurs under applicable law;
 - iii. If, except as provided below, either Party assigns (by operation of law or otherwise, including merger) or transfers any of the rights or responsibilities granted under this Agreement, any support agreement, or any SOW, without the prior written consent of the other Party, or in the event of a sale of all or substantially all of such Party's assets, or transfer of a controlling interest in such Party to an unaffiliated third Party. Notwithstanding the foregoing: ROK reserves the right to subcontract Services to any affiliate or third-party organization to provide Services to Client, and ROK may assign this Agreement or all or any portion of its rights and obligations hereunder, to any affiliate of ROK with written amendment approved by both parties; and/or
 - iv. If fees are not paid when due and payment has not been received within thirty (30) days after notice from ROK to Client of such past due payment, ROK may suspend or withhold the provision of Services until all amounts past due are paid in full, and/or immediately terminate this Agreement or any Services provided hereunder.
- C. Additionally, this Agreement may be terminated by Client for convenience, upon providing written notice of such termination to ROK, in which event ROK shall be paid its compensation for services performed to termination date, any unused and pre-paid portion

of the contract amount remaining for the term shall be refunded.

- D. **Change of Scope.** ROK reserves the right to change the scope and content of any of the Services upon ninety (90) days prior notice to Client. Such changes will become effective upon Client's renewal of the applicable Services.
- E. **Effect of Termination.**
 - i. If, following termination of this Agreement, the Parties execute an SOW, then any such SOW will be governed by the terms and conditions of this Agreement notwithstanding the earlier termination of this Agreement, unless and until the Parties execute a new MSA to govern the SOW.
 - ii. Each of the Services provided hereunder will terminate immediately upon termination of this Agreement, unless otherwise agreed by the Parties. Notwithstanding the foregoing, the Parties' ongoing obligations under any non-terminated SOWs will continue through the end of their defined term, unless otherwise agreed by the Parties in writing.
 - iii. Upon termination of this Agreement or any Services, Client shall pay ROK for all work ROK has performed up to the Effective Date of termination at the agreed upon prices, fees and expense reimbursement rates.
 - iv. Sections 4(c), 6(e), 6(f), liability under Section 9, and Sections 10 through 16 shall survive termination of this Agreement.

8. BACKUPS; DATA LOSS OR CORRUPTION.

- A. **Tenant Backups.** For Tenants, backups will be performed and retained by ROK according to the schedule set forth in the SLA or other SOW.
- B. **Non-Tenant Backups.** For Non-Tenants, Non-Tenant shall be responsible for performing and retaining current backups of its systems and data. At its exclusive option, ROK shall be entitled to perform and retain its own backups of Client's systems and data according to the schedule set forth in the SLA or other SOW. Client understands and agrees that said backup by ROK is merely intended as a secondary backup and that Client, as the owner of the infrastructure, is expected to make primary backups at a frequency reasonably sufficient to protect Client's data and restore the same, if needed.
- C. **Data Loss or Corruption.** Whether Client is a Tenant or Non-Tenant, ROK is not responsible for any loss, alteration, destruction, damage, or corruption of data resulting from Client's introduction of a virus or other corrupting force (a "**Virus**"). Any warranty or service contract does not cover infection of any Client application or system with such as a Virus. For Non-Tenants, because the Client owns and controls the infrastructure of its systems, any virus not expressly introduced by ROK shall be deemed a Virus introduced by Client. ROK may, at its discretion, bill Client for the Professional Services required to remove a Virus and restore the system.

9. CLIENT RESPONSIBILITIES AND RESTRICTIONS.

- A. **Tenant responsibilities.** As a Tenant, Client shall be solely responsible for:
 - i. Confidentially maintaining an accurate and complete list of all individuals that are authorized by Client to have access credentials ("**Authorized Users**");

- ii. The security and use of access credentials by the Authorized Users;
 - iii. The use of the Services by the Authorized Users in compliance with Client's responsibilities and restrictions under this Agreement;
 - iv. Employing all physical, administrative, and technical controls, screening, security procedures, and other safeguards necessary to securely administer the distribution and use of all access credentials and protect against any unauthorized access to or use of the Services and control of data, including the uploading or other provision of data for processing by the Services;
 - v. The content of the data provided to ROK or otherwise hosted by ROK for the Client under this Agreement, including without limitation ensuring that all such content is benign and suitable for hosting in a public cloud environment.
 - vi. Securing and maintaining all rights in the data provided to ROK or otherwise hosted by ROK for the Client necessary for ROK to provide Services without violating the rights of any third party or otherwise obligating ROK to Client or to any third-party;
 - vii. Use of the Services in a manner that infringes, misappropriates, or otherwise violates any intellectual property right, privacy right, or other right of any third party including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any third party, or that violates any applicable law;
 - viii. Client's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through third-Party services;
 - ix. All access to and use of the Services directly or indirectly with or without Client's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use; and
 - x. Providing all cooperation and assistance as ROK may reasonably request to enable ROK to exercise its rights and perform its obligations under and in connection with this Agreement.
- B. **Tenant restrictions.** As a Tenant, Client shall not, and shall not permit others to:
- i. Copy, modify, or create derivative works or improvements of the Services;
 - ii. Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services to any third-Party without first obtaining approval from ROK, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
 - iii. Reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part;
 - iv. Bypass or breach any security device or protection used by the Services or access or use the Services other than by an authorized user through the use of his or her own then valid access credentials;
 - v. Input, upload, transmit, or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code;

- vi. Damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, ROK systems, or ROK's provision of Services to any third Party, in whole or in part;
 - vii. Remove, delete, alter, or obscure any trademarks, specifications, documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services, including any copy thereof;
 - viii. Access or use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third Party including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any third-Party, or that violates any applicable law;
 - ix. Access or use the Services for purposes of competitive analysis of the Services, the development, provision, or use of a competing service or product or any other purpose that is to ROK's detriment or commercial disadvantage; or
 - x. Access or use the Services in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage.
- c. **Tenant Responsibility for Certain Factors Affecting Uptime.** The service commitment and hourly or uptime commitment in any Service Level Agreement do not apply to any unavailability, suspension or termination of an included Service, or any other included Service performance issues: (i) caused by factors outside of ROK's reasonable control, including any force majeure event or internet access or related problems beyond the demarcation point of the applicable included Service; (ii) that result from any actions or inactions of Client or any third party, including failure to acknowledge a recovery volume; (iii) that result from Client's equipment, software or other technology and/or third party equipment obtained by Client, software or other technology (other than third-party equipment within ROK's direct control); (iv) that result from Client or third-party (including AWS) policies or protocols inherited by ROK; (v) relating to compliance with laws applicable to Client or Client's industry that are not generally applicable to information technology service providers; or (vi) arising from ROK's suspension or termination of Client's right to use the applicable included Service in accordance with the Agreement. If availability is impacted by factors other than those listed herein or used in ROK's monthly uptime percentage calculation, then ROK may issue a service credit to Client at its exclusive discretion.
- d. **Non-Tenant responsibilities.** As a Non-Tenant, Client shall be solely responsible for:
- i. Confidentially maintaining an accurate and complete list of Authorized Users;
 - ii. The security and use of access credentials by the Authorized Users;
 - iii. The use of the Services by the Authorized Users in compliance with Client's responsibilities and restrictions under this Agreement;
 - iv. Employing all physical, administrative, and technical controls, screening, and security

procedures and other safeguards necessary to securely administer the distribution and use of all access credentials and protect against any unauthorized access to or use of the Services and control the content and use of Client data, including the uploading or other provision of data for processing by the Services;

- v. The content of data associated with or effected by Services provided by ROK, including without limitation ensuring that all such content is benign and suitable for hosting in a public cloud environment;
 - vi. Security, protection, and backup of data associated with or effected by Services provided by ROK; and
 - vii. Compliance with laws applicable to the use of data associated with or effected by Services provided by ROK;
 - viii. Use of Services in a manner that infringes, misappropriates, or otherwise violates any intellectual property right, privacy right, or other right of any third Party including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any third-Party, or that violates any applicable law;
 - ix. Set up, maintenance, and operation all Client systems in good repair on or through which the Services are accessed or used;
 - x. Providing ROK with such access to Client's premises and Client systems as is necessary for ROK to perform the Services;
 - xi. Client's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-Party services;
 - xii. All access to and use of the Services directly or indirectly with or without Client's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use; and
 - xiii. Providing all cooperation and assistance as ROK may reasonably request to enable ROK to exercise its rights and perform its obligations under and in connection with this Agreement.
- E. **Non-Tenant Restrictions** - as a Non-Tenant, Client shall not, and shall not permit others to:
- i. Copy, modify, or create derivative works or improvements of the Services;
 - ii. Reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part;
 - iii. Damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services or ROK's provision of Services;
 - iv. Remove, delete, alter, or obscure any trademarks, specifications, documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services, including any copy thereof;
 - v. Access or use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of

any third Party including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any third-Party, or that violates any applicable law;

- vi. Access or use the Services for purposes of competitive analysis of the Services, the development, provision, or use of a competing service or product or any other purpose that is to ROK's detriment or commercial disadvantage; or
 - vii. Access or use the Services in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage.
- F. **All Clients.** Except to the extent caused by ROK's breach of this Agreement, Client is responsible for all activities that occur on Client's Platform or under all Client accounts, regardless of whether the activities are authorized by Client or undertaken by Client, Client's employees or a third party (including Client's contractors, agents or end users), and ROK is not responsible for unauthorized access to Client accounts.

10. WARRANTY; DISCLAIMER AND LIMITATIONS.

- A. **Services Warranty.** With respect to Services performed by ROK, ROK warrants to Client, unless otherwise specified in writing, that the Services as and when delivered or rendered, will conform to the standard of care exhibited by reasonably skilled contractors in the industry (network systems integration). Client shall notify ROK in writing within ninety (90) days after provision of the Services in question if any of the Services fail to conform to the standard of care set forth in this Agreement. The passage of the thirty (30) day period after provision of the Services without the notification described herein shall constitute Client's final acceptance of the Services.
- B. **Third-Party Product Warranties.** With respect to particular products manufactured or supplied by third parties to ROK for resale to Client, ROK MAKES NO WARRANTIES OF ANY KIND IN ADDITION TO OR EXCEEDING THE WARRANTY SUPPLIED OR OFFERED BY THE RESPECTIVE MANUFACTURER OR SUPPLIER, which shall be transferred or assigned to Client, if possible, and Client's recovery is limited to recovery against such manufacturer or supplier for breach of any applicable warranties of manufacturer or supplier. In the event of a claim by Client for breach of product warranty, ROK must follow the warranty policy established by the manufacturer. This policy may require return of the warranted item to the manufacturer for repair. At Client's request, ROK agrees to take all actions reasonably necessary or appropriate to secure Client's rights and to protect its interests under such third-party warranties. Work performed by ROK, not covered by product warranty, will be billed to Client at the applicable ROK rate.
- C. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN ANY SOW, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. USE AND RELIANCE ON THE SERVICES ARE AT CLIENT'S OWN RISK. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN ANY SOW, ROK EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY RELATING TO THE SERVICES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY OR SATISFACTORY QUALITY,

FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN ANY SOW, ROK EXPRESSLY DISCLAIMS ANY THAT USE OF OR ACCESS TO THE SERVICES WILL BE CONTINUOUS, UNINTERRUPTED, ERROR-FREE, FREE OF DEFECTS, OR FREE OF TECHNICAL PROBLEMS.

- D. **Limitation of Liability.** ROK'S LIABILITY UNDER THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), UNDER ANY WARRANTY, OR OTHERWISE, IS ABSOLUTELY LIMITED TO CORRECTION OF ANY NONCONFORMITIES IN ANY SERVICES, OR REFUND OF THE PURCHASE PRICE, OR REFUND OF SPECIFIC AMOUNTS PAID FOR PRODUCTS OR SERVICES WHICH FAIL TO CONFORM, AT ROK'S SOLE OPTION AND THE AGGREGATE AMOUNT THEREOF FOR ALL CLAIMS RELATING TO ANY PARTICULAR PRODUCT OR SERVICE SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE FEES PAID TO ROK UNDER THIS AGREEMENT FOR THE PARTICULAR PRODUCT OR SERVICES WHICH GIVE RISE TO THE CLAIM. EXCEPT FOR THEIR INDEMNIFICATION OBLIGATIONS, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, GENERAL, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR OTHER DAMAGES (INCLUDING LOST PROFITS, LOST SAVINGS, LOSS OF DATA OR LOSS OF USE), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COULD HAVE REASONABLY FORESEEN SUCH DAMAGES, NOR FOR ANY CLAIMS ARISING FROM CLIENT'S USE OR TRANSFER OF ANY SERVICES SOLD HEREUNDER. NO ACTION, REGARDLESS OF THE FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY CLIENT MORE THAN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENTS WHICH GAVE RISE TO THE CAUSE OF ACTION. THE PRICING OF ALL SERVICES AND THE TERMS AND CONDITIONS OF ALL SALES ARE BASED UPON THIS LIMITATION OF LIABILITY.

11. NON-SOLICITATION. During the term of this Agreement and for a period of one (1) year following the end of this Agreement, neither Party will (i) offer employment to any employee of the other Party; or (ii) attempt to directly or indirectly induce any employee of the other Party to terminate his or her employment. In the event of a breach of this section, money or damages may not be an adequate remedy, and, therefore, in addition to any other legal or equitable remedies, each Party shall be entitled to seek an injunction against such breach. The obligations set forth in this section are independent covenants and shall survive termination of this Agreement. Notwithstanding the foregoing, each Party shall be free to offer employment to any employee or subcontractor that directly contacts such Party in response to general public advertisements of employment opportunities (including the use of employment agencies and recruiters).

12. DISPUTE RESOLUTION.

- A. **Governing Law.** This Agreement, including without limitation this Agreement's interpretation, shall be treated as though this Agreement were executed and performed in the State of Florida, and shall be governed by and construed in accordance with the laws of the State of Florida without regard to its conflict of law principles. The language in this Agreement shall be interpreted in accordance with its fair meaning and not strictly for or

against either Party.

- B. **Elective Arbitration.** Except to the extent not preempted by the federal arbitration act, 9 U.S.C. §1 et seq. (1970), any claim or controversy arising out of, or relating to, any provision of this contract, or the breach thereof, shall upon written demand of any Party, and if consented to by official action by the City of Delray Beach Commission, may be settled by three (3) arbitrators in accordance with the Commercial Arbitration Rules then in effect of the American Arbitration Association, to the extent consistent with the laws of the state of Florida and the Uniform Arbitration Act, S.C. Code §15-48-10, *et seq.* The location of the arbitration shall be the AAA facility in or nearest to Delray Beach, Florida, or such other venue as agreed upon in writing by the Parties. An election by any Party to arbitrate under this paragraph shall be binding on all other Parties and their heirs, successors, and assigns. The AAA fees shall be divided equally between the Parties unless otherwise determined by the arbitrators.
- C. **Venue.** Subject to and without waiving the arbitration paragraph above, this Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs. The Parties stipulate to and agree to waive any objection to the personal jurisdiction and venue of such courts, and further expressly submit to extraterritorial service of process.

13. CONFIDENTIALITY.

- A. **Confidential Information.** "Confidential Information" shall mean and include all of the proprietary, non-public information of either Party disclosed pursuant to or in furtherance of this Agreement including but not limited to all Technical Information as defined herein, information related to ROK fees, and any information relating to markets, customers, products, patents, inventions, procedures, methods, designs, object code, data, programs, improvements, training materials, workflows, and works of authorship. Notwithstanding the foregoing, "Confidential Information" shall not include any information, that the recipient can demonstrate through its records (i) was in its knowledge or possession prior to disclosure by the discloser, (ii) was in the public domain at the time of disclosure or subsequently entered the public domain through no fault of recipient, or (iii) was disclosed to recipient by a third party with the right to make such a disclosure.
- B. **Duty of Nondisclosure.** It is expected that, appurtenant to this Agreement, each Party to this may disclose certain Confidential Information to the other Party, or otherwise required by law, including Ch. 119, Florida Statutes. Each Party shall refrain from using or exploiting any Confidential Information of the other Party for any purposes or activities other than those specifically authorized in this Agreement. Each Party represents and warrants that it will hold Confidential Information in confidence and protect Confidential Information to the same extent and by the same means it uses to protect the confidentiality

of its own proprietary or confidential information that it does not wish to disclose. Neither Party shall disclose or facilitate disclosure of Confidential Information of the other Party to anyone except its employees, independent contractors, or legal or tax advisors who are authorized according to this Agreement and who have a “need to know such information.” Each Party shall ensure that the employees, independent contractors, or legal or tax advisors to whom the Confidential Information is disclosed comply with their obligations under this Agreement with respect to the Confidential Information.

- C. **Survival.** Each Party’s duty of confidentiality with respect to all Confidential Information it receives hereunder will survive termination or expiration of this Agreement and will be binding upon each Party’s successors and assigns. The Parties may disclose, or may have disclosed, to each other, both orally and in writing or in other tangible form, certain confidential information with respect to each Party’s business, as well as the Services provided under this Agreement. The Parties hereby agree to keep such information and the terms of this Agreement confidential except to the extent required by law including Ch. 119, Florida Statutes. The Parties shall not disclose to any other person (except for legal, tax and financial advisors) any information relating to this Agreement or its subject matter and shall treat as confidential all information and documents relating hereto.
- D. **Disclosure to Subcontractors.** Notwithstanding any other provision of this Section 19, ROK shall be authorized to disclose Client’s Confidential Information to subcontractors, contractors, or employees of a ROK entity who have a legitimate business need to have access to such information. ROK shall be responsible for any breach of this Agreement caused by any of its subcontractors, employees or agents.
- E. **Confidentiality of Agreement.** Neither Party may disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other Party. Any press release or publication regarding this Agreement is subject to prior review and written approval of the Parties.

14. INTELLECTUAL PROPERTY.

- A. **Pre-Existing IP.** Each Party will retain the exclusive ownership of all of its pre-existing intellectual property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a Party prior to commencement of any Services hereunder, or that are otherwise developed by or for such Party outside the scope of this Agreement.
- B. **ROK IP.** Except as otherwise expressly set forth in this Agreement or an applicable SOW, ROK owns and will continue to own all right, title, and interest in and to the Services, products, deliverables, data collection tools, reports, scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by ROK (or a third party acting on ROK’s behalf) pursuant to this Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all intellectual property in any of the foregoing (collectively “**ROK IP**”).
- C. **Client IP.** As between Client and ROK, Client at all times retains all right, title and interest in and to all of Client’s data and applications provided by Client to ROK hereunder, Client’s

pre-existing technology and all intellectual property that is developed by Client or by a third party on Client's behalf thereafter, other than ROK intellectual property.

- D. **Third-Party Products.** Third party products will always be owned by the applicable third party and will be subject to any applicable third Party license terms.

15. INDEMNIFICATION.

- A. **Duty.** ROK, on its own behalf, and on behalf of its respective third-party partners, affiliates, owners, directors, employees, agents, successors, and assigns (collectively, the "**Indemnitor**") will defend, indemnify, and hold harmless the Client and its third-party partners, affiliates, owners, directors, employees, agents, successors, and assigns (collectively, the "**Indemnitee**") from and against all claims, actions, losses, liability, damages, costs, and expenses (including reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising from or related to: (i) any gross negligence or willful misconduct by Indemnitor; (ii) any breach of this Agreement by the Indemnitor; (iii) any violation or alleged violation by Indemnitor of any applicable foreign or domestic, federal, state or local statutes, laws, ordinances, rules and regulations or industry standards; and (iv) any violation or alleged violation by Indemnitor of the rights of any third party, including without limitation, intellectual property rights.
- B. **Procedure.** The Indemnitee will provide Indemnitor with prompt written notice of the Claim for which the Indemnitee intends to claim such indemnification, and Indemnitor shall have the right to participate in, and, to the extent the Indemnitor so desires, to assume sole control of the defense thereof with counsel selected by the Indemnitor; provided, however, and notwithstanding the foregoing, that the Indemnitee shall have the absolute right to retain their own counsel, with the fees and expenses to be paid by the Indemnitee. Indemnitor will have no authority to settle any Claim on the Indemnitee's behalf without the written consent of the Indemnitee. Nothing in this Section shall limit any other remedy of the parties. These obligations will survive any termination of the Agreement.
- C. The Parties acknowledge that Client shall remain responsible for any liability resulting from its own actual or alleged negligence, willful misconduct, acts or omissions during performance of this Agreement, subject to the rights and immunities afforded to it under the common law and §768.28, Florida Statutes, as may be amended from time to time.
- D. Nothing contained herein nor in any SOW is intended nor shall be construed to waive Client's rights and immunities under the common law or §768.28, Florida Statutes, as many be amended from time to time.

16. GENERAL PROVISIONS.

- A. **Entire Understanding.** This Agreement, along with all Exhibits and Appendices incorporated by reference herein, and all SOWs executed by the Parties pursuant to this Agreement, contains the entire understanding of the Parties with respect to the subject matter contained herein, and shall supersede all prior agreements and understandings, whether written or oral. There are no restrictions, promises, covenants, or understandings other than those expressly set forth herein, and no rights or duties on the part of either Party are to be implied or inferred beyond those expressly provided for. To the extent ROK is required to click to agree or accept any written terms of Client in order to provide the

Services (e.g., accepting Client's website terms to access Client's designated environment), the Parties understand and agree that such act is the result of a technological requirement and is of no binding effect upon the Parties.

- B. **Severance.** If any provision of this Agreement is held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining provisions shall not be affected by such holding. The Parties agree to negotiate and amend in good faith such provision in a manner consistent with the intentions of the Parties as expressed in the Agreement, if any invalid or unenforceable provision affects the consideration of either Party.
- C. **Modifications and Additions.** No modifications or additions to the terms and conditions of this Agreement shall be binding unless in a formal amendment and signed by both Parties.
- D. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Neither Party may assign the terms or conditions of this Agreement to a third party, affiliated entity, or related division without the prior written consent of the other Party.
- E. **Notices.** All notices provided in connection with this Agreement will be in writing and will be delivered by email and either (i) certified or registered mail, postage prepaid and return receipt requested or (ii) overnight delivery courier (e.g., FedEx) and will be deemed effective upon receipt by the authorized representative at the address set forth above in the preamble, or at such other addresses as the Parties as designated below:

For Client:
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

For ROK:
ROK Technologies, LLC,
1501 Belle Isle Ave, Suite 100
Mt. Pleasant, SC 29464
Attn: Alex Coleman, CEO

- F. **Force Majeure** – ROK may, without liability, suspend or delay performance or cancel this Agreement on account of force majeure or other circumstances beyond its control, including, but not limited to, strikes, acts of God, political unrest, embargo, failure of source of supply, or casualty.
 - G. **Waiver.** No waiver by either Party of any breach of this Agreement, no matter how long continuing or how often repeated, shall be deemed a waiver of any subsequent breach thereof, nor shall any delay or omission on the part of either Party to exercise any right, power, or privilege hereunder be deemed a waiver of such right, power, or privilege.
 - H. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.
17. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
18. By entering into this Agreement ROK acknowledges its obligation to comply with the provisions

of Section 448.095, Fla. Stat., "Employment Eligibility." ROK affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by ROK, ROK may be prohibited from conducting future business with Client or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of ROK.

19. IF ROK HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ROK'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

- A. ROK shall comply with public records laws, specifically to:
- i. Keep and maintain public records required by Client to perform the service.
 - ii. Upon request from the Client's custodian of public records, provide the City 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 in Florida Statute or as otherwise provided by law.
 - iii. 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 term and following completion of the Agreement if the ROK does not transfer the records to Client.
 - iv. Upon completion of the Agreement, transfer, at no cost, to Client all public records in possession of ROK or keep and maintain public records required by Client to perform the service. If ROK transfers all public records to Client upon completion of the Agreement, ROK shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ROK keeps and maintains public records upon completion of the Agreement, ROK shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Client, upon request from the Client's custodian of public records, in a format that is compatible with the information technology systems of Client.
 - v. If ROK does not comply with this section, Client shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

20. The required insurance coverage is to be issued by an insurance company authorized, licensed and registered to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be

documented in certificates of insurance which provides that the City of Delray Beach shall be notified at least thirty (30) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of Firm's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the City of Delray Beach. Firm shall provide insurance coverage as follows:

- A. Workers' Compensation Insurance – as required by law.
- B. Employer's Liability Insurance - \$100,000 per occurrence, \$100,000 for each disease, and \$500,000 for aggregate disease
- C. Comprehensive General Liability Insurance – with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for Bodily Injury and Property Damage.
- D. Automobile Liability Insurance - for owned, non-owned and hired vehicles – with a limit of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- E. Professional Liability Insurance - with limits of not less than \$1,000,000 per occurrence.
- F. All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

IN WITNESS WHEREOF, CLIENT and the ROK executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

ROK:

By: _____


Print Name: Corey Jenkins

Title: Account Executive

(SEAL)

STATE OF South Carolina
COUNTY OF Charleston

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 6 day of January, 2023 by Carey Jenkins (name of person), as Acct Executive (type of authority) for ROK Technologies (name of party on behalf of whom instrument was executed).

Personally known ___ OR Produced Identification
Type of Identification Produced SCDL

Andrea C. Orrach
Notary Public – State of SC

