

CITY OF NORTH MIAMI VIDEOGRAPHY SERVICES AGREEMENT

THIS VIDEOGRAPHY SERVICES AGREEMENT ("Agreement") is made and entered into this 3rd day of October, 2023 by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL ("City") and Xero Pictures, LLC d/b/a Xero Media Group, a limited liability company organized and existing under the laws of the State of Florida, having its principal office at 8540 S.W. 27 Street, Miami, FL 33155 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

WITNESSETH:

WHEREAS, the City desires to engage the Contractor as an independent contractor for the purpose of shooting videos ("Services") on the terms and conditions set forth below; and

WHEREAS, the Contractor has expressed its capability, expertise and willingness to perform the Services in accordance with the terms provided hereto.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - CONTRACT DOCUMENTS

1.1 The following document is incorporated into and made part of this Agreement:

1.1.1 Proposal for provision of Services ("Proposal"), attached hereto as Exhibit "A";

1.2 In the event of any conflict between the Agreement and the Proposal, the following priority is hereby established:

1.2.1 Specific written direction from the City Manager or City Manager's designee.

1.2.2 This Agreement.

1.2.3 The Proposal.

ARTICLE 2 - SERVICES AND RESPONSIBILITIES

2.1 Contractor agrees to perform for the City's benefit, all of the Services set forth and described in this Agreement and Proposal. Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

2.2 Contractor shall provide videography outreach and graphic services as specified by the proposal.

2.3 The Services shall be performed under the direction of and to the satisfaction of the City. No approval or direction by the City shall relieve the Contractor of any contractual obligation.

2.4 The Contractor shall furnish all labor, materials, supplies, services and any other items required to perform the Services pursuant to this Agreement.

2.5 The City shall make decisions on all claims regarding interpretation of the Documents, and on all other matters relating to the execution and progress of the Services.

2.6 The Contractor represents, with full knowledge that the City is relying upon these representations when entering into this Agreement with the Contractor, that the Contractor has the professional expertise, experience and manpower to perform the Services as described in this Agreement.

2.7 The Contractor shall be fully responsible to the City for all acts and omissions of any agents or employees, or approved subcontractors. Subcontractors shall have appropriate general liability, professional liability, and workers' compensation insurance, or be covered by Contractor's insurance. Contractor shall furnish the City with appropriate proof of insurance and releases from all subcontractors in connection with the work performed.

ARTICLE 3 – TERM AND TIME FOR PERFORMANCE

3.1 This Agreement shall commence upon September 11, 2023, and shall remain in full force and effect until August 30, 2024.

3.2 The Services shall be secured on an as needed/when needed basis. The video tapes, DVD's, or any other video materials produced for City in connection with the performance of the Services shall be delivered to City no later than 48 hours from completion of Services. Time is of the essence.

3.3 The Contractor agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed term. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. Additional Services requested by City, or changes in scope, will be reviewed and any impact on the schedule shall be determined and the schedule modified accordingly.

ARTICLE 4 - DELAY IN PERFORMANCE

4.1 A delay due to an Act of God, fire, lockout, strike or labor dispute, manufacturing delay, riot or civil commotion, act of public enemy or other cause beyond the control of Contractor, or by interruption of or delay in transportation, labor trouble from whatever cause arising and whether or not the demands of the employees involved are reasonable and within City's power to concede, partial or complete suspension of City's operations, compliance with any order or request of any governmental officer, department, agency, or committee shall not subject City to any liability to Contractor. At the City's option, the period specified for performance of Services shall be extended by the period of delay occasioned by any such circumstance, and Services omitted shall be made or performed during such extension, or this Agreement shall be extended for a period equal to such delay. During this period such delay shall not constitute a delay by the Contractor for which liquidated damages are due.

ARTICLE 5 - COMPENSATION AND METHOD OF PAYMENT

5.1 Contractor shall be compensated in accordance with the priced schedule listed in Contractor's proposal, attached as Exhibit "A." Payment shall be made at the end of each month following completion of the program. Payment for services shall be limited to the scope described in Exhibit "A".

5.2 Additional Services or significant changes in the scope of Services for any project will be agreed to between the Parties and set forth in a written amendment to this Agreement. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

5.3 The City shall pay Contractor within forty (45) days of receipt of any invoice the total shown to be due on such invoice, provided the City has accepted the Contractor's performance.

ARTICLE 6 – PRODUCTION OWNERSHIP

6.1 All rights to the production materials resulting from the Services rendered by the Contractor under this Agreement shall be deemed the sole property of the City; and the City shall have all rights incident to the sole ownership. Contractor agrees that all documents maintained and generated pursuant to this Agreement shall be subject to Chapter 119, Florida Statutes.

6.2 It is further understood that any data, writings, video, contract documents, reports or any other matter which is given by the City to Contractor pursuant to this Agreement, shall at all times remain the property of the City and shall not be used by Contractor for any other purpose without the written consent of the City.

ARTICLE 7 - COURT APPEARANCE, CONFERENCES AND HEARINGS

7.1 This Agreement shall obligate the Contractor to prepare for and appear in any litigation on behalf of the City for any dispute arising out of this Agreement.

7.2 The Contractor shall confer with the City during the performance of the Services regarding the interpretation of this Agreement, the correction of errors and omissions, the preparation of any necessary revisions to correct errors and omissions or the clarification of Service requirements, without compensation.

ARTICLE 8 - WARRANTIES

8.1 The Contractor warrants that its services are to be performed within the limits prescribed by the City and with the usual thoroughness and competence of the Contractor's profession.

8.2 All services performed by the Contractor shall be to the satisfaction of the City. In cases of disagreement or ambiguity regarding quality or the amount of value, the City shall decide all questions, difficulties and disputes of whatever nature that may arise under this Agreement. The City's decision on all claims or questions is final.

ARTICLE 9 - NOTICES

9.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Contractor: Xero Pictures, LLC d/b/a Xero Media Group
Attn: Harold Marrero
8540 S.W. 27 Street
Miami, FL 33155

To City: City of North Miami
Attn: City Manager
776 N.E. 125th Street
North Miami, Florida 33161

With a copy to: City Attorney
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161

9.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

9.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 10 - CONFLICTS OF INTEREST

10.1 Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

10.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with the Contractor, except as fully disclosed and approved by the City.

ARTICLE 11 -CITY'S TERMINATION RIGHTS

11.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon five (5) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

ARTICLE 12 - DEFAULT

12.1 An event of default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include any of the following:

- 12.1.1 Contractor has not performed Services on a timely basis;
- 12.1.2 Contractor has refused or failed to supply enough properly skilled staff personnel;
- 12.1.3 Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
- 12.1.4 Contractor has failed to obtain the approval of the City where required by this Agreement;
- 12.1.5 Contractor has failed in the representation of any warranties; or
- 12.1.6 Contractor has refused or failed to provide Services as defined in this Agreement.

12.2 The City may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy given or otherwise existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. The City's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to the City in law or in equity.

ARTICLE 13 - INDEMNIFICATION

13.1 The Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, costs, losses and damages, including but not limited to all fees and charges of attorneys and other professionals caused by the acts or omissions of the Contractor, its officers, directors, partners, employees, and agents in the performance and furnishing of Services under this Agreement.

ARTICLE 14 - INSURANCE

14.1 Throughout the term of this Agreement, the Contractor shall maintain in force at its own expense, insurance as follows:

- 14.1.1 Workers' Compensation: Workers' Compensation Insurance with statutory limits, as required by law.
- 14.1.2 General Liability: Commercial General Liability with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for Bodily Injury and Property damage including coverage for contractual liability, personal injury, broad

form property damage, products and completed operations. This coverage is required by the Contractor and any subcontractor or anyone directly or indirectly employed by either of them. The City shall be named additional insured.

14.1.3 Automobile Liability: Comprehensive or Business Automobile Liability Insurance with not less than Five Hundred Thousand Dollars (\$500,000.00) each occurrence combined single limit for Bodily Injury and Property Damage including coverage for owned, hire and non-owned vehicles as applicable. The Contractor and any of its approved subcontractors shall take out and maintain this insurance coverage against claims for damages resulting from bodily injury, including wrongful death and property damage which may arise from the operations of any owned, hired or non-owned automobiles and/or equipment used in any capacity in connection with the carrying out of this Agreement. The City shall be named as an additional insured.

14.1.4 Professional Liability: The Contractor, its officers, employees and agents will provide the City a Certificate of Insurance evidencing professional liability insurance with limits not less than One Million Dollars (\$1,000,000.00) aggregate with respect to acts, errors or omissions in connection with professional Services to be provided under this Agreement and any deductible is not to exceed Ten Thousand Dollars (\$10,000.00) for each claim. Contractor represents it is financially responsible for the deductible amount.

14.1.5 Contractor shall maintain professional liability insurance during the term of this Agreement and for a period of three (3) years for the date of completion of each Project. In the event that Contractor goes out of business during the term of this Agreement or the three (3) year period described above, Contractor shall purchase Extended Reporting Coverage for claims arising out of Contractor's negligent acts errors and omissions during the term of the Professional Liability Policy.

14.2 Subcontractors Insurance: The Contractor shall require any approved subcontractors to take out and maintain during the life of the subcontract the same insurance coverage required of the Contractor or the Contractor will include all subcontractors as insureds under its policies. Each subcontractor shall furnish to the Contractor two (2) copies of the Certificate of Insurance and Contractor shall furnish one (1) copy of the Certificate of Insurance to the City, and shall name the City as an additional insured.

14.3 Insurance Company and Agent: All insurance policies required of the Contractor shall be written by a company with a Best's rating of B + or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed agents upon whom service of process may be made in Miami-Dade County, Florida. The City reserves the right to request a copy of the required policies for review. The City may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Contractor and the insurance carrier.

14.4 Certificates of Insurance: Evidence of all required insurance shall be submitted prior to commencement of this Agreement. Contractor must submit revised Certificate of Insurance naming the City as additional insured for all liability policies.

ARTICLE 15 - INDEPENDENT CONTRACTOR

15.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering Services to the City under this Agreement.

ARTICLE 16 -NON-EXCLUSIVE AGREEMENT

16.1 The Services to be provided by the Contractor pursuant to this Agreement shall be non-exclusive, and nothing shall preclude the City from engaging other firms to perform such professional Services.

ARTICLE 17- LIMITATION OF LIABILITY

17.1 The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of the Agreement, so that its liability never exceeds the agreed sum of One Hundred Dollars (\$100.00). Contractor expresses its willingness to enter into this Agreement with the understanding that Contractor's recovery from the City for any action or claim arising from this Agreement shall be limited to One Hundred Dollars (\$100.00).

17.2 Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor agrees that the City shall not be liable to Contractor for damages in an amount in excess of One Hundred Dollars (\$100.00), for any action or claim of the Contractor or any third party arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 18 - MISCELLANEOUS PROVISIONS

18.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

18.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

18.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall

be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

18.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

18.5 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

18.6 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

18.7 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

18.8 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

18.9 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

18.10 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

18.11 All other terms and conditions set forth in the Proposal which have not been modified by this Agreement, shall remain in full force and effect.

18.12 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

18.13 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

18.14 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

Xero Pictures, LLC d/b/a Xero Media Group
a Florida for profit corporation: **"Contractor"**

By: _____

E-SIGNED by Harold Marrero
By: on 2023-09-29 14:27:25 GMT _____

Print Name:

Print Name: Harold Marrero

Date:

Date: September 29, 2023

ATTEST:

City of North Miami, a Florida municipal
corporation: **"City"**

E-SIGNED by Vanessa Joseph
By: on 2023-09-28 18:09:13 GMT
Vanessa Joseph, Esq.
City Clerk

E-SIGNED by Rasha Cameau
By: on 2023-09-28 16:44:03 GMT
Rasha Cameau, MBA, FRA-RP
City Manager

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

E-SIGNED by Jeff Cazeau
By: on 2023-10-02 18:32:56 GMT
Jeff P. H. Cazeau, Esq.
City Attorney