

Professional Services Agreement for Website Hosting Services

2022-04



The Town of Miami Lakes Council:

**Mayor Manny Cid
Vice Mayor Luis Collazo
Councilmember Carlos Alvarez
Councilmember Jeffrey Rodriguez
Councilmember Joshua Dieguez
Councilmember Tony Fernandez
Councilmember Marilyn Ruano**

Edward Pidermann, Town Manager
The Town of Miami Lakes
6601 Main Street
Miami Lakes, FL 33014

TABLE OF CONTENTS

Recitals..... 4

Section A: General Terms and Conditions 4

 1. Definitions..... 4

 2. General Conditions 5

 a. Term..... 5

 b. Scope of Services 5

 c. Compensation..... 5

 3. Performance 6

 a. Performance and Delegation..... 6

 b. Removal of Unsatisfactory Personnel..... 6

 c. Consultant Key Staff 6

 d. Time for Performance..... 6

 4. Standard of Care 6

 5. Subconsultants..... 7

 6. Default..... 7

 a. General 7

 b. Conditions of Default..... 7

 c. Time to Cure Default; Force Majeure 7

 7. Termination of Agreement 7

 a. Town’s Right to Terminate 7

 b. Consultant’s Right to Terminate..... 8

 c. Termination Due to Undisclosed Lobbyist or Agent..... 8

 8. Documents and Records 8

 a. Ownership of Documents 8

 b. Delivery upon Request or Cancellation 8

 c. Nondisclosure 8

 d. Maintenance of Records..... 9

 9. Miscellaneous 10

 a. Indemnification..... 10

 b. Entire Agreement 10

 c. Nonexclusive Agreement..... 10

d. Successors and Assigns	10
e. Applicable Law and Venue.....	11
f. Notices	11
g. Interpretation	11
h. Joint Preparation	12
i. Priority of Provisions.....	12
j. Mediation – Waiver of Jury Trial	12
k. Compliance with Laws	12
l. No Partnership.....	13
m. Discretion of Town Manager	13
n. Resolution of Disputes.....	13
o. Contingency Clause.....	13
p. Third-Party Beneficiary	14
q. No Estoppel.....	14
Section B. Scope of Services.....	15
1. Basic Services	15
2. Additional Services.....	15

This Agreement made this 27th day of October in the year 2021 ("Agreement") by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and Xomatech Enterprises, LLC hereinafter called the "Consultant," having a principal office at 10818 NW 51st Lane, Doral, FL 33178.

RECITALS

WHEREAS the Town has requested the Consultant to provide Website Hosting Services ("Services").

WHEREAS, the Consultant has the necessary expertise to provide the requested Services and has agreed to provide said Services.

WITNESSETH, that the Town and the Consultant, for the considerations herein set forth, agree as follows:

SECTION A: GENERAL TERMS AND CONDITIONS

1. Definitions

- a. *Additional Services*** means any Work defined as such in this Agreement, secured in compliance with Florida Statutes and Town Code.
- b. *Attachments*** means the Attachments to this Agreement which are expressly incorporated by reference and made a part of this Agreement as if set forth in full.
- c. *Base Fee*** means the amount of compensation mutually agreed upon for the completion of the Services under this Agreement.
- d. *Basic Services*** means those services designated as such in the Agreement.
- e. *Consultant*** means Xomatech Enterprises, LLC, which has entered into the Agreement to provide professional services to the Town.
- f. *Errors*** means Services or work product prepared by the Consultant that are not correct or are incomplete, which results in the need for revision or re-issuance of the Services performed or developed based on the Services provided for under this Agreement.
- g. *Fee*** means the amount of compensation mutually agreed upon for the completion of Basic Services as determined in accordance with Article A.2.c.i. Fee Amount.
- h. *Project Manager*** means the Director of Communications who will manage and monitor the Services to be performed under this Agreement.
- i. *Professional Services*** means those services within the scope of practice for website hosting services.
- j. *Scope of Service(s)*** means the activities, tasks, objectives, deliverables, and completion of work provided for under this Agreement.
- k. *Town Council*** means the legislative body of the Town of Miami Lakes.
- l. *Town Manager*** means the duly appointed chief administrative officer of the Town of Miami Lakes or designee.
- m. *Town or Owner*** means the Town of Miami Lakes, Florida, a Florida municipal corporation, the public agency which is a party hereto and for which this Agreement is to be performed. In all

respects hereunder, Town's performance is pursuant to Town's position as the owner of a Project. In the event the Town exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances will be deemed to have occurred pursuant to Town's authority as a governmental body and will not be attributable in any manner to Town, as the owner, as a party to this Agreement. For purposes of this Agreement, "Town" without modification means the Town Manager.

- n. Work Order* means a document approved and issued by the Town authorizing the performance of Additional Services to be provided by the Consultant.
- o. Work Order Proposal* means a document prepared by the Consultant, at the request of the Town for Services to be provided by the Consultant.

2. General Conditions

a. Term

The Term of this Agreement shall be for a term of one (1) year commencing on the effective date of the Agreement.

The Town, by action of the Town Manager, has the option to extend the term of the Agreement, subject to continued satisfactory performance as determined by the Town Manager and to the availability and appropriation of funds.

b. Scope of Services

Consultant agrees to provide the Services as specifically described and set forth in Section B.

c. Compensation

i. Fee Amount

Town shall pay a yearly fee of two thousand eight hundred and eighty dollars (\$2,880) for Hosting Services performed by the Consultant in accordance with this Agreement. Also, Town shall pay an hourly fee of one hundred dollars (\$100) for Website Development and an hourly fee of eighty dollars (\$80) for training and/or maintenance performed by the Consultant in accordance with this Agreement. Last, the Town shall pay any additional fees as approved per Work Order. For Work Orders that exceed three thousand dollars (\$3,000), Consultant shall have the right to request fifty percent (50%) of the total Work Order cost as an advanced payment from the Town. Consultant may waive this right on a case-by-case basis. Consultant shall receive no other compensation unless a properly approved Work Order has been executed. The maximum not-to-exceed value includes all payments and any Additional Services payments made to the Consultant. In no event shall the total expenditure under this Contract exceed twenty-five thousand dollars (\$25,000). All Services undertaken by the Consultant before the Town's approval of this Agreement shall be at the Consultant's own risk and expense.

ii. Payments

The Town will make payment against a properly submitted invoice on a monthly basis for Service performed in the preceding month. Payment requests that include Additional Services must clearly identify the Work Order number issued for the Additional Services. For Additional Services performed where no Work Order was issued, supporting documentation must be provided with the invoice demonstrating that the Additional

Services were requested by the Town. Consultant must use the Town's standard invoice form and all payments will be issued in accordance with Florida Statute Chapter 218, Part VII, Local Government Prompt Payment Act.

3. Performance

a. Performance and Delegation

The Services to be performed hereunder must be performed by Bernardo Passariello, unless otherwise provided in this Agreement, or approved, in writing by the Town Manager. Said approval will not be construed as constituting an agreement between the Town and said other person or firm and the Town assumes no liability or responsibility for any subconsultant.

b. Removal of Unsatisfactory Personnel

The Project Manager or Town Manager may make written request to Consultant for the prompt removal and replacement of any personnel employed or retained by the Consultant to provide and perform Services pursuant to the requirements of this Agreement. The Consultant must respond to the Town within seven (7) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. All decisions involving personnel will be made by the Town. Such request will solely relate to said employees working under this Agreement and not as employees of the Consultant or subconsultant.

c. Consultant Key Staff

The parties acknowledge that Consultant was selected by the Town, in part, on the basis of qualifications of particular staff identified in Consultant's response to Town's solicitation, hereinafter referred to as "Key Staff". Consultant must ensure that Key Staff are available for Services hereunder as long as said Key Staff are in Consultant's employ. Consultant must obtain prior written acceptance of Project Manager to change Key Staff. Consultant must provide the Project Manager with such information, as may be necessary, to determine the suitability of proposed new Key Staff personnel. The Project Manager will act reasonably in evaluating Key Staff qualifications. Such acceptance will not constitute any responsibility or liability for the individual's ability to perform.

d. Time for Performance

The Consultant agrees to start all Services hereunder upon execution of the Agreement and complete each, task within the time stipulated in the Agreement. Time is of the essence with respect to performance of this Agreement.

A reasonable extension of the time for completion of various tasks may be granted by the Town Manager should there be a delay on the part of the Town in fulfilling its obligations under this Agreement as stated herein. Such extension of time shall not be cause for any claim by the Consultant for extra compensation.

4. Standard of Care

Consultant is solely responsible for the technical accuracy and quality of its Services. Consultant must perform due diligence, in accordance with best industry practices, performing the Services under this Agreement. Consultant will be responsible for the professional quality, technical accuracy and coordination of all reports, and other documents furnished by the Consultant under this Agreement.

Consultant must, without additional compensation, correct or revise any errors, omissions, or deficiencies in its reports, documents, or other Services.

5. Subconsultants

Unless this box is checked, the use of subconsultants is prohibited under this Agreement.

6. Default

a. *General*

If Consultant fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Consultant will be in default. Upon the occurrence of a default hereunder the Town, in addition to all remedies available to it by law, may immediately, upon written notice to Consultant, terminate this Agreement whereupon all payments, advances, or other compensation paid by the Town to Consultant while Consultant was in default must be immediately returned to the Village. Consultant understands and agrees that termination of this Agreement under this section does not release Consultant from any obligation accruing prior to the effective date of termination. The Town, at its sole discretion, may allow the Consultant a specified time to correct a default.

b. *Conditions of Default*

A finding of default and subsequent termination for cause may include, without limitation, any of the following:

- i. Consultant fails to obtain or maintain the required insurance.
- ii. Consultant fails to comply, in a substantial or material sense, with any of its duties under this Agreement, with any terms or conditions set forth in this Agreement or in any agreement it has with the Town, beyond the specified period allowed to cure such default.
- iii. Consultant fails to commence the Services within the time provided or contemplated herein or fails to complete the Services in a timely manner as required by this Agreement.

c. *Time to Cure Default; Force Majeure*

Town through the Town Manager will provide written notice to Consultant as to a finding of default, and Consultant must take all necessary action to cure said default within time stipulated in said notice, after which time the Town may terminate the Agreement. The Town, at its sole discretion, may allow additional days to perform any required cure if Consultant provides written justification deemed reasonably sufficient.

Should any such failure on the part of Consultant be due to a condition of Force Majeure as the term is interpreted under Florida Law, then the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

7. Termination of Agreement

a. *Town's Right to Terminate*

The Town Manager has the right to terminate this Agreement for any reason or no reason, upon thirty (30) days' written notice. Upon termination of this Agreement, documents, analysis, materials, and/or reports, including all electronic copies related to Services authorized under this

Agreement, whether finished or not, must be turned over to the Town. The Consultant will be paid for the Services performed and accepted, provided that said documentation is turned over to the Project Manager or Town Manager within ten (10) business days of termination.

b. *Consultant's Right to Terminate*

The Consultant shall have the right to terminate this Agreement, in writing, following breach by the Town, if the breach of the Agreement has not been corrected within thirty (30) days from the date of the Town's receipt of a written statement from Consultant specifying its breach of its duties under this Agreement.

c. *Termination Due to Undisclosed Lobbyist or Agent*

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

For the breach or violation of this provision, the Town has the right to terminate this Agreement without liability and, at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

8. Documents and Records

a. *Ownership of Documents*

All documents, analysis, materials, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, including all electronic digital copies, will be considered works made for hire and are the property of the Town, without any restriction or limitation on their use. Upon expiration or termination of the Agreement the Consultant must turn over all records, documents and data, whether used or not used, including electronic data as required under Florida Statute 119.0701(d). Consultant is to keep copies of all such records, documents, or data for its records. However, Article A6.03 will continue in full force and effect after the expiration or termination of this Agreement.

b. *Delivery upon Request or Cancellation*

Failure of the Consultant to promptly deliver all such documents in the possession of the Consultant, both hard copy and digital, to the Town Manager within ten (10) days of cancellation, or within ten (10) days of request by the Town Manager, will be just cause for the Town Manager to withhold payment of any fees due Consultant until Consultant delivers all such documents. Consultant will have no recourse from these requirements.

c. *Nondisclosure*

To the extent allowed by law, Consultant agrees not to divulge, furnish, or make available to any third person, firm, or organization any information or documentation related to this Agreement, without Town Manager's prior written consent, or unless incident to the proper performance of the Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant hereunder, and Consultant must require all of its employees, agents and Subconsultants comply with the provisions of this paragraph. Consultant

will be entitled to limited use of the information and documents related to this Agreement, which will be used for the sole purpose of marketing to generate new business clients.

d. Maintenance of Records

Consultant will keep adequate records and supporting documentation, which concern or reflect its Services hereunder. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, must be kept in accordance with statute. Otherwise, the records and documentation will be retained by Consultant for a minimum of three (3) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. Town, or any duly authorized agents or representatives of Town, has the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the three (3) year period noted above; provided, however such activity will be conducted only during normal business hours. The Consultant agrees to furnish copies of any records necessary, in the opinion of the Town Manager, to approve any requests for payment by the Consultant.

Consultant shall also comply with the following requirements of the Florida Public Records Law including:

- i. Consultant must keep and maintain all public records required by the Town in order to perform services under this Agreement.
- ii. Upon request from the Town's custodian of public records, Consultant shall provide the Town with a copy of the requested public records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- iii. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the contract if the Consultant does not transfer the records to the Town.
- iv. Upon completion of the contract, Consultant shall transfer, at no cost, to the Town all public records in the possession of the Consultant or keep and maintain public records required by the Town to perform the service under this contract. If the Consultant transfers all public records to the Town upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

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 TOWN'S CUSTODIAN OF PUBLIC RECORDS VIA PHONE (305) 364-6100 x 1138; EMAIL CLERK@MIAMILAKES-FL.GOV; OR MAIL AT TOWN OF MIAMI LAKES, 6601 MAIN STREET, MIAMI LAKES, FL 33014.

9. **Miscellaneous**

a. Indemnification

The Consultant will hold harmless, indemnify the Town, its officials and employees from any and all claims, losses and causes of actions which may arise out of the performance of this Agreement as a result of any act of negligence or negligent omission, recklessness, or intentionally wrongful conduct of the Consultant or the Subconsultants. The Consultant will pay all claims and losses of any nature whatsoever in connection therewith in the name of the Town when applicable, and will pay all costs, including without limitation reasonable attorney's and appellate attorney's fees, and judgments which may issue thereon. The Consultant's obligation under this paragraph will not be limited in any way by the agreed upon the Agreement value, or the Consultant's limit of, or lack of, sufficient insurance protection and applies to the full extent that it is caused by the negligence, act, omission, recklessness or intentional wrongful conduct of the Consultants, its agents, servants, or representatives.

b. Entire Agreement

This Agreement, as it may be amended from time to time, represents the entire and integrated Agreement between the Town and the Consultant and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of this Agreement will not be deemed to be a waiver of any other breach of any provision of this Agreement.

c. Nonexclusive Agreement

Consultant Services under this Agreement are to be provided on a nonexclusive basis and the Town, at its sole discretion and right, may engage other firms to perform the same or similar Service, provided, however, that the Town will first notify the Consultant that the Town has engaged such similar Service and that the duties performed or Service provided, to the extent they may conflict between the Consultant and those other firms engaged, are delineated by the Project Manager so that the Consultant and those similarly engaged are clear as to their responsibilities and obligations.

d. Successors and Assigns

The performance of this Agreement must not be transferred, pledged, sold, delegated, or assigned, in whole or in part, by the Consultant without the written consent of the Town Council or Town Manager, as applicable. It is understood that a sale of the majority of the stock or partnership shares of the Consultant, a merger or bulk sale, or an assignment for the benefit of creditors will each be deemed transactions that would constitute an assignment or sale hereunder requiring prior Town approval.

The Consultant's services are unique in nature and any transference without the prior written approval of the Town will be cause for the Town to terminate this Agreement. The Consultant will have no recourse from such cancellation. The Town may require bonding, other security, certified financial statements and tax returns from any proposed Assignee and the execution of an Assignment/ Assumption Agreement in a form satisfactory to the Town as a condition precedent to considering approval of an assignment.

The Consultant's services are unique in nature and any transference without the prior written approval of the Town will be cause for the Town to terminate this Agreement. The Consultant will have no recourse from such cancellation. The Town may require bonding, other security, certified financial statements and tax returns from any proposed Assignee and the execution of an Assignment/ Assumption Agreement in a form satisfactory to the Town as a condition precedent to considering approval of an assignment.

e. *Applicable Law and Venue*

This Agreement will be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any suit or action brought by any party concerning this Agreement, or arising out of this Agreement, must be brought in Miami-Dade County, Florida. Each party will bear its own attorney's fees except in actions arising out of Consultant's duties to indemnify the Town under Article A7 where Consultant must pay the Town's reasonable attorney's fees.

f. *Notices*

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by registered United States mail, return receipt requested, addressed to the party for whom it is intended and at the place last specified; and the place for giving of notice will remain such until it has been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

For Town of Miami Lakes:
Edward Pidermann
Town Manager
6601 Main Street
Miami Lakes, Florida 33014
pidermanne@miamilakes-fl.gov

For Consultant:
Bernardo Passariello
Xomatech Enterprises, LLC
10818 NW 51st Lane
Doral, FL 33175
bpas@xomatech.com

With a copy to:

Nathalie Garcia
Procurement Manager
At the same address as above
garcian@miamilakes-fl.gov

g. *Interpretation*

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction will be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement includes the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

h. Joint Preparation

Preparation of this Agreement has been a joint effort of the Town and Consultant and the resulting document will not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

i. Priority of Provisions

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement will prevail over any document incorporated by reference and be given effect.

j. Mediation – Waiver of Jury Trial

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the Agreement, the parties to this Agreement agree all disputes between them will be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will split the costs of a certified mediator on a 50/50 basis. The Consultant agrees to include such similar contract provisions with all Subconsultants and/or independent Consultants and/or Consultants retained for the project(s), thereby providing for non-binding mediation as the primary mechanism for dispute resolution.

In an effort to expedite the conclusion of any litigation, the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Agreement.

k. Compliance with Laws

Consultant must comply with all applicable laws, codes, ordinances, rules, regulations, and resolutions, and all applicable guidelines and standards in performing its duties, responsibilities, and obligations related to this Agreement. This includes the Consultant maintaining in good standing all required licenses, certificates, and permits as required to perform the Services.

i. Non-Discrimination

Town warrants and represents that it does not and will not engage in discriminatory practices and that there must be no discrimination in connection with Consultant's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status, or national origin. Consultant further covenants that no otherwise qualified individual will, solely by reason of his/her race, color, sex, religion, age, handicap, marital status, or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

ii. ADA Compliance

Consultant must affirmatively comply with all applicable provisions of the Americans with Disabilities Act ("ADA") in the course of providing any work, labor, or services funded by the Town, including Titles I & II of the ADA (regarding nondiscrimination on the basis of disability) and all applicable regulations, guidelines, and standards. Additionally, the Consultant must take affirmative steps to insure nondiscrimination in employment of disabled persons.

l. No Partnership

Consultant is an independent Consultant. This Agreement does not create a joint venture, partnership, or other business enterprise between the parties. The Consultant has no authority to bind the Town to any promise, debt, default, or undertaking of the Consultant.

m. Discretion of Town Manager

Any matter not expressly provided for herein dealing with the Town or decisions of the Town will be within the exercise of the reasonable professional discretion of the Town Manager.

n. Resolution of Disputes

Consultant understands and agrees that all disputes between it and the Town based upon an alleged violation of the terms of this Agreement by the Town will be submitted for resolution in the following manner.

The initial step will be for the Consultant to notify the Procurement Manager in writing of the dispute identified in Article A8.05, Notices. Consultant must, within five (5) calendar days of the initial notification, submit all supporting documentation to the Procurement Manager. Failure to submit such notification and documentation will constitute a waiver of protest by the Consultant. Upon receipt of said documentation the Procurement Manager will review the issues relative to the dispute and issue a written finding.

Should the Consultant and the Procurement Manager fail to resolve the dispute the Consultant may submit an appeal of the Procurement Manager's finding in writing within five (5) calendar days to the Town Manager. Failure to submit such an appeal of the written finding shall constitute acceptance of the finding by the Consultant. Upon receipt of said notification the Town Manager will review the issues relative to the dispute and issue a written finding.

Appeal to the Town Manager for his/her resolution, is required prior to Consultant being entitled to seek judicial relief in connection therewith. Should the amount of compensation require approval or disapproval by the Town Council, Consultant will not be entitled to seek judicial relief unless:

- i. it has first received the Town Manager's written decision, approved by the Town Council if applicable, or
- ii. a period of sixty (60) calendar days has expired after submitting to the Town Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of ninety (90) calendar days has expired where the Town Manager's decision is subject to Town Council approval; or
- iii. Town has waived compliance with the procedure set forth in this section by written instrument(s) signed by the Town Manager.

o. Contingency Clause

Funding for this Agreement is contingent on the availability of funds and continued authorization for the services and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds, or change in regulations, upon thirty (30) days' notice. The Consultant shall be entitled to discontinue Services, which may include uncompleted hearings, without any recourse by the Town if the funding is not available to pay for Services not yet begun. In any event, the

Town acknowledges that it will pay for Services performed that have been properly authorized by the Project Manager.

p. *Third-Party Beneficiary*

Consultant and the Town agree that it is not intended that any provision of this Agreement establishes a third-party beneficiary giving or allowing any claim or right of action whatsoever by any third-party under this Agreement.

q. *No Estoppel*

Neither the Town's review, approval, or acceptance of, or payment for Services performed under this Agreement will be construed to operate as a waiver of any rights under this Agreement of any cause of action arising out of the performance of this Agreement, and the Consultant will be and remain liable to the Town in accordance with applicable laws for all damages to the Town caused by the Consultant's negligent performance of any of the Services under this Agreement. The rights and remedies provided for under this Agreement are in addition to any other rights and remedies provided by law.

END OF SECTION

SECTION B. SCOPE OF SERVICES

1. Basic Services

The following Services are illustrative of the Basic Services to be provided by the Consultant which are covered by the Consultant's fixed hourly fee. Other routine services may be required that are not enumerated herein that may be required to meet the intent of this Agreement:

a. Services.

Consultant agrees to provide Services to the Town and will report directly to the Director of Communications or designee. Stated Services and Fees are amendable by Change Order. Consultant shall set its own schedule and control the means by which it performs the Services, subject to the approval of the Town Manager. Consultant's services shall include:

- Hosting of the Town's website for a flat rate of two hundred and forty dollars (\$240) per month on a Virtual Machine solely used for Town with the following specs:
 - 4 -core Intel E5-2620 2.0 GHz Processor
 - 2 GB RAM
 - 80 GB Hard Drive
 - 1 GB network connection
 - Unlimited bandwidth
 - CentOS Enterprise Linux 7.1
 - Plesk 12.0 Hosting Control Panel
- A backup will be conducted daily to the Town's FTP server. The backup will contain all data needed to restore the Town's website to a version of the website no older than one day from date of restore.
- Assisting the Town staff, through the Communications Department, with any website development, training, maintenance, questions, tutorials, etc.
- When using hourly rates provided in Section 3 of this Agreement, the Consultant shall have a turnaround time of one (1) hour for critical issues and twenty-four (24) hours for non-critical issues.
 - Critical issues are those that impede the usage of the website.
 - Non-critical issues are those that relate to form, appearance, etc.
- Any additional work as provided by a properly approved Work Order.

2. Additional Services

The Town may, at its sole discretion, request that the Consultant perform Additional Services under the Agreement. In most instances the Town will issue a written Work Order detailing the scope of the Additional Services.

Most Additional Services will be compensated based on the hourly rate stipulated in Article A2.03 of the Agreement. However, the Town may, at its sole discretion, request Additional Services for services to be performed on a routine basis that will result in an adjustment to the fixed hourly fee that would be mutually agreed to by both parties.

END OF SECTION

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

WITNESS/ATTEST

Xomatech Enterprises, LLC



Signature



Signature



Print Name, Title

Bernardo Passariello

Print Name, Title of Authorized Officer or Official

ATTEST:

(Corporate Seal)

Firm's Secretary

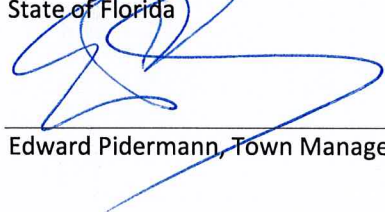
(Affirm Firm's Seal, if available)

ATTEST:

Town of Miami Lakes, a municipal corporation of the State of Florida




Gina Inguanzo, Town Clerk



Edward Pidermann, Town Manager

APPROVED AS TO LEGAL FORM AND CORRECTNESS:



Town Attorney

CERTIFICATE OF AUTHORITY

I HEREBY CERTIFY that at a meeting of the Board of Directors of XomaTech Enterprises, LLC, a corporation organized and existing under the laws of the State of Florida, held on the 14 day of October, 2021, a resolution was duly passed and adopted authorizing (Name) Bernardo Passariello as (Title) Manager of the corporation to execute agreements on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation.
I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 14, day of October, 2021.
Secretary: Bernardo Passariello
Print: Bernardo Passariello

NOTARIZATION

STATE OF Florida)
) SS:
COUNTY OF Mani-Dale)

The foregoing instrument was acknowledged before me this 14 day of October, 2021, by Bernardo Passariello, who is personally known to me or who has produced FL chris 110 0910 as identification and who (did / did not) take an oath.



SIGNATURE OF NOTARY PUBLIC
STATE OF FLORIDA

CAROLINA ANDRE GUINA ROSADO
Commission # GG 304955
Expires January 10, 2023
Bonded Thru Budget Notary Services

PRINTED, STAMPED OR TYPED
NAME OF NOTARY PUBLIC