

TECHNOLOGY SOFTWARE-AS-A-SERVICE (SaaS) AGREEMENT

AGREEMENT BETWEEN Gridics, LLC and City of North Miami, FL FOR SOFTWARE-AS-A-SERVICE

THIS AGREEMENT ("Agreement"), is entered into this 4th day of February 2022, by and between the City of North Miami, a Florida municipal corporation, whose address is 776 NE 125th Street, North Miami, FL 33161 and Gridics, a LLC whose address is 169 E. Flagler St. Suite 1640, Miami, FL 33131 ("Gridics") (collectively referred to as the "Parties").

RECITALS:

The following Recitals are a substantive portion of this Agreement:

- A. City of North Miami is a municipal corporation duly organized and validly existing under the laws of the State of Florida.
- B. Gridics is specially trained, experienced and competent to perform the special services required under this Agreement.
- C. City and Gridics desire to enter into an agreement for Gridics's provision of software-as-a-service (SaaS) pertaining to City's online systems. Through this Agreement, Gridics shall provide to City initial implementation of the Gridics municipal software platform for evaluation, analysis, planning and visualization of City's zoning regulations, and ongoing user access licenses relating to the City's network. The full scope of services covered by this agreement is described in the attached Exhibit A: Service Level Agreement (the "SLA").

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM** - The term of this Agreement shall commence on the date and year written above. The term of this Agreement is one year, unless the Agreement is terminated prior thereto under the provisions of Section 16, below. This Agreement may be renewed for two additional one year terms.
2. **SCOPE OF SERVICES AND CONDITIONS THEREOF** - Subject to the terms and conditions set forth in this Agreement, Gridics shall perform each and every service to the schedule of performance set forth in the SLA (collectively "Services"), as described below.
 - a. Responsibilities of Gridics. Gridics shall provide the software services as further described in the SLA. The Services provided under this Agreement shall include (a) any software, plug-ins or extensions related to the Services or upon which the Services are based including any and all updates, upgrades, bug fixes, dot releases, version upgrades or any similar changes that may be made available to the Gridics from time to time (the "Software"), (b) any and all technical documentation necessary or use of the Services, in hard copy form or online (the "Documentation"), (c) regular maintenance of Gridics' system, and (d) other technology, user interfaces, know-how and other trade secrets, techniques, designs, inventions, data, images, text, content, APIs, and tools provided in conjunction with the Services.
 - b. Equipment. If necessary to enable Gridics to fulfill its obligations under the SLA, Gridics shall, at its sole cost and expense, furnish all facilities, personnel and equipment to City necessary to provide the Services (the "Equipment"). City agrees, if necessary, to install the Equipment at the location(s) and in the manner specified by Gridics and as directed by Gridics. Any Equipment installed by City is a part of the Service and loaned to City by

Gridics, not sold. City agrees to return the Equipment to Gridics at the termination of this Agreement in an undamaged condition, less ordinary wear and tear.

- c. Registration. Prior to using the Services, City shall identify the administrative users for its account ("Administrators"). Each Administrator will be provided an administrator ID and password.
- d. License Grant. Gridics hereby grants City a license to use the Software and the Documentation for the permitted purpose of accessing the Services.
- e. Reservation of Rights and Data Ownership. City shall own all right, title and interest in its data that is related to the services provided by this contract. Gridics shall not access City user accounts or City data, except (1) as essential to fulfillment of the objectives of this Agreement, (2) in response to service or technical issues, or (3) at City's written request.
- f. Data Protection. In carrying out the Services, Gridics shall endeavor to protect the confidentiality of all confidential, non-public City data ("City Data") as follows:
 - i. Implement and maintain appropriate security measures to safeguard against unauthorized access, disclosure or theft of City Data in accordance with recognized industry practice.
 - ii. City Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, Gridics is responsible for encryption of the City Data.
 - iii. Gridics shall not use any City Data collected by it in connection with the Services for any purpose other than fulfilling the obligations under this Agreement.
- g. Software Ownership. Gridics owns the Software, Documentation and any underlying infrastructure provided by Service Provider in connection with this Agreement. City acknowledges and agrees that (a) the Software and Documentation are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws, (b) Gridics retains all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to the Software, Documentation, any other deliverables, any and all related and underlying technology, and any derivative works or modifications of any of the foregoing, including, without limitation, (c) the Software and access to the Services are licensed on a subscription basis, not sold, and City acquires no ownership or other interest in or to the Software or the Documentation other than the license rights expressly stated herein, and (d) the Services are offered as an on-line, hosted solution, and that City has no right to obtain a copy of the Services.
- h. Restrictions. City agrees not to, directly or indirectly: (i) modify, translate, copy or create derivative works based on the Services or any element of the Software, (ii) interfere with or disrupt the integrity or performance of the Services or the data contained therein or block or disrupt any use or enjoyment of the Services by any third party, (iii) attempt to gain unauthorized access to the Services or their related systems or networks or (iv) remove or obscure any proprietary or other notice contained in the Services, including on any reports or data printed from the Services.
- i. Security Incident. In the event a data breach occurs with respect to City Data, Gridics shall immediately notify the appropriate City contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident. Gridics shall (1) cooperate with City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

- j. Notification of Legal Requests. Gridics shall contact City upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to City Data. Gridics shall not respond to subpoenas, service of process and other legal requests related to City without first notifying City, unless prohibited by law from providing such notice.
 - k. Access to Security Logs and Reports. Gridics shall provide reports to City in a format as specified in the SLA agreed to by both Gridics and City. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all City files related to this Agreement.
 - l. Responsibilities and Uptime Guarantee. Gridics shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of Gridics. The system shall be available for City's use on a 24/7/365 basis (with agreed-upon maintenance downtime).
 - m. Subcontractor Disclosure. Gridics shall identify all of its strategic business partners related to services provided under this Agreement, including all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with Gridics, and who shall be involved in any application development and/or operations.
 - n. Business Continuity and Disaster Recovery. Gridics shall provide to City a written business continuity and disaster recovery plan prior to or at the time of execution of this agreement and shall ensure that it meets City's recovery time objective (RTO) of four (4) hours or less.
 - o. Compliance with Accessibility Standards. Gridics shall comply with and adhere to the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101).
 - p. Web Services. Gridics shall use Web services exclusively to interface with City Data in near real time when possible.
 - q. Encryption of Data at Rest. Gridics shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless City approves the storage of personal data on Gridics's portable device in order to accomplish work as defined in the statement of work.
3. **COMPENSATION TO GRIDICS** - Gridics shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed \$25,000. The payments specified in this section shall be the only payments to be made to Gridics for services rendered pursuant to this Agreement. Gridics shall invoice City according to the following schedule:

Annual platform service fee- 2022 Renewal (January 1, 2022 - December 31, 2022)	\$25,000 Per Year
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City shall pay Contractor within thirty (30) days after receipt of Gridics' invoice. City shall return to Gridics any payment request determined not to be a proper payment request as soon as practicable, but not later than seven (7) days after receipt, and shall explain in writing the reasons why the payment request is not proper.

4. TIME IS OF THE ESSENCE - Gridics and City agree that time is of the essence regarding the performance of this Agreement.
5. LICENSES; PERMITS; ETC. - Gridics represents and warrants to the City that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required to carry out the purposes of this Agreement.
6. ASSIGNMENTS - Gridics may assign, sublease, or transfer this Agreement, or any interest therein, to a third party with the prior written consent of City. Such consent shall not be unreasonably withheld. City's withholding of consent shall be deemed reasonable if it appears that the intended assignee in question is not financially or technically capable of performing Gridics's obligations under this Agreement, or if City has reason to conclude that the proposed assignee is otherwise incapable of fulfilling Gridics's duties hereunder.
7. INDEPENDENT PARTIES - Gridics has been procured and is being engaged to provide Services to the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Gridics shall not attain nor be entitled to any rights or benefits of the City, nor any rights generally afforded classified or unclassified employees of the City. Gridics further understands that Florida Workers' Compensation benefits available to employees of the City are not available to Gridics, and agrees to provide workers' compensation insurance for any employee or agent of Gridics rendering Services to the City under this Agreement.
8. IMMIGRATION REFORM AND CONTROL ACT (IRCA) - Gridics assumes any and all responsibility for verifying the identity and employment authorization of all of his/her employees performing work hereunder, pursuant to all applicable IRCA or other federal or state rules and regulations. Gridics shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Gridics.
9. NON-DISCRIMINATION - Gridics certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap. Gridics further agrees that neither Gridics, nor any parent company, subsidiaries or affiliates of Gridics are currently engaged in, nor will engage in during the term of this Agreement, the boycott of a person or business based in or doing business with a member of the World Trade Organization or any country with which the United States has free trade.
10. INTELLECTUAL PROPERTY INDEMNIFICATION - Gridics agrees to, at its expense, defend and/or settle any claim made by a third party against the City alleging that the City's use of the Services infringes such third party's United States patent, copyright, trademark or trade secret (an "IP Claim"), and pay those amounts finally awarded by a court of competent jurisdiction against the City with respect to such IP Claim.
11. DUTY TO INDEMNIFY AND HOLD HARMLESS - Gridics shall indemnify, defend, and hold harmless City and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including for any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out, pertaining to, or related to the performance of this Agreement by Gridics or Gridics' employees, officers, officials, agents or independent contractors, except where such liability arises solely as a result of the active negligence or tortious conduct of City or its agent. Such costs and expenses shall include reasonable attorneys' fees of counsel of City's choice, expert fees and all other costs and fees of litigation. The provisions of this Section survive the completion of the Services or termination of this Contract. Nothing in this Agreement shall be deemed or treated as a waiver by the City of any immunity to which it is entitled by law, including but not limited to the City's sovereign immunity as set forth in Section 768.28, Florida Statutes.
12. INSURANCE:

- a. General Requirements. On or before the commencement of the term of this Agreement, Gridics shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "B". Gridics shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement.
 - b. Subrogation Waiver. Gridics agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Gridics shall look solely to its insurance for recovery. Gridics hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Gridics or City with respect to the services of Gridics herein, a waiver of any right to subrogation which any such insurer of said Gridics may acquire against City by virtue of the payment of any loss under such insurance.
13. RECORDS - Gridics shall maintain internal records reflecting that the Services were performed by Gridics hereunder in accordance with customary recordkeeping practices in the software development industry. Gridics shall provide free access to such records to the representatives of the City or its designee's at all reasonable and proper times, and gives the City the right to examine and audit same, and to make transcripts therefrom as necessary. No such examination and audit shall give the City the right to access records relating to other Gridics customers. Such records shall be maintained for a period of three (3) years after Gridics receives final payment from City for all services required under this agreement.
14. NONAPPROPRIATION - This Agreement is subject to the fiscal provisions of the City's Municipal Code and Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.
15. NOTICES - All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after deposit in the U.S. Mail, postage prepaid, addressed as hereinafter provided. All notices, demands, requests, or approvals shall be addressed as follows:

To City:

Theresa Therilus, Esq., City Manager
City of North Miami
776 NE 125 Street
North Miami, FL 33161

Copies To: 

Vanessa Joseph, Esq., City Clerk
City of North Miami
776 NE 125 Street
North Miami, FL 33161

Jeff P.H. Cazeau, Esq., City Attorney
City of North Miami
776 NE 125 Street
North Miami, FL 33161

To Gridics:

Gridics, LLC
169 E. Flagler St. Suite 1640, Miami, FL 33131
Attention: Jason Doyle

16. TERMINATION

- a. Basis for Termination. In the event Gridics fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Gridics shall be deemed in default in the performance of this Agreement. If Gridics fails to cure the default within the time specified and according to the requirements set forth in City's written notice of default, and in addition to any other remedy available to the City by law, the City Manager may terminate the Agreement by giving Gridics written notice thereof, which shall be effective immediately. The City Manager shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) calendar days' prior written notice to Gridics as provided herein. Upon receipt of any notice of termination, Gridics shall immediately discontinue performance.
- b. *Pro Rata* Payments. City shall pay Gridics for services satisfactorily performed up to the effective date of termination. In such event, a calculation of the amounts due shall be deemed correct as computed on a *pro rata* basis with compensation provided for the period of service paid as a percentage of the total contract amount.
- c. Handling of City Data. In the event of a termination of this Agreement, Gridics shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data. During any period of service suspension, Gridics shall not take any action to intentionally erase any City data for a period of 30 days after the effective date of termination, unless authorized by City. City shall be entitled to any post-termination assistance generally made available with respect to the Services; unless a unique data retrieval arrangement has been established as part of the SLA. Gridics shall securely dispose of all requested data in all of its forms, such as disk, CD/ DVD, backup tape and paper, when requested by City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to City.

17. WARRANTY AND WARRANTY DISCLAIMER - Gridics warrants that, (i) the services shall be provided in a diligent, professional, and workmanlike manner in accordance with industry standards, (ii) the services provided under this agreement do not infringe or misappropriate any intellectual property rights of any third party, and (iii) the services shall substantially perform in all material respects as described in the SLA in the event of any breach of section (iii), above, Gridics shall, as its sole liability and your sole remedy, repair or replace the services that are subject to the warranty claim at no cost to City or if Gridics is unable to repair or replace, then it will refund any pre-paid fees for services not rendered. Except for the warranty described in this section, the services are provided without warranty of any kind, express or implied including, but not limited to, the implied warranties or conditions of design, merchantability, fitness for a particular purpose, and any warranties of title and non-infringement.
18. COMPLIANCE - Gridics shall comply with all state or federal laws and all ordinances, rules, policies and regulations enacted or issued by City.
19. GOVERNING LAW - This Agreement shall be governed by, construed in accordance with, the laws of the State of Florida. The venue for any dispute arising from this Agreement shall be the Circuit Court of Miami Dade City, Florida.

20. INTEGRATED CONTRACT - This Agreement, including all appendices, represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Gridics. In the event that any Service Level Agreement, Exhibit, associated instrument or agreement executed by the Parties in conjunction with this Agreement or prior thereto contains a term that conflicts with the terms of this Agreement, the terms of this Agreement shall govern and supersede any other document or Exhibit.
21. NO CONTINGENT FEES - Gridics warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Gridics, 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 Gridics any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
22. GRIDICS' COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW - Pursuant to Section 119.0701 of the Florida Statutes, Gridics agrees to:
- a. Keep and maintain public records in Gridics's possession or control in connection with Gridics' performance under this agreement. Gridics 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 City.
 - b. Upon request from the City's custodian of public records, Gridics shall 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.
 - c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City. Notwithstanding, it is understood that at all times Gridics's workpapers shall remain the sole property of Gridics, and are not subject to the terms of this Agreement.
 - d. 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 Gridics shall be delivered by Gridics to the City Manager, at no cost to the City, within seven (7) days. All such records stored electronically by Gridics shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, Gridics shall destroy any and all duplicate records that are exempt or confidential and exempt from public records disclosure requirements. Notwithstanding the terms of this Section, the Parties agree and it is understood that Gridics will maintain a copy of any information, confidential or otherwise, necessary to support its work product generated as a result of its engagement for services, solely for reference and archival purposes in accordance with all applicable professional standards, which will remain subject to the obligations of confidentiality herein.
 - e. Any compensation due to Gridics shall be withheld until all records are received as provided herein.
 - f. Gridics's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

IF GRIDICS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GRIDICS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-895-9888 or fmedranda@northmiamifl.gov OR BY MAIL: City of North Miami – 776 NE 125 Street, North Miami, FL 33161.

23. SCRUTINIZED COMPANIES

- a. Gridics certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if Gridics or its subcontractors are found to have submitted a false certification; or if Gridics, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, Gridics certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if Gridics, its affiliates, or its subcontractors are found to have submitted a false certification; or if Gridics, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. Gridics agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

24. WAIVER - No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

25. AUTHORITY

The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

GRIDICS
Gridics, LLC



Jason Doyle, CEO

Date February 7, 2022

City of North Miami
A Municipal Corporation

Theresa Therilus, Esq., City Manager

Date _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of North Miami, Florida, only:

Jeff P.H. Cazeau, Esq.
City Attorney

ATTEST:

Vanessa Joseph, Esq.
City Clerk