

RESOLUTION NO. 23-151

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING THE MASTER SERVICES AGREEMENT WITH CLOUD NAVIGATOR, INC. RELATING TO A MAIL TENANT MERGER AND ANNUAL MICROSOFT 365 LICENSING FOR A ONE-TIME MIGRATION COST OF \$77,300 WITH AN ONGOING ANNUAL COST OF \$91,176.

BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Master Services Agreement with Cloud Navigator, Inc., relating to the Mail Tenant Merger and Annual Microsoft 365 Licensing for a one-time migration cost of Seventy-Seven Thousand, Three Hundred Dollars (\$77,300.00), with an ongoing annual cost of Ninety-One Thousand, One Hundred Seventy-Six Dollars (\$91,176), in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 13th day of April, 2023.

CITY OF PANAMA CITY BEACH

By 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk



CLOUD NAVIGATOR MASTER SERVICE AGREEMENT

This agreement ("AGREEMENT") is made and entered into as of the Contract Effective Date (defined below), by and between

CLOUD NAVIGATOR, a corporation organized under the laws of the State of Florida and having its principal office at 2551 Welaunee Blvd, Tallahassee, Florida 32308, and City of Panama City Beach, FL a corporation organized under the laws of the State of Florida and having its principal office at 17007 Panama City Beach Parkway, PCB, FL 32413 ("CLIENT") with "Contract Effective Date" of April 13, 2023.

RECITALS

WHEREAS, CLOUD NAVIGATOR is in the business of providing information technology services in areas of practice that include cloud onboarding, management and support, solution design and deployment, application development, and cloud computing advisor services as well as providing cloud service subscription services and licensing; and

WHEREAS, CLIENT desires to retain the services and expertise of CLOUD NAVIGATOR relating to the above mentioned and other areas of expertise;

NOW, THEREFORE, in consideration of the premises and mutual agreements herein, CLIENT and CLOUD NAVIGATOR agree as follows:

1. CLIENT hereby retains CLOUD NAVIGATOR and CLOUD NAVIGATOR agrees to be so retained to provide Project Services and/or Subscription and Support Services.
 - a. CLOUD NAVIGATOR shall maintain liaison with and report to such CLIENT representative as CLIENT may designate;
 - b. Products and Services provided by CLOUD NAVIGATOR will be described in on or more "Statement of Work" documents and/or one or more "Subscription Services and Budget" documents as follows:
 - c. Project Services.
 - i. CLOUD NAVIGATOR will provide information technology services ("Services") as described in one or more optional attached "Statements of Work" documents;
 - ii. A Statement of Work may be attached by reference to this Services Agreement between CLIENT and CLOUD NAVIGATOR with the Contract Effective Date noted;
 - d. Subscription and Support Services.
 - i. CLOUD NAVIGATOR will provide optional cloud product subscription and licensing as a direct reseller with cloud product vendors including Microsoft, Brainstorm and others as described in one or more optional attached "Subscription Services and Budget" documents;
 - ii. A Subscription Services and Budget may be attached by reference to this Services Agreement between CLIENT and CLOUD NAVIGATOR with the Contract Effective Date noted;
 - iii. CLOUD NAVIGATOR will provide support for cloud product subscription and licensing as described in the Support Services section of this agreement;
 - iv. If CLIENT subscribes to Microsoft cloud licensing, then CLIENT agrees to the then current "Microsoft Cloud Agreement" at the time of signing of this AGREEMENT.
2. Independent Contractor Status.

In connection with this AGREEMENT, CLOUD NAVIGATOR shall be an independent contractor and as such will not have any authority to bind or commit CLIENT. Nothing herein shall be deemed or construed to create a joint venture, partnership, agency or employee/employer relationship between the parties for any purpose, including but



not limited to, withholding for purposes of Social Security or income tax, or entitlement to vacation, insurance, retirement or other employee benefits. CLOUD NAVIGATOR will be solely responsible for payment of any and all taxes and insurance, including workers' compensation hereunder.

3. No Power to Act on Behalf of CLIENT.

CLOUD NAVIGATOR shall not have any right, power or authority to create any obligation, express or implied, or make any representation on behalf of CLIENT except as it may be expressly authorized from time to time by CLIENT and then only to the extent of such authorization.

4. Support Services.

- a. This section describes support to be provided to all customers purchasing Subscription and Support Services unless otherwise described in an attached Subscription Services and Budget document; this is the default support service level agreement (SLA) for CLOUD NAVIGATOR Subscription and Support Services customers;
- b. CLOUD NAVIGATOR will provide technical support to a maximum of five (5) named CLIENT Technical Support Contacts;
- c. CLIENT's first level of support is CLIENT technical support staff;
- d. CLIENT is entitled to tier 2 support from 8:00am to 5:00pm Eastern time on business days;
- e. CLIENT is optionally entitled to 24 hours per day, 7 days per week (24x7) tier 2 support when 24x7 support is included in a "Service Description and Budget" agreement attached by reference to this agreement;
- f. CLOUD NAVIGATOR will monitor incidents and work closely with CLIENT Technical Support Contact for proper escalation;
- g. CLIENT may email a service request or use the CLOUD NAVIGATOR customer portal to submit a service request;
- h. The priority or severity of the Service Request will determine the target response time for the request as follows:

Priority	Severity	Response Time
1	High	1 hour
2	Medium	6 hours
3	Low	Next Business Day

- i. Support service may be limited or denied for a Service Request due to the following:
 - i. Due to factors outside of CLOUD NAVIGATOR's reasonable control;
 - ii. That resulted from CLIENT's or third-party hardware or software;
 - iii. That resulted from actions or inactions of CLIENT or third parties;
 - iv. Caused by CLIENT's use of the Service after CLOUD NAVIGATOR or the product vendor advised CLIENT to modify its use of the Service, if CLIENT did not modify its use as advised;
 - v. During scheduled downtime; or
 - vi. During beta and trial services;
- j. CLOUD NAVIGATOR shall undertake reasonable efforts to; acknowledge receipt of a Service Request from a Technical Support Contact within the time allotted ("Response Time") and resolve the reported issue;
- k. Each party acknowledges that despite a party's reasonable efforts, not all problems may be solvable by Cloud Navigator or customer and may require escalation via a ticket to Microsoft support services.
- l. Processing time for CLOUD NAVIGATOR starts from the date and time when CLOUD NAVIGATOR acknowledges receipt of a Service Request. If the Service Request cannot be solved within a commercially reasonable timeframe, the Service Request may be escalated to Microsoft Support.

5. Fees.

- a. CLIENT shall pay CLOUD NAVIGATOR for Services under this AGREEMENT in the amount and manner specified in one or more attached Statements of Work;
- b. CLIENT shall pay CLOUD NAVIGATOR for Subscription and Support Services under this AGREEMENT in the amount and manner specified in one or more Subscription Services and Budget;



- c. CLIENT may authorize ad-hoc services (HOURLY SERVICES) in writing, including the following details:
 - i. Start Date
 - ii. Hours of Work Authorized
 - iii. Manner and Scope of Work Authorized
 - iv. Optionally, the rate of pay for such HOURLY SERVICES, which shall be \$150 per hour unless otherwise noted
 - d. CLOUD NAVIGATOR invoices are submitted monthly after the month during which services are rendered and are due NET 30.
6. Expenses.
 - a. CLIENT shall reimburse CLOUD NAVIGATOR for actual out-of-pocket expenditures incurred by CLOUD NAVIGATOR in performing the Services, provided that they are consistent with applicable expense policies of CLIENT and expenses are approved by CLIENT in writing;
 - b. To the extent requested by CLIENT, all airline and lodging reservations shall be made through CLIENT travel coordinators. Out-of-town travel shall require advance approval by CLIENT;
 - c. Allowable out-of-pocket expenses will be reimbursed bi-weekly based upon actual expenditures incurred. Airline travel will be reimbursed only at coach air fare. Requests for reimbursement shall be presented on a form and in a manner acceptable to CLIENT and shall be accompanied by supporting documentation as required by CLIENT;
 - d. CLIENT shall provide such reasonable office space, computer resources, materials, facilities and other support to assist CLOUD NAVIGATOR in its performance hereunder as may be mutually agreed to by the parties.
7. Delinquency.
 - a. If CLIENT does not remit payment for invoices when due, CLOUD NAVIGATOR reserves the right to initiate termination of service. CLOUD NAVIGATOR invoices are due 30 days from issue unless otherwise stated. If termination process is initiated, Customer may lose access to subscribed cloud products and licenses and all Services provided through this agreement. Customer data will be retained for a time period of at least 30 days for delinquent accounts.
8. Covenants.

CLOUD NAVIGATOR represents and covenants to CLIENT as follows:

 - a. In performing the Services and providing any resulting work product hereunder, CLOUD NAVIGATOR will comply at all times with all applicable laws and regulations of the United States and any other jurisdiction in which it performs the Services hereunder;
 - b. In performing the Services and providing any resulting work product hereunder, CLOUD NAVIGATOR, its employees and agents shall perform its Services in a manner consistent with the ethical and professional standards of the CLIENT and shall comply with all applicable policies and standards provided by CLIENT in writing to CLOUD NAVIGATOR;
 - c. CLOUD NAVIGATOR, its employees and agents shall comply at all times with all security requirements provided by CLIENT in writing to CLOUD NAVIGATOR and in effect from time to time at CLIENT premises (or any premises of a CLIENT or patron of CLIENT) or otherwise relating to the facilities, data, systems, resources, websites, operations or business of CLIENT (or of any CLIENT or patron of CLIENT);
 - d. The Deliverables of the Services under this AGREEMENT will not infringe the intellectual or proprietary rights of any third party;
 - e. The Deliverables of the Services under this AGREEMENT will not contain any viruses, time bombs or other surreptitious code.
9. Confidentiality.

During the course of performing the Services for CLIENT, CLOUD NAVIGATOR may have access to information that (a) relates to CLIENT's and/or its patrons' research, development, or business activities and any proprietary products, materials, services, or technical knowledge, or (b) is marked "Confidential" in writing by CLIENT, ("Confidential Information"). The following subsections shall apply to the Confidential Information



- a. The Confidential Information may be used by CLOUD NAVIGATOR only to assist CLOUD NAVIGATOR in connection with providing Services;
 - b. CLOUD NAVIGATOR agrees to protect the security and confidentiality of the Confidential Information in the same manner that it protects its own confidential information of like kind, but in any case, using reasonable care and precautions. Access to the Confidential Information shall be restricted to those of CLOUD NAVIGATOR's personnel engaged in a use permitted hereby and CLOUD NAVIGATOR shall not disclose Confidential Information to any third party;
 - c. Unless otherwise expressly authorized in writing by CLIENT, all Confidential Information made available to CLOUD NAVIGATOR, including all summaries, derivatives and copies thereof, shall be returned to CLIENT upon the first to occur of (a) termination of this AGREEMENT or (b) request by CLIENT;
 - d. Nothing in this AGREEMENT shall prohibit or limit CLOUD NAVIGATOR's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (i) previously known to it, (ii) independently developed by it without reference to any CLIENT Confidential Information or materials, (iii) acquired by it from a third party which is not under an obligation to CLIENT not to disclose such information, or (iv) which is or becomes publicly available through no breach by CLOUD NAVIGATOR of this AGREEMENT;
10. Limitation of Liability.
EXCEPT FOR CLIENT'S DUTY HEREUNDER TO PAY FEES OR REIMBURSE EXPENSES TO CLOUD NAVIGATOR AND EXCEPT FOR A BREACH OF THE CONFIDENTIALITY TERMS HEREOF OR INDEMNITY OBLIGATIONS, AND WITHOUT LIMITING ANY SPECIFIC REMEDY EXPRESSLY PROVIDED FOR IN THIS AGREEMENT NEITHER PARTY SHALL BE RESPONSIBLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES OR LOSS NOR FOR ANY HARM TO OR LOSS OF PROFITS, REVENUE, BUSINESS OR BUSINESS OPPORTUNITY, NOR FOR ANY DAMAGES. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY WHETHER OR NOT A PARTY CHARGED WITH LIABILITY HAS BEEN ADVISED OF THE POSSIBLE EXISTENCE OF DAMAGES OR LIABILITY OF THE KIND EXCLUDED OR LIMITED, AND REGARDLESS OF THE THEORY OF RELIEF ASSERTED (E.G., WHETHER IN CONTRACT, TORT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY IN TORT OR BY STATUTE, OR OTHERWISE) AND WHETHER OR NOT ANY REMEDY OFFERED OR PERFORMED IS HELD TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THE TERMS OF THIS LIMITATION OF LIABILITY SECTION REPRESENT THE AGREED AND BARGAINED-FOR UNDERSTANDING OF THE PARTIES AND EACH PARTY'S DECISION TO ENTER INTO THIS AGREEMENT IS BASED IN SUBSTANTIAL PART UPON THE TERMS OF THIS SECTION.
11. Term and Termination.
This AGREEMENT shall remain in effect until terminated in accordance with the term hereof (the "Term");
- a. CLIENT may at any time and without cause terminate this AGREEMENT upon giving sixty (60) working days written notice to CLOUD NAVIGATOR.
 - b. Upon any past-due payment by CLIENT to CLOUD NAVIGATOR, in accordance with section 4 ("Fees"), where payment is 15 days past due, CLOUD NAVIGATOR may at their sole discretion terminate this AGREEMENT.
 - c. Upon termination of this AGREEMENT for any reason, CLOUD NAVIGATOR shall be entitled to payment of all fees and reimbursement of expenses provided for hereunder and due and incurred through the effective date of such termination. CLOUD NAVIGATOR will immediately cease all affected work and shall promptly provide to CLIENT, without additional cost or obligation to CLIENT, all Deliverables of Services then relevant, developed, obtained, assembled or prepared to date, and all materials provided to CLOUD NAVIGATOR by CLIENT in connection with this AGREEMENT.
12. Publicity.
CLOUD NAVIGATOR agrees it will not use CLIENT's name or any of their intellectual property, including but not limited to, any trademarks, logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of CLIENT.
13. Assignment.
This AGREEMENT may not be assigned by either party, except upon express prior consent in writing of the other



party. Any transaction not in compliance with this Section is void. For purposes of the preceding sentences and without limiting its generality, any merger, consolidation or reorganization involving either party shall not be considered a sale, transfer or assignment.

14. Waiver.

Failure of either party to enforce any of the provisions of this AGREEMENT, of any rights with respect thereto, or failure to exercise any election provided for herein, shall in no way be considered a waiver of such provisions, rights or elections, or in any way affect the validity of this AGREEMENT. The failure of either party to enforce any of said provisions, rights or elections shall not prejudice such party from later enforcing or exercising the same or any other provisions, right or elections which it may have under this AGREEMENT.

15. Notices.

Any payment, notice, consent or other communication given pursuant to this AGREEMENT shall be in writing and shall be effective when delivered personally to the party for whom intended, or five (5) days following deposit of the same into the United States mail (certified or registered mail, return receipt requested, or first class mail postage prepaid), addressed so such party as set forth below or as either party may designate by written notice given to the other party in accordance herewith

- a. If to CLIENT, at the address for CLIENT set forth above, addressed to the attention of the signatory, and;
- b. If to CLOUD NAVIGATOR, at the address for CLOUD NAVIGATOR set forth above, addressed to the attention of the signatory.

16. Severability.

If any term or provision of this AGREEMENT shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this AGREEMENT, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

17. Force Majeure.

Neither party shall be liable for any unforeseeable delays or failures in performance due to circumstances beyond its control.

18. Limited Warranty and Disclaimer of Warranty

CLOUD NAVIGATOR DISCLAIMS AND THIS AGREEMENT EXPRESSLY EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL DELIVERABLES OF SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND.

19. Intellectual Property.

- a. CLOUD NAVIGATOR will retain all intellectual property rights to work products resulting from Services provided to CLIENT unless otherwise noted in this AGREEMENT or any attached SOW.
- b. CLOUD NAVIGATOR hereby grants to CLIENT an exclusive, perpetual, non-transferable, fully paid, worldwide right and license, to any work products resulting from Services provided for CLIENT's business purposes, including CLOUD NAVIGATOR existing intellectual property that CLOUD NAVIGATOR provides to CLIENT within the provision of such Services.
- c. Nothing herein shall restrict either party's right to develop, use or market any products or services as long as it shall not thereby breach this AGREEMENT. Notwithstanding this AGREEMENT's other provisions, neither party shall be liable for use or disclosure of any comment on, or other feedback received in any form concerning,



any products, services, plans, research or other information submitted or shared by the other party hereunder, nor for use or disclosure of any Residual Information. "Residual Information" means information (including, without limitation, ideas, concepts, know-how, expressions and techniques) that either party's personnel retain by memory as a result of activities undertaken in connection with this AGREEMENT. This AGREEMENT does not restrict, and either party remains free to use, information obvious to those skilled in the disciplines of information or systems technology, software development, data processing, e-commerce and such other practice areas engaged in professionally by either party.

20. Non-Solicitation of Employees.

- a. CLIENT will not, directly or indirectly, approach, solicit, entice or attempt to approach, solicit or entice any of CLOUD NAVIGATOR's employees or any individual who has left the employment of CLOUD NAVIGATOR without the express written consent of CLOUD NAVIGATOR.
- b. CLIENT acknowledges that breach of the terms of the "Non-Solicitation of Employees" may cause irreparable harm to CLOUD NAVIGATOR, which may not be compensable by monetary damages. Accordingly, CLIENT acknowledges that such a breach of the terms of the "Non-Solicitation of Employees" shall be sufficient grounds for the granting of an injunction.

21. Complete AGREEMENT.

This AGREEMENT sets forth the entire understanding between the parties hereto and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof. CLIENT acknowledges that it is entering into this AGREEMENT solely on the basis of the agreements and representations contained herein. This AGREEMENT may not be modified or amended except by the mutual written agreement of the parties. Captions appearing in this AGREEMENT are for convenience only and shall not be deemed to explain, limit or amplify the provisions hereof.

22. Governing Law.

This AGREEMENT, and all of the parties' respective rights and duties in connection herewith, shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to conflicts of laws rules, and any action or similar proceeding that might arise from or in connection with this AGREEMENT or its subject matter may be neither commenced nor maintained except in the courts located in Leon County, Florida and their applicable courts of appeal, and the parties agree to such jurisdiction exclusively. Any action to enforce a judgment so obtained, however, may be brought in any court of competent jurisdiction.

IN WITNESS WHEREOF, the parties have duly executed this AGREEMENT as of the Contract Effective Date.

Cloud Navigator	Client	<u>City of Panama City Beach, FL</u>
By _____	By	<u></u>
Printed Name _____	Printed Name	<u>Drew Whitman, City Manager</u>
Date _____	Date	<u>4-17-23</u>



Cost Schedule

Fixed Price for Office 365 Migration (982 Mailboxes)

This is the total fixed price for the services and deliverables outlined in this proposal/statement of work. The Total Fixed Price shall include all labor and materials. This price is inclusive of any third-party licenses used by Cloud Navigator to perform the Work.

- Project Management will be invoiced after Project Closeout is complete
- Exchange Migration will be invoiced after each phase (Design, Prepare, Test, and Migrate)
- Teams, SharePoint, and OneDrive will be invoiced after the respective migration is complete
- You will be invoiced for the BitTitan migration tool after Discovery is completed
 - o The cost for the BitTitan tool below is an estimate due to you having over 50 or 100 GB in some Teams and SharePoint Sites. We will adjust the cost as Discovery is completed
- Monthly Support Package will be invoiced after Project Closeout is complete

Deliverables for the City of Panama City Beach				Cost
Project Management				\$7,200.00
Total for Project Management Services				\$7,200.00
Exchange Migration – 982 mailboxes				
- Design Phase				\$4,500.00
- Prepare Phase				\$6,600.00
- Test Phase				\$3,900.00
- Migrate Phase				\$12,600.00
Total for Email Migration Services				\$27,600.00
Other Office 365 Migration Services				
- Migrate Teams Sites and OneDrive Data				\$6,000.00
- Migrate SharePoint Sites and Data				\$9,000.00
Total for Other Office 365 Migration Services				\$15,000.00
Tools & Support				
- Estimated BitTitan Migration Tool		500	\$55.00	\$27,500.00
- Monthly Support Package (3 years/36 months)		36	\$2,400.00	\$86,400.00
Total for Tools & Support				\$113,900.00
Total Project Cost				\$163,700.00



Licensing Costs

The table below represents the current Microsoft Retail Pricing for each license listed. We will work with the City of Panama City Beach to determine the best overall licensing price and structure.

Per User Licensing for City of Panama City Beach	# of Units	Unit Cost per Month	Cost per Month	Annual Cost
Microsoft Licensing for PCBFL.gov Tenant				
- Azure AD Premium Plan 2	3	\$9.00	\$27.00	\$324.00
- Microsoft 365 Business Standard	160	\$12.50	\$2,000.00	\$24,000.00
- Exchange Online Plan 1	181	\$4.00	\$724.00	\$8,688.00
- Exchange Online Plan 2	8	\$8.00	\$64.00	\$768.00
- Exchange Online Archiving for Exchange Online	182	\$3.00	\$546.00	\$6,552.00
- Microsoft Defender for Office 365 Plan 2	342	\$5.00	\$1,710.00	\$20,520.00
- OneDrive for Business Plan 1	5	\$5.00	\$25.00	\$300.00
- Project Plan 3	2	\$30.00	\$60.00	\$720.00
Total PCBFL.gov Licensing Cost			\$5,156.00	\$61,872.00
Microsoft Licensing for BeachPolice.org Tenant				
- Office 365 G3 for GCC	104	\$23.00	\$2,392.00	\$28,704.00
- Exchange Online Kiosk for GCC	10	\$2.00	\$20.00	\$240.00
- Exchange Online Archiving for Exchange Online for GCC	10	\$3.00	\$30.00	\$360.00
Total BeachPolice.org Licensing Cost			\$2,442.00	\$29,304.00
Total Annual Licensing Cost				\$91,176.00