

**RESOLUTION 22-146**

**A RESOLUTION TO APPROVE A CONTRACT BETWEEN THE CITY OF SPRING HILL AND HYPER REACH FOR MASS NOTIFICATION SYSTEM**

**WHEREAS**, the City of Spring Hill is in need of providing mass notification information to its residents and businesses during times of need; and

**WHEREAS**, Hyper Reach provides a mass notification system that would allow the City of Spring Hill to alert the community of Spring Hill when situations arise; and

**WHEREAS**, after research, City staff recommends the City of Spring Hill and Hyper Reach enter in to a contract for Hyper Reach to offer services to allow the City of Spring Hill to alert the community with its mass notification system; and

**WHEREAS**, the contract is for \$9,800 dollars annually, renewable after 3 years, with the option to cancel after one year, if either entity deems necessary, attached hereto as Exhibit A; and

**WHEREAS**, funding for the notification system is budgeted in the FY budget 2022-2023.

**NOW, THEREFORE BE IT RESOLVED**, that the City of Spring Hill Board of Mayor and Alderman:

1. Approves the contract with Hyper Reach for a mass notification, attached hereto as Exhibit A.
2. Approves the purchase of the Hyper Reach Mass Notification Information System, for a three-year annual cost of \$9800.00.
3. Authorizes the Mayor to sign the contract between the City and Hyper Reach.

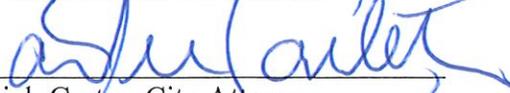
**Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on the 5<sup>th</sup> day of July, 2022.**

  
Jim Hagaman, Mayor

ATTEST:

  
April Goad, City Recorder

APPROVED AS TO FORM:

  
Patrick Carter, City Attorney

## *Asher Group Services Agreement for Hyper-Reach™ Customers*

This agreement is made between **Asher Group**, 3300 Monroe Avenue, Suite # 317, Rochester, NY 14618, and **City of Spring Hill, TN**, 199 Town Center Parkway, Spring Hill, TN 37174 (“**Customer**”).

Whereas Asher provides mass emergency notification services (“**Services**”) and will make **Services** available to **Customer** under the following terms and conditions:

### **1) Services**

**Services** are described in Exhibit A – Description of **Services**. **Services** shall be available as described in Section 3 below.

### **2) Cost of Services**

**Services** provided to **Customer** shall be billed according to the pricing schedule: See Exhibit B - Cost of **Services**.

### **3) Service Availability**

**Services** shall be available 24 hours a day, 7 days a week, except for: (i) planned downtime (“**Scheduled Downtime**”) for which Asher shall provide a minimum of 8 hours prior notice and shall normally but not necessarily schedule within the interval from 6:00 p.m. Friday to 3:00 a.m. Monday, Eastern Time) or (ii) any unavailability caused by circumstances beyond Asher’s reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems, internet service provider failures or delays, or denial of service attacks (“**Emergency Downtime**”), and (iii) software or other failures which interrupt **services**. In the case of such failures, Asher warrants that it will use its best commercially reasonable efforts to correct such failures as quickly as possible.

### **4) Limited Warranty; Disclaimers of Warranty**

Asher represents and warrants that the **Services**, under normal operation and when used as authorized herein, will perform substantially in accordance with the Description of **Services** during the Term.

Asher’s sole obligation and **Customer**’s exclusive remedy for any breach of the above warranty is limited to Asher’s commercially reasonable efforts to correct the non-conforming **Services** at no additional charge to **Customer**. Save as specifically set out herein, Asher will not be responsible for any incidental, special or consequential damage sustained or suffered by **Customer** in any way arising out of or referable to **Services** provided under this Agreement, so long as such damages were not caused by

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wrongful misdoing or gross negligence on the part of Asher.

EXCEPT AS WARRANTED IN THIS SECTION, ASHER HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS, GUARANTIES AND REPRESENTATIONS RELATING TO THE SERVICES, EXPRESS AND IMPLIED, ORAL OR IN WRITING, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WHETHER OR NOT ARISING THROUGH A COURSE OF DEALING. THE SERVICES ARE NOT GUARANTEED TO BE ERROR-FREE OR UNINTERRUPTED. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, ASHER MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE COMPATIBILITY OF SOFTWARE OR EQUIPMENT OR ANY RESULTS TO BE ACHIEVED THEREFROM.

### **5) Payments**

All charges shall be paid to Asher within 30-day terms, net from date of invoice. Any overdue invoice shall be subject to a one and one-half percent (1.5%) late charge for each full or part month (on a prorated basis) during which payment is outstanding. Upon request by Customer, Asher shall promptly provide written details for any such amounts that are in dispute ("Disputed Amounts"), which such Disputed Amounts shall only be subject to late charges in accordance with the following provision. In the event it is determined any Disputed Amounts are due and payable, Customer shall promptly remit such payment, including late fees from the time in which fees were confirmed in writing and the date in which Asher received payment for such fees in full (on a prorated basis). Both parties agree to use commercially reasonable efforts to resolve any Disputed Amounts within thirty (30) business days of Customer first being invoiced.

### **6) Force Majeure**

Any delay in the performance of any duties or obligations of either party will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, severe weather, malicious computer or internet virus, worm, attack, hack, or any other event not reasonably foreseeable by, and beyond the control of a party, provided that such party uses commercially reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

### **7) Term and Termination**

The Services shall be deemed to start on the date the Customer is authorized to "go live" with the Services for production purposes, (the "Start Date"), and shall continue for a minimum of 36 months thereafter (the "Initial Term"), and then indefinitely until terminated in accordance with the provisions hereof (the "Term").

7.1 After the Initial Term and each subsequent term, this Agreement shall automatically renew for an additional period of 12 months ("Renewal Term"). Either party may terminate the Agreement for convenience upon ninety (90) days prior written notice of the Renewal Term, but not before all amounts due are fully paid.

7.2 Either party may suspend or terminate the Services or the Agreement upon a material breach of

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the Agreement by the other party if such breach is not cured within fifteen (15) days after receipt of written notice.

7.3 In the event that either party becomes insolvent, makes a general assignment for the benefit of creditors, is adjudicated as bankrupt or insolvent, commences a case under applicable bankruptcy laws, or files a petition seeking reorganization, the other party may choose to terminate the Agreement immediately upon written notice.

7.4 If this Agreement is terminated for any reason, (a) within thirty (30) days Customer shall pay Asher all fees accrued for the Services prior to the date of termination; (b) Customer's right to access and use the Services shall be revoked and be of no further force or effect; and (c) all provisions in the Agreement, which by their nature are intended to survive termination shall so survive.

### **8) Default**

Upon default of payment, but subject to the provisions for Disputed Amounts in Section 5 above, Asher reserves the right to discontinue further Service to Customer. Regardless of the foregoing, Asher must provide written notice to Customer of any such failure to make payment and provide Customer not less than 30 days to cure such default. Asher is not responsible for any damages to Customer resulting from such suspension, discontinuation or termination of service, so long as the 30-day cure period has been granted to Customer.

### **9) Confidentiality**

Each party expressly acknowledges and understands that it may have access to Confidential Information belonging to the other party.

9.1 "Confidential Information" means all information that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, or (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, or (c) is disclosed in a manner whereby the disclosing party reasonably communicated, or the receiving party should reasonably have understood, that the information is considered by the disclosing party to be confidential, whether or not the specific designation "confidential" or any similar designation is used, including, without limitation, all reports, information and data in whatever form, regarding a disclosing party's sales, customers and prospects, usage statistics, product pricing, business plans, suppliers, costs, operations, trade secrets, strategies, know-how, source code, obfuscated code, and object code.

9.2 Notwithstanding the previous sentence, "Confidential Information" does not include any information which (a) at the time of disclosure or thereafter is generally available to and known by the public other than as a result of an improper disclosure directly or indirectly by the receiving party; (b) was or becomes available to the receiving party on a non-confidential basis from a source other than the parties hereto provided that such source is not at the time of disclosure bound by a confidentiality or other nondisclosure agreement with either of the parties hereto or is not otherwise prohibited from transmitting the information to the receiving party by a contractual, legal or fiduciary obligation; or (c) the receiving party can demonstrate is independently acquired or developed by the receiving party without violating any of the receiving party's obligations under this

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Agreement.

9.3 Each party as a receiving party agrees that the Confidential Information disclosed to it by the disclosing party (a) will be kept confidential by the receiving party, its affiliates, and their respective directors, officers, employees, agents, consultants, advisers, or other representatives, including legal counsel, accountants and financial advisers ("Representatives") and (b) without limiting the foregoing, will not be disclosed by the receiving party or the receiving party's Representatives to any person except with the specific prior written consent of the disclosing party, or except as expressly otherwise permitted by the terms of this Agreement. Each receiving party further agrees that the receiving party and the receiving party's Representatives will not copy, use or disclose any of the Confidential Information for any reason or purpose other than as expressly authorized herein.

### **10) Governing Law and Arbitration**

This Agreement will be governed by and construed in accordance with the laws of the State of New York. Any dispute between the parties arising out of or related to this Agreement will be resolved by three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association in New York. An arbitrator shall be selected by each of the parties (which arbitrator shall have no direct or indirect interest in or relationship to the parties) and the two arbitrators selected by the parties shall select a third mutually agreeable arbitrator. The parties shall each pay one-half (1/2) of the costs and expenses of the arbitrators and each shall separately pay its respective counsel fees and expenses. The decision and award of the arbitrators will be final and binding and the award so rendered may be entered in any court having jurisdiction of the matter.

### **11) Notice**

All notices and communications required or permitted under this Agreement shall be in writing and shall be delivered in person, sent by overnight delivery, or sent via email, with confirmation of receipt, to the addresses and email addresses set forth below, or to any other address, as such party will designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section will be deemed received if personally delivered, then on the date of delivery, if by overnight delivery or email, on the date of confirmation of receipt.

If to Asher:

Attn: Samuel Asher

Email Address: [support@ashergroup.com](mailto:support@ashergroup.com)

Physical Address: Sam Asher Computing Services, Inc.

3300 Monroe Avenue, Suite # 317

Rochester, NY 14618

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If to Customer: City of Spring Hill, TN

Attn: Don Brite

Email Address: [dbrite@springhilltn.org](mailto:dbrite@springhilltn.org)

Physical Address: 199 Town Center Parkway, Spring Hill, TN 37174

### **12) Relationship of the Parties**

Nothing contained herein will be deemed to create a partnership, joint venture, agency or Employment relationship between the parties hereto. Neither party is authorized to enter into any contract or commitments on behalf of the other, or assume any obligation for, or otherwise bind the other party financially or otherwise, nor will it represent that it has such authority. Each party is acting hereunder as an independent contractor.

### **13) Taxes**

Client shall pay all applicable sales, use and value added taxes (local, state, county, federal or national).

### **14) Assignment**

Except as expressly stated otherwise in this Agreement, neither party may assign, delegate, sublicense or otherwise transfer any rights or duties under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the above, either party may assign this Agreement to (i) an entity that purchases all or substantially all of the assets or a distinct business line (or operating unit) of such party, a third party that such party will be merged into pursuant to a merger, or a third party in connection with a corporate reorganization; or (ii) a parent, affiliate or subsidiary of such party whereby such parent, affiliate or subsidiary is at least in 50% (fifty percent) common interest with one another. Any assignment shall be proceeded by notice of the assignment provided to the other party at least 5 days prior to the consummation of the applicable transaction. Any attempted assignment, delegation, sublicense or other transfer by either party in violation of this Agreement shall have no force or effect.

### **15) Waiver**

None of the terms of this Agreement will be deemed to be waived or modified except by an expressed Agreement in writing signed by both parties. The failure of a party hereto in enforcing any of its rights under this Agreement will not be deemed a continuing waiver or modification by such party of any of its rights under this Agreement.

### **16) Severability**

If any provision of this Agreement is for any reason declared to be invalid, the validity of the remaining provisions will not be affected thereby.

*Hyper-Reach Service Agreement*

**17) Entire Agreement**

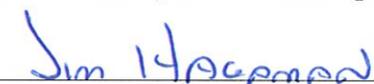
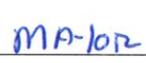
This Agreement constitutes the entire agreement between parties. No alteration or amendment shall be effective unless in writing and executed by both parties. In particular, no oral statement or representation made by either party or any representation shall be effective unless reduced to writing and incorporated into this Agreement.

**18) Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original of this Agreement; and all of which when taken together, shall be deemed to constitute one and the same instrument.

The parties further agree to be bound by a facsimile or an electronic scanned copy of their respective signatures.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the day and date first written above.

<b>Asher</b>	<b>Asher Customer</b>
_____ I have authority to bind the corporation	Signature  I have authority to bind the corporation
_____ Print Name	 Print Name
_____ Title	 Title
_____ Date	 Date

**Exhibit A - Description of Services**

**1) Service**

Provide access to Hyper-Reach notification system, which enables the Client to instantly send messages via multiple channels to any number of recipients. Hyper-Reach service will commence on the activation date indicated below, or two (2) weeks after the signing of this agreement and receiving set up data. The system will be available to the Client 24 hours a day, seven (7) days a week from and after that date.

**2) Deliverables**

- Access to Hyper-Reach website for account creation and management, contact list management, and reviewing reports.

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- Access to the Hyper-Reach IVR system to initiate campaigns, record messages and review reports.
- Access to the Hyper-Reach Launch App via iOS or Android device
- Access to the Accu-Reach Targeting Tool with Google maps
- Access to IPAWS (WEA from cell towers)
- Automated Weather Alerts

### 3) Performance

The system can make up to seven (7) attempts (if necessary) to contact each recipient. The system is currently scaled to deliver over 100,000 messages per hour, and over 100,000 SMS (text) per hour.

### Exhibit B – Cost of Services

Services provided to Client shall be billed according to the following:

Service	Cost	Description
Standard Notification System	Included with Package Pricing	Includes web access, maintenance, security, upgrades, and web training.
Automated Weather Alerts	Included with Package Pricing	Automated service to alert the public of severe weather warnings. (based on community signup)
Mapping	Included with Package Pricing	Google maps integrated with landline phone data and GIS mapping.

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IPAWS functionality	Included with Package Pricing	Functionality will be activated once Client is certified by FEMA and Hyper-Reach has your credentials.
On-Site Training (1/2 day) <b>(OPTIONAL)</b>	\$600 (plus travel)	Up to 4 hours of in-person training.
	<b>Package Pricing</b>	
<b>Emergency Mass Notification</b>  <b>3 yr Contract</b>	\$9,800.00 annually	Package Includes: <ul style="list-style-type: none"> <li>● Hyper-Reach</li> <li>● Community Signup</li> <li>● IPAWS alerts</li> <li>● Automated Weather Alerts (based on community signup)</li> <li>● Accu-Reach Targeting Tool</li> <li>● Web Training</li> <li>● Marketing Support</li> <li>● <b>Unlimited minutes</b></li> </ul>

**Estimated Activation Date:** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

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