pfm | Synopsis
powered by Synario

Software as a Service Subscription Agreement

SERVICE PROVIDER

PFM Solutions LLC ("PFM")
1735 Market Street, 43rd Floor
Philadelphia PA 19103

CUSTOMER

Company Name: City of Doral

Address: 8401 NW 53rd Terrance

City: Doral	**State:** Florida (FL)	**Zip Code:** 33166

INITIAL TERM

Effective Date: June 1, 2021	**Termination Date:** May 31, 2024	**Months:** 36

FEES

FEE	BASIS	AMOUNT	INVOICE DATE(S)
Licensing: ($12,500 - $2,500 discount)	Annual	$10,000	June 1, 2021 (annually thereafter)
Implementation:	One-Time	N/A	N/A
Ancillary Services	As Requested	As Incurred	Monthly

AUTHORIZED USERS

Standard Users	6	$1,000 per additional

TERMS AND CONDITIONS

Subscription: PFM shall grant Customer the right to Access the Application, described in **Annex A**.

Services: PFM shall provide Customer with the Services described in **Annex B**.

Taxes: Fees payable to PFM shall not include any taxes that Customer's access to and use of the Application or receipt of Services may be subject.

Users: Customers shall only allow its Authorized Users to access and use Customer's Account.

Limitation on Liability: IN NO EVENT SHALL PFM BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

Entire Agreement: Each annex that is attached hereto is incorporated in its entirety into and form a part of this Subscription Agreement (collectively, the "Agreement"). Any capitalized but undefined term herein shall have the meaning given to it in the applicable annex. This agreement: (i) comprises the entire agreement between the parties relating to the subject matter hereof. This Agreement may only be modified by a writing that is manually signed by both parties.

ADDITIONAL TERMS AND CONDITIONS

Customer agrees that in addition to the terms and conditions contained on this page, the terms and conditions as set forth in Annex C ("Additional Terms and Conditions"): (i) were read and understood by Customer prior to signing below; and (ii) are incorporated herein by reference as if fully set forth herein. The Additional Terms and Conditions address the following, among others, authorized users, fees, taxes, indemnification, limitation of liability, confidentiality and governing law.

BY SIGNING BELOW, CUSTOMER AGREES TO THE TERMS AND CONDITIONS SET FORTH ON THIS PAGE AND IN THE ADDITIONAL TERMS AND CONDITIONS. This agreement may be executed: (a) in counterparts, both of which taken together shall constitute one simple agreement between parties.

SIGNATURE AUTHORIZATION

SERVICE PROVIDER		CUSTOMER	
Name: PFM Solutions LLC		**Name:**	
Signature:		**Signature:**	
Print Name: Albert P. Matteo, Jr	**Title:** President	**Print Name:** Albert P. Childress	**Title:** City Manager

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SIGNATURE AUTHORIZATION

SERVICE PROVIDER		CUSTOMER	
Name:	PFM Solutions LLC	Name:	
Signature:		Signature:	
Print Name:	Albert P. Matteo, Jr	Print Name:	Title:
	Title: President		

CONTRACT WILL BE EXECUTED VIA DOCUSIGN

Annex A
to
Synopsis Software as a Service Subscription Agreement
Description of Application
(Synopsis)

1. **Application.** The "Application", as defined and used throughout this Agreement, constitutes the configuration of Synario identified in Section 2 of the Subscription Agreement.

   1.1. *"Synopsis"* shall mean a configuration of Synario by which Customer has access to the "Presentation Interface".

   1.2. *"Presentation Interface"* shall mean one or more Decks, comprising one or more Slides constructed on the Synario software to facilitate financial analysis and communicate that analysis to Customer stakeholders. "Decks" constitute collections of Slides, by which Customer and Authorized Users (i) drive analysis; (ii) review and analyze reports, charts, and Customer Data, and (iii) consider other results and output of the Application. "Slides" constitute dashboards and other collections of reports, graphs, charts, tables, and controls, by which Customer and Authorized Users model and interact with the Power User Interface of the Synario software.

2. **Documentation.** PFM may make available to Customer certain Documentation. "Documentation" means PFM's standard user documentation (that PFM generally makes available to its Application customers), in electronic form, that describes the use, features and operation of the Application. Use of the Documentation is restricted solely to Customer's use of the Application during the Term and solely for Customer's internal business purposes. Customer may print or copy the Documentation as needed for its own internal business purposes provided that all copyright notices are included therein. The Documentation shall be considered Confidential Information of PFM. Unless the Documentation is separately referred to herein, all references in this Agreement to the Application shall include the Documentation.

3. **Updates.** The Application, and all references to it in this Agreement, shall include new code related to the Synario platform and new configurations of the Application implemented by PFM to: (i) improve performance, (ii) improve functionality, (iii) fix reported issues, or (iv) modify and revise prior versions or releases of Synario and/or the Application, as well as additions or corrections to Documentation (collectively, "Updates"). PFM reserves the right, in its sole discretion, to make any Updates that it deems necessary or desirable in furtherance thereof.

Annex B
to
Synopsis Software as a Service Subscription Agreement
Description of Services
(Synopsis Plus)

PFM will provide the following services related to the implementation and ongoing use of the Application.

1. **Implementation Services.** Shall mean the services provided by PFM in connection with the development of the Application to which Customer and Authorized Users have been granted Access, as identified in Section 2 of the Subscription Agreement and described in the Annex A (Description of Application). The Implementation Services comprise:

   1.1. *Project Management*. PFM shall manage the process of implementing the Application, including: (i) developing a mutually-acceptable schedule (the "Schedule") to complete the Implementation Services, (ii) confirming the Authorized Users as defined in the Subscription Agreement and as identified by Customer, (iii) confirming other key stakeholders in the implementation process as identified by Customer (with the Authorized Users, the "Responsible Parties"), (iv) managing access to Synario and the Application, (v) arranging access to all electronic and telephonic meetings and sessions, (vi) managing the flow of information between PFM and Customer, (vii) and providing periodic reports to the Responsible Parties describing progress against the Schedule.

   1.2. *Phase ONE (Learn)*. PFM will work collaboratively with Customer to provide:

       1.2.1. *Initial Data Process*. PFM will work collaboratively with Customer to develop and import summary Customer financial data.

       1.2.2. *Introductory Training*. PFM shall provide: (i) the Documentation; and (ii) up to three (3) one-hour-long internet sessions to introduce Customer to the Application, focusing on:

           1.2.2.1. Navigation. How to efficiently and effectively navigate the Decks;

           1.2.2.2. Assumptions. How to set Application assumptions and parameters to drive analysis;

           1.2.2.3. Analysis. How to conduct sensitivity, scenario, and what-if analysis.

   1.3. *Phase TWO (Configure)*. PFM will work collaboratively with Customer to provide:

       1.3.1. *Design Process*. PFM will work collaboratively with Customer via one (1) one-hour-long internet session, as needed, to develop specifications for the Application (the "Design Process"). PFM will endeavor to understand Customer preferences as related to the configuration of the Presentation Interface (the "Synopsis Design").

       1.3.2. *Customer Data*. PFM will conduct up to one (1) two-hour-long internet session, as needed, to describe the Customer Data required for the Application.

       1.3.3. *Data Importation*. PFM will import the Customer Data into the Application.

       1.3.4. *Configuration Process*. PFM will configure the Application to reflect the Synopsis Design in consideration of Customer Data.

   1.4. *Phase THREE (Deploy)*. PFM will work collaboratively with Customer via one (1) one-hour-long internet session, as needed, to provide:

1.4.1. Final Adjustments. Amend the visual content within the Decks and Slides;

1.4.2. Validation. Achieve final agreement that the Application is configured to meet Customer needs;

1.4.3. Final Training. Revisit key concepts related to the use of the Application.

2. **Ongoing Services.** Shall mean the advisory services provided by PFM in connection with the ongoing use of the Application by Customer and Authorized Users, as described in the Standard Terms and Conditions. The Ongoing Services comprise:

   2.1. **Development Assistance.** PFM will provide Customer post-implementation assistance by which PFM personnel answer Customer questions and otherwise direct Customer in how Customer can or should reconfigure the Decks and Application ("<u>Development Assistance</u>"). As requested by Customer, PFM will provide Development Assistance via telephone, Internet and/or email from 9 AM to 6 PM Eastern Time, Monday through Friday, except on recognized US holidays. Any request for Development Assistance outside of the times provided in the foregoing sentence shall be on a previously scheduled appointment-only basis as mutually agreed upon by PFM and Customer.

   2.2. **Forum(s).** PFM will provide Customer access to one or more internet portals hosted by PFM on which Customer and other Synario subscribers are provided a platform to exchange insights, use cases, and other information.

   2.3. **Hosted Discussions.** PFM may, in its sole discretion, host discussions, meetings, and sessions, internet-based or otherwise, during which Customer and other Synario subscribers are provided opportunities to exchange insights, use cases, and other information.

   2.4. **Post-implementation Training.** PFM may, in its sole discretion, host training sessions, internet-based or otherwise, during which Synario's features and functionality will be explored.

3. **Ancillary Services.** Shall mean post-implementation support related to the Application, as requested by Customer. The Ancillary Services comprise: (i) post-implementation modifications, additions, and/or deletions of elements of the Application executed on behalf of Customer by PFM, and (ii) post-implementation training requested specifically by and for Customer. PFM will provide Ancillary Services via telephone, Internet and/or email from 9 AM to 6 PM Eastern Time, Monday through Friday, except on recognized US holidays. Any request for Ancillary Services outside of the times provided in the foregoing sentence shall be on a previously scheduled appointment-only basis as mutually agreed upon by PFM and Customer.

4. **Customer Responsibilities.**

   4.1. **Application-Development Responsibilities.** Customer will actively participate in the Data and Design Processes.

   4.2. **Training-Related Responsibilities.** Customer will: (i) participate in the Introductory Training sessions, and (ii) review the Documentation. **Customer acknowledges that the Training Process is serially dependent on the Data and Design Processes.**

   4.3. **Data-Related Responsibilities.** Customer will provide the Customer Data, as needed, to load the Application in support of the Implementation Services.

**Annex C
to
Synopsis Software as a Service Subscription Agreement
Standard Terms and Conditions**

1. **Subscription.** Subject to these standard terms and conditions ("Terms and Conditions"), PFM hereby grants Customer the right to access and use the Application ("Access") during the Term (defined below), solely for Customer's internal business purposes (the "Subscription"). The Application, and all references to it in these Terms and Conditions, shall also include Updates (as defined in Annex A). The Subscription is subject to, and in consideration of, the full payment of the Licensing Fees owed to PFM as described in the Subscription Agreement.

    1.1. **Access.** The Application is only accessible via the Internet. Access is only granted to Authorized Users as described below.

    1.2. **Web Browser.** Customer is solely responsible for observing the then-current minimum web browser requirements that PFM defines from time to time.

2. **Services.** Subject to these Terms and Conditions, PFM agrees to provide Customer the Services described in Annex B in support of the implementation and ongoing use of the Application. The Services are subject to, and in consideration of, the full payment of the Implementation Fees and Licensing Fees owed to PFM as described in the Subscription Agreement.

3. **Cooperation.** Customer agrees: (i) to cooperate with PFM in order for PFM to provide Services to Customer; and (ii) to comply with instructions that PFM may provide to Customer in connection with PFM's provision of Services to Customer, and that the provision of certain Services by PFM may be dependent on Customer providing the foregoing cooperation. PFM shall not be responsible or liable for any delay or failure of performance caused in whole or in part by Customer's failure to perform its obligations under these Terms and Conditions.

4. **Customer Account.**

    4.1. **Authorized Users.** A Customer account will be created in connection with Customer's use of the Application ("Account"). Customer must not allow anyone other than Customer's authorized users (each an "Authorized User") to access and use Customer's Account. Customer acknowledges and agrees: (i) to keep, and ensure that Authorized Users keep, all Credentials (defined below) secure at all times; (ii) to remain solely responsible and liable for the activity that occurs in Customer's Account, (iii) that the Credentials for each Authorized User may only be used by that Authorized User, and that multiple people may not share the same Credentials; and (iv) to promptly notify PFM in writing if Customer becomes aware of any unauthorized access or use of Customer's Account, any Credentials or the Application.

        4.1.1. *Standard Users* shall refer to Authorized Users that are granted access to the Presentation Interface of the Application, as described in the Subscription Agreement.

        4.1.2. *Power Users* shall refer to Authorized Users that are granted access to both the Presentation Interface and the Power User Interface of the Application, as described in the Subscription Agreement.

    4.2. **Credentials.** For purposes of these Terms and Conditions, "Credentials" means user identification numbers, passwords, security codes, passphrases, security questions, biometrics, personal identification numbers, or other credentials necessary for Customer and its Authorized Users to access the Application and Services, as established by PFM and its third party vendors from time to time.

    4.3. **Security Devices.** For purposes of these Terms and Conditions, "Security Devices" means Credentials, anti-malware services, out-of-band authentication services, secure tokens and other procedures or technologies required to access a Service, the Application, network or web site. PFM may change the Security Device(s) from time to time. PFM will deliver and/or communicate the Security Device(s) directly to the Permitted Users.

4.4. _Unique Credentials_. PFM will assign each Customer and each Authorized User unique Credentials, which must be used when accessing the Application and Services. Authorized Users shall use only their own assigned Credentials when requesting Services and to access the Application.

4.5. _Reliance by PFM_. PFM SHALL BE ENTITLED TO RELY, WITHOUT INVESTIGATION, UPON THE AUTHENTICITY OF ANY WRITTEN OR ORAL INSTRUCTION, INCLUDING ANY WRITTEN OR ELECTRONIC SIGNATURE OR USE OF CREDENTIALS BELIEVED BY PFM IN GOOD FAITH TO BE AUTHENTIC AND MADE OR GIVEN BY ANYONE PURPORTING TO ACT ON BEHALF OF CUSTOMERS OR AUTHORIZED USERS.

5. **Restrictions on Use.** Customer shall only access the Application via the PFM designated web portal and in connection with Customer's Account. Customer must not, and shall not allow any Authorized User or third party to: (i) circumvent, disable or otherwise interfere with security-related features of the Application or features that enforce limitations on use of the Application; (ii) violate or abuse password protections governing access to the Application; (iii) allow any third party to use the Application; (iv) sell, rent, lease, license or timeshare the Application or use it in any service bureau arrangement; (v) copy, modify, reverse engineer, decompile, disassemble or derive, or attempt to derive, the source code of, the Application or any components thereof; (vi) use the Application to develop a competing service or product or, directly or indirectly, assist any other individual or entity in developing a competing service or product; (vii) use any automated means to access the Application; (viii) take any action that imposes or may impose, at PFM's sole discretion, a disproportionately large load on the PFM infrastructure; (ix) interfere or attempt to interfere with the integrity or proper working of the Application; (x) remove, deface, obscure, or alter PFM's, or any third party's, copyright notices, trademarks, or other proprietary rights affixed to or provided as part of the Application, or use or display logos of the Application differing from those of PFM; and/or (xi) use the Application in any unlawful manner or in breach of the Agreement. Customer agrees and acknowledges that a violation of this Section is a material breach of the Agreement and that if Customer provides access to the Application to an unauthorized third party, or uses the Application primarily for the benefit of an unauthorized third party, then Customer shall be liable for the payment of an Implementation Fee and Licensing Fee for each such unauthorized third party, in addition to any other remedies available to PFM pursuant to these Terms and Conditions.

6. **Customer Data.**

    6.1. **_Customer Data_.** During the Term, Customer will provide, upload, import, transmit, post, or make accessible to PFM certain data, including financial statements, general ledger information, budget information, and all other data and assumptions required for Customer to use the Application and Services ("Customer Data").

    6.2. **_License_.** Customer grants PFM a non-exclusive license to use, process, display, copy and store the Customer Data in order to provide the Application and Services to Customer.

    6.3. **_Ownership; Responsibility_.** The intellectual property and all other rights, title and interest of any nature in and to the Customer Data are and shall remain the exclusive property of Customer and its licensors. Except as expressly set forth herein, nothing herein shall be construed as transferring any rights, title or interests to PFM or any third party. Customer represents and warrants that: (i) Customer has the right to provide PFM the license granted herein to use such Customer Data in accordance with these Terms and Conditions; and (ii) the Customer Data does not infringe or violate any patents, copyrights, trademarks or other intellectual property, proprietary or privacy or publicity rights of any third party. Customer shall remain solely responsible and liable for the Customer Data and expressly releases PFM from any and all liability arising from PFM's use of the Customer Data as permitted herein.

    6.4. **_Security_.** During the Term, PFM agrees to implement reasonable security measures to protect Customer Data in accordance with applicable industry standards.

    6.5. **_Backup_.** During the Term, PFM will routinely backup Customer Data, however the Application does not operate as an archive or file storage service. Customer is and shall remain solely responsible for maintaining redundant archives of the Customer Data. Customer acknowledges that PFM has no obligation or liability for any loss, alteration, destruction, damage, corruption or recovery of Customer Data.

7. **Title.** The intellectual property and all other rights, title and interest of any nature in and to the Application, and any related content, Documentation (as defined in Annex A) and Services provided or made available by PFM hereunder, including all Updates, are and shall remain the exclusive property of PFM and its licensors. Except

as expressly set forth herein, nothing in these Terms and Conditions shall be construed as transferring any rights, title or interests to Customer or any third party. PFM and its licensors reserve any and all rights not expressly granted herein.

8. **Anonymous Information.** PFM may collect, use and publish Anonymous Information (defined below), and disclose it to its third party service providers, to provide, improve and publicize PFM's applications and services. "Anonymous Information" means information about use of the Application, including Customer Data, which does not enable identification of an individual, such as aggregated and analytics information about use of the Application. PFM owns all Anonymous Information collected or obtained by PFM.

9. **Payments.** Customer shall pay PFM the fees set forth in the Subscription Agreement in accordance with this Section 9.

   9.1. *Implementation Fee.* The provision of any "Implementation Services" (as described in Annex B) is subject to Customer's payment in full of the Implementation Fee set forth in the Subscription Agreement.

   9.2. *Licensing Fee.* Access to the Application and the provision of any "Ongoing Services" (as described in Annex B) is subject to Customer's payment in full of the related Licensing Fee for the related subscription period set forth in the Subscription Agreement.

   9.3. *Ancillary Services Fee.* If Customer requests that PFM provide ancillary services, then PFM will provide such service subject to Customer's payment in full of the "Ancillary Services Fee" set forth in the Subscription Agreement.

   9.4. *Expenses.* Customer will reimburse PFM for reasonable transportation, lodging, meal, and out-of-pocket expenses incurred by PFM for travel, as requested by Customer, to any location outside of Philadelphia, Pennsylvania. Customer will be solely responsible for all expenses incurred by Customer personnel in connection with these Terms and Conditions, the Application, and the Services.

   9.5. *Payment Terms.* All payments hereunder are quoted and shall be paid in United States Dollars. Payments shall be made without any right of set-off or deduction and are irrevocable and (except as expressly set forth herein) nonrefundable. All PFM invoices are due and payable in accordance with the Subscription Agreement. Any amount not paid when required to be paid hereunder shall accrue interest on a daily basis until paid in full at the lesser of: (i) the rate of one and a half percent (1.5%) per month; or (ii) the highest amount permitted by applicable law.

   9.6. *Taxes.* All fees payable to PFM are exclusive of applicable taxes (including without limitation VAT), withholdings, duties, or other governmental charges (collectively, "Taxes"), and the fees set forth in the Subscription Agreement are the net amounts which PFM shall be paid by Customer hereunder. Customer contemplates that Customer's access to and use of the Application and receipt of Services will be exempt from all Taxes. If Customer's access to or use of the Application or receipt of Services is nevertheless determined to be subject to Taxes, Customer shall pay when due all such Taxes assessed or levied against or with respect to the Application or Services.

10. **Term, Renewal, and Termination.**

    10.1. *Initial Term.* The Agreement shall be effective upon the Effective Date and shall continue for an initial term as described in the Subscription Agreement (the "Initial Term").

    10.2. *Renewal.* Following the Initial Term, the Agreement may be renewed upon mutual written consent at the then-applicable Licensing Fee for successive one-year terms (each a "Renewal Term", and together with the Initial Term, the "Term") unless: (i) PFM or Customer provides the other with sixty (60) days written notice prior to the end of any term of its intent not to renew, or (ii) the Agreement is terminated in accordance with Section 10.3 (Termination) below. If Customer continues to use the Application past any renewal date, then Customer shall be deemed to have renewed the Agreement for the following term at the rates applicable for said new term.

    10.3. *Termination.*

        10.3.1. *Material Breach.* Either party may terminate the Agreement with immediate effect if the other party materially breaches the Agreement and such breach remains uncured (to the extent that the breach can be cured) fifteen (15) days after having received written notice thereof.

10.3.2. *Distress Event.* In the event that either party becomes liquidated, dissolved, whether voluntarily or involuntarily, or becomes subject to any bankruptcy or insolvency (or similar) proceeding, or shall take any action to be so declared, the other party shall have the right to immediately terminate the Agreement.

10.3.3. *Suspension.* If PFM believes that Customer is using the Application in a manner that may cause harm to PFM or any third party then PFM may, without derogating from PFM's right to terminate the Agreement for any breach hereof, suspend Customer's access to and use of the Service until such time as PFM believes the threat of harm, or actual harm, has passed.

10.4. **Effect of Termination.**

10.4.1. *General.* Upon termination of the Agreement, PFM may disable all access to the Application, and Customer shall immediately discontinue all access and use, including by all Authorized Users, of the Application and shall promptly, but in any event within three (3) days, permanently delete all copies of the Documentation in Customer's possession or control.

10.4.2. *Fees.* Customer shall be liable for all amounts due and payable hereunder through the effective date of expiration or termination, as described in the Subscription Agreement, including 100% of all Implementation Fees and the pro-rated amount of the most recently billed Licensing Fees. EXCEPT AS EXPLICITLY PROVIDED HEREIN, CUSTOMER SHALL NOT BE ENTITLED TO A REFUND OF ANY AMOUNTS PREVIOUSLY INVOICED OR PAID.

10.4.3. *Access to Customer Data.* Upon termination of the Agreement, Customer will lose all access to any Customer Data that PFM may be storing in order to make available the Application to Customer. It is Customer's responsibility to download its Customer Data prior to termination of the Agreement. Notwithstanding the foregoing, for a period of thirty (30) days from the effective date of termination, PFM will provide Customer, upon Customer's written request, with a reasonable opportunity to download the Customer Data. PFM reserves the right to permanently delete any Customer Data that may be contained in Customer's Account at any time following said thirty (30) day period, and Customer agrees to waive any legal or equitable rights or remedies it may have against PFM with respect to Customer Data that is deleted in connection thereto.

10.4.4. *Survival.* This Section 10 and Sections 5 (Restrictions on Use), 7 (Title), 9 (Payments, to the extent any amounts due hereunder remain payable), 11 (Warranty Disclaimer), 12 (Limitation of Liability), 13 (Indemnification), 14 (Confidential Information), 15 (Privacy Policy) and 17 (Independent Contractors) to 21 (General) shall survive termination of the Agreement.

11. **Warranty Disclaimer.**

11.1. Except as expressly set forth herein: (i) the Application, Reports (defined below), and Services are provided on an "as is" basis; and (ii) ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. PFM WILL NOT BE LIABLE OR RESPONSIBLE FOR: (a) ANY TECHNICAL PROBLEMS OF THE INTERNET (INCLUDING WITHOUT LIMITATION SLOW INTERNET CONNECTIONS OR OUTAGES); AND/OR (b) ANY ISSUE THAT IS ATTRIBUTABLE TO CUSTOMER'S HARDWARE OR SOFTWARE OR CUSTOMER'S INTERNET OR DATA SERVICE PROVIDER.

11.2. PFM DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY CONTENT, REPORTS, INFORMATION, OR RESULTS THAT CUSTOMER OBTAINS THROUGH OR IS GENERATED BY THE USE OF THE APPLICATION (COLLECTIVELY, "REPORTS"), OR THAT THE REPORTS ARE COMPLETE OR ERROR-FREE. THE REPORTS DO NOT CONSTITUTE FINANCIAL OR LEGAL ADVICE, AND CUSTOMER UNDERSTANDS IT MUST DETERMINE FOR ITSELF THE NEED TO OBTAIN ITS OWN INDEPENDENT FINANCIAL AND LEGAL ADVICE REGARDING THE SUBJECT MATTER OF ANY REPORT THAT CUSTOMER USES OR IS CONSIDERING TO USE. CUSTOMER'S USE OF AND RELIANCE UPON THE APPLICATION AND ANY REPORTS IS ENTIRELY AT CUSTOMER'S SOLE DISCRETION AND RISK, AND PFM SHALL HAVE NO RESPONSIBILITY OR

LIABILITY WHATSOEVER TO CUSTOMER NOR ANY OTHER PERSON IN CONNECTION WITH ANY OF THE FOREGOING. THE PARTIES DO NOT CONFER ANY RIGHTS OR REMEDIES UPON ANY PERSON OTHER THAN THE PARTIES TO THE AGREEMENT AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS.

12. Limitation of Liability.

12.1. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL PFM BE LIABLE FOR ANY LOSS OF INCOME, PROFITS, REPUTATION, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT ARISE UNDER THE AGREEMENT OR THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE APPLICATION, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2. PFM'S TOTAL AGGREGATE LIABILITY FOR ALL DAMAGES AND LOSSES UNDER THE AGREEMENT, OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE APPLICATION, SHALL NOT UNDER ANY CIRCUMSTANCE EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO PFM UNDER THE AGREEMENT WITHIN THE TWELVE (12) MONTHS PRECEDING THE DATE OF BRINGING A CLAIM.

13. Indemnification.

13.1. *By PFM.* PFM hereby agrees to defend and indemnify Customer against any damages awarded against Customer by a court of competent jurisdiction, or paid in settlement, in connection with a third party claim, suit or proceeding that Customer's use of the Application within the scope of the Agreement infringes any copyright or trade secret of a third party. PFM shall have no obligations or liability hereunder to the extent that the alleged infringement is based on the Customer Data. Without derogating from the foregoing defense and indemnification obligation, if PFM believes that the Application, or any part thereof, may infringe, then PFM may in its sole discretion: (i) obtain (at no additional cost to Customer) the right to continue to use the Application; (ii) replace or modify the allegedly infringing part of the Application so that it becomes non-infringing while giving substantially equivalent performance; or (iii) if PFM determines that the foregoing remedies are not reasonably available, then PFM may require that use of the (allegedly) infringing Application (or part thereof) shall cease and in such an event Customer shall receive a prorated refund of any Licensing Fee paid for the unused portion of the subscription period. This Section states PFM's entire liability and Customer's exclusive remedy for infringement.

13.2. *By Customer.* To the extent not prohibited under applicable law, Customer hereby agrees to defend and indemnify PFM against any damages awarded against PFM by a court of competent jurisdiction, or paid in settlement, in connection with a third party claim, suit or proceeding arising from (a) the use of the Customer Data within the scope of the Agreement that infringes any intellectual property rights of a third party; (b) an unauthorized user's access to the Application, including, but not limited to, access obtained by an unauthorized user through using valid Credentials; or (c) a claim that such third party suffered damages in reliance upon the output of the Application.

13.3. *General.* The indemnification obligations of the indemnifying party under this section are subject to: (i) the indemnifying party being given prompt written notice of the claim; (ii) the indemnifying party being offered immediate and complete control over the defense and/or settlement of the claim; and (iii) the indemnified party providing cooperation and assistance, at the indemnifying party's expense, in the defense and/or settlement of such claim and not taking any action that prejudices the indemnifying party's defense of or response to such claim.

14. Confidential Information. Customer may have access to certain of PFM's non-public and/or proprietary information, in any form or media, including (without limitation) confidential trade secrets and other information related to the Application, other products, software, technology, data, know-how, or business, whether written or oral, and any such other information that, regardless of the manner in which it is furnished and given the totality of the circumstances, a reasonable person or entity should have reason to believe is proprietary, confidential, or competitively sensitive ("Confidential Information"). Customer shall take reasonable measures, at least as protective as those taken to protect its own confidential information, but in no event less than reasonable care, to protect PFM's Confidential Information from disclosure to a third party. Customer shall not use or disclose the Confidential Information except as expressly permitted herein or required by applicable law.

All right, title and interest in and to Confidential Information is and shall remain the sole and exclusive property of PFM. The terms of the Agreement are considered Confidential Information (although Customer may disclose the terms herein to its advisers and (potential and actual) investors, subject to a confidentiality undertaking). The Customer Data is the confidential information of Customer and PFM shall take reasonable measures to protect the Customer Data, except to the extent that applicable law requires the Customer data to be kept publicly available.

15. **Privacy Policy.** To the extent that any personally identifiable information is collected by or on behalf of PFM, it shall be used by PFM in accordance with the PFM privacy policy which is available at https://www.pfm.com/privacy and may be modified by PFM from time to time.

16. **Reference Customer.** PFM may use Customer's name and logo on its website and in its promotional materials to state that Customer is a customer of PFM and Application user, but will not imply that the parties are affiliated.

17. **Independent Contractors.** The parties are independent contractors. Nothing herein shall create a partnership, joint venture, agency, or employment relationship between the parties. Neither party may make, or undertake, any commitments or obligations on behalf of the other.

18. **Assignment.** The Agreement and any rights or obligations thereunder may not be transferred or assigned by Customer without the prior written consent of PFM. PFM reserves the right to subcontract any of the Services to third parties. PFM further reserves the right to subcontract other services, including hosting, data storage, and/or backup services. Subject to the foregoing conditions, the Agreement shall be binding upon and inure to the benefit of each party and its respective assigns. Any prohibited assignment shall be null and void.

19. **Notice.** Unless otherwise agreed to by the parties, any notice under the Agreement shall be in writing and addressed and delivered to the other party's address or email set forth in the Subscription Agreement. Notice shall be deemed to have been received by a party: (i) when delivered personally by hand (with written confirmation of receipt); (ii) on the business day sent, if sent by email, receipt confirmation requested, before 5pm (or on the next business day if sent after 5pm); or (iii) on the fifth (5th) business day after which such notice is deposited prepaid in the registered postal system. Either party may change its address for notice purposes upon issuance of notice thereof in accordance with this section.

20. **Governing Law and Settlement of Disputes.**

    20.1. The Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions. The United Nations Convention for the International Sale of Goods shall not apply.

    20.2. In the event of any dispute arising out of the Agreement, each party agrees to cooperate and negotiate in good faith with the other party in an effort to amicably resolve said dispute. Except as otherwise required by applicable non-waivable law, all disputes arising out of the Agreement shall be subject to, and each party hereby consents to, the sole and exclusive jurisdiction of the competent courts located in Philadelphia, Pennsylvania. Notwithstanding the foregoing, PFM may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.

General. The headings used herein are for convenience only and shall in no case be considered in construing the Agreement. Any subscription agreement entered into between the parties shall be deemed to incorporate these Terms and Conditions. If a subscription agreement contains terms that purport to modify or supplement these Terms and Conditions then those subscription agreement terms shall have no force or effect, unless expressly agreed to in writing by both parties. In the case of an inconsistency or contradiction between these Terms and Conditions and any subscription agreement, these Terms and Conditions shall prevail.

RESOLUTION No. 21-85

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH PFM SOLUTIONS, LLC FOR A THREE-YEAR SUBSCRIPTION TO THE SYNOPSIS FINANCIAL PLANNING SOFTWARE IN AN AMOUNT NOT TO EXCEED $10,000.00 PER YEAR; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, PFM Solutions, LLC offers local government and municipalities, an advance modeling/ planning tool, Synopsis Financial Planning software; and

WHEREAS, this financial model will allow the City to get a deeper analysis of historic trends, macro-economic trends, as well as incorporating known, likely, or potential changes in future years' projections; and

WHEREAS, in order to continue to meet the financial planning needs of our growing City, along with the consideration of a second tranche bond issuance, it is recommended for the City to continue using an advanced modeling/ planning tool for Five (5) Year Budget Forecasts; and

WHEREAS, staff respectfully requests that the Mayor and City Council authorize the City Manager to enter into a professional services agreement with PFM Solutions, LLC, for a three-year subscription to the Synopsis Financial Planning software in an amount not to exceed $10,000 per year, payable from the General Fund's Information Technology Repair and Maintenance – Office Equipment-Other account number 001.21005.500464; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL AS FOLLOWS:

Section 1. **Recitals.** The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. **Authorization.** The City Council hereby approves for the City Manager to enter into a professional services agreement with PFM Solutions, LLC, for a three-year subscription to the Synopsis Financial Planning software in an amount not to exceed $10,000 per year, payable from the General Fund's Information Technology Repair and Maintenance – Office Equipment-Other account number 001.21005.500464.

Section 3. **Implementation.** The City Manager and the City Attorney are hereby authorized to take such action as may be necessary to implement the provisions of this Resolution.

Section 4. Effective Date. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Councilmember Mariaca who moved its adoption. The motion was seconded by Councilmember Puig-Corve and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Pete Cabrera	Yes
Councilwoman Digna Cabral	Yes
Councilman Claudia Mariaca	Yes
Councilwoman Oscar Puig-Corve	Yes

PASSED AND ADOPTED this 14 day of April, 2021.

_____
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

_____
CONNIE DIAZ, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:

_____
LUIS FIGUEREDO, ESQ.
CITY ATTORNEY