

**FUNDING AGREEMENT
BETWEEN
CITY OF JACKSONVILLE
AND
ENVIROSUITE, INC.
FOR
URBAN AREA ODOR STUDY**

THIS FUNDING AGREEMENT (“Agreement”) is effective as of the ____ day of _____ 2021, by and between the **CITY OF JACKSONVILLE**, a consolidated municipality and county political subdivision of the State of Florida (“City”), and **EMS BRUEL & KJAER, INC., d/b/a ENVIROSUITE, INC.** (“Envirosuite”), to conduct an Urban Area Odor Study (the “Project”).

RECITALS:

WHEREAS, in Ordinance 2021-___-E, the Jacksonville City Council appropriated \$125,392.00 to provide funding for services to conduct the Project and authorized the City to contract directly with Envirosuite; and

WHEREAS, Envirosuite has agreed to provide the services for the Project subject to terms and conditions of this Agreement.

IN CONSIDERATION of the foregoing and the mutual obligations set forth herein, the parties hereby agree as follows:

1. **Scope of Work.** Envirosuite shall perform the services described in **Exhibit A** attached to this Agreement (the “Scope of Work”) and in accordance with the Project Budget stated therein.

2. Obligations of the Parties.

a. Envirosuite agrees to provide the services and take other actions necessary to accomplish the Project consistent with the Scope of Work.

b. Envirosuite shall comply with the insurance requirements attached hereto as **Exhibit B**.

c. Envirosuite agrees to the Indemnification requirements attached hereto as **Exhibit C**.

d. City shall pay Envirosuite a sum not to exceed \$125,392.00 for performance of the Project pursuant to the payment schedule outlined in **Exhibit A**.

4. **Performance.** Envirosuite shall ensure that the work is performed in a workmanlike manner, using reasonable efforts and abilities on a non-emergency basis.

5. **Force Majeure.** The Parties shall not be liable for any failure or delay in the performance of their obligations under this Agreement due to a force majeure event, including but not limited to acts of civil or military authorities, acts of courts and/or regulatory agencies, war, riot or insurrection, embargoes, sabotage, strikes or lockouts (provided such strike or lockout does not arise from inequitable labor practices), epidemics, fires, floods, earthquakes, tornadoes, and hurricanes. If any failure or delay results from such causes, upon notice from Envirosuite within five days of the event giving rise to the delay, the time for performance shall be extended for a period of time reasonably necessary to overcome the effects of such delays. Notwithstanding the foregoing, if Envirosuite's performance is rendered impossible or ineffective by the event or delay, then all funds distributed to Envirosuite by the City remaining unspent on the Project shall be returned to the City.

6. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and does not create any rights or privileges in any third parties.

8. **No Waivers.** Failure of the City to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

9. **Consent of JEA.** The Parties acknowledge that the property constituting the location where odor monitoring devices will be installed is under the custody, care, operation, and maintenance of JEA. No work related to the installation of odor monitor devices shall commence without written consent from JEA.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter hereof.

11. **Governing State Law/Severability/Venue.** The rights, obligations, and remedies of the parties as specified under this Agreement shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of this Agreement be determined by the courts to be illegal or in conflict with any law of the State of Florida, the

validity of the remaining provisions shall not be impaired. Venue for litigation of this Agreement shall be in courts of competent jurisdiction located in Jacksonville, Duval County, Florida.

12. **Public Records.** Public Records. In accordance with Section 119.0701, Florida Statutes, the Contractor shall:

- a. Keep and maintain public records required by City to perform the Project; and
- b. Upon request from City's custodian of public records, provide City with a copy of the requested records or allow records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, or as otherwise provided by law; and
- c. 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 the Agreement term and following completion of this Agreement if Contractor does not transfer the records to City; and
- d. Upon completion of this Agreement, transfer to City at no cost all public records in possession of Contractor or keep and maintain public records required by City to perform the Project. If Contractor transfers all public records to City upon completion of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City upon request from City's custodian of public records in a format that is compatible with City's information technology systems.

The above requirements apply to a "Contractor" as defined in Section, 119.0701, Florida Statutes.

IF 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 CITY'S CUSTODIAN OF PUBLIC RECORDS AT (904) 630-7678; PRR@COJ.NET; CITY OF JACKSONVILLE, PUBLIC RECORDS REQUEST, 214 N. HOGAN STREET, SUITE 1180, JACKSONVILLE, FLORIDA 32202.

14. **Limitations of Government Liability.** Nothing in this Agreement shall be deemed a waiver of immunity or limits of liability beyond any statutory limited waiver of immunity or limits which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes, or other statute as it now exists or may be changed from time to time, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

15. **Maximum Indebtedness.** \$125,392.00 is the City's maximum indebtedness under this Agreement. In no event shall the total amount owed under this Agreement exceed this amount.

16. **Non-Discrimination.** Envirosuite represents that it has adopted and will maintain throughout the term of this Agreement a policy of nondiscrimination or harassment against any person with regard to race, color, sex (including pregnancy), sexual orientation, gender identity or expression, religion, political affiliation, national origin, disability, age, marital status, veteran status, or any other impermissible factor in recruitment, hiring, compensation, training, placement, promotion, discipline, demotion, transfers, layoff, recall, termination, working conditions and related terms and conditions of employment.

17. **Compliance with Laws.** In performing under this Agreement, Envirosuite shall comply with all applicable federal, state, and local laws, rules, and regulations as the same exist or as may be amended from time to time.

[Remainder of page left blank intentionally. Signature page follows immediately.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

WITNESS:

Signed in the presence of

**EMS BRUEL & KJAER, INC, d/b/a
ENVIROSUITE, INC.**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

**CITY OF JACKSONVILLE, a
Florida municipal corporation**

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry
Mayor

In accordance with the Ordinance Code of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing agreement, and that provision has been made for the payment of monies provided therein to be paid.

Director of Finance
City Contract Number: _____

Form Approved:

Office of General Counsel

Scope of Work



Scope of Work for City of Jacksonville Odor Study



This Scope of Work (“SOW”) forms an integral part of the Envirosuite Services provided to the City of Jacksonville during the odor study

1. SCOPE

Envirosuite is pleased to present this study to better understand and manage the odor complaints within the different towns through City of Jacksonville, Florida. Completing a 12-month study with continuous monitoring will provide the city with an additional tool that will enable response to community concerns even at times when personal may not be available to perform a site inspection and a deeper understanding of the characteristics of the odor being perceived. This study will also allow the ability to take in all the different possible weather variables through the year that might have a different effect on how the odor is perceived through the city.

2. KEY OBJECTIVES

We have developed 5 phases for the delivery of the study. These phases will ensure that the city and Envirosuite meet specific goals throughout the 12 months.

2.1. Phase 1: Project Deployment (Sept 15th – Dec 15th, 2021)

- a) Deliver a comprehensive network of odor 11 monitoring devices sensitive to H2S, NH3 and VOC that will be strategically placed around the areas of concern
- b) Configure the Envirosuite web-based software platform for real-time alerting, reporting, and modeling to produce ongoing reports and on-demand as needed to respond to community concerns
- c) Validate model configurations to meet the require sensitivity response and representation of the area

2.2. Phase 2: Initial Validation (Dec 15th, 2021 – Jan 15th 2022)

- a) Discuss and document the city environmental monitoring & reporting workflow to optimize the utilization of the Envirosuite tool
- b) Create and configure City of Jacksonville tenant on the Envirosuite platform
- c) Configure the Envirosuite core platform
- d) Create reporting templates
- e) Invite users chosen by the city to collaborate in the study
- f) Verification of sensor readings
- g) Verification of model results

2.3. Phase 3: Operation and reporting (Jan 15th – Dec 15th, 2022)

- a) Adoption meeting and workflow for complaint management and resolution
- b) Automated Weekly report delivery
- c) Monthly report delivery and discussion meeting
- d) Annual report delivery and discussion meeting

2.4. Phase 4: Training (Jan 15th – Dec 15th, 2022)

- a) Train COJ staff on all necessary items (hardware, software, troubleshooting, etc.)
- b) Provide COJ staff with process for technical support

2.5. Phase 5: Final Review and Report (Mar 31, 2023)

- a) Final report operation
- b) Final report on study findings further work suggested

3. STAFFING & DURATION

This engagement will be delivered by multiple Envirosuite staff, providing:

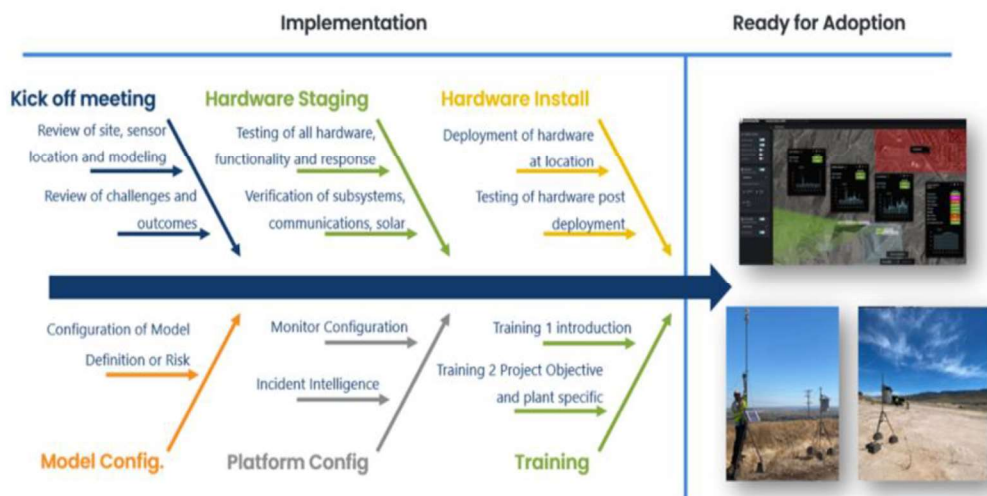
- 3.1. Assistance with the activation of the ES2 platform for the pilot project and users
- 3.2. An Envirosuite specialist to gather requirements, configure the ES2 platform, draft related documentation, and provide software training.

The delivery of the Services under this Engagement is expected to begin deployment in June, 2021 with full operation in July 2021, assuming all preliminary steps are met accordingly.

4. WORK TO BE COMPLETED

The following image describes the typical deployment process from kickoff to adoption of the system being sued in the study

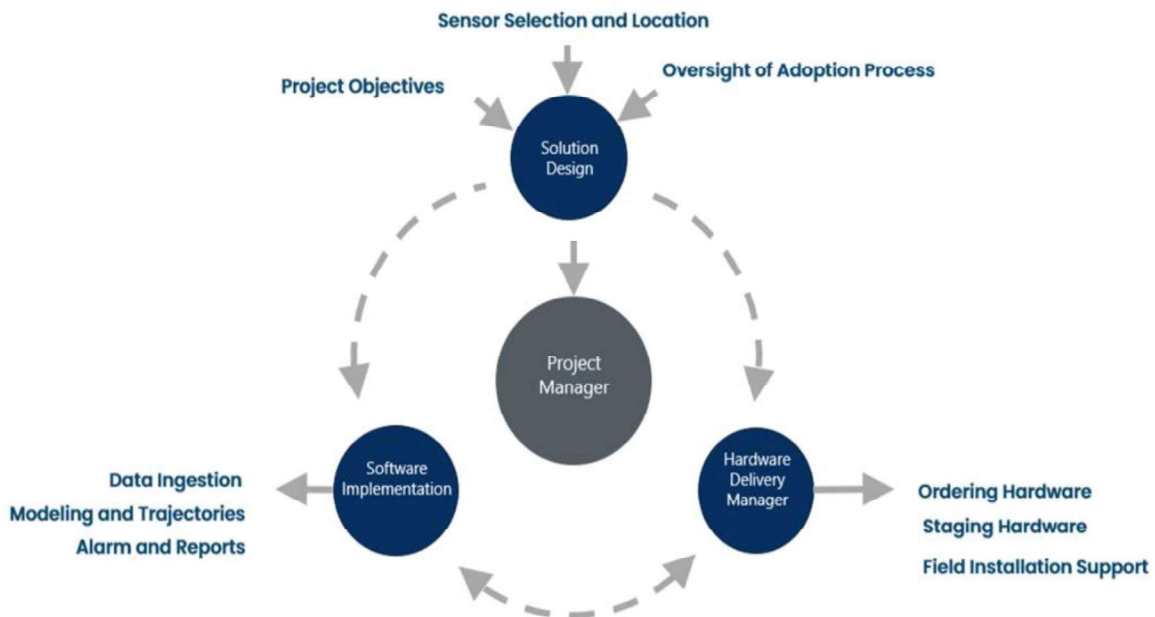
EVS Project Deployment Process



| Tasks | Deliverables/Supplementary Documentation |
|---|---|
| <p>Task 1: Implementation – A initial call will be held with all respective parties from Envirosuite and COJ prior to the start of the study to review the implementation services described in phase 1 & 2 in the key objectives section, present the standard configuration documentation (with required Client information), schedule engagement activities, and identify the implementation team.</p> | <p>Deliverables: Project delivery plan, confirmation for 11 eNose location</p> <p>Supplementary Documentation: Meeting notes, including Envirosuite/Client responsibilities, implementation schedule, and engagement teams.</p> |
| <p>Task 2: Validation – Working onsite and online, Envirosuite will gather the Client’s information and environmental requirements, practices, and procedures. Envirosuite will lead Client through the process which will determine the configuration settings, roles, reporting requirement and other information required for the pilot project template setup. This task includes the following sub-tasks.</p> <ul style="list-style-type: none"> a) Gather minimum ES2 configuration requirements to update the Clients project template. b) Gather reporting requirements, including sample reports provided by Client (Envirosuite can provide). c) Capture requirements for trigger levels d) Identify data sources for import/export e) Installation of 11 eNose Sensors f) Installation of 2 weather stations g) Configure user roles, add users to project and enable users h) Map reporting requirements i) Review project settings with the implementation team and finalize | <p>Deliverables: Configured ES2 standard project template with reporting enables, hardware and software installation and configuration, accounts for all necessary COJ staff</p> <p>Supplementary Documentation: Meeting notes including Client-provided documentation, layout for reporting deliverables</p> |
| <p>Task 3: Operation/Reporting – Working offsite and online, Envirosuite will document the requirements compiled under Task 2 which will define the ES2 setup and configuration. Client has a one-week review period in which to comment and provide approval of the configuration documentation. Approval is required before Task 4 can begin.</p> | <p>Deliverables: Set scheduled reporting (weekly, monthly and annually), schedule meetings to assist in analyzing monthly and annual reports</p> <p>Supplementary Documentation: None.</p> |
| <p>Task 4: Training – This task includes the following sub-tasks:</p> <ul style="list-style-type: none"> a) Provide online platform user training session for existing all relevant users b) Create processes for technical support (operation center) | <p>Deliverables: Administrator and user training consisting of software interface, technical support and troubleshooting</p> <p>Supplementary Documentation: None.</p> |

| | |
|---|---|
| <p>Task 5: Final Review & Report – This task includes the following sub tasks:</p> <ul style="list-style-type: none"> a) Provide a final analysis of the 12-month study b) Suggest further work or recommendations post-study c) deinstall hardware throughout the city | <p>Deliverables: Final annual report and analysis with the city, any recommendations from our experts post-study and deinstallation of hardware throughout the city</p> <p>Supplementary Documentation: None.</p> |
|---|---|

The following diagram describes the team responsible for the delivery of the initial configuration of the system hardware and software prior to the full commencement of the study



5. LOCATION OF SERVICES

Engagement will be conducted through a combination of onsite and online efforts as reasonably agreed between the parties to achieve the deliverables under Section 4.

6. ASSUMPTIONS

- 6.1. An Envirosuite ES2 standard implementation of core modules is included in this SOW and is based on the default ES2 configuration template. The standard implementation includes the configuration of 5 reporting templates.
- 6.2. Envirosuite will assist Client in the initial configuration and setup of the odor study. Configuration of additional organizations is the responsibility of Client, with support from Envirosuite, or can be provided under a separate SOW, subject to additional fees.
- 6.3. Envirosuite will use online training materials for all training sessions, unless requested to be onsite by Client, subject to travel & expenses.

7. CLIENT RESPONSIBILITIES

- 7.1. COJ will assign a single point of contact to Envirosuite for the coordination of task activities.
- 7.2. COJ will ensure relevant decision makers and engagement participants are reasonably available and able to attend meetings as scheduled.
- 7.3. COJ agrees to share relevant information with Envirosuite regarding its existing application usage, targeted users, processes and requirements, and technical infrastructure to enable Envirosuite to perform its obligations.
- 7.4. Access to monitoring locations as and when required by Envirosuite.
- 7.5. From time to time COJ will provide assistance to Envirosuite required for on-site to determine any fault is not related to power or other client-provided services

8. PROJECT BUDGET

| | |
|---|------------------|
| 8.1. Implementation Fee | \$11,924 |
| 8.2. Bundled Solutions Package | \$103,316 |
| a) Software subscription to Environmental Compliance, Incident Intelligence and Source Identification | |
| b) 2 Weather Station | |
| c) 11 Ambient eNoses | |
| d) All data communication | |
| 8.3. Insurance | <u>\$10,152</u> |
| 8.4. Total Project Budget | \$125,392 |

9. PAYMENT SCHEDULE

| | | |
|--|--|----------|
| 9.1. Implementation Fee | Due at start of the project | \$11,924 |
| 9.2. Quarterly in Advance Subscription | Due at the beginning of the project and every 3 months there after | \$28,367 |

INSURANCE

Without limiting its liability under this **Agreement**, Contractor shall at all times during the term of this **Agreement** procure prior to commencement of work and maintain at its sole expense during the life of this **Agreement** (and **Agreement** shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

| | |
|---|---|
| Worker's Compensation Employer's Liability | Florida Statutory Coverage \$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 100,000 Each Employee/Disease |
|---|---|

This insurance shall cover the Applicant (and, to the extent they are not otherwise insured, its contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

| | |
|-------------------------------------|--|
| Commercial General Liability | \$2,000,000 General Aggregate \$2,000,000 Products & Comp.Ops. Agg. \$1,000,000 Personal/Advertising Injury \$1,000,000 Each Occurrence \$ 50,000 Fire Damage \$ 5,000 Medical Expenses |
|-------------------------------------|--|

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

| | |
|--|-----------------------------------|
| Automobile Liability (Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract) | \$1,000,000 Combined Single Limit |
|--|-----------------------------------|

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

| | |
|-------------------------------|--|
| Professional Liability | \$1,000,000 per Claim \$1,000,000 Aggregate |
|-------------------------------|--|

The Professional Liability insurance shall include coverage for Technology Errors and Omissions Liability and must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of this Agreement and such Claims-made coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

Pollution Liability \$1,000,000 per Loss
If applies \$2,000,000 Annual Aggregate

Any entity hired to perform services as part of this **Agreement** for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation. Such coverage must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of this **Contract** and such claims-made coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

Pollution Legal Liability \$1,000,000 per Loss
If applies \$2,000,000 Aggregate

Any entity hired to perform services as a part of this **Agreement** that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this **Agreement**. Such coverage must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of this **Agreement** and such claims-made coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage

Additional Insurance Provisions

- A. Certificates of Insurance. **Applicant** shall deliver the City of Jacksonville Certificates of Insurance that shows the corresponding **City Contract or Bid Number** in the Description, **Additional Insureds, Waivers of Subrogation** and **& statement** as provided below. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- B. Additional Insured: All insurance **except** Worker's Compensation and Professional Liability, shall be endorsed to name the City of Jacksonville and their respective members, officers, officials, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and, if products and completed operations is required, CG2037, Automobile Liability CA2048.

- C. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and their respective members, officers, officials, employees and agents
- D. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- E. **Applicant** Insurance Primary. The insurance provided by the **Applicant** shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the Duval County Clerk of the Circuit and County Courts and the City of Jacksonville and their respective members, officers, officials, employees and agents
- F. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this **Agreement** shall remain the sole and exclusive responsibility of the named insured **Applicant**. Under no circumstances will the City of Jacksonville and their respective members, officers, officials, employees and agents be responsible for paying any deductible or self-insured retention related to this **Agreement**.
- G. **Agreement** Insurance Additional Remedy. Compliance with the insurance requirements of this **Agreement** shall not limit the liability of the **Applicant** or its Subcontractors, employees or agents to the City of Jacksonville and their respective members, officers, officials, employees and agents shall be in addition to and not in lieu of any other remedy available under this **Agreement** or otherwise.
- H. Waiver/Estoppel. Neither approval by City of Jacksonville nor failure to disapprove the insurance furnished by Ontario Systems shall relieve **Applicant** of **Applicant's** full responsibility to provide insurance as required under this **Agreement**.
- I. Notice. The **Applicant** shall provide an endorsement issued by the insurer to provide the City of Jacksonville thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the Ontario Systems, as applicable, shall provide said thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of the **Applicant** under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City of Jacksonville may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City of Jacksonville and their respective members, officers, officials, employees and agents also be named as an additional insured.
- L. Special Provision: Prior to executing this Agreement, **Applicant shall** present this **Agreement** and insurance requirements to its Insurance Agent Affirming: 1) That the Agent has Personally reviewed

the insurance requirements of the Contract Documents, and (2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of **Agreement**.

INDEMNIFICATION

Applicant (the “**Indemnifying Party**”) shall hold harmless, indemnify, and defend the City of Jacksonville and their respective members, officers, officials, employees and agents (collectively the “**Indemnified Parties**”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Party that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Party’s performance of the **Agreement**, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this **Agreement** contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the **Agreement**; and

3. Intellectual Property Liability, to the extent this **Agreement** contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services provided under this **Agreement** (the “**Service(s)**”), any product generated by the Services, or any part of the Services as contemplated in this **Agreement**, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Party shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties, a license, authorizing the continued use of the Service or product. If the Indemnifying Party fails to secure such a license for the Indemnified Parties, then the Indemnifying Party shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the City, so that the Service or product is non-infringing.

If an Indemnified Party exercises its right under this **Agreement**, the Indemnified Party will (1) provide reasonable notice to the Indemnifying Party of the applicable claim or liability, and (2) allow Indemnifying Party, at its own expense, to participate in the litigation of such claim or liability to protect its interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by, any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.