

Facility Management Software and Solutions
Contract No. R210702

THIS IS AN AGREEMENT ("Agreement"), dated the ____ day of _____ 20__, by and between:

CITY OF COOPER CITY, a municipal corporation organized and existing under the laws of the State of Florida and whose address is 9090 SW 50th Place, Cooper City, Florida 33328 (hereinafter referred to as the "CITY"),

and,

Brightly Software, Inc., a Foreign Corporation, duly organized in the State of Delaware, located at **4242 Six Forks Road Suite 1400, Raleigh, NC 27609**, (hereinafter referred to as the "CONTRACTOR"), who is authorized to do business in the State of Florida.

City and CONTRACTOR may each be referred to herein as "party" or collectively as "parties".

WHEREAS, the CITY desires to enter into an agreement with the CONTRACTOR for the CONTRACTOR to provide **Facility Management Software and Solutions**; and

WHEREAS, the CITY Code provides authority for the CITY to select and contract through the use of the competitive bid process of another government entity as an exception to the otherwise required formal bidding process, pursuant to Sec 2-258 (f); and

WHEREAS, the parties wish to incorporate the terms and conditions of **OMNIA Partners Cooperative Contracts ("OMNIA") Contract No.R210702** issued by **Region 4 Education Service Center** and the CONTRACTOR for **Facility Management Software and Solutions, dated on April 1, 2022 ("OMNIA Agreement")**. The **OMNIA** Agreement is attached hereto as **Appendix "A"** and incorporated herein; and

WHEREAS, the Parties agree to add the provisions of this agreement to the **OMNIA** Agreement as set forth herein; and

WHEREAS, CONTRACTOR has agreed to honor the prices and terms and conditions of the **OMNIA** Agreement; and

WHEREAS, CITY desires to retain the services of CONTRACTOR by "accessing/piggybacking" the **OMNIA** Agreement; and

WHEREAS, the CITY has reviewed the scope of services of the competitively bid **OMNIA** Agreement, and has determined that it is an agreement that can be used by the CITY; and,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

ARTICLE 1. PREAMBLE

The foregoing recitals are true and correct and are hereby incorporated into this Agreement

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows:

1) This Agreement; 2) **OMNIA Agreement Contract No. R210702) R210702** Solicitation and any associated addenda, exhibits and attachments 4) the Contractor's proposal submission.

ARTICLE 3. NATURE OF THE AGREEMENT

In all other respects, the terms and conditions of the **OMNIA** Agreement, are hereby ratified and shall remain in full force and effect under this "piggybacking" arrangement, as provided by the terms of this Agreement. All recitals, representations, and warranties of CONTRACTOR applicable to Public Agencies made in those documents are restated as if set forth fully herein, made for the benefit of the City, and incorporated herein.

The prices, terms and conditions of the **OMNIA** Agreement shall govern the relationship between the City and CONTRACTOR, except as amended below:

- A. The Scope of Services for the Offerings ("Offerings") to be provided under this Agreement shall be as set forth an Order Form subject to the **OMNIA** Agreement.
- B. All payments shall be governed by the Local Government prompt Payment Act as provided under §§218.70-.80, Florida Statutes.

ARTICLE 4. TERM

The term of this agreement shall be effective upon execution of this agreement by both parties and shall terminate on the same date as the **OMNIA** Agreement; **March 31, 2027**. Following the initial Term, the contract shall have **two (2) options** to renew for an additional period of **one year (1) year**, under the same terms and conditions if renewed by **OMNIA**. It is expressly stipulated and agreed that this agreement shall run concurrently and in conjunction with the **OMNIA** Agreement throughout the specified term. Notwithstanding the foregoing, the parties acknowledge that any software subscriptions or Purchase Orders issued in under this Agreement shall survive expiration or termination of the **OMNIA** Agreement as set forth in Section 13 (Survival Clause) of the **OMNIA** Agreement.

The City may extend this Agreement for up to an additional one hundred eighty (180) calendar days beyond the current Agreement period and will notify the Contractor in writing of the extension.

ARTICLE 5. NOTICE

Notice hereunder shall be provided in writing by certified mail, return receipt requested, or customarily used overnight transmission with proof of delivery, to the following parties, with mandatory copies, as provided below:

CITY:

a) to the Project Manager

City of Cooper City, Utilities Department
Attention: Akin Ozaydin
9090 SW 50th Place
Cooper City, Florida, 33328-4227
Telephone No. (954) 434-4300 X 111
Aozaydin@CooperCity.gov

and,

b) to the Contract Manager

City of Cooper City, Procurement
Attention: Tyrone White
9090 SW 50th Place
Cooper City, Florida 33328-4227
Telephone No. (954) 434-4300 X 268
Purchasing@CooperCity.gov

Copy To:

Jacob G. Horowitz, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
JHorowitz@gorencherof.com

For CONTRACTOR:

Corporate Trust Center
Attention: Brightly Software
1209 Orange Street
Wilmington, DE 19801
notice@brightlysoftware.com

ARTICLE 6. PAYMENT FOR GOODS/SERVICES AND AMOUNT OBLIGATED

The CONTRACTOR warrants that it has reviewed the City's requirements and has asked such questions and conducted such other inquiries as the CONTRACTOR deemed necessary in order to determine the price the CONTRACTOR will charge to provide the Goods/Services to be performed under this Contract. The compensation for all Goods/Services performed under this Contract, including all costs associated with such Offerings, shall be paid in accordance with **Contract No.R210702**. Prices are exclusive of applicable taxes, fees, and government charges. The City represents that it is exempt from applicable sales and use taxes and shall provide Contractor with a valid tax-exempt certificate prior to commencement of services. In the event the City's tax-exempt status is inapplicable to any Goods/Services provided hereunder, the City shall be responsible for all such applicable taxes. The City shall have no obligation to

pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the City and the CONTRACTOR.

All Offerings provided by the CONTRACTOR before City's approval of this Contract or after the expiration of this contract shall be at the CONTRACTOR'S risk and expense.

With respect to travel costs and travel-related expenses, the CONTRACTOR agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses, including employee lodging, transportation, per diem, and all miscellaneous costs and fees. Notwithstanding the foregoing, travel-related expenses shall not exceed the amounts set forth in the applicable Order Form unless approved in advance, in writing, by the City.

ARTICLE 7. PRICING

Pricing shall be as stipulated and in accordance with the pricing listed within **Contract No.R210702** for the term of the contract, including any option-to-renew or extension periods; however, the CONTRACTOR may offer incentive discounts to the City at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 8. COMPENSATION AND METHOD OF PAYMENT

The CONTRACTOR may bill the City periodically, but not more than once per month, upon invoices certified by the CONTRACTOR pursuant to the pricing listed within **Contract No.R210702**. Cloud Services shall be invoiced annually in advance in accordance with the applicable Order Form. All invoices shall be taken from the books of account kept by the CONTRACTOR, shall be supported by copies of documents reasonably required by the City, shall show the City's contract number, and shall have a unique invoice number assigned by the CONTRACTOR. In accordance with Section 218.74 of the Florida Statutes, the time at which payment shall be due from the City shall be forty-five (45) calendar days from receipt of a proper invoice.

Invoices and associated back-up documentation shall be submitted electronically or in hard copy format by the CONTRACTOR to the City to: AccountsPayable@coopercity.gov. The City may at any time designate a different email address, address or contact person by giving written notice to the Contractor.

ARTICLE 9. INDEMNIFICATION

The CONTRACTOR agrees at all times to indemnify and defend the City, its trustees, elected and appointed officers, agents, servants employees, and City officials, from and against third-party claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the City to the extent resulting from the CONTRACTOR's negligence or willful misconduct in the performance of professional services on the City's premises.

ARTICLE 10. INSURANCE

CONTRACTOR shall provide City with proof of insurance and bonding as required by the **Contract No.R210702**. CONTRACTOR hereby confirms that the City is named as an additional insured under the provisions of CONTRACTOR'S insurance.

CONTRACTOR shall not commence any work related to the Offerings unless and until the requirements for insurance have been fully met by CONTRACTOR and appropriate evidence thereof has been provided to and approved by the City.

ARTICLE 11. PUBLIC RECORDS

- A. Public Records: CONTRACTOR shall comply with The Florida Public Records Act as follows:
1. Keep and maintain public records in the CONTRACTOR's possession or control in connection with the CONTRACTOR's performance under this Agreement that ordinarily and necessarily would be required by the City in order to perform the service.
 2. Upon request by City's records custodian, provide City with a copy of requested 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.
 3. 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 this Agreement.
 4. Upon completion of this Agreement or in the event of termination of this Agreement by either party, any and all public records relating to this Agreement in the possession of CONTRACTOR shall be delivered by CONTRACTOR to City, at no cost to City, within seven days. All records stored electronically by CONTRACTOR shall be delivered to CITY in a format that is compatible with City's information technology systems. Once the public records have been delivered to City upon completion or termination of this Agreement, CONTRACTOR shall destroy any and all duplicate public records that are exempt or confidential and exempt from public record disclosure requirements. The CONTRACTOR's obligations under this subsection shall be performed in accordance with the CONTRACTOR's standard data handling and deletion practices and shall not require modification of the CONTRACTOR's multi-tenant cloud infrastructure. Unless such handling and deletion practices conflict with Florida Law
 5. CONTRACTOR'S failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE
APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO**

CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 434-4300, PRR@COOPERCITY.GOV, OR BY MAIL: CITY OF COOPER CITY – CITY CLERK'S OFFICE, 9090 SW 50TH PLACE, COOPER CITY, FL 33328.

ARTICLE 12. SCRUTINIZED COMPANIES

- A. CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the CONTRACTOR or its subcontractors are found to have submitted a false certification; or if the CONTRACTOR, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- B. If this Agreement is for more than one million dollars, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the CONTRACTOR , its affiliates, or its subcontractors are found to have submitted a false certification; or if the CONTRACTOR, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- C. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
- D. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions, then they shall become inoperative.

ARTICLE 13. ASSIGNMENT

Neither party may assign its rights or obligations under this Agreement without the written consent of the other. However, the CONTRACTOR may assign to an affiliate or an acquirer of all or substantially all the business covered by this Agreement or any Order, provided that written notice is given to the City as soon as commercially practicable after such assignment, but no later than thirty (30) business days following the closing of such transaction. Any assignee must agree to comply with all terms and conditions of this Agreement. In the event the City reasonably determines, based on its compliance checks and policies, that it cannot continue doing business with the assignee due to compliance, legal, or regulatory concerns, the City may terminate this Agreement immediately upon written notice without any further obligation.

ARTICLE 14. SEVERABILITY

This Agreement, together with Contract No. R210702, the CONTRACTOR's standard commercial terms incorporated therein, and any applicable Order Forms, sets forth the entire agreement between CONTRACTOR and City with respect to the subject matter of this Agreement. In the event of a conflict between this Agreement and Contract No. R210702 or its incorporated terms, this Agreement shall prevail. This Agreement may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

ARTICLE 15. GOVERNING LAW/VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any dispute under this Agreement shall be an appropriate court of competent jurisdiction in Broward County, Florida.

ARTICLE 16. E-VERIFY

Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees in the United States. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- A. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
- B. All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Cooper City. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Cooper City; and
- C. The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors performing named services under this Agreement to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

ARTICLE 17. CONTRIBUTIONS PROHIBITED

Pursuant to Section 2-26 of Cooper City Code, no lobbyist, or vendor shall give a campaign contribution, directly or indirectly, to a candidate for the office of Mayor or Commissioner. No candidate for Mayor or

Commissioner, or member of the City Commission shall, directly or indirectly, solicit, accept or deposit into such candidate's campaign account any campaign contribution from a lobbyist, or vendor.

ARTICLE 18. TERMINATION FOR CONVENIENCE

The City, at its sole discretion, reserves the right to terminate this Contract for convenience (without cause) upon providing a thirty (30) day written notice to the Contractor. Termination for convenience is effective on the termination date stated in the written notice provided by the City. Upon receipt of such notice, the Contractor shall not incur any new additional costs under the Contract. Upon termination for convenience: (a) for cloud services, all fees for the then-current subscription term shall remain due and payable, and any prepaid fees are non-refundable; and (b) for professional services, the City shall be liable for all fees and expenses for services performed through the effective date of termination.

ARTICLE 19. TERMINATION FOR CAUSE

The City reserves the right to terminate this Contract, in part or in whole, or place the Contractor on probation, or to avail itself of all other remedies available at law and equity, inclusive injunctive relief and specific performance, in the event the Contractor fails to perform a material obligation in accordance with the terms and conditions stated herein. Following a material breach of the Contract by the Contractor, the City shall provide written notice specifying the breach to the Contractor and advising the Contractor that the breach must be cured within thirty (30) days of such notice, or this Contract may be terminated by the City. The City further reserves the right to suspend or debar the Contractor in accordance with the Sec. 2-266 of Cooper City Procurement Code, resolutions and/or other governing legislation. The Contractor will be notified by letter of the City's intent to terminate if, following the initial notice of breach, the Contractor fails to timely or adequately, and to the satisfaction of the City, cure said breach. In the event of termination for default, the City may procure the required goods and/or services from any source and use any method deemed in its best interest. If this Agreement is terminated by the City under this Article 19, the City will pay the fees and expenses related to any portion of the Offerings delivered before the effective date of termination.

The CONTRACTOR may terminate this Agreement, in part or in whole, in the event the City fails to perform a material obligation in accordance with the terms and conditions stated herein. Following a material breach of the Contract by the City, the Contractor shall provide written notice specifying the breach to the City and advising the City that the breach must be cured within thirty (30) days of such notice (or such longer period as mutually agreed if the breach is not reasonably capable of cure within thirty (30) days), or this Contract may be terminated by the Contractor. If this Agreement is terminated by the CONTRACTOR under this Article 19, the City will pay all agreed fees for the Offering, minus any expenditures avoid by termination.

ARTICLE 20. AUDITS – ACCESS TO RECORDS

The City, through its duly authorized representatives and governmental agencies, shall have access to and the right to examine and reproduce any of the CONTRACTOR's books, documents, papers which apply to financial transactions related to this Agreement for a minimum of three years after the expiration of this Contract and any extension thereof. Such records shall subsequently conform to Generally Accepted

Accounting Principles requirements, as applicable, and shall only address those transactions related to this Contract. The City shall provide the CONTRACTOR with reasonable prior written notice of any audit request, and any such audit shall be conducted during normal business hours at a mutually agreed upon location. The City shall treat all CONTRACTOR records reviewed during any audit as confidential to the extent permitted by applicable law, including Chapter 119, Florida Statutes.

The CONTRACTOR shall maintain accurate records and documentation related to this Agreement sufficient to support invoiced amounts and shall make such records available for audit in accordance with this Article..

ARTICLE 21. CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES OF CONCERN PROHIBITED

Pursuant to Section 287.138, Florida Statutes (“F.S.”), entities submitting a bid, proposal, quote or other response, or otherwise entering into a contract with a governmental entity are required to affirm by way of an Affidavit that the entity is not giving a government of a foreign country of concern, as listed in Section 287.138, F.S., access to an individual’s personal identifying information if: a) the entity is owned by a government of a foreign country of concern; b) a government of a foreign country of concern has a controlling interest in the entity; or c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern as is set forth in Paragraphs 2(a)–(c) of Section 287.138, F.S. The affirmation by the Contractor shall be in the form provided by the City. This Agreement shall not be effective unless and until Contractor executes such Affidavit.

ARTICLE 22. KIDNAPPING, CUSTODY OFFENSES, HUMAN TRAFFICKING AND RELATED OFFENSES AFFIDAVIT

By entering into, amending, or renewing this Agreement, including, without limitation, a grant agreement or economic incentive program payment agreement (all referred to as the “Agreement ”), as applicable, the Contractor is obligated to comply with the provisions of Section 787.06, Florida Statutes (“F.S.”), “Human Trafficking,” as amended, which is deemed as being incorporated by reference in this Agreement. All definitions and requirements from Section 787.06, F.S., apply to this Agreement.

This compliance includes the Contractor providing an affidavit that it does not use coercion for labor or services. This attestation by the Contractor shall be in the form attached to this Agreement as the Kidnapping, Custody Offenses, Human Trafficking and Related Offenses Affidavit (the “Affidavit”) and must be executed by the Contractor and provided to the City when entering, amending, or renewing this Agreement.

This Agreement shall be void if the Contractor submits a false Affidavit pursuant to Section 787.06, F.S., or the Contractor violates Section 787.06, F.S., during the term of this Agreement, even if the Contractor was not in violation at the time it submitted its Affidavit.

(REMAINDER INTENTIONALLY LEFT BLANK)

IN WITNESS OF THE FOREGOING, the parties have hereunto set their hands and seals on the dates written below.

CITY OF COOPER CITY, a Florida municipal corporation

Brightly Software, Inc, a Foreign Corporation

BY: _____
CITY MANAGER

BY: _____

Name: _____

BY: _____
CITY MAYOR

Title: _____

ATTEST:

BY: _____
CITY CLERK

BY: _____

Name: _____

APPROVED AS TO LEGAL FORM:

Title: _____

BY: _____
CITY ATTORNEY

WITNESSED BY:

Signature

Print Name

STATE OF _____
COUNTY OF _____

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____, as _____ of **Brightly Software, Inc**, and acknowledged that he has executed the foregoing instrument for the use and purposes mentioned in it and that the instrument is the act and deed of _____, as _____ of **Brightly Software, Inc**, and who is personally known to me or has produced _____ as identification.

IN WITNESS WHEREOF, I have set my hand and seal in the State and County aforesaid this ____ day of _____, 20____.

NOTARY PUBLIC

Print or Type Name

My Commission Expires: _____