

**TELEVIC Mic Upgrade with Confero 360
Contract No. BW2025-5**

THIS IS AN AGREEMENT, dated the _____ day of _____, 20____ by and between:

THE CITY OF COOPER CITY, a municipal corporation of the State of Florida with a business address of **9090 S.W. 50th Place, Cooper City, Florida 33328** (hereinafter referred to as the "CITY")

and

Full Moon Creative, LLC a Limited Liability Company, authorized to do business in the State of Florida, with a business address of 10001 NW. 50th Street, Ste 202, Sunrise, FL 3331 (hereinafter referred to as the "CONTRACTOR").

CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties."

W I T N E S S E T H:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

**ARTICLE 1
PREAMBLE**

In order to establish the background, context and form of reference for this Agreement and to generally express the objectives, and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

**ARTICLE 2
SERVICES AND RESPONSIBILITIES**

- 2.1 CONTRACTOR hereby agrees to provide Artistic Utility Wrap Design and Installation, as more particularly described in the Scope of Services outlined in Appendix A.
- 2.2 In the event a conflict exists between or among the provisions of this Agreement, said conflict shall be resolved in the following priority: (1) The Terms of this Agreement; (2) Appendix A – **Full Moon Creative, LLC** ESTIMATE, as outlined in CONTRACTOR'S Terms;
- 2.3 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.
- 2.4 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

- 2.5 CONTRACTOR assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional standards of good engineering practice. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the CITY promptly advises CONTRACTOR thereof in writing, CONTRACTOR agrees to re-perform such deficient services without charge to the CITY.
- 2.6 CONTRACTOR shall not utilize the services of any sub-Contractor without the prior written approval of CITY.

ARTICLE 3

TERM AND TERMINATION

- 3.1 This Contract shall commence on the first calendar day of the month succeeding approval of the Contract by the CITY Commission, or designee, unless otherwise stipulated in the Purchase Order issued by the CITY and shall remain in effect until such time as the goods are delivered and/or services are completed and accepted by the CITY's authorized representative.
- 3.2 This Agreement may be terminated for convenience by the CITY, upon thirty (30) days written notice by the CITY to CONTRACTOR in which event the CONTRACTOR shall be paid its compensation for services performed to termination date.
- 3.3 This Agreement may also be terminated for cause by the CITY for reasons including, but not limited to, (i) the CONTRACTOR commits an Event of Default (as defined below in 3.3.1) and fails to cure said Event of Default (as delineated below in 3.3.2), or (ii) CONTRACTOR attempts to meet its contractual obligations with the CITY through fraud, misrepresentation, or material misstatement.
- 3.3.1 An Event of Default is a material breach of this Agreement by the CONTRACTOR, and includes but is not limited to the following:
- i. the CONTRACTOR has not delivered Deliverables and/or Services on a timely basis;
 - ii. the CONTRACTOR has refused or failed to supply enough properly skilled staff personnel;
 - iii. the CONTRACTOR has failed to make prompt payment to Subcontractors or suppliers for any Services;
 - iv. the CONTRACTOR has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the CONTRACTOR's creditors, or the CONTRACTOR has taken advantage of any insolvency statute or debtor/creditor law or if the CONTRACTOR's affairs have been put in the hands of a receiver;
 - v. the CONTRACTOR has failed to obtain the approval of the CITY where required by this Agreement;
 - vi. the CONTRACTOR has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the CONTRACTOR has failed in the representation of any warranties stated herein; or
 - viii. the CONTRACTOR fails to comply with ARTICLE 13.14.

3.3.2 If an Event of Default occurs in the determination of the CITY, the CITY shall notify the CONTRACTOR (the "Default Notice"), specifying the basis for such default, and advising the CONTRACTOR that such default must be cured immediately, or this Agreement with the CITY may be terminated. Notwithstanding, the CITY may, in its sole discretion, allow the CONTRACTOR to rectify the default to the CITY's reasonable satisfaction within a thirty (30) day period. The CITY may grant an additional period of such duration as the CITY shall deem appropriate without waiver of any of the CITY's rights hereunder, so long as the CONTRACTOR has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the CITY prescribes. The Default Notice shall specify the date the CONTRACTOR shall discontinue the Work upon the Effective Termination Date.

ARTICLE 4.

TERMINATION AND SUSPENSION OF WORK

- 4.1 This Agreement may be terminated for cause by the City for reasons including, but not limited to:
- i. the Contractor commits an Event of Default (as defined below in ARTICLE 5) and fails to cure said Event of Default (as delineated below in ARTICLE 6), OR
 - ii. Contractor attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement.
- 4.2 This Agreement may also be terminated for convenience by the City. Termination for convenience is effective on the termination date stated in the written notice provided by the City.
- 4.3 If City terminates this Agreement for cause under ARTICLE 4.1 above, the City may, at its sole discretion, also terminate or cancel any other contract(s) that such individual or corporation or other entity has with the City and that such individual, corporation or other entity shall pay all direct or indirect costs associated with such termination or cancellation, including attorneys' fees.
- 4.4 The foregoing notwithstanding, if the Contractor attempts to meet its contractual obligations with the City through fraud, misrepresentation, or material misstatement, the Contractor may be debarred from City contracting in accordance with the City debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 2-266 of the City Ordinance 21-8.
- 4.5 In the event that the City exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the City:
- i. stop Work on the date specified in the notice (the "Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the City's materials
 - i. and property;
 - ii. cancel orders;
 - iii. assign to the City and deliver to any location designated by the City any non-cancelable orders
 - iv. for Deliverables that are not capable of use except in the performance of this Agreement and has been
 - v. specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - vi. take no action which will increase the amounts payable by the City under this Agreement; and

vii. reimburse the City a proration of any prepayments, if any.

4.6 In the event that the City exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:

- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
- ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.

4.7 All compensation pursuant to this Article are subject to audit.

4.8 In the event the Contractor fails to cure an Event of Default timely, the City may terminate this Agreement, and the City or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports, and data.

ARTICLE 5.

EVENT OF DEFAULT

5.1 An Event of Default is a material breach of this Agreement by the Contractor, and includes but is not limited to the following:

- i. the Contractor has not delivered Deliverables and/or Services on a timely basis;
- ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
- iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services;
- iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
- v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
- vi. the Contractor has failed to provide "adequate assurances" as required under subsection 5.2 below;
- vii. the Contractor has failed in the representation of any warranties stated herein;

5.2 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work or any portion thereof, the City may request that the Contractor, within the timeframe set forth in the City's request, provide adequate assurances to the City, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the City receives such assurances, the City may request an adjustment to the compensation received by the Contractor for portions of the Work which the Contractor has not performed. In the event that the Contractor fails to provide to the City the requested assurances within the prescribed timeframe, the City may:

- i. treat such failure as a repudiation and/or material breach of this Agreement; and
- ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Work or any part thereof either by itself or through others.

ARTICLE 6
NOTICE OF DEFAULT – OPPORTUNITY TO CURE

6.1 If an Event of Default occurs in the determination of the City, the County shall notify the Contractor (the "Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately, or this Agreement with the City may be terminated. Notwithstanding, the City may, in its sole discretion, allow the Contractor to rectify the default to the City's reasonable satisfaction within a thirty (30) day period. The City may grant an additional period of such duration as the City shall deem appropriate without waiver of any of the City's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the City prescribes. The Default Notice shall specify the date the Contractor shall discontinue the Work upon the Effective Termination Date

ARTICLE 7
REMEDIES IN THE EVENT OF DEFAULT

7.1 If an Event of Default occurs, whether or not the City elects to terminate this Agreement as a result thereof, the Contractor shall be liable for all damages resulting from the default, irrespective of whether the City elects to terminate the Agreement, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the City for re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

7.2 The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The City may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 8
COMPENSATION AND METHOD OF PAYMENT

8.1 CONTRACTOR shall be entitled to invoice CITY at the completion of each request for work and must contain detailed information including the location and amount of work performed. Contractor shall submit an exact listing of completed work with submission of invoice for payment. The compensation shall not exceed the unit prices stated in Exhibit "B".

8.2 CITY will make its best efforts to pay CONTRACTOR within thirty (30) days of receipt of proper invoice the total shown to be due on such invoice.

8.3 All payments shall be governed by the Florida Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

8.4 Payment will be made to CONTRACTOR at:

Attn: Full Moon Creative, LLC
10001 NW 50th Street
STE 202
Sunrise, Florida 33351

ARTICLE 9
CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK

- 9.1 Any changes that would increase, decrease, or otherwise modify the Scope of Services, as described in Exhibit "A," to be provided under this Agreement as described in Article 2 of this Agreement must be in accordance with the provisions of the CITY Code of Ordinances, and must be contained in a written amendment, executed by the parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.
- 9.2 In no event will the CONTRACTOR be compensated for any work which has not been described in a separate written agreement executed by the parties hereto.

ARTICLE 10
INDEMNIFICATION

- 10.1 CONTRACTOR shall indemnify and save harmless and defend the CITY, its trustees, elected and appointed officials, agents, servants and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature sustained by the CITY or any third party arising out of, or by reason of, or resulting from acts, error, omission, or negligent act of CONTRACTOR, its agents, servants or employees in the performance under this Agreement, for all costs, losses and expenses, including but not limited to, damages to persons or third party property, judgments and attorneys' fees arising out of or in connection with the performance by CONTRACTOR pursuant to this Agreement.
- 10.2 CONTRACTOR shall indemnify CITY for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right due to services furnished pursuant to this Agreement. CONTRACTOR will defend and/or settle at its own expense any action brought against the CITY to the extent that it is based on a claim that products or services furnished to CITY by CONTRACTOR pursuant to this Agreement, or if any portion of the services or goods furnished in the performance of the service becomes unusable as a result of any such infringement or claim.
- 10.3 CONTRACTOR'S aggregate liability shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement plus the compensation received by CONTRACTOR, or extend to any claims brought subsequent to the expiration of warranty period outlined above. The CITY's rights and remedies and CONTRACTOR's liabilities as set forth in this Agreement, are exclusive, and the CITY hereby releases CONTRACTOR from all further or subsequent liability, whether based in contract or tort and irrespective of fault, negligence, or strict liability.
- 10.4 The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification by the CONTRACTOR and that Florida Statutes §725.06 requires a specific consideration be given therefor. The parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by CONTRACTOR. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

ARTICLE 11
INSURANCE

- 11.1 Where Contractors are required to enter or go onto the City of Cooper City property (including any property which is owned or leased by the City or upon which the City has a license, easement or right-of-

way) to deliver materials or perform work or services as a result of an award, the successful Contractor shall assume the full duty, obligation and expense of obtaining all necessary licenses, permits and insurance and assure all work complies with all applicable Broward County and City of Cooper City building requirements and the Florida Building Code. The Contractor shall be liable for any damages or loss to the City occasioned by negligence of the Contractor or any person the Contractor has designated in the completion of the contract as a result of his or her bid.

- 11.2 The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the CONTRACTOR or its employees, agents, servants, partners principals or sub-contractor. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.
- 11.3 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any sub-contractor to commence work on his subcontract until all similar such insurance required of the sub-contractor has been obtained and similarly approved.
- 11.4 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.
- 11.5 Policies shall be endorsed to provide the CITY with notice of cancellation or the CONTRACTOR shall obtain written agreement from its Agent to provide the CITY with 30-day notice of cancellation.
- 11.6 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONTRACTOR shall furnish, as soon as reasonably practicable, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.
- 11.7 **Prior to the commencement of the project, CONTRACTOR shall provide the City with a certificate of liability insurance and a copy of the additional insured endorsement naming the City of Cooper City its employees, directors, officers, agents, independent CONTRACTOR's, successors and assigns, and other authorized representatives as additional insured on a primary and non- contributory basis to the extent of the contractual obligation assumed by the CONTRACTOR. Additionally, the CONTRACTOR shall provide the City with a copy of the certificates of insurance and a copy of the additional insured endorsement reflecting the same insurance coverage for all sub-contractors utilized by CONTRACTOR.**
- 11.8 **The City shall be granted a Waiver of Subrogation on the CONTRACTOR's Workers' Compensation and General Liability insurance policy and affirmed on the Certificate of Liability Insurance and a Waiver of Subrogation Endorsement. The CONTRACTOR waives, and the**

CONTRACTOR shall ensure that the CONTRACTOR's insurance carrier waives, all subrogation rights against the City, its officials, employees, agents and volunteers for all losses or damages.

11.9 REQUIRED INSURANCE: Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$3,000,000

Products & Completed Operations Coverage shall be maintained for two (2) years after the final payment under this contract.

The City of Cooper City must be shown as an additional insured with respect to this coverage.

11.10 Worker's Compensation and Employers Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the sub-contractor similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and his sub-contractor shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

- | | | |
|---------------------------|------------|-----------------------------------|
| 1. Workers' Compensation: | Coverage A | Statutory |
| 2. Employers Liability: | Coverage B | \$500,000 Each Accident |
| | | \$500,000 Disease – Policy Limit |
| | | \$500,000 Disease – Each Employee |

11.11 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

11.12 Professional Liability/Errors & Omissions Insurance, when applicable, with a limit of liability no less than \$1,000,000 per wrongful act. This coverage shall be maintained for a period of no less than two (2) years after final payment of the contract.

11.13 Sexual Abuse may not be excluded from any policy.

11.14 REQUIRED INSURANCE ENDORSEMENTS

1. The City of Cooper City shall be named as an Additional Insured on each of the General Liability

- policies required herein
2. Waiver of all Rights of Subrogation against the CITY
 3. 30-Day Notice of Cancellation or Non-Renewal to the CITY
 4. CONTRACTORS' policies shall be Primary & Non-Contributory
 5. All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment of the CITY
 6. The City of Cooper City shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

CONTRACTOR shall name the CITY, as an additional insured on each of the General Liability policies required herein and shall hold the CITY, its agents, officers and employees harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder. Any insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any sub-contractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work is subcontracted unless such sub-contractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any sub-contractors shall maintain such policies during the term of this Agreement. CONTRACTOR shall agree to waive all rights of subrogation against the City, members of the City Commission, boards, commissions and committees, officers, agents, employees and volunteers for losses arising from activities and operations of CONTRACTOR in the performance of its obligations under this agreement.

The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Contract.

ARTICLE 12

INDEPENDENT CONTRACTOR

12.1 This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONTRACTOR is an independent CONTRACTOR under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, H.U.D., or United States policies, rules or regulations relating to the use of CONTRACTOR's Funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 13

VENUE/GOVERNING LAW

13.1 This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be in Broward County

ARTICLE 14
PUBLIC RECORDS

- 14.1 The City of Cooper City is a public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR shall:
- 14.2 Keep and maintain public records required by the CITY to perform the service;
- 14.3 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the 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, Fla. Stat., or as otherwise provided by law;
- 14.4 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and
- 14.5 Upon completion of the contract, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.
- 14.6 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the City may terminate the Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION
OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY
TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,
CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT**

**CITY CLERK
9090 S.W. 50TH PLACE
COOPER CITY, FL 33328
954-434-4300
PRR@COOPERCITYFL.ORG**

ARTICLE 15
SCRUTINIZED COMPANIES -- 287.135 AND 215.473

- 15.1 **SCRUTINIZED COMPANIES.** CONTRACTOR certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, CONTRACTOR agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the CITY may immediately terminate this Agreement for cause if the CONTRACTOR, its affiliates, or its sub-contractors are found to have submitted a false certification; or if the CONTRACTOR, its affiliates, or its sub-contractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

ARTICLE 16
E-VERIFY

16.1 Registration Requirement; Termination. 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. 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 sub vendors/sub-contractors/sub-contractors) 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 sub-contractors to provide an affidavit attesting that the sub-contractor 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 sub-contractor 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.
- D.

ARTICLE 17
KIDNAPPING, CUSTODY OFFENSES, HUMAN TRAFFICKING AND RELATED OFFENSES
AFFIDAVIT

17.1 By entering into, amending, or renewing this Contract, including, without limitation, a grant agreement or economic incentive program payment agreement (all referred to as the "Contract"), 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 Contract. All definitions and requirements from Section 787.06, F.S., apply to this Contract.

17.2 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 Contract 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 Contract.

17.3 This Contract 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 Contract, even if the Contractor was not in violation at the time it submitted its Affidavit.

ARTICLE 18

DISCRIMINATION

- 18.1 During the performance of this Contract, Contractor agrees to not discriminate unlawfully against any employee or applicant for employment on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.
- 18.2 By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts). If the Contractor or any owner, subsidiary or other firm affiliated
- 18.3 with or related to the Contractor is found by the responsible enforcement agency or the City to be in violation of the Act, such violation shall render this Contract void. This Contract shall be void if the Contractor violates the Act during the term of this Contract, even if the Contractor was not in violation at the time it submitted any required affidavit.

ARTICLE 19

CONFLICT OF INTEREST

- 19.1 The Contractor represents that
- (a) No officer, director, employee, agent, or other consultant of the City or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment, or compensation, whether tangible or intangible, in connection with the award of this Agreement.
 - (b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent, or other consultant of the City, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i. is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the Services, Deliverables or Work, to which this Agreement relates or in any portion of the revenues; or
 - ii. is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any Subcontractor or supplier to the Contractor.
 - c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the City, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the City with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the City's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the Project Manager. Contractor shall thereafter cooperate with the City's review and investigation of such information and comply with the instructions Contractor receives from the Project Manager regarding remedying the situation.

ARTICLE 20

PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

20.1 Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the City, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the City. Such approval may be withheld if for any reason the City believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Work to be performed hereunder except upon prior written approval and instruction of the City; and
- c) Except as may be required by law, the Contractor and its employees, agents, Subcontractors, and suppliers will not represent, directly or indirectly, that any Work, Deliverables or Services provided by the Contractor or such parties has been approved or endorsed by the City.

ARTICLE 21.

BANKRUPTCY

21.1 The City may terminate this Contract, if, during the term of any contract the Contractor has with the City, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 22.

FORCE MAJEURE

22.1 Under applicable law, shall refer to an act of nature (such as, but not limited to, a hurricane, flood, and/or earthquake), war, terrorism, riot, sovereign conduct, strikes, lockouts, fires, epidemics and/or

pandemic, adverse governmental conditions or conduct of third parties.

- 22.2 Neither the City nor the Contractor shall be held liable or responsible to the counterparty nor be deemed to have defaulted under or breached this Contract for failure or delay in performing any obligation under this Contract when such failure or delay is caused by an act of Force Majeure. Within twenty-four (24) hours of the occurrence of an act of Force Majeure, the affected party shall notify the counterparty of the act by sending an e-mail message to the Project Manager of the other party. In addition, the affected party shall provide to the counterparty within seven days of determining the cause of the Force Majeure, a written explanation via e-mail concerning the circumstances that caused the act of Force Majeure and the overall impacts to the Contract. Upon receipt of the written explanation, the parties shall mutually agree to any contractual modifications as necessary to continue the Contract with minimal impact to City operations. The City maintains the right to terminate the Contract for convenience or obtain the goods and/or services through a separate contract, taking over the performance of the Work or any part thereof either by itself or through others.

ARTICLE 23

MISCELLANEOUS

- 23.1 **Ownership of Documents.** Reports, surveys, plans, studies and other data provided in connection with this Agreement are and shall remain the property of CITY whether or not the project for which they are made is completed. City hereby agrees to use CONTRACTOR's work product for its intended purposes.
- 23.2 **Records.** CONTRACTOR shall keep such records and accounts and require any and all sub-contractor to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, F.S.
- 23.3 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY, except in connection with a merger, acquisition, or sale of all or substantially all of a CONTRACTOR's assets or voting securities. In the event that CONTRACTOR does undergo a merger, acquisition, or sale of all or substantially all of its assets or voting securities, CONTRACTOR agrees to ensure that any successor entity assumes the obligations of this Agreement. However, this Agreement shall run to the benefit of CITY and its successors and assigns. It is further agreed that no modification, amendment, or alteration in 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.
- 23.4 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 23.5 **Notice.** Whenever any party desires to give notice unto any other party, it must be given

by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

CITY:

- a) to the Project Manager
City of Cooper City, Finance Department
Attention: Jonathan Lopez
9090 S.W. 50th Place
Cooper City, Florida, 33328-4227
Telephone No. (954) 434-4300 X 231
Jlopez@CooperCity.gov
- b) to the Contract Manager
City of Cooper City, Purchasing
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

CONTRACTOR:

Full Moon Creative, LLC
Attn: Reece Pounder
10001 NW 50th Street
STE 202
Sunrise, Florida 33351
Telephone No. (954) 742-2622
r.pounder@fullmooncreative.com

- 23.6 Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 23.7 Headings.** Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.
- 23.8 Appendices.** Each Appendix referred to in this Agreement forms an essential part of this Agreement. The appendices if not physically attached should be treated as part of this and are incorporated herein by reference.
- 23.9 Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have

been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

23.10 Extent of Agreement. This Agreement represents the entire and integrated agreement between the CITY and the CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

23.11 Legal Representation. It is acknowledged that each party was represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

23.12 Counterparts and Execution. This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

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(END OF SECTION)

SIGNATURE PAGE

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

CITY OF COOPER CITY

Date: _____

Full Moon Creative, LLC

Date: _____

CITY MAYOR

By:

CITY MANAGER

NAME

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY BY:

CITY ATTORNEY

TITLE

CITY CLERK

WITNESSED BY:
ADDRESS:

STATE OF _____
COUNTY OF _____

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____, as _____ of **Full Moon Creative, LLC**, 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 **Full Moon Creative, LLC**, 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: _____