

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH
AND
PM AM CORPORATION
FOR
FIRE AND POLICE FALSE ALARM BILLING SYSTEM PURSUANT TO
RFP-2022-005-ND**

This Professional Services Agreement (“Agreement”) is entered into this _____ between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139 (“City”), and **PM AM CORPORATION**, whose address is 5430 LBJ FREEWAY, SUITE 370, DALLAS TEXAS 75240 (“PM AM”).

SECTION 1
DEFINITIONS

- Agreement: This Agreement between the City and PM AM, including any exhibits and amendments thereto.
- City Manager: The chief administrative officer of the City.
- PM AM: For the purposes of this Agreement, PM AM shall be deemed to be an independent contractor, and not an agent or employee of the City.
- Services: All services, work and actions by the PM AM performed or undertaken pursuant to the Agreement, as more fully set forth in Exhibits A and B to this Agreement.
- Fee: Amount paid to PM AM as compensation for Services.
- Proposal Documents: Proposal Documents shall mean City of Miami Beach **RFP No. 2022-005-ND** for **FIRE AND POLICE FALSE ALARM BILLING SYSTEM**, together with all amendments thereto, issued by the City in contemplation of this Agreement, **The Request For Proposal**, and the PM AM’s proposal in response thereto (Proposal), all of which are hereby incorporated and made a part hereof; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, the following order of precedent shall prevail: this Agreement; the RFP; and the Proposal.
- Risk Manager: The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139: telephone number (305) 673-7000, Ext. 6435: and fax number (305) 673-7023.

SECTION 2
SCOPE OF SERVICES (SERVICES)

2.1 In consideration of the Fee to be paid to PM AM by the City, PM AM shall provide the work and services described in Exhibit "A" hereto (the Services).

2.2 PM AM's Services, and any deliverables incident thereto, shall be completed in accordance with the timeline and/or schedule in Exhibit "A" hereto.

SECTION 3
TERM

The term of this Agreement (Term) shall commence upon execution of this Agreement by all parties hereto, and shall be for a period of **two (2) years**, commencing on the date of execution of this Agreement, and ending on the day immediately preceding the second anniversary of the date of execution of this Agreement (the '**Initial Term**'), subject to earlier termination as set forth in Section 5 hereof, with **three (3) one (1) year renewal options**, on the same terms and conditions as set forth herein (each an "**Renewal Term**"), with each such one year renewal exercised at the City Manager's sole option and discretion prior to the expiration of the Initial Term or each Renewal Term.

Notwithstanding the Term provided herein, the PM AM shall adhere to any specific timelines, schedules, dates, and/or performance milestones for completion and delivery of the Services, as same is/are set forth in the timeline and/or schedule referenced in Exhibit B hereto.

SECTION 4
FEE

4.1 FEES STRUCTURE

The PM AM will collect all revenues generated in accordance to the City's False Alarm Ordinance, pursuant to the RFP, Appendix D.

4.2 PERCENTAGE OF GROSS (PG)

During the initial term and any approved renewal term, the successful contractor shall pay the City a percentage of its gross revenue collected from the enactment of false alarm program. Percentage of gross revenue shall be paid on a monthly base, showing the fee calculation and supporting payments reconciliation. In the event that the City chooses to extend the term of the agreement for any renewal term(s), the renewal term(s) range of collections may be increased in a manner to be negotiated between the City and successful contractor.

The term "gross receipts" is understood to mean all revenue collected or accrued, derived by PM AM under the privileges granted by this Agreement, excluding amounts of any Federal, State, or City sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind, collected by the PM AM from customers and required by law to be remitted to the taxing or other governmental authority.

PM AM will pay all costs including USPS postage, all paper stock, educational materials, equipment (including hardware, hosting charges, and software), tools, personnel, utilities, etc. that are required for administering the false alarm billing and tracking program on behalf of the City.

4.3 SPECIAL SERVICES

At any time during the term of this Agreement, City may request that PM AM perform Special Services for additional compensation to be agreed upon by City and PM AM prior to the performance of any Special Services by PM AM. As used herein, Special Services means any work which is determined by City to be necessary for this Agreement, but which the parties did not reasonably contemplate as part of the RFP or within PM AM's RFP proposal submission. If City and PM AM reach an agreement on the performance of Special Services, PM AM shall undertake such Special Services after receiving the authorization from City.

4.4 SIMILAR SERVICES

City acknowledges and agrees that PM AM reserves the right to offer, and may offer, similar services to other government agencies under similar terms and conditions as stated herein except that the revenue share percentage allocated to PM AM and the other government agency may be negotiated between PM AM and such other agency based on the specific revenue expectations, agency reimbursed costs, the exact scope of services to be provided by PM AM, and other agency requirements. PM AM acknowledges and agrees that City shall have no responsibility or liability whatsoever hereunder with respect to any agreement entered into between PM AM and such other government agency.

4.5 INVOICING

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**SECTION 5
TERMINATION**

5.1 TERMINATION FOR CAUSE

If PM AM shall fail to fulfill in a timely manner, or otherwise violates, any of the covenants, agreements, or stipulations material to this Agreement, City, through its City Manager, shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, City shall notify PM AM of its violation of the particular term(s) of this Agreement, and shall grant PM AM sixty (60) days to cure such default. If such default remains uncured after sixty (60) days, City may terminate this Agreement without further notice to PM AM. Upon termination, City shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

Notwithstanding the above, the PM AM shall not be relieved of liability to City for damages sustained by City by any breach of the Agreement by the PM AM. City, at its sole option and discretion, shall be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce City's right and remedies against PM AM. City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees.

5.2 TERMINATION FOR CONVENIENCE OF CITY

CITY MAY ALSO, THROUGH ITS CITY MANAGER, AND FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THE AGREEMENT AT ANY TIME DURING THE TERM BY GIVING WRITTEN NOTICE TO PM AM OF SUCH TERMINATION; WHICH SHALL BECOME EFFECTIVE WITHIN THIRTY (30) DAYS FOLLOWING RECEIPT BY THE PM AM OF SUCH NOTICE. IF THE AGREEMENT IS TERMINATED FOR CONVENIENCE BY CITY, PM AM SHALL BE PAID FOR ANY SERVICES SATISFACTORILY PERFORMED UP TO THE DATE OF TERMINATION; FOLLOWING WHICH CITY SHALL BE DISCHARGED FROM ANY AND ALL LIABILITIES, DUTIES, AND TERMS ARISING OUT OF, OR BY VIRTUE OF, THIS AGREEMENT.

City acknowledges that PM AM is installing/providing the Program at no cost to City. Consequently, in the event City terminates this Agreement within 12 months from the Effective Date for any reason other than the failure of PM AM to perform its Services hereunder that has not been cured by PM AM within 30 days of receipt of written notice of the problem, PM AM shall be entitled to receive, and City shall pay to PM AM, the fees that PM AM would have received hereunder for a period of 12 months less the number of months, if any, that PM AM was paid its fees hereunder prior to the termination of this Agreement (the "Guaranteed Period"). If this Agreement is terminated, the amount of the fees to be paid to PM AM shall be the average of the monthly fees retained by PM AM prior to termination of this Agreement multiplied by the number of months remaining in the Guaranteed Period. If the City terminates this Agreement for its convenience pursuant to this Section 5.2, the amount of fees to be paid to PM AM shall be the amount of the PM AM Revenue Share projected by the parties to be retained by PM AM during the Guaranteed Period at the time this Agreement was executed. The amount of any fees payable to PM AM pursuant to the provisions of this paragraph shall be paid by City upon termination this Agreement unless the parties agree to have such amount paid in equal monthly installments over an agreed period of time. The provisions of this paragraph shall survive the termination of this Agreement.

5.3 TERMINATION FOR INSOLVENCY

City also reserves the right to terminate the Agreement in the event the PM AM is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 5.2.

5.4 CHANGE IN CITY'S ALARM RELATED ORDINANCE/S

PM AM's Fee Schedule and pricing for any and all Services to be provided by PM AM to City under this Agreement have been set, established and agreed to be based upon the current provisions of applicable City ordinances relating to alarms. Should said ordinances change at any time during the term of this Agreement to reduce the applicable fee, fines and charges, then PM AM reserves the express right to enter into good faith negotiations with City to modify the Fee Schedule and pricing accordingly. If, within thirty (30) days of notice from PM AM to City of its desire to so renegotiate, the parties are unable to reach an agreement mutually acceptable to both parties, then PM AM reserves the right to terminate this Agreement. Said termination shall not be deemed to be a default by PM AM under this Agreement, PM AM shall be paid all fees and costs due and owing PM AM as of the date of said termination.

5.5 MISUSE OF PROPRIETARY SOFTWARE

PM AM may terminate this Agreement upon written notice to City if City intentionally attempts to appropriate the proprietary software of PM AM, by permitting copies of PM AM's proprietary software to be made by others, without PM AM's authorization, or if City intentionally misuses PM AM's software, without PM AM's authorization, for purposes not contemplated by the RFP or this Agreement.

5.6 EFFECT OF TERMINATION

5.6.1 If this Agreement is terminated as provided herein, City may require PM AM to provide all finished and/or unfinished data and other information of any kind possessed by PM AM in connection with the performance of Services under this Agreement. PM AM shall be required to provide such information within a reasonable period of time of receipt of the request not to exceed thirty (30) days. Specifically, in the event City shall terminate this Agreement:

5.6.1a All data relating to alarm permits shall be owned by City. Upon termination of this Agreement, PM AM shall promptly deliver to City all data in MS-SQL format.

5.6.1b PM AM retains all right and title to the Application Software (a web based application platform / browser based with multi-browser based builds with no FAT client installation requirement) including but not limited to, all publication rights, all development rights, all reproductions rights, and all rights that may follow from the commercial development of the Application Software. City does not acquire any ownership rights to the Application Software. The Application Software is protected in favor of PM AM, as well as any future registered trademarks, are trademarks of PM AM.

5.6.1c The Application Software is considered loaned and/or licensed to City during the duration of this Agreement, and City will not have any access to PM AM's proprietary software after the conclusion of the Agreement.

5.6.1d As of the date of said termination, City shall pay PM AM all fees and costs due and owing to PM AM pursuant to this Agreement.

5.6.1e The provisions of this Section shall survive the termination of this Agreement.

SECTION 6 INDEMNIFICATION AND INSURANCE REQUIREMENTS

6.1 INDEMNIFICATION; MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

The PM AM agrees to indemnify and hold harmless the City of Miami Beach and its officers, employees, agents, and contractors, from and against any and all actions

(whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the PM AM, its officers, employees, agents, contractors, or any other person or entity acting under PM AM's control or supervision, in connection with, related to, or as a result of the PM AM's performance of the Services pursuant to this Agreement. To that extent, the PM AM shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by City in the defense of such claims and losses, including appeals.

The provisions of this Section 6.1 and of this indemnification shall survive termination or expiration of this Agreement.

Notwithstanding any other obligation of PM AM hereunder, in no event shall either PM AM or City be liable to each other for any indirect, incidental, special, consequential or punitive damages, including loss of fees, profits or income, arising directly or indirectly out of this Agreement and/or the provision or non-provision of Services or Special Services hereunder, whether or not PM AM or City had any knowledge that such damages might be incurred.

If PM AM is required to indemnify City hereunder, PM AM may assume the defense of City with counsel reasonably acceptable to City at the expense of PM AM. In addition, City may engage its own counsel to participate in any defense in any such proceeding at City's expense.

6.2 INSURANCE REQUIREMENTS:

At the current time, PM AM does not maintain any offices in the State of Florida, nor does PM AM maintain any employees in such State. All Services required to be performed by PM AM hereunder shall be performed by PM AM at its offices in the State of Texas or elsewhere outside the State of Florida. The PM AM shall, at its own expense, maintain and carry in full force during the Term, the following insurance:

Commercial General Liability Insurance on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate.

Additional Insured - City of Miami Beach must be included by endorsement as an additional insured with respect to all liability policies (except Professional Liability and Workers' Compensation) arising out of work or operations performed on behalf of the contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed in the form of an endorsement to the contractor's insurance.

Notice of Cancellation - Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.

Waiver of Subrogation – Vendor agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of

whether the City has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers – Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.

Verification of Coverage – Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

CERTIFICATE HOLDER MUST READ:

CITY OF MIAMI BEACH
c/o EXIGIS Insurance Compliance Services
P.O. Box 947
Murrieta, CA 92564

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:

Certificates-miamibeach@riskworks.com

Special Risks or Circumstances - The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

SECTION 7
LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER

This Agreement shall be construed in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Agreement, PM AM and City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement.

SECTION 8
LIMITATION OF CITY'S LIABILITY

The City desires to enter into this Agreement only if in doing so the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged

breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000, except for and excluding any claims for fees or other compensation due to PM AM pursuant to Section 4, or any claim arising out of or relating to Section 9 of this Agreement. PM AM hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000. Any claim arising out of or relating to Section 9 of the Agreement shall be subject to the limits of liability as set forth in Section 768.28 of the Florida Statutes.

Accordingly, and notwithstanding any other term or condition of this Agreement, PM AM hereby agrees that the City shall not be liable to the Consultant for damages in an amount in excess of \$10,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

SECTION 9

CONFIDENTIALITY OF INFORMATION

At all times, PM AM shall recognize City's sole and exclusive ownership of all information provided by City, and the sole and exclusive right and jurisdiction of City to control the use of this information. Similarly, City recognizes that the proprietary software described in Section 5.6.1c. above is owned by PM AM and City has no rights or claim thereto.

Solely to the extent permitted by Florida law, including, without limitation, Chapter 119 of the Florida Statutes, each party agrees that neither it, nor its employees, subsidiaries, subcontractors, or agents shall disclose confidential information of the other party, to any person or to anyone except as necessary to perform its obligations under this Agreement or as required by law, without the expressed written permission of the other party or unless required to do so by law.

Each party further agrees that in the event that any documents containing confidential information of the other party and clearly marked as confidential, should be improperly distributed to a third-party, or removed in any way from the possession or control of the other party by a party for any purpose that is not contemplated by the RFP or this Agreement, the breaching party shall promptly notify the other party orally and in writing, to provide the owner of the confidential information with the opportunity to take such reasonable steps as it may deem advisable to enjoin the misuse and regain possession of such confidential information, or steps otherwise necessary for the protection of the owner's rights and the confidentiality of the information.

PM AM agrees to return any and all data furnished and information derived hereunder promptly upon a request by City and its authorized designee.

SECTION 10

GENERAL PROVISIONS

10.1 AUDIT AND INSPECTIONS

Upon reasonable verbal or written notice to PM AM, and at any time during normal business hours (i.e. 9AM – 5PM, Monday through Fridays, excluding nationally recognized holidays), and as often as City Manager may, in his/her reasonable discretion and judgment, deem necessary, there shall be made available to City Manager, and/or such representatives as City Manager may deem to act on City's behalf, to audit, examine, and/ or inspect, any and all other documents and/or records relating to all matters covered by this Agreement. PM AM shall maintain any and all such records at its place of business at the address set forth in the "Notices" section of this Agreement.

10.2 CITY'S RESPONSIBILITY

City shall cooperate with and assist PM AM by, among other things, making available, as reasonably requested by PM AM, management decisions, information, approvals, reasonable IT assistance and acceptance that are directly necessary for PM AM to carry out its obligations under this agreement.

10.3 ASSIGNMENT, TRANSFER OR SUBCONSULTING

PM AM shall not subcontract, assign, or transfer all or any portion of any work and/or service under this Agreement without the prior written consent of City Manager, which consent, if given at all, shall be in the Manager's sole judgment and discretion. Neither this Agreement, nor any term or provision hereof, or right hereunder, shall be assignable unless as approved pursuant to this Section, and any attempt to make such assignment (unless approved) shall be void.

10.4 PUBLIC ENTITY CRIMES

Prior to commencement of the Services, the PM AM shall file a State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes with City's Procurement Division.

10.5 NO DISCRIMINATION

In connection with the performance of the Services, the Consultant shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Consultant shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

10.5 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of the Services, the PM AM shall not discriminate against any employee or applicant for employment because of race, color, national origin,

religion, sex, intersexuality, gender identity, sexual orientation, disability, marital and familial status, or age.

10.6 CONFLICT OF INTEREST

The PM AM herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and Ethics provisions, as set forth in the Miami-Dade County Code, and as may be amended from time to time; and by the City of Miami Beach Charter and Code (as some may be amended from time to time); both of which are incorporated by reference herein as if fully set forth herein.

The PM AM covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of the Services. The PM AM further covenants that in the performance of this Agreement, PM AM shall not knowingly employ any person having such interest. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising there from.

10.7 INSPECTOR GENERAL AUDIT RIGHTS

- (A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- (B) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Consultant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- (C) Upon ten (10) days written notice to the Consultant, the Consultant shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals,

activities of the Consultant its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

- (D) The Inspector General shall have the right to inspect and copy all documents and records in the Consultant's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (E) The Consultant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
 - i. If this Agreement is completely or partially terminated, the Consultant shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. The Consultant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to the Consultant, its officers, agents, employees, subcontractors and suppliers. The Consultant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Consultant in connection with the performance of this Agreement.
- (G) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Consultant or third parties.

SECTION 11
NOTICES

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

TO PM AM:

PM AM Corporation
5430 LBJ Fwy, Suite 370
Dallas, TX 75240

Attn: Dave Moss
Email:

TO CITY: City of Miami Beach
City Manager's Office
1700 Convention Center Drive, 4th Floor
Miami Beach, FL 33139
Attn: [Alina T. Hudak, City Manager](#)
Email: AlinaHudal@miamibeachfl.gov

WITH A COPY TO: City of Miami Beach
Fire Prevention
1701 Meridian Ave., 2nd Floor
Miami Beach, FL 33139
Attn: Jeremy Bloomfield, Fire Captain
Email: JeremyBloomfield@miamibeachfl.gov

AND: City of Miami Beach
Police Department
1100 Washington Ave.
Miami Beach, FL 33139
Attn: Andre Morale
Email: AndreMorales@miamibeachfl.gov

All notices mailed electronically to either party shall be deemed to be sufficiently transmitted.

SECTION 12 **MISCELLANEOUS PROVISIONS**

12.1 CHANGES AND ADDITIONS

This Agreement cannot be modified or amended without the express written consent of the parties. No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.2 SEVERABILITY

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

12.3 WAIVER OF BREACH

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A party's waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

12.4 JOINT PREPARATION

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

12.5 ENTIRETY OF AGREEMENT

City and PM AM agree that this is the entire Agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

12.6 PM AM'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

Pursuant to Section 119.0701 of the Florida Statutes, if the PM AM meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the PM AM shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- d) Meet all requirements for retaining public records and transfer to City, at no City cost, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of the PM AM upon termination of this Agreement. Upon termination of this Agreement, the PM AM shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to City in a format that is compatible with the information technology systems of City.

For purposes of this Article, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

PM AM's failure to comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes shall be a breach of this Agreement.

In the event the PM AM does not comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes, City may, at the City's sole discretion, avail itself of the remedies set forth under this Agreement and available at law.

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

CITY OF MIAMI BEACH

ATTENTION: RAFAEL E. GRANADO, CITY CLERK

1700 CONVENTION CENTER DRIVE

MIAMI BEACH, FLORIDA 33139

E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV

PHONE: 305-673-7411

12.7 FORCE MAJEURE

- (A) A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of the Consultant or the City's obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, inclement weather, or failure to secure any of the required permits pursuant to the Agreement.
- (B) If the City or Consultant's performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.
- (C) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part,

by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.

- (D) Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
- (E) Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party's performance under the Agreement for a time period greater than thirty (30) days, the City may, at the sole discretion of the City Manager, terminate the Agreement on a given date, by giving written notice to Consultant of such termination. If the Agreement is terminated pursuant to this section, Consultant shall be paid for any Services satisfactorily performed up to the date of termination; following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In no event will any condition of Force Majeure extend this Agreement beyond its stated term.

12.8 E-VERIFY

- (A) Consultant shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Consultant shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Consultant shall expressly require any subconsultant performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subconsultant during the contract Term. If Consultant enters into a contract with an approved subconsultant, the subconsultant must provide the Consultant with an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an unauthorized alien. Consultant shall maintain a copy of such affidavit for the duration of the Agreement or such other extended period as may be required under this Agreement.
- (B) **TERMINATION RIGHTS.**
 - (1) If the City has a good faith belief that Consultant has knowingly violated Section 448.09(1), Florida Statutes, the City shall terminate this Agreement with Consultant for cause, and the City shall thereafter have or owe no further obligation or liability to Consultant.
 - (2) If the City has a good faith belief that a subconsultant has knowingly

violated the foregoing Subsection 10.9(A), but the Consultant otherwise complied with such subsection, the City will promptly notify the Consultant and order the Consultant to immediately terminate the Agreement with the subconsultant. Consultant's failure to terminate a subconsultant shall be an event of default under this Agreement, entitling City to terminate the Consultant's contract for cause.

- (3) A contract terminated under the foregoing Subsection (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.
- (4) The City or Consultant or a subconsultant may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (B)(1) or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.
- (5) If the City terminates the Agreement with Consultant under the foregoing Subsection (B)(1), Consultant may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
- (6) Consultant is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 10.9.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
Rafael E. Granado, City Clerk

Alina T. Hudak, City Manager

Date: _____

FOR PM AM:

PM AM CORPORATION

By: _____

Print Name

Date: _____

EXHIBIT A

Scope of Services.

PM AM shall provide the City of Miami Beach Fire and Police Department with a real-time, web-based "False Alarm Billing System" and shall be responsible for administrating the City's real-time, web based, false alarm billing system which includes database development and management, registration of alarm systems, alarm tracking, billing, collection and accounting services for registration fees and false alarm fees, correspondence with citizens and businesses regarding false alarms for the Fire and Police Departments. The contractor shall provide the City with the ability to manage the back-office functions of the billing system which could include system configuration, false alarm case review, account management, financial statistics quality assurance/insurance and ad-hoc reporting. The application shall allow the residents, business owners, and alarm management entities the capability to register and manage both burglar and fire alarm account information via the internet. The contractor shall provide the customer with all aspects of customer service. Finally, the contractor will provide all hardware, software, materials, supplies, space, and staff resources as required, at no cost to the City.

A3. Specifications.

- Proposed solution must be hosted by third-party, and web enabled.
- Technical support shall be available via the telephone (toll free) during normal business hours. Monday through Friday, 8:00 a.m. to 5:00 p.m. (Eastern Standard Time), and after-hours emergency support.
- Provide customer support to residents and business owners during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. (Eastern Standard Time)
- Provide a dedicated account manager that will be responsible for providing support and implementation assistance.
- Provide initial training for the Fire and Police Department personnel on the proper use of the functions and applications, both at the individual and administrator level.
- Provide collection of payments in accordance with the rates established by the alarm ordinance, and any implementing resolution or orders, as may be amended from time to time by the City.
- Performance of all the billing in accordance with the City's alarm ordinance, and any implementing resolutions or orders, as may be amended from time to time by the City.
- Provide customers with the ability to make payments online.
- Identify and provide notice to alarm users that are delinquent by 30 days.
- Report to the City those alarm users that are delinquent by 30 days.
- Contractor will maintain a list of all City owned properties which will be excluded from collection of payment for any false alarm incidents.
- Respond to citizen complaints about lack of services to an alarm address.
- Respond to miscellaneous citizen complaints concerning the false alarm billing collection and related services.
- The contractor shall be the point of contact for all alarm users.
- The contractor shall send out notices when the City advises contractor that there is a new user of the alarm system.
- All templates for correspondence must be preapproved by the City prior to the use by the

contractor.

- The contractor shall supply hardware, software, and all services necessary to establish and provide the false alarm billing and collection service; to include postage.
- Contractor shall pay for the development and integration of two independent data interfaces: one for Police and one for Fire. Police will use the Computer Aided Dispatch (CAD) data while Fire will utilize Records Management System (RMS) data.
- Contractor shall make payments directly to the CAD and RMS vendor(s).
- Contractor shall work directly with the CAD and RMS vendor(s) as part of the build-out, testing, and implementation process of the data interfaces.

1. Minimum Requirements of the System.

- Single contractor for both Police and Fire Departments with separate user management and configuration.
- Daily resident assistance.
- Web based platform/browser based and no "FAT" client installation.
- Independent and configurable triggers to be defined by Police CAD data and Fire Department RMS data.
- Back-end user management tool that is permission based.
- Multi browser-based builds (Chrome, Safari, Mozilla, Firefox, Opera, IE, etc.).
- Administration configuration utility.
- Ad-hoc reporting tool.
- Records retention shall meet the State of Florida Schedule, per Chapter 119 and 257, Florida Statutes.
- Contractor to provide public service announcements and initial mailers for registration kick-off at no cost.
- Maintenance of databases:
 - (a) Alarm permits.
 - (b) Permit Holders.
 - (c) Permit Holders with outstanding charges.
 - (d) Non-permitted location with outstanding charges.

2. System Functionality Requirements.

- Public education via web and mailers.
- Provide a toll-free citizen customer support telephone line. Such services shall not be outsourced and shall be conducted by the selected vendor. Customer service personnel must have experience in handling the administration aspects (including tracking and billing) of the program and the service must be able to support any citizens' inquiries about the City's alarm ordinance, registrations, fines, etc.
- Provide continuing education programs for alarm users and alarm companies. The promotional campaign may include radio and television public service announcements, billboards, print advertisements.
- Public Access Portal.
- Self-registration of alarm via the web by customer or administrator.
- Mail Registration Acceptance.
- Call Center acceptance of registration to be handled by vendor.
- Ad-hoc reporting.
- Configurable accounting statistical and reporting tools.

- Ability to audit user's access and actions within application (i.e. record changes or billing changes).
- Ability to exclude specific response locations and mass import the exclusion locations (i.e. City buildings, hospitals, non-response locations).
- Ability to export to Excel, CSV, and or text files.
- Shall return the City's data in an agreed-upon format at the end of the contract term, if the contract is not renewed, or upon any earlier termination, at no cost to the City.
- Access to query system for notification/billing date/time stamp.
- Provide a monthly report of all fees collected for permits and false alarms.
- Violator must have the ability to dispute the Notice of Violation (NOV) within 30 days of notification (should delay billing functionality once dispute is received).
- Contractor customer service to flag disputes and provides notification to the City.
- Contractor to provide a system or business process for handling disputes (correction of record info, request for hearing at Special Master) within a certain number of days from NOV.
- City to have the ability to add notes/follow-up information on individual alarm profiles and incidents.
- Contractor to provide an automated upload process of violations with no end-user intervention.
- Ability to run reports based on geographical location (homeowners association, Fire Department Zone) by set map layers or polygon.

**EXHIBIT B
REVENUE COST PROPOSAL FORM**

Estimated Monthly Gross Collections¹ (A)	Monthly Percentage of Gross Revenue to the Vendor (B)	Monthly Estimated Cost to the City (C) (A X B = C)
\$25,000	<u>24%</u>	<u>\$ 6,000/-</u>

¹The estimated amounts stated herein are for calculation purposes only. Actual amounts may be greater or less than the estimated amounts.