

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE CITY OF DORAL  
AND  
E-FORENSICS  
FOR  
DIGITAL FORENSICS SERVICES**

**THIS AGREEMENT** is made between e-Forensics Incorporated, an active, for-profit Florida Corporation, validly engaging business in the state of Florida (hereinafter the “Provider”), and the **CITY OF DORAL, FLORIDA**, a Florida municipal corporation, (hereinafter the “City”).

**RECITALS**

**WHEREAS**, the City desires to have certain digital forensic, e-discovery, and information technology security services performed to test and strengthen the City’s information technology system as further defined herein (the “Services”) ; and

**WHEREAS**, having obtained the requisite number of competing quotes, staff has recommended that the City enter into an agreement with Provider for provision of the Services; and

**WHEREAS**, the City and Provider, through mutual negotiation, have agreed on the terms and conditions in this Agreement for the provision of Services.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the aforementioned recitals, which are incorporated herein and made a part hereof by this reference, the mutual covenants and conditions contained herein, and other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, Provider and the City agree as follows.

1. **Scope of Services/Deliverables.**

- 1.1 The Provider shall furnish the Services, which shall include the following:
  - 1.1.1 Forensically image -three (3) computers assigned to the City’s Police Department and prepare applicable documentation regarding to same. Images will be stored on encrypted media. Note, the computers will be delivered to e-Forensics and imaged at its lab
  - 1.1.2 Create a back-up copy of the forensic images to encrypted volumes;
  - 1.1.3 While on-site, run searches of the City’s system (select server based virtual machines and workstations) for surveillance system

that may be actively running. Search methodology will be to use the default key stroke sequence of the known surveillance software, and any key strokes sequences provided by the City;

1.1.4 While off-site, examine the forensic images and, to the extent possible, ascertain the following information related to the surveillance software purported to have been installed:

- 1.1.4.1 publisher; name and version of software suite;
- 1.1.4.2 running state;
- 1.1.4.3 installation date and/or deletion date;
- 1.1.4.4 identity (email address, server running control center) of entity receiving captured content from computer; and
- 1.1.4.5 purpose, to the extent possible.

1.1.5 Prepare a case memorandum; and

1.1.6 Be available to provide expert/fact witness testimony either in a deposition, hearing, trial, or internal City meetings with administration and/or elected officials. Internal City meetings will be a separate billable item and billed at the "Computer and Financial Forensics" rate.

1.2 Provider hereby agrees to complete the Services within Ninety (90) days of mutual execution of this Agreement. Extensions of time may be granted upon request by the Provider to the City Manager, which the Manager may consider and grant at his sole discretion.

2. **Term/Commencement Date.**

2.1 This initial Agreement shall become effective upon execution by both parties and shall remain in effect for one (1) year from the date of execution of Agreement, unless earlier terminated in accordance with Paragraph 8. Prior to, or upon completion of the initial term, the City shall have two (2) one-year optional renewals for a total maximum of three (3) years. The Provider shall maintain, for the entirety of the stated additional period(s), the same terms and condition included within this original Agreement. Continuation of the Agreement beyond the initial term, and the optional years, is a City prerogative, and not a right of the Provider.

2.2 Provider agrees that time is of the essence and Provider shall complete each deliverable for the Project within the timeframes set forth in the Project Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

3.1 The Provider shall be compensated at an hourly rate as per the rates that follow, provided that the total sum to complete the services delineated in Section 1 herein shall not exceed SIX Thousand Nine Hundred Dollars and No Cents (\$6,900.00) (the "Fee"). The Fee is inclusive of the costs of disk media for storing images and work product, which the City shall not be responsible to pay for a period of time of ninety (90) days. Any costs associated with the services that exceed the Fee will require the approval of the City Manager prior to same being incurred by Provider.

Work provided by Provider in performance of the Services will be billed at the following rates:

Computer and Financial Forensics: \$250.00 per hour; and  
Expert/Fact Witness Testimony: \$375.00 per hour.

Travel to and from the City's government center or alternative site shall not be billed to the City. Any additional travel costs shall require the approval of the City Manager prior to same being incurred by Provider.

In the event that the City needs to call Provider as an expert/fact witness to testify in a court of competent jurisdiction or official tribunal, in a proceeding that does not involve a dispute of this Agreement or the Services rendered but otherwise is in connection with or as a result of the work performed pursuant to this Agreement, the City agrees to pay Provider in accordance with this section for all time spent in preparation for the appearance and for time spent in appearing.

Should the City elect to maintain its data stored with Provider beyond an initial ninety (90) day period, during which time Provider shall not assess any independent data storage charges, the City shall be required to pay a monthly media storage charges, pursuant to the following rates:

Desktop/laptop data: \$300.00 per month;  
Hard-Drive/Phone data: \$100.00 per month;  
Tape data: \$40.00 per month; and  
DVD/CD data: \$10.00 per month.

Media will otherwise be returned to the City, provided that all outstanding balances due to Provider have been paid by the City. Storage fees shall be assessed until the account balance is paid and the media is returned. Provider reserves the right to dispose of all stored media if account balances remain paid for more than ninety (90) calendar days.

- 3.2 It shall be the responsibility of Provider to bill the City on a monthly basis for any work performed in that corresponding month. The City shall pay Provider in accordance with the Florida Prompt Payment Act.
- 3.3 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Provider the undisputed portion of the invoice. Upon written request of the Finance Director, the Provider shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Sub-Contractors.**

- 4.1 The Provider shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Project.
- 4.2 Any subcontractors used on the Project must have the prior written approval of the City Manager or his designee.

5. **City's Responsibilities.**

- 5.1 The City shall furnish to Provider, at the Provider's written request, all available, pertinent information, including, but not limited to, access codes, keystrokes to load software, reports, and other data, in the City's possession necessary for Provider to complete the Services.
- 5.2 The City shall be responsible for arranging for access to, and making all provisions for, Provider to enter upon real property as required for Provider to perform services as may be requested in writing by the Provider (if applicable).

6. **Provider's Responsibilities.**

- 6.1 The Provider shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a provider under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Project, it is determined that the Provider's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Provider shall at Providers sole expense, immediately correct the work. The City in no way assumes or shares any responsibility or liability of the Provider or Sub Provider under this agreement.

7. **Confidentiality.**

- 7.1 Provider expressly acknowledges that it and its officer, employees, and agents shall be in a position to receive and possess confidential information related to the City, including, but not limited to, technical, personal, and security information (the “Confidential Information”), and Provider further acknowledges that disclosure of such Confidential Information to any person who is not a member of the administration or staff and/or an authorized representative of the City would cause irreparable harm to the City. To the extent permitted under Chapter 119, Florida Statutes, Provider shall:
- 7.1.1 protect the City’s Confidential Information by using a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information; and
  - 7.1.2 use and disseminate Confidential Information as authorized in the course of its business relationship with the City;
- 7.2 To the extent permitted under Chapter 119, Florida Statutes, Provider shall not:
- 7.2.1 disclose any Confidential Information to any person who is not a member of the administration or staff and/or an authorized representative of the City, except as deemed necessary by to effectuate the City’s business objectives or as otherwise required by law; or
  - 7.2.2 use any Confidential Information for any purpose, except in connection with its efforts on behalf of BUSINESS VENTURE.
- 7.3 Confidential Information as defined herein shall not include Confidential Information that: (a) is or becomes a matter of public knowledge through no fault of the Provider; or (b) was in Provider’s possession or known by it prior to receipt from the City; or (c) was rightfully disclosed to the Provider by another person without restriction; or (d) is independently developed by Provider without access to such Confidential Information. The Provider may disclose Confidential Information pursuant to any statutory or regulatory authority or court order, provided that (a) Provider gives the City prior written notice of such requirement, (b) the scope of such disclosure is limited to the disclosure that is legally required, and (c) Provider reasonably cooperates with the City, at the City’s expense, to ensure that the Confidential Information will be subject to a protective order or other legally available means of protection.

8. **Default & Termination.**

- 8.1 Breach or failure to observe or comply with any provision of this agreement shall constitute an act for default. Upon being placed on notice by the City, the Provider shall have fifteen (15) days to cure the breach. Failure of Provider to cure such a breach within the allotted time may cause the City to immediately terminate this Agreement as provided herein.
- 8.2 The City may, by written notice to Provider, terminate this Agreement, if in the judgment of the City Manager, Provider has engaged in any of the following acts of default:
  - 8.2.1 Provider has materially breached any portion of this Agreement;
  - 8.2.2 Provider fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required under this Agreement;
  - 8.2.3 Provider has assigned or delegated its duties or subcontracted any performance of this Agreement without prior written consent by the City;
  - 8.2.4 Provider has become insolvent. Provider shall be deemed insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Provider is insolvent within the meaning of such laws;
  - 8.2.5 There has been a filing of a voluntary or involuntary petition regarding Provider under the Federal Bankruptcy Code;
  - 8.2.6 There has been the appointment of a Receiver or Trustee for the Provider; and
  - 8.2.7 There has been an execution by Provider of a general assignment for the benefit of creditors; and/or
- 8.3 Upon receipt of the City's written notice of termination, Provider shall stop work on the Project.
- 8.4 In the event of termination by the City, the Provider shall be paid for all work accepted by the City Manager up to the date of the act of default, provided that the Provider has first complied with the provisions of this Section 8. All payments, advances, or other compensation paid by the City to the Provider while Provider was in default shall be immediately returned to the City.
- 8.5 The Provider shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Project to the City, in the native format kept by the Provider within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

8.6 8.7 The Provider agrees that termination of this Agreement under this section shall not release the Provider from any obligation accruing prior to the effective date of termination.

9. **Insurance.**

9.1 The Provider shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by Exhibit "A". The insurance carrier shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida.

9.2 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted, or in accordance to policy provisions.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Provider shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys' Fees and Waiver of Jury Trial.**

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

11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

12.1 Provider shall indemnify, defend and hold harmless the City, its elected officials, employees, agents and volunteers (collectively referred as "Indemnitees") against all loss, costs, penalties, fines, damages, claims, expenses, including attorney's fees, or liabilities ("collectively referred to as "liabilities") by reason of any injury to, or death of any person, or damage to, or destruction, or loss of any property arising out of, resulting

from, or in connection with the Licensee's use of the Premises and performance of this Agreement, which is, or is alleged to be directly, or indirectly caused, in whole, or in part by any act of omission, default, or negligence of Licensee, its employees, agents, or sub-contractors. Licensee expressly agrees to indemnify, defend, and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of provider to the extent same its covered by payments under workers' compensation or similar laws.

12.2 This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes. This indemnification shall survive the cancellation or expiration of the Agreement. This indemnification extends, without limitation, to any damage or injury to persons or property located on the park property.

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

12.4 Ten dollars (\$10) of the payments made by the City constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntary and knowingly acknowledged by the Provider.

13. **Notices/Authorized Representatives.**

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

For the City: Edward Rojas  
City Manager  
City of Doral, Florida  
8401 NW 53rd Terrace  
Doral, Florida 33166

With a Copy to: Daniel A Espino, Esq.  
City Attorney  
Weiss Serota Helfman  
Pastoriza Cole & Boniske, P.L.  
2525 Ponce De Leon Boulevard, 7<sup>th</sup> Floor  
Coral Gables, FL 33134

For The Provider: Jesus F. Peña  
E-Forensics Incorporated

6262 Bird Road, Suite 2B  
Miami, FL 33155

14. **Governing Law.**

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

15. **Entire Agreement/Modification/Amendment.**

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

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

16. **Ownership and Access to Records and Audits.**

16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Provider providing services to the City under this Agreement shall be the property of the City.

16.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Provider involving transactions related to this Agreement.

16.3 The City may cancel this Agreement for refusal by the Provider to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Nonassignability.**

17.1 This Agreement shall not be assignable by Provider unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Provider, and such firm's familiarity with the City's area, circumstances and desires.

18. **Severability.**

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

19. **Independent Contractor.**

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

20. **Representations and Warranties of Provider.**

20.1 Provider hereby warrants and represents, at all times during the Term of this Agreement, inclusive of any renewals thereof, that:

20.1.1 Provider, and its employees and/or subcontractors, shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary to perform the Services hereunder;

20.1.2 Provider is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and duly registered, validly doing business and in good standing under the laws of the State of Florida;

20.1.3 The execution, delivery and performance of this Agreement by Provider has been duly authorized and no consent of any other person or entity to such execution, delivery and performance is required to render this Agreement a valid and binding instrument enforceable against Provider in accordance with its terms; and

20.1.4 Provider has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.

21. **Compliance with Laws.**

21.1 The Provider shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the services.

22. **Non-collusion.**

22.1 Provider certifies that it has not divulged, discussed or compared his/her/its quote with other individuals and/or entities that provided quotes to the City for the Services and has not colluded with any other individual or entity whatsoever.

23. **Truth in Negotiating Certificate.**

23.1 Provider hereby certifies, covenants, and warrants that wage rates and other factual unit costs supporting the compensation for the Services that may be offered pursuant to this Agreement are accurate, complete, and current. Provider further agrees that the Fee provided shall be adjusted to exclude any significant sums by which the City determines the agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such agreement adjustments shall be made within one (1) year following the end of the Term or any Extension term.

24. **Waiver**

24.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

25. **Survival of Provisions**

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

26. **Prohibition of Contingency Fees.**

26.1 The Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Provider, 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 the Provider, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

27. **Force Majeure.**

27.1 It is understood that performance of any act by the City or Provider hereunder may be delayed or suspended at any time while, but only so

long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however, the City shall have the right to provide substitute service from third parties or City forces as may be necessary to meet City needs, and, in such event, the City shall withhold payment due Contractor for such period of time, if any. If the condition of force majeure exceeds a period of fourteen (14) days, the Town may, at its option and discretion, cancel or renegotiate the Agreement

28. **Counterparts**

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

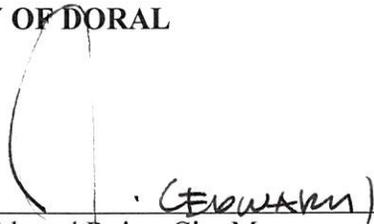
**[THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.]**

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature:

Attest:

  
\_\_\_\_\_  
Connie Diaz, Interim City Clerk

CITY OF DORAL

By:   
\_\_\_\_\_  
Edward Rojas, City Manager  
Date: 5.26.15

Approved As To Form and Legal Sufficiency for the Use  
And Reliance of the City of Doral Only:

  
\_\_\_\_\_  
Weiss Serota Helfman Cole Bierman & Popok, PL  
City Attorney

E-Forensics Incorporated

  
By: \_\_\_\_\_  
Jesus F. Peña  
Its: President  
Date: 5/22/2015

**Exhibit "A"**

**Insurance Requirements**