

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

A Resolution authorizing the Mayor and the City Clerk to execute a professional services agreement between the City of Miami Beach, Florida and PN Investments, Inc. for \$62,500 for unique law enforcement and investigative services.

Issue:

Shall the City Commission authorize a professional services agreement between the City and PN Investments, Inc. for \$62,500 for unique law enforcement and investigative services?

Item Summary/Recommendation:

The Scope of Services ("Services") of this agreement shall be generally for PN Investments to provide Miami Beach Police Department with consulting services regarding terrorism activities; analysis of data as needed; and, documentation and reports of those contributions provided to other law enforcement agencies on MBPD's behalf. PN Investments will provide transportation and incidental costs associated with consultation services at no additional cost to MBPD.

The Administration recommends approving the resolution.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 60px; height: 40px; display: flex; align-items: center; justify-content: center;"> </div> Finance Dept.	1			
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Don DeLucca

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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AGENDA ITEM C7H
DATE 3-16-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: March 16, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in cursive script, appearing to read 'Jorge'.

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND PN INVESTMENTS, INC. FOR \$62,500 FOR UNIQUE LAW ENFORCEMENT AND INVESTIGATIVE SERVICES.**

ADMINISTRATIVE RECOMMENDATION

Adopt the Resolution.

ANALYSIS

The Scope of Services ("Services") of this agreement shall be generally for PN Investments to provide Miami Beach Police Department with consulting services regarding terrorism activities; analysis of data as needed; and, documentation and reports of those contributions provided to other law enforcement agencies on MBPD's behalf. PN Investments will provide transportation and incidental costs associated with consultation services at no additional cost to MBPD.

CONCLUSION

The Administration recommends that the Mayor and City Commission authorize the signing of this Professional Services Agreement that will provide for effective anti-terrorism capability.

JG:DD:RM:PS:MG

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**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH
AND PN INVESTMENTS, INC.**

This Professional Services Agreement ("Agreement") is entered into this _____ day of _____, 2005, between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida ("City"), having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and PN Investments, Inc. (Contractor) C/O 1100 Washington Avenue, Miami Beach, FL 33139.

SECTION 1
DEFINITIONS

- Agreement: This Agreement between the City and Contractor.
- City Manager: The Chief Administrative Officer of the City.
- Contractor: For the purposes of this Agreement, Contractor 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 Contractor performed pursuant to or undertaken under this Agreement, as described in Section 2.
- Fee: Amount paid to the Contractor to cover the costs of the Services as more specifically described in Section 3.
- 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

2.1 SERVICES

Since the terrorist attacks of September 11, 2001, law enforcement agencies have been acutely aware of the need to gather timely and accurate information relative to terrorism. Miami-Dade County has been identified by intelligence experts as an area vulnerable to terrorist attacks. Intelligence gathered on organized groups that engage in terrorist activities or align with these organizations, have focused their attacks towards airports and seaports.

In light of this situation, it is incumbent upon the Miami Beach Police Department (MBPD) to enlist the services of the Contractor. The Contractor shall provide professional consulting services regarding terrorism activities, analysis of data, documentation and reports. The Contractor employs a recognized expert in anti-terrorism; an expertise and capability that does not currently exist within the MBPD.

The MBPD will provide reasonable work accommodations including: a desk, chair, telephone, and consumable office supplies, as needed. The MBPD, Strategic Investigations Unit, will determine and advise the Contractor of the required work hours; outline specific intentions for performance of the Contractor on a monthly, weekly or daily basis; authorize the monthly invoice for payment; maintain all attendance or assignment records of the Contractor's activities; and provide documentation to all authorized and inquiring sources with regards to the Contractor's attendance and assignment records, as needed.

2.2 DURATION AND EXTENT OF AGREEMENT

The term of this Agreement shall commence upon execution of this Agreement, by all parties hereto, and shall terminate twelve months from such effective date, unless terminated as otherwise provided in Section 4 of this Agreement.

2.3 AUDIT AND INSPECTIONS

At anytime during normal business hours and as often as the City may deem necessary, there shall be made available to the City and/or such representatives as the City may deem to act on its behalf, to audit, examine and make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Contractor shall maintain any and all records necessary to document compliance with the provisions of this Agreement.

2.4 ACCESS TO RECORDS

Contractor agrees to allow access during normal business hours to all financial records to the City and/or such authorized representatives as it may deem to act on its behalf, and agrees to provide such assistance as may be necessary to facilitate financial audit by the City or its representatives when deemed necessary to insure compliance with applicable accounting and financial standards.

Contractor shall allow access during normal business hours to all other records, forms, files, and documents which have been generated in performance of this Agreement, to those personnel as may be designated by the City.

2.5 ASSIGNMENT, TRANSFER OR SUBCONSULTING

Neither this Agreement nor any term nor provision hereof or right hereunder shall be assignable by any parties and any attempt to make such assignment shall be void.

2.6 SUB-CONTRACTORS

The Contractor shall be liable for the Contractor's services, responsibilities and liabilities under this Agreement and the services, responsibilities and liabilities of sub-contractors, and any other person or entity acting under the direction or controls of the Contractor. When the term "Contractor" is used in this Agreement, it shall be deemed to include any sub-contractors and any other person or entity acting under the direction or control of the Contractor. All sub-contractors must be approved in writing prior to their engagement by the Contractor.

3.1 COST OF SERVICES

The City of Miami Beach agrees to pay the Contractor the total amount of sixty-two thousand, five hundred dollars (\$62,500) to be payable in twelve (12) monthly installments of \$5,208.33 commencing on the effective date of this Agreement, and payable upon receipt of a satisfactory invoice from the Contractor.

3.2 INVOICING

The Contractor will provide the MBPD Financial Management Unit with an invoice for services on, or before, the fifth (5th) day of each month.

The Contractor shall mail all invoices to:

City of Miami Beach Police Department
Financial Management Unit – 3rd Floor
1100 Washington Ave
Miami Beach, FL 33139
Attn: Ingrid Carries – Police Financial Assistant

3.3 METHOD OF PAYMENT

Within thirty (30) days of the approval by the City of an appropriately filed Invoice, the City shall provide the Contractor, a check for payment of the

approved amount. Payments shall only be made for approved Invoices only for services satisfactorily performed.

SECTION 4
TERMINATION, SUSPENSION AND SANCTIONS

4.1 TERMINATION FOR CAUSE

If the Contractor shall fail to fulfill in a timely manner, or otherwise violate any of the covenants, agreements, or stipulations material to this Agreement, the City shall thereupon have the right to terminate the Services then remaining to be performed. Prior to exercising its option to terminate for cause, the City shall notify the Contractor of its violation of the particular terms of this Agreement and shall grant the Contractor seven (7) days to cure such default. If such default remains uncured after seven (7) days, the City, upon three (3) days notice to the Contractor may terminate this Agreement and the 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 Contractor shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by the Contractor. The City, at its sole option and discretion, shall additionally be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's right and remedies against the defaulting party. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees. To the extent allowed by law, the defaulting party waives its right to jury trial and its right to bring permissive counter claims against the City in any such action.

4.2 TERMINATION FOR CONVENIENCE OF THE CITY

THE CITY MAY ALSO, FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THE SERVICES THEN REMAINING TO BE PERFORMED AT ANY TIME DURING THE TERM HEREOF BY GIVING WRITTEN NOTICE TO THE CONTRACTOR OF SUCH TERMINATION, WHICH SHALL BECOME EFFECTIVE FIFTEEN (15) DAYS FOLLOWING RECEIPT BY THE CONTRACTOR OF THE WRITTEN TERMINATION NOTICE. IF THE AGREEMENT IS TERMINATED BY THE CITY AS PROVIDED IN THIS SUBSECTION, THE CONTRACTOR SHALL BE PAID FOR ANY SERVICES SATISFACTORILY PERFORMED, AS DETERMINED BY THE CITY AT ITS DISCRETION, UP TO THE DATE OF TERMINATION.

4.3 TERMINATION FOR INSOLVENCY

The City also reserves the right to terminate the Agreement in the event the Contractor 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 4. 2.

4.4 SANCTIONS

In the event of the Contractor's noncompliance with the non-discrimination provisions of this Agreement, the City shall impose such sanctions as the City or State of Florida may determine to be appropriate, including but not limited to, withholding of payments to the Contractor under the Agreement until the Contractor complies and/or cancellation, termination or suspension of the Services. In the event the City cancels or terminates the Services pursuant to this Subsection the rights and obligations of the parties shall be the same as provided in Section 4.2.

SECTION 5 INDEMNIFICATION

5.1 INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the City of Miami Beach and its officers, employees and agents, from and against any and all actions, 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, at law or in equity, which may arise or be alleged to have arisen from the negligent acts, errors, omissions, or other wrongful conduct of the Contractor, its employees, agents, sub-contractors, or any other person or entity acting under the Contractor's control, in connection with the Contractor's performance of the Services pursuant to this Agreement; and to that extent, the Contractor 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, including appeals. The parties agree that one percent (1%) of the total compensation to the Contractor for performance of the Services under this Agreement is the specific consideration from the City to the Contractor for the Contractor's Indemnity Agreement.

The Contractor's obligation under this subsection shall not include the obligation to indemnify the City of Miami Beach and its officers, employees and agents, from and against any actions or claims which arise or alleged to have arisen from negligent acts or omissions or other wrongful conduct of the City and its officers, employees and agents.

The parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.

5.2 LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER

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, the Contractor and the 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. Contractor shall specifically bind its employees, sub-contractors, and agents to the provisions of this Agreement. This Agreement shall be construed in accordance with the laws of the State of Florida.

5.3 LIMITATION OF CITY'S LIABILITY

The City desires to enter into this Agreement only if in so doing 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 \$1,000. The Contractor hereby expresses its willingness to enter into this Agreement with the Contractor's recovery from the City for any damage action for breach of contract to be limited to a maximum of \$1,000.

Accordingly, and notwithstanding any other term or condition of this Agreement, the Contractor hereby agrees that the City shall not be liable to the Contractor for damages in amount in excess of \$1,000 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 paragraph 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.

5.4 ATTORNEY'S FEES

In the event that any party to this Agreement should seek legal or administrative recourse to enforce the terms of this Agreement, the breaching party shall be obligated to pay the prevailing party the reasonable attorney's fees and costs incurred by the prevailing party.

SECTION 6
GENERAL PROVISIONS

6.1 PUBLIC ENTITY CRIMES

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

6.2 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, and national origin, place of birth, marital status, sexual orientation or physical handicap. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, color, religion, ancestry, sex, age, national origin, place of birth, marital status, physical handicap, or sexual orientation. Such action shall include but not be limited to the following: employment, upgrading, demotion, or termination; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

6.3 CONFLICT OF INTEREST

The Contractor 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; both of which are incorporated by reference herein as if fully set forth herein.

The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirectly which should conflict in any manner or degree with the performance of the Services. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Contractor. 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.

SECTION 7
NOTICES

- 7.1 All notices and communications in writing required or permitted hereunder, may be delivered personally to the representatives of the Contractor and the City listed below or may be mailed by U.S. Certified Mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service.

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

TO CONTRACTOR: PN Investments, Inc. (Peter Smolyanski)
C/O 1100 Washington Avenue
Miami Beach, FL 33139

TO CITY: City of Miami Beach Police Department
Chief of Police
Donald W. De Lucca
1100 Washington Avenue
Miami Beach, FL 33139
(305) 673-7925

Notice may also be provided to any other address designated by the party to receive notice if such alternate address is provided via U.S. certified mail, return receipt requested, hand delivered, or by overnight delivery. In the event an alternate notice address is properly provided, notice shall be sent to such alternative address which notice would otherwise be sent, unless other delivery instruction as specifically provided for by the party entitled to notice.

7.2 **EFFECTIVE DATE OF NOTICE**

Notice shall be deemed given on the day on which personally served, or the day of receipt by either U.S. certified mail or overnight delivery.

SECTION 8
ENTIRE AGREEMENT, AMENDMENT, SEVERABILITY

8.1 **ENTIRETY OF AGREEMENT**

The City and the County 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.

8.2 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.

8.3 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 enforced to the fullest extent permitted by law.

8.4 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement.

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

FOR CITY:

CITY OF MIAMI BEACH

ATTEST:

By: _____
Robert Parcher
City Clerk

By: _____
David Dermer
Mayor

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

M. McCall 3-8-05
City Attorney Date

