

**LEASE AGREEMENT**

**BETWEEN**

**CITY OF JACKSONVILLE, AS LANDLORD**

**AND**

**NATIONAL MEDICAL SERVICES, INC., AS TENANT**

**DATED: \_\_\_\_\_**

## BASIC LEASE INFORMATION

Lease Date: October 1, 2020

Landlord: City of Jacksonville, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida

Tenant: National Medical Services, Inc., d/b/a NMS Labs, a foreign for-profit corporation

Premises: Approximately 4,309 square feet located on the second floor of the Duval County Medical Examiner's Office building, having an address of 2100 North Jefferson Street, Jacksonville, Florida 32206 (the "**Building**"), as such premises are shown on the site/floor plan attached hereto as **Exhibit A**.

Project: The Building together with the adjacent parking lot and land of Landlord.

Term: October 1, 2020 through September 30, 2025 with up to five (5) consecutive additional periods of one (1) year each as stated in Exhibit F.

Rent Commencement Date: October 1, 2020

Basic Rent: Landlord to receive a monthly credit toward costs for services rendered by Tenant pursuant to that certain Services Contract attached hereto as Exhibit C (the "Services Contract") in lieu of Tenant's payment of Basic Rent as outlined in Exhibit E. Basic Rent (the credit toward services pursuant to the Services Contract) shall increase at a rate of three percent (3%) per year.

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Additional Rent: Any sum of money required to be paid by Tenant in addition to the Basic Rent herein reserved.

Security Deposit: N/A

Rent: Basic Rent, Additional Rent, and all other sums that Tenant may owe to Landlord or otherwise be required to pay under the Lease.

Permitted Use: Postmortem Toxicology Laboratory – including Tenant's provision of services to Landlord as outlined in the Services Contract.

Tenant's Proportionate Share: N/A

Brokerage Commission: None.

Tenant's Address: For all Notices: With a copy to:

National Medical Services, Inc.  
200 Welsh Road  
Horsham, PA 19044  
Attn: Andrew Nolan, VP Finance  
Telephone: (800) 522-6671

Landlord's Address: For all Notices: With a copy to:

City of Jacksonville  
District Four Medical Examiner's Office  
2100 Jefferson Street  
Jacksonville, Florida 32206  
Attn: Tim Crutchfield, Operations Manager

Office of General Counsel  
117 West Duval Street, Ste 480  
Jacksonville, Florida 32202  
Attention: Government Operations  
Telephone: (904) 255-5100

City of Jacksonville  
Real Estate Division  
214 Hogan Street, 10<sup>th</sup> Floor  
Jacksonville, Florida 32202  
Attention: Chief of Real Estate  
Telephone: (904) 255-8700

The foregoing Basic Lease Information is incorporated into and made a part of the Lease identified above. If any conflict exists between any Basic Lease Information and the Lease, then the Lease shall control.

**LANDLORD:**

**CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

**NATIONAL MEDICAL SERVICES, INC. d/b/a NMS LABS**, a foreign profit corporation

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

Print: \_\_\_\_\_

## LEASE

This Lease Agreement (this "Lease") is entered into as of **October 1, 2020**, by and between **City of Jacksonville**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida ("Landlord"), and **National Medical Services, Inc. d/b/a NMS Labs**, a foreign profit corporation ("Tenant").

1. **Definitions and Basic Provisions.** The definitions and basic provisions set forth in the Basic Lease Information (the "Basic Lease Information") executed by Landlord and Tenant contemporaneously herewith are incorporated herein by reference for all purposes. Additionally, the following terms shall have the following meanings when used in this Lease: "Affiliate" means any person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the party in question; "Building's Structure" means the Building's exterior walls, roof, elevator shafts, footings, foundations, structural portions of load-bearing walls, structural floors and subfloors, and structural columns and beams; "Building's Systems" means the Building's HVAC, life-safety, plumbing, electrical, and mechanical systems; "including" means including, without limitation; "Laws" means all federal, state, and local laws, ordinances, rules and regulations, all court orders, governmental directives, and governmental orders and all interpretations of the foregoing, and all restrictive covenants affecting the Project, and "Law" shall mean any of the foregoing; and "Tenant Party" means any of the following persons: Tenant; any assignees claiming by, through, or under Tenant; any subtenants claiming by, through, or under Tenant; and any of their respective agents, contractors, employees, licensees, guests and invitees.

2. **Lease Grant.** Subject to the terms of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises for the Term.

3. **Tender of Possession.** Possession of the Premises was previously tendered to Tenant pursuant to that License and Service Agreement executed between the parties and effective on June 26, 2015. Tenant shall be deemed to have accepted the Premises in their AS-IS condition as of the Lease Commencement Date.

4. **Rent.** As consideration for the services provided by Tenant to the City's Medical Examiner's Office pursuant to the Services Contract, Tenant shall not be responsible for payment of Basic Rent. The monthly Basic Rent credit Tenant shall receive for services rendered to Landlord for the duration of the initial Lease term is outlined in the attached Exhibit E.

5. **Limitation on Landlord Expense.** Notwithstanding anything in this Lease to the contrary, it is understood and agreed that Tenant will pay all costs and expenses in connection with Tenant's use and occupancy of the Premises, and such use and occupancy of the Premises will be at no cost to Landlord, except as expressly set forth herein. All costs, expenses and obligations of every kind relating directly or indirectly in any way, foreseen or unforeseen, to the Premises which may arise or become due during the Term of this Lease shall, except as otherwise specifically provided in this Lease, be paid by Tenant and Tenant hereby indemnifies and holds Landlord harmless from and against any and all such costs, expenses, obligations, and liabilities.

6. **Security Deposit.** N/A.

7. **Services and Costs.**

(a) **Premises.** Landlord shall provide the normal utility service connections into the Premises and shall pay the cost of Tenant's utility services to include: all charges for gas, water, sewer and electricity used on the Premises, and for all electric light lamps or tubes. Tenant shall pay all costs caused

by Tenant introducing excessive pollutants into the sanitary sewer system, including permits, fees and charges levied by any utility provider or governmental agency for any pollutants or solids other than ordinary human waste. Tenant shall pay all charges for telephone and internet services. Landlord will provide general housekeeping and janitorial services, pest control and extermination, supplies and upkeep in connection with the Premises, including hazardous and non-hazardous waste removal and disposal. Landlord will provide HVAC to the Premises that is appropriate for office work.

(b) **Common Areas.** Landlord shall maintain the common areas of the Premises, in reasonably good order and condition.

(c) **Restoration of Services; Abatement.** Landlord shall use reasonable efforts to restore any service required of it that becomes unavailable as soon as possible; however, such unavailability shall not render Landlord liable for any damages caused thereby, be a constructive eviction of Tenant, constitute a breach of any implied warranty, or, entitle Tenant to any abatement of Tenant's obligations hereunder.

8. **Improvements; Alterations; Repairs; Maintenance.**

(a) **Improvements; Alterations.** The Tenant accepts the subject premises in "as is" condition and shall be solely responsible for the repairs necessary to make it appropriately inhabitable. No improvements, alterations or physical additions in or to the Premises may be made without Landlord's prior written consent, which shall not be unreasonably withheld or delayed; however, Landlord may withhold its consent to any improvement, alteration or addition that would adversely affect (in the reasonable opinion of Landlord) the (1) Building's Structure or the Building's Systems (including the Building's restrooms or mechanical rooms), (2) exterior appearance of the Building, (3) appearance of the Building's common areas or elevator lobby areas, or (4) provision of services to other occupants of the Building. Tenant shall not paint or install lighting or decorations, signs, window or door lettering, or advertising media of any type visible from the exterior of the Premises without the prior written consent of Landlord, which consent may not be unreasonably withheld, but shall be in Landlord's sole and absolute discretion. All alterations, additions, and improvements shall be constructed, maintained, and used by Tenant, at its risk and expense, in accordance with all Laws; Landlord's consent to or approval of any alterations, additions or improvements (or the plans therefor) shall not constitute a representation or warranty by Landlord, nor Landlord's acceptance, that the same comply with sound architectural and/or engineering practices or with all applicable Laws, and Tenant shall be solely responsible for ensuring all such compliance.

Tenant shall be responsible to install and maintain security devices and/or systems (i.e. card readers or other access limiting devices, alarm/security monitoring, etc.) for the Premises at its sole cost and expense and for the purposes of ANAB and/or ABFT accreditation. The parties agree that security for the Premises shall be established such that only Tenant, Landlord and their respective "Authorized Personnel" may have access to the secured areas of the Premises; such access to be audited by ANAB and/or ABFT. Landlord will provide some limited access control for the evidence storage room and the main laboratory area of the Building which shall be supplemental to Tenant's obligation to provide security devices or systems as provided in this Section.

(b) **Repairs; Maintenance.** Tenant shall maintain the Premises in a clean, safe, and operable condition, and shall not permit or allow to remain any waste or damage to any portion of the Premises. Additionally, Tenant, at its sole expense, shall repair, replace and maintain in good condition and in accordance with all Laws all portions of the Premises, all areas, improvements and systems exclusively serving the Premises that have been installed by Tenant and/or that are identified in this Lease as Tenant's responsibility. Tenant shall keep the interior of the Premises, including plumbing facilities, interior surfaces and floor coverings, in a clean and sanitary condition. Tenant shall provide for the maintenance and repairs of internal capital items in accordance with generally accepted good practices,

including, but not limited to re-carpeting, repainting, replacement of worn or damaged tile. Tenant shall use and operate, in a reasonable manner, all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, and shall not destroy, deface, damage, impair, or remove any part of the Premises or property therein belonging to Landlord nor permit any person to do so. With the exception of normal wear and tear and unavoidable casualties, Tenant shall keep the Premises in as good a condition as on the date of occupancy.

Landlord shall maintain all interior common areas of the Building and exterior areas of the Premises, including, but not limited to the landscaping, sidewalks and outdoor areas. Tenant shall repair or replace, subject to Landlord's direction and supervision, any damage to the Building caused by a Tenant Party. If Tenant fails to make such repairs or replacements within fifteen (15) days after the occurrence of such damage, then Landlord may make the same at Tenant's cost. If any such damage occurs outside of the Premises, then Landlord may elect to repair such damage at Tenant's expense, rather than having Tenant repair such damage. The cost of all maintenance, repair or replacement work performed by Landlord under this Section 8 shall be paid by Tenant to Landlord within thirty (30) days after Landlord has invoiced Tenant as Rent plus a sum equal to ten percent (10%) thereof representing Landlord's administrative expense.

(c) **Performance of Work.** All work described in this Section 8 that is the responsibility of Tenant shall be performed only by contractors and subcontractors approved in writing by Landlord. Tenant shall cause all contractors and subcontractors to procure and maintain insurance coverage naming Landlord as "additional insured" against such risks, in such amounts, and with such companies as Landlord may reasonably require. Tenant shall provide Landlord with the identities, mailing addresses and telephone numbers of all persons performing work or supplying materials prior to beginning such construction and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable Laws. All such work shall be performed in accordance with all Laws and in a good and workmanlike manner so as not to damage the Building (including the Premises, the Building's Structure and the Building's Systems). All such work which may affect the Building's Structure or the Building's Systems must be approved by the Building's engineer of record, at Tenant's expense and, at Landlord's election, must be performed by Landlord's usual contractor for such work. Any work affecting the roof of the Building must be performed by Landlord's roofing contractor and no such work will be permitted if it would void or reduce the warranty on the roof.

(d) **Mechanic's Liens.** All work performed, materials furnished, or obligations incurred by or at the request of a Tenant Party shall be deemed authorized and ordered by Tenant only, and Tenant shall not permit any mechanic's liens to be filed against the Building, Premises or the Project in connection therewith. Upon completion of any such work, Tenant shall deliver to Landlord final lien waivers from all contractors, subcontractors and materialmen who performed such work. If such a lien is filed, then Tenant shall, within ten (10) days after Landlord has delivered notice of the filing thereof to Tenant (or such earlier time period as may be necessary to prevent the forfeiture of the Premises, the Project or any interest of Landlord therein or the imposition of a civil or criminal fine with respect thereto), either (1) pay the amount of the lien and cause the lien to be released of record, or (2) diligently contest such lien and deliver to Landlord a bond or other security reasonably satisfactory to Landlord. If Tenant fails to timely take either such action, then Landlord may pay the lien claim, and any amounts so paid, including expenses and interest, shall be paid by Tenant to Landlord within ten (10) days after Landlord has invoiced Tenant therefor. Landlord and Tenant acknowledge and agree that their relationship is and shall be solely that of "landlord-tenant" (thereby excluding a relationship of "owner-contractor," "owner-agent" or other similar relationships). Accordingly, all materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter contracting with Tenant, any contractor or subcontractor of Tenant or any other Tenant Party for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises, at any time from the date hereof until the end of the Term, are hereby charged with notice that they look exclusively to Tenant to obtain payment for same. Nothing herein shall be deemed a

consent by Landlord to any liens being placed upon the Premises, the Project or Landlord's interest therein due to any work performed by or for Tenant or deemed to give any contractor or subcontractor or materialman any right or interest in any funds held by Landlord to reimburse Tenant for any portion of the cost of such work. Tenant shall defend, indemnify and hold harmless Landlord and its agents and representatives from and against all claims, demands, causes of action, suits, judgments, damages and expenses (including attorneys' fees) in any way arising from or relating to the failure by any Tenant Party to pay for any work performed, materials furnished, or obligations incurred by or at the request of a Tenant Party. This indemnity provision shall survive termination or expiration of this Lease.

9. **Use.** Tenant shall continuously occupy and use the Premises only for the Permitted Use and shall comply with all Laws relating to the use, condition, access to, and occupancy of the Premises and will not commit waste, overload the Building's Structure or the Building's Systems or subject the Premises to use that would damage the Premises. Notwithstanding anything in this Lease to the contrary, as between Landlord and Tenant, (a) Tenant shall bear the risk of complying with Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time (the "Disabilities Acts") in the Premises, and (b) Landlord shall bear the risk of complying with the Disabilities Acts in the common areas of the Building, other than compliance that is necessitated by the use of the Premises for other than the Permitted Use or as a result of any alterations or additions, including any Tenant improvement, made by or on behalf of a Tenant Party (which risk and responsibility shall be borne by Tenant). The Premises shall not be used for any use which is disreputable, creates extraordinary fire hazards, or results in an increased rate of insurance on the Building or its contents, or for the storage of any Hazardous Materials (other than typical supplies for the Permitted Use) and then only in compliance with all Laws). If, because of a Tenant Party's acts or because Tenant vacates the Premises, the rate of insurance on the Building or its contents increases, then such acts shall be an Event of Default, Tenant shall pay to Landlord the amount of such increase on demand, and acceptance of such payment shall not waive any of Landlord's other rights. Tenant shall conduct its business and control each other Tenant Party so as not to create any nuisance or unreasonably interfere with other tenants or Landlord in its management of the Building.

10. **Assignment and Subletting.**

(a) **Transfers. Tenant shall not: (1) assign, transfer, or encumber this Lease or any estate or interest herein, whether directly or by operation of law, (2) permit any other entity to become Tenant hereunder by merger, consolidation, or other reorganization, (3) if Tenant is an entity other than a corporation whose stock is publicly traded, permit the transfer of an ownership interest in Tenant so as to result in a change in the current control of Tenant, (4) sublet any portion of the Premises, (5) grant any license, concession, or other right of occupancy of any portion of the Premises, or (6) permit the use of the Premises by any parties other than Tenant.**

11. **Insurance and Indemnity.**

(a) Tenant shall be responsible to obtain and maintain, for the duration of the Lease Term and any extensions thereto, insurance in the forms and amounts provided in Exhibit G.

(b) Tenant and Tenant Parties (as applicable) shall hold harmless and indemnify the City as provided in Exhibit H.

12. **Rules and Regulations.** Tenant shall comply with the rules and regulations of the Project which are attached hereto as Exhibit C. Landlord may, from time to time, change such rules and regulations for the safety, care, or cleanliness of the Project and related facilities, provided that such changes are

applicable to all tenants of the Project, will not unreasonably interfere with Tenant's use of the Premises and are enforced by Landlord in a non-discriminatory manner. Tenant shall be responsible for the compliance with such rules and regulations by each Tenant Party.

13. **Condemnation.**

(a) **Total Taking.** If the entire Building or Premises are taken by right of eminent domain or conveyed in lieu thereof (a "**Taking**"), this Lease shall terminate as of the date of the Taking.

(b) **Partial Taking - Tenant's Rights.** If any part of the Building becomes subject to a Taking and such Taking will prevent Tenant from conducting on a permanent basis its business in the Premises in a manner reasonably comparable to that conducted immediately before such Taking, then Tenant may terminate this Lease as of the date of such Taking by giving written notice to Landlord within thirty (30) days after the Taking.

(c) **Partial Taking - Landlord's Rights.** If any material portion, but less than all, of the Building becomes subject to a Taking, then Landlord may terminate this Lease by delivering written notice thereof to Tenant within thirty (30) days after such Taking.

(d) **Temporary Taking.** If all or any portion of the Premises becomes subject to a Taking for a limited period of time, this Lease shall remain in full force and effect and Tenant shall continue to perform all of the terms, conditions and covenants of this Lease. Landlord shall be entitled to the entire award for any such temporary condemnation or other taking. If any such temporary condemnation or other taking terminates prior to the expiration of the Term, Tenant shall restore the Premises as nearly as possible to the condition prior to the condemnation or other taking, at Tenant's sole cost and expense; provided that, Tenant shall receive the portion of the award attributable to such restoration.

(e) **Award.** If any Taking occurs, then Landlord shall receive the entire award or other compensation for the land, the Building, the Project, and other improvements taken; however, Tenant may separately pursue a claim (to the extent it will not reduce Landlord's award) against the condemnor for the value of Tenant's personal property which Tenant is entitled to remove under this Lease, moving costs, loss of business, and other claims it may have.

14. **Fire or Other Casualty.**

(a) **Repair Estimate.** If the Premises or the Building are damaged by fire or other casualty (a "**Casualty**"), Landlord shall, within ninety (90) days after such Casualty, deliver to Tenant a good faith estimate (the "**Damage Notice**") of the time needed to repair the damage caused by such Casualty.

(b) **Tenant's Rights.** If a material portion of the Premises is damaged by Casualty such that Tenant is prevented from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Casualty and Landlord estimates that the damage caused thereby cannot be repaired within one hundred eighty (180) days after the commencement of repairs (the "**Repair Period**"), then Tenant may terminate this Lease by delivering written notice to Landlord of its election to terminate within thirty (30) days after the Damage Notice has been delivered to Tenant.

(c) **Landlord's Rights.** If a Casualty damages the Premises or a material portion of the Building and (1) Landlord estimates that the damage to the Premises cannot be repaired within the Repair Period, (2) the damage to the Premises exceeds 50% of the replacement cost thereof (excluding foundations and footings), as estimated by Landlord, and such damage occurs during the last two (2) years of the Term, (3) regardless of the extent of damage to the Premises, the damage is not fully covered by Landlord's



insurance policies or Landlord makes a determination in its sole discretion that restoring the Building would be uneconomical, or (4) Landlord is required to pay any insurance proceeds arising out of the Casualty to a Landlord's Mortgagee, then Landlord may terminate this Lease by giving written notice of its election to terminate within thirty (30) days after the Damage Notice has been delivered to Tenant.

(d) **Repair Obligation**. If neither party elects to terminate this Lease following a Casualty, then Landlord shall, within a reasonable time after such Casualty, begin to repair the Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition as they existed immediately before such Casualty; however, Landlord shall not be required to repair or replace any improvements, alterations or betterments within the Premises (which shall be promptly and with due diligence repaired and restored by Tenant at Tenant's sole cost and expense) or any furniture, equipment, trade fixtures or personal property of Tenant or others in the Premises or the Building, and Landlord's obligation to repair or restore the Premises shall be limited to the extent of the insurance proceeds actually received by Landlord for the Casualty in question. If this Lease is terminated under the provisions of this Section 14, Landlord shall be entitled to the full proceeds of the insurance policies providing coverage for all alterations, improvements and betterments in the Premises (and, if Tenant has failed to maintain insurance on such items as required by this Lease, Tenant shall pay Landlord an amount equal to the proceeds Landlord would have received had Tenant maintained insurance on such items as required by this Lease).

15. **Personal Property Taxes**. Tenant shall be liable for all taxes levied or assessed against personal property, furniture, or fixtures placed by Tenant in the Premises or in or on the Building or Project. If any taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and Landlord elects to pay the same, or if the assessed value of Landlord's property is increased by inclusion of such personal property, furniture or fixtures and Landlord elects to pay the taxes based on such increase, then Tenant shall pay to Landlord, within thirty (30) days following written request therefor, the part of such taxes for which Tenant is primarily liable hereunder; however, Landlord shall not pay such amount if Tenant notifies Landlord that it will contest the validity or amount of such taxes before Landlord makes such payment, and thereafter diligently proceeds with such contest in accordance with Law and if the non-payment thereof does not pose a threat of loss or seizure of the Project or interest of Landlord therein or impose any fee or penalty against Landlord.

16. **Tenant Events of Default**. Each of the following occurrences shall constitute an "**Event of Default**" by Tenant:

(a) **Default Under Services Contract**. Tenant default under the Services Contract during the Term of this Lease or any extension thereto;

(b) **Abandonment**. Tenant (1) abandons or vacates the Premises or any substantial portion thereof or (2) fails to continuously operate its business in the Premises;

(c) **Estoppel**. Tenant fails to provide any estoppel certificate after Landlord's written request therefor pursuant to Section 25(d) and such failure shall continue for five (5) days after Landlord's second written notice thereof to Tenant;

(d) **Insurance**. Tenant fails to procure, maintain and deliver to Landlord evidence of the insurance policies and coverages as required under Section 11(a);

(e) **Mechanic's Liens**. Tenant fails to pay and release of record, or diligently contest and bond around, any mechanic's lien filed against the Premises, the Building or the Project for any work

performed, materials furnished, or obligation incurred by or at the request of Tenant, within the time and in the manner required by Section 8(d);

(f) **Other Defaults**. Tenant's failure to perform, comply with, or observe any other agreement or obligation of Tenant under this Lease and the continuance of such failure for a period of more than thirty (30) days after Landlord has delivered to Tenant written notice thereof; and

(g) **Insolvency**. The filing of a petition by or against Tenant (the term "Tenant" shall include, for the purpose of this Section 16(g), any guarantor of Tenant's obligations hereunder) (1) in any bankruptcy or other insolvency proceeding; (2) seeking any relief under any state or federal debtor relief law; (3) for the appointment of a liquidator or receiver for all or substantially all of Tenant's property or for Tenant's interest in this Lease; (4) for the reorganization or modification of Tenant's capital structure; or (5) in any assignment for the benefit of creditors proceeding; however, if such a petition is filed against Tenant, then such filing shall not be an Event of Default unless Tenant fails to have the proceedings initiated by such petition dismissed within ninety (90) days after the filing thereof.

Any notice periods provided for under this Section 16 shall run concurrently with any statutory notice periods and any notice given hereunder may be given simultaneously with or incorporated into any such statutory notice.

17. **Remedies**. Upon any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

(a) **Termination of Lease**. Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall immediately surrender possession of the Premises to Landlord for Landlord's account, and pay to Landlord the sum of all amounts due under Section 18(a);

(b) **Termination of Possession**. Terminate Tenant's right to possess the Premises without terminating this Lease by giving written notice thereof to Tenant, in which event Tenant shall immediately surrender possession of the Premises to Landlord for Tenant's account and pay to Landlord all amounts due from time to time under Section 18(a). If Landlord elects to proceed under this Section 17(b), Landlord may remove all of Tenant's property from the Premises and store the same in a public warehouse or elsewhere at the cost of, and for the account of, Tenant, without becoming liable for any loss or damage which may be occasioned thereby. Landlord shall use reasonable efforts to relet the Premises on such terms as Landlord in its sole discretion may determine (including a term different from the Term, rental concessions, and alterations to, and improvement of, the Premises); however, Landlord shall not be obligated to relet the Premises before leasing other portions of the Building and Landlord shall not be obligated to accept any prospective tenant proposed by Tenant unless such proposed tenant meets all of Landlord's leasing criteria. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder. Reentry by Landlord in the Premises shall not affect Tenant's obligations hereunder for the unexpired Term; rather, Landlord may, from time to time, bring an action against Tenant to collect amounts due by Tenant, without the necessity of Landlord's waiting until the expiration of the Term. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to dispossess or exclude Tenant from the Premises shall be deemed to be taken under this Section 17(b). If Landlord elects to proceed under this Section 17(b), it may at any time elect to terminate this Lease under Section 17(a);

(c) **Perform Acts on Behalf of Tenant**. Perform any act Tenant is obligated to perform under the terms of this Lease and enter upon the Premises in connection therewith if necessary, without

being liable for any claim for damages therefor. Except in the case of an emergency (as determined in the Landlord's sole judgment), Landlord shall telephone or email Tenant prior to entering the Premises. In all events, Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate; or

(d) **Acceleration.** Bring suit for the collection of any sums due to Landlord hereunder or under the Services Contract and for the applicable damages as described in Section 18(a), without entering into possession of the Premises or terminating this Lease.

**18. Payment by Tenant; Non-Waiver; Cumulative Remedies.**

(a) **Payment by Tenant.** Upon any Event of Default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses) in (1) obtaining possession of the Premises, (2) removing and storing Tenant's or any other occupant's property, (3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant, (4) if Tenant is dispossessed of the Premises and this Lease is not terminated, reletting all or any part of the Premises (including brokerage commissions, cost of tenant finish work, and other costs incidental to such reletting), (5) performing Tenant's obligations which Tenant failed to perform, and (6) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default. To the full extent permitted by law, Landlord and Tenant agree the state courts located in Duval County, Florida shall have exclusive jurisdiction over any matter relating to or arising from this Lease and the parties' rights and obligations under this Lease.

(b) **No Waiver.** Landlord's allowance for Tenant to continue the providing any or all services under the Service Contract following an Event of Default shall not waive Landlord's rights regarding such Event of Default. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such term.

(c) **Cumulative Remedies.** Any and all remedies set forth in this Lease: (1) shall be in addition to any and all other remedies Landlord may have at law or in equity, (2) shall be cumulative, and (3) may be pursued successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future. Additionally, Tenant shall defend, indemnify and hold harmless Landlord, and its representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees) arising from Tenant's failure to perform its obligations under this Lease.

**19. Landlord's Lien.** In addition to any statutory landlord's lien, now or hereafter enacted, Tenant grants to Landlord, to secure performance of Tenant's obligations hereunder, a security interest in all of Tenant's property situated in or upon, or used in connection with, the Premises or the Project, and all proceeds thereof (collectively, the "**Collateral**"), and the Collateral shall not be removed from the Premises or the Project without the prior written consent of Landlord until all obligations of Tenant have been fully performed. Such personalty thus encumbered includes specifically all trade and other fixtures for the purpose of this Section 19 and inventory, equipment and contract rights. Upon the occurrence of an Event of Default, Landlord may, in addition to all other remedies, without notice or demand except as provided below, exercise the rights afforded to a secured party under the Uniform Commercial Code of the state in which the Premises are located (the "**UCC**"). To the extent the UCC requires Landlord to give to Tenant notice of any act or event and such notice cannot be validly waived before a default occurs, then five (5) days' prior written notice thereof shall be reasonable notice of the act or event. In order to perfect such security interest, Landlord may file any financing statement or other instrument at Tenant's expense at the

state and county Uniform Commercial Code filing offices. Tenant grants to Landlord a power of attorney to execute and file any financing statement or other instrument necessary to perfect Landlord's security interest under this Section 19, which power is coupled with an interest and is irrevocable during the Term. Landlord may also file a copy of this Lease as a financing statement to perfect its security interest in the Collateral. Within ten (10) days following written request therefor, Tenant shall execute financing statements to be filed of record to perfect Landlord's security interest in the Collateral.

20. **Surrender of Premises.** No act by Landlord shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord. At the expiration or termination of this Lease, Tenant shall deliver to Landlord the Premises with all improvements located therein in good repair and condition, free of Hazardous Materials placed on the Premises during the Term, broom-clean, reasonable wear and tear (and condemnation and Casualty damage not caused by Tenant, as to which Sections 13 and 14 shall control) excepted, and shall deliver to Landlord all keys to the Premises. Provided that Tenant has performed all of its obligations hereunder, Tenant may remove all unattached trade fixtures, furniture, and personal property placed in the Premises or elsewhere in the Building by Tenant (but Tenant may not remove any such item which was paid for, in whole or in part, by Landlord or any wiring or cabling unless Landlord requires such removal). Additionally, at Landlord's option, Tenant shall remove such alterations, additions, improvements, trade fixtures, personal property, equipment, wiring, conduits, cabling, and furniture as Landlord may request; however, Tenant shall not be required to remove any addition or improvement to the Premises or the Project if Landlord has specifically agreed in writing that the improvement or addition in question need not be removed. Tenant shall repair all damage caused by such removal. All items not so removed shall, at Landlord's option, be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant and without any obligation to account for such items; any such disposition shall not be considered a strict foreclosure or other exercise of Landlord's rights in respect of the security interest granted under Section 19. The provisions of this Section 20 shall survive the end of the Term.

21. **Holding Over.** If Tenant fails to vacate the Premises at the end of the Term, then Tenant shall be a tenant at sufferance and shall continue to be subject to all of Tenant's obligations under this Lease. The provisions of this Section 21 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

22. **Certain Rights Reserved by Landlord.** Provided that the exercise of such rights does not unreasonably interfere with Tenant's occupancy of the Premises or prevent the Tenant from fulfilling its obligations under its Service Contract as outlined in Exhibit C, Landlord shall have the following rights:

(a) **Building Operations.** To decorate and to make inspections, repairs, alterations, additions, changes, or improvements, whether structural or otherwise, in and about the Project, or any part thereof; to enter upon the Premises (after giving Tenant reasonable notice thereof, which may be oral notice, except in cases of real or apparent emergency, in which case no notice shall be required) and, during the continuance of any such work, to temporarily close doors, entryways, public space, and corridors in the Building; to interrupt or temporarily suspend Building services and facilities; to change the name of the Building; and to change the arrangement and location of entrances or passageways, doors, and doorways, corridors, elevators, stairs, restrooms, or other public parts of the Building;

(b) **Additional Security Provisions.** To take such reasonable measures as Landlord deems advisable for the security of the Building and its occupants; evacuating the Building for cause, suspected cause, or for drill purposes; temporarily denying access to the Building; and closing the Building after normal business hours and on Sundays and holidays, subject, however, to Tenant's right to enter when the Building is closed after normal business hours under such reasonable regulations as Landlord may prescribe from time to time;

(c) **Prospective Purchasers and Lenders.** To enter the Premises at all reasonable hours to show the Premises to prospective purchasers or lenders; and

(d) **Prospective Tenants.** At any time during the last twelve (12) months of the Term (or earlier if Tenant has notified Landlord in writing that it does not desire to renew the Term) or at any time following the occurrence of an Event of Default, to enter the Premises at all reasonable hours to show the Premises to prospective tenants.

23. **Substitution Space.** Landlord may, in its sole discretion and upon no less than one hundred (100) days' advance written notice to Tenant, relocate Tenant to space which is comparable in size, utility and condition to the Premises. Tenant shall be solely responsible for any and all costs of Tenant's relocation, including but not limited to, any and all costs associated with improvements or upfits to the space to meet any current or future accreditation requirements of Tenant (i.e. installation of independent computer network connections and infrastructure, installation of telephone systems and services, and any required security system(s) installation). Tenant shall obtain Landlord's prior approval for any upfits or improvements to the new space as required in accordance with the terms of this Lease. Landlord shall be responsible to ensure a new space is appropriately outfitted to meet basic requirements for safety and functions as necessary to allow Tenant to perform laboratory activities and services. Landlord shall determine, in its sole discretion, what improvements or upfits to the new space are necessary to meet these basic functional and safety needs. Tenant's obligations hereunder to pay the costs of Tenant's relocation shall be limited to one (1) instance of relocation pursuant to this Section 23 during the Lease Term.

Upon such relocation, the relocation space shall be deemed to be the Premises and the terms of the Lease shall remain in full force and shall apply to the relocation space; provided, however, that Landlord may require the negotiation and execution of a new lease for the relocation space in instances where the relocation space is superior, in Landlord's sole discretion, to the Premises, said new lease to be executed by Tenant within thirty (30) days of Landlord's request therefor. No amendment or other instrument shall be necessary to effectuate the relocation contemplated by this Section to a relocation space that is comparable to the Premises; however, if requested by Landlord, Tenant shall execute an appropriate amendment document within ten (10) business days after Landlord's written request therefor. If Tenant fails to execute a new lease or relocation amendment (as applicable) within the aforementioned time period, or if Tenant fails to relocate within the time period stated in Landlord's relocation notice to Tenant (or, if such relocation space is not available on the date specified in Landlord's relocation notice, as soon thereafter as the relocation space becomes available and is tendered to Tenant in the condition required by this Lease), then, in addition to Landlord's other remedies set forth in this Lease, at law and/or in equity, Landlord may terminate this Lease by notifying Tenant in writing thereof at least sixty (60) days prior to the termination date contained in Landlord's termination notice. Time is of the essence with respect to Tenant's obligations under this Section.

24. **Landlord Event of Default.** Subject to any other provisions in this Lease to the contrary, Landlord's failure to perform any of its duties under this Lease shall constitute an event of default. In such event, Tenant may deliver a written notice to Landlord describing the alleged default and specifying the provisions of the Lease under which Tenant considers Landlord to be in default. Tenant shall give Landlord no less than one hundred eighty (180) days' notice of default and opportunity to cure. In the event Landlord

fails to cure any default within one hundred eighty (180) days of Landlord's receipt of Tenant's notice, Tenant may, at its sole option, extend the period for cure. Tenant shall not unreasonably deny, withhold or delay its approval of any reasonable request from Landlord to extend a period for cure. Tenant hereby waives the remedy of rescission and hereby agrees that Tenant's sole remedies for Landlord's default hereunder and for breach of any promise or inducement shall be limited to termination of this Lease or a suit for injunction.

25. **Miscellaneous.**

(a) **Sovereign Immunity.** The liability of Landlord to Tenant (or any person or entity claiming by, through or under Tenant) for any default by Landlord under the terms of this Lease or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Building shall be limited to Tenant's actual direct, but not consequential, damages therefor and shall be subject to the limitations and provisions of Section 768.28, Florida Statutes (which provisions are not waived, altered or expanded).

(b) **Landlord Transfer.** Landlord may transfer any portion of the Project and any of its rights under this Lease. If Landlord assigns its rights under this Lease, then Landlord shall thereby be released from any further obligations hereunder arising after the date of transfer, provided that the assignee assumes in writing Landlord's obligations hereunder arising from and after the transfer date.

(c) **Force Majeure.** Other than for Tenant's obligations under this Lease that can be performed by the payment of money (e.g., payment of Rent and maintenance of insurance), whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, pandemic, epidemic, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.

(d) **Brokerage.** Each party hereto hereby represents and warrants to the other that in connection with this Lease, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and, no broker initiated or participated in the negotiation of this Lease or is entitled to any commission in connection with this Lease. Each party hereto will indemnify the other against any inaccuracy in such party's representation. No commission is due for this Lease.

(e) **Estoppel Certificates.** From time to time, Tenant shall furnish to any party designated by Landlord, within thirty (30) days after Landlord has made a request therefor, a certificate signed by Tenant confirming and containing such factual certifications and representations as to this Lease as Landlord may reasonably request. Unless otherwise required by a prospective purchaser of the Project, the initial form of estoppel certificate to be signed by Tenant is attached hereto as **Exhibit D**. If Tenant does not deliver to Landlord the certificate signed by Tenant within such required time period, Landlord, and any prospective purchaser, may conclusively presume and rely upon the following facts: (1) this Lease is in full force and effect, (2) the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord, (3) there are no claims against Landlord nor any defenses or rights of offset against collection of Rent or other charges, and (4) Landlord is not in default under this Lease. In such event, Tenant shall be estopped from denying the truth of the presumed facts.

(f) **Notices.** All notices and other communications given pursuant to this Lease shall be in writing and shall be (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address specified in the Basic Lease Information, (2) hand delivered to the intended addressee, or (3) sent by a nationally recognized overnight courier

service. All notices shall be effective upon delivery to the address of the addressee. The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.

(g) **Severability**. If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Lease shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

(h) **Amendments; Binding Effect; No Electronic Records**. This Lease may not be amended except by instrument in writing signed by Landlord and Tenant. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord, and no custom or practice which may evolve between the parties in the administration of the terms hereof shall waive or diminish the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms hereof. Landlord and Tenant hereby agree not to conduct the transactions or communications contemplated by this Lease by electronic means; nor shall the use of the phrase "in writing" or the word "written" be construed to include electronic communications. The terms and conditions contained in this Lease shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. This Lease is for the sole benefit of Landlord and Tenant, and no third party shall be deemed a third party beneficiary hereof.

(i) **Quiet Enjoyment**. Provided Tenant has performed all of its obligations hereunder, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through, or under Landlord, but not otherwise, subject to the terms and conditions of this Lease.

(j) **No Merger**. There shall be no merger of the leasehold estate hereby created with the fee estate in the Premises or any part thereof if the same person acquires or holds, directly or indirectly, this Lease or any interest in this Lease and the fee estate in the leasehold Premises or any interest in such fee estate.

(k) **No Offer**. The submission of this Lease to Tenant shall not be construed as an offer, and Tenant shall not have any rights under this Lease unless Landlord executes a copy of this Lease and delivers it to Tenant.

(l) **Entire Agreement**. This Lease constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to the other with respect to this Lease or the obligations of Landlord or Tenant in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Lease or any exhibits or amendments hereto.

(m) **Waiver of Jury Trial**. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.**

(n) **Governing Law and Venue.** This Lease shall be governed by and construed in accordance with the laws of the state in which the Premises are located. Venue for the purposes of any action arising out of or relating to this Lease shall lie solely and exclusively in the courts located in Duval County, Florida.

(o) **Recording.** Tenant shall not record this Lease or any memorandum of this Lease without the prior written consent of Landlord, which consent may be withheld or denied in the sole and absolute discretion of Landlord, and any recordation by Tenant shall be a material breach of this Lease. Tenant grants to Landlord a power of attorney to execute and record a release releasing any such recorded instrument of record that was recorded without the prior written consent of Landlord.

(p) **Joint and Several Liability.** If Tenant is comprised of more than one party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease. All unperformed obligations of Tenant hereunder not fully performed at the end of the Term shall survive the end of the Term, including payment obligations with respect to Rent and all obligations concerning the condition and repair of the Premises.

(q) **Financial Reports.** Within fifteen (15) days after Landlord's request, Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant or, failing those, Tenant's internally prepared financial statements. If Tenant is a publicly traded corporation, Tenant may satisfy its obligations hereunder by providing to Landlord Tenant's most recent annual and quarterly reports. Tenant will discuss its financial statements with Landlord and, following the occurrence of an Event of Default hereunder, will give Landlord access to Tenant's books and records in order to enable Landlord to verify the financial statements. Tenant shall not be required to deliver the financial statements required under this Section 25(p) more than once in any 12-month period unless requested by a prospective buyer of the Building or an Event of Default occurs.

(r) **Landlord's Fees.** Whenever Tenant requests Landlord to take any action not required of it hereunder or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for Landlord's reasonable, out-of-pocket costs payable to third parties and incurred by Landlord in reviewing the proposed action or consent, including reasonable attorneys', engineers' or architects' fees, within thirty (30) days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

(s) **Telecommunications.** Tenant and its telecommunications companies, including local exchange telecommunications companies and alternative access vendor services companies, shall have no right of access to and within the Building, for the installation and operation of telecommunications systems, including voice, video, data, Internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems ("**Telecommunications Services**"), for part or all of Tenant's telecommunications within the Building and from the Building to any other location without Landlord's prior written consent. All providers of Telecommunications Services shall be required to comply with the rules and regulations of the Building, applicable Laws and Landlord's policies and practices for the Building. Tenant acknowledges that Landlord shall not be required to provide or arrange for any Telecommunications Services and that Landlord shall have no liability to any Tenant Party in connection with the installation, operation or maintenance of Telecommunications Services or any equipment or facilities relating thereto. Tenant, at its cost and for its own account, shall be solely responsible for obtaining all Telecommunications Services.



(t) **Notice Concerning Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a structure in sufficient quantities, may present health risks to persons who are exposed to it. Levels of radon that exceed Federal and State guidelines have been found in buildings in the State of Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit. Landlord makes no representation to Tenant concerning the presence or absence of radon gas in the Premises or the Building at any time or in any quantity. By executing this Lease, Tenant expressly releases Landlord from any loss, claim, liability, or damage now or hereafter arising from or relating to the presence at any time of such substances in the Premises or the Building.

(u) **Termination for Convenience.** Notwithstanding any provision contained herein to the contrary, either party may terminate this Lease at any time upon giving ninety (90) days' written notice to the other party. Landlord's and Tenant's respective rights to terminate for cause, if any, shall be as otherwise outlined in this Lease.

(v) **Reservation of Rights.** Pursuant to Section 122.428(g), *Ordinance Code*, the City reserves the right to terminate this Lease under any circumstances that threaten the public health or safety, or where the Lease creates an adverse impact on the City's tax-exempt bond status.

(w) **No Warranty by Landlord.** Pursuant to Section 122.428(h), *Ordinance Code*, nothing hereunder shall constitute a warranty of the feasibility of Tenant's use or the current or ongoing quality or conditions of the improvements or their suitability for Tenant's purposes, the competence or qualifications of any third party furnishing services, labor or materials whether or not Landlord has approved the contract for third party activities, or any other form of warranty or indemnity, including any indemnity for attorneys fees. By executing this Lease, Tenant acknowledges that Tenant has not relied and will not rely upon any experience, awareness or expertise of the Landlord, or Landlord's employees, agents or contractors and shall acknowledge that the Landlord's only responsibility under the provisions of this Lease is to provide quiet enjoyment. Landlord shall not be liable to Tenant for any damages arising from Tenant's use of the Premises, Building or other improvements, whether economic, noneconomic, general or special, incidental or consequential, statutory, or otherwise, arising out of the presence or operation of Tenant's activities on City-owned real property.

(x) **No Liability for Crimes.** Landlord makes no representations or warranties with respect to crime in the area, undertakes no duty to protect against criminal acts and shall not be liable for any injury, wrongful death or property damage arising from any criminal acts. Landlord may, from time to time, employ security personnel and equipment, however, such personnel and equipment are only for the protection of Landlord's property. Landlord reserves the right, in its sole discretion, to start, alter or terminate any such security services without notice. Tenant is urged to provide security for its invitees, its own personnel, and property as it deems necessary. Tenant is urged to obtain insurance to protect against criminal acts.

(y) **Authority.** Tenant (if a corporation, partnership or other business entity) hereby represents and warrants to Landlord that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Tenant has full right and authority to execute and deliver this Lease, and that each person signing on behalf of Tenant is authorized to do so. Landlord hereby represents and warrants to Tenant that Landlord is a municipal corporation, that Landlord has full right and authority to execute and deliver this Lease, and that each person signing on behalf of Landlord is authorized to do so. The Mayor and Corporation Secretary shall have the authority to cancel this Lease under any circumstances wherein Landlord has a legal right to cancel this Lease in accordance with the provisions hereof.

(z) **Hazardous Materials.** The term "**Hazardous Materials**" means any substance, material, or waste which is now or hereafter classified or considered to be hazardous, toxic, or dangerous under any Law relating to pollution or the protection or regulation of human health, natural resources or the environment, or poses or threatens to pose a hazard to the health or safety of persons on the Premises or in the Project. Tenant shall not use, generate, store, or dispose of, or permit the use, generation, storage or disposal of Hazardous Materials on or about the Premises or the Project except in a manner and quantity necessary for the ordinary performance of Tenant's business, and then in compliance with all Laws. If Tenant breaches its obligations under this Section 25(w), Landlord may immediately take any and all action reasonably appropriate to remedy the same, including taking all appropriate action to clean up or remediate any contamination resulting from Tenant's use, generation, storage or disposal of Hazardous Materials. Tenant shall defend, indemnify, and hold harmless Landlord and its representatives and agents from and against any and all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees and cost of clean up and remediation) arising from Tenant's failure to comply with the provisions of this Section 25(w). This indemnity provision shall survive termination or expiration of this Lease.

(aa) **Sovereign Immunity.** Notwithstanding anything in this Lease to the contrary, the Landlord is governed by the provisions of Section 768.28, Florida Statutes, and nothing in this Lease shall be deemed to be a further waiver of the limited waiver of sovereign immunity afforded Landlord as set forth therein.

(bb) **Florida Tort Claims Act.** Tenant expressly agrees that, in all things relating to this Lease, the Landlord is performing a government function, as defined by the Florida Tort Claims Act. Tenant further expressly agrees that every act or omission of the Landlord which, in any way, pertains to or arises out of this Lease falls within the definition of a government function.

(cc) **List of Exhibits.** All exhibits and attachments attached hereto are incorporated herein by this reference.

- Exhibit A - Outline of Premises
- Exhibit B - Description of the Land
- Exhibit C - Services Contract
- Exhibit D - Form of Tenant Estoppel Certificate
- Exhibit E - Basic Rent – Credit for Services
- Exhibit F - Renewal Option
- Exhibit G- Insurance Requirements
- Exhibit H- Indemnity Provisions

26. **Representations and Warranties.**

(a) **Representations and Warranties.** Tenant hereby represents and warrants that:

- (i) It is not designated as an individual or entity that has been determined to have committed, or poses a significant risk of committing, acts of terrorism that threaten the security of the U.S. nationals or the national security, foreign policy, or economy of the U.S., which would violate the Executive Order 13224, entitled "Blocking Property and Prohibiting Transactions

with Persons Who Commit, Threaten to Commit, or Support Terrorism," which became effective on September 24, 2001 (the "Order"); and

- (ii) It is not owned or controlled by, or acting on behalf of an individual or entity which would violate the Order, and
- (iii) It has not and will never assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, acts of terrorism or individuals or entities designated in or under the Order; and
- (iv) It is not otherwise associated with certain individuals or entities designated in or under the Order.
- (v) It is not, and shall not become, a person or entity with whom Landlord is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list or under any statute executive order (including, but not limited to the Order), or other governmental action and is not an shall not engage in any dealings or transaction or be otherwise associated with such persons or entities.

(b) **Indemnity.** Tenant hereby agrees to defend, indemnify, and hold harmless the Landlord, and its respective employees, agents, officers, members, managers, directors and shareholders from and against any and all fines, penalties, actions, claims, damages, losses, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing warranties and representations.

LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED USE, AND TENANT'S OBLIGATION TO PROVIDE THE SERVICES CONTEMPLATED IN THE SERVICES CONTRACT IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER.

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

This Lease is executed on the respective dates set forth below, but for reference purposes, this Lease shall be dated as of the date first above written. If the execution date is left blank, this Lease shall be deemed executed as of the date first written above.

**ATTEST:**

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

**LANDLORD:**

CITY OF JACKSONVILLE, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida

By: \_\_\_\_\_  
Lenny Curry, Mayor

Execution Date: \_\_\_\_\_

**WITNESSES:**

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

**TENANT:**

NATIONAL MEDICAL SERVICES, INC., d/b/a NMS Labs, a foreign profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Execution Date: \_\_\_\_\_

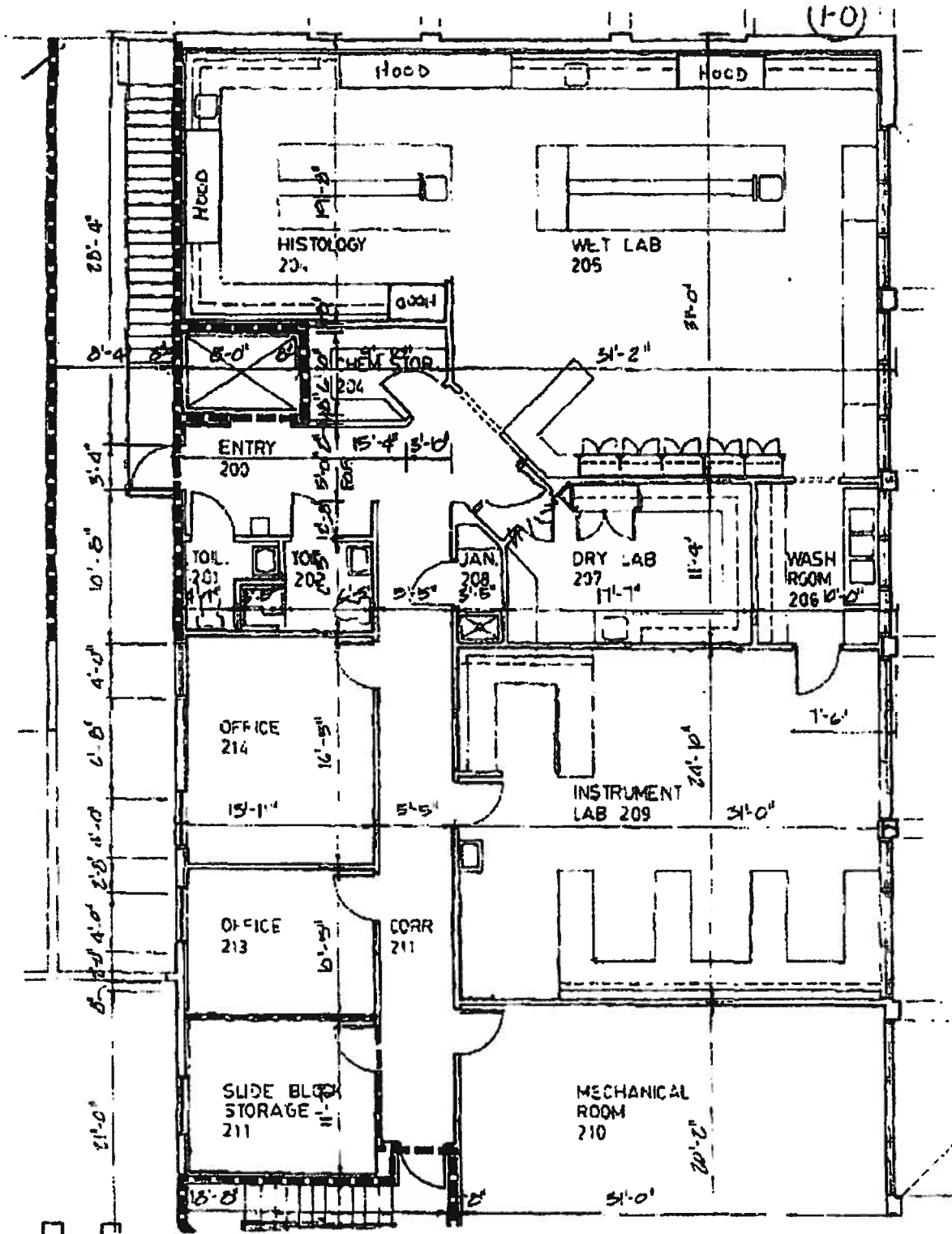
**FORM APPROVED:**

By: \_\_\_\_\_  
Office of General Counsel

GC-#1381730-v10A-Medical\_Examiners\_Office\_-\_NMS\_Labs\_-\_Lease\_Agreement\_2020.docx

EXHIBIT A

OUTLINE OF PREMISES



**EXHIBIT B**

**DESCRIPTION OF THE LAND**



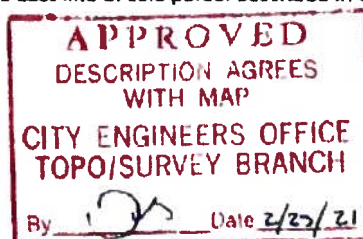
A parcel of land located in Duval County, Florida being more particularly described as:

That parcel of land as described in Official Records Book 6720, Page 06, of the current public records of Duval County, Florida;

Together with the North one half of that portion of the former West 11<sup>th</sup> Street, a 46 foot Right-of-Way, abandoned by Ordinance 90-701 as ordained by the Council of the City of Jacksonville from the West Right-of-Way of Jefferson Street, Westerly to the southerly projection of the West line of said parcel as described in Official Records book 6720, Page 06 of said public records;

And also together with that portion of the former Jefferson Street, a variable width Right-of-Way abandoned by Ordinance 93-111 as ordained by the Council of the City of Jacksonville and also abandoned by Ordinance 2013-60-E as ordained by the Council of the City of Jacksonville from the South line of said parcel and in the Easterly projection at right angles to the East line of said parcel described in Official Records book 6720, Page 06 of said public records and Northerly to the North line of said parcel and in the Easterly projection at right angles to the East line of said parcel described in Official Records book 6720, Page 06 of said public records.

Said Parcel Contains 1.21 Acres



**EXHIBIT C**

**SERVICES CONTRACT**  
(Immediately follows.)

**SERVICES CONTRACT  
BETWEEN  
THE CITY OF JACKSONVILLE  
AND  
NATIONAL MEDICAL SERVICES, INC.  
FOR  
POSTMORTEM FORENSIC TOXICOLOGY SERVICES**

THIS SERVICES CONTRACT (the “Contract”) is made effective as of the 1<sup>st</sup> day of October, 2020 (the “Effective Date”), by and between the CITY OF JACKSONVILLE, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the “City”), and NATIONAL MEDICAL SERVICES, INC. d/b/a NMS Labs, a foreign for-profit corporation authorized to conduct business in the State of Florida, with its principal offices located at 200 Welsh Road, Horsham, PA 19044 (“Contractor”).

**RECITALS**

WHEREAS, pursuant to Ordinance 2020-504-E, the Jacksonville City Council appropriated \$3,632,796.65 to fund postmortem forensic toxicology services for the District IV Medical Examiner’s Office; and

WHEREAS, Contractor has demonstrated the competence and qualifications necessary to perform the contractual services identified herein; and

WHEREAS, the City desires to engage Contractor to provide postmortem forensic toxicology services as described in the Scope of Services and Deliverables, attached hereto as Exhibit A and incorporated herein by this reference (the “Services” or “Scope of Services”); and

WHEREAS, Contractor is willing and able to accept such engagement and provide the Services in accordance with the terms and conditions contained in this Contract; and

WHEREAS, the City’s Procurement Division approved this expenditure pursuant to an Administrative Award (BID NO.: POA-70159-20) for procurement of the Services on June 23, 2020.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties, each intending to be legally bound hereby, do promise and agree as follows:

1. Performance of Services. The City hereby retains the Contractor to perform the Services, and Contractor agrees to perform the Services, in accordance with the Scope of Services and in accordance with the General Terms and Conditions, attached hereto as Exhibit B and incorporated herein by this reference. Contractor shall employ sound business administration and superintendence to perform the Scope of Services in a manner consistent with the City’s best interests.
2. Term of the Contract. This Contract shall commence on the Effective Date and shall continue through and including September 30, 2025 (the “Term”) unless sooner terminated in accordance with the terms of this Contract. This Contract may be renewed for up to five (5) additional one (1) year periods upon mutual agreement by the parties. Any extensions or renewals of this Contract shall occur contemporaneously with renewal of the Lease Agreement entered into between the parties effective October 1, 2020.



3. Maximum Indebtedness. As required by Section 106.431, *Ordinance Code*, the City's maximum indebtedness for all products and services under this Contract shall be a fixed monetary amount not-to-exceed THREE MILLION SIX HUNDRED THIRTY-TWO THOUSAND SEVEN HUNDRED NINETY-SIX AND 65/100 DOLLARS (\$3,632,796.65). All payments to Contractor under this Contract are contingent upon the existence of lawfully appropriate funds.
4. Responsibilities of Contractor. Contractor shall perform the Services in accordance with the terms and conditions of this Contract. Contractor's failure to meet the deliverables provided for in the Scope of Services shall constitute a material breach of this Contract.
5. Compensation.
  - (a) Unless otherwise specified in this Contract, payment to Contractor for Services shall be made on a monthly basis for the Services provided by Contractor for the preceding month in accordance with the budget attached hereto as **Exhibit C** (the "**Budget**"), less the applicable pro-rata monthly portion of the Facility Credit identified in the Budget. Invoices are due the first week of each month, shall be itemized and contain the Contract number, purchase order number, if applicable, and the appropriate vendor identification number. The City may require any other information from Contractor that the City deems necessary to verify its obligation to pay under the Contract. Payments will be made to Contractor approximately thirty (30) days after receipt and acceptance of a proper invoice. The City does not pay service charges, interest, or late fees unless required by law.
  - (b) Contractor shall submit separate invoices for forensic laboratory testing and support services that are performed beyond those identified in the Scope of Services (e.g., DNA testing and drug identification). Additional services performed outside the Scope of Services may only be performed at the request of an authorized agent of the City's District IV Medical Examiner's Office and will be billed at prevailing list prices or at discounted rates agreed upon between the parties.
  - (c) To the extent Contractor's fees include reimbursement for travel or travel-related expenses, such travel and travel-related expenses shall be subject to and governed by the provisions and limitations of Chapter 106, Part 7, *Jacksonville Ordinance Code*.
  - (d) The City's obligations to make payment are contingent upon availability of lawfully appropriated funds for the Services.
6. Contract Documents. This Contract consists of the following documents which are hereby incorporated as if fully set forth herein and which, in case of conflict, shall have priority in the order listed:
  - this Contract document, as modified by any subsequent signed amendments
  - the General Terms and Conditions attached to this Contract as **Exhibit B**
  - the Statement of Work and Budget attached to this Contract as **Exhibits A & C**, respectively
  - the Indemnity Provisions attached to this Contract as **Exhibit D**
  - the Insurance Provisions attached to this Contract as **Exhibit E**
  - any Purchase Order under this Contract
7. Notices. All notices under this Contract shall be in writing and shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

As to City:

District Four Medical Examiner's Office  
2100 Jefferson Street  
Jacksonville, Florida 32206  
Attention: Tim Crutchfield, Operations Manager

With a copy to:

City of Jacksonville  
Office of General Counsel  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attention: Government Operations

As to Contractor:

National Medical Services, Inc.  
200 Welsh Road  
Horsham, PA 19044  
Attention: Andrew Nolan, VP of Finance


8. Contract Managers. Each Party will designate a Contract Manager during the term of this Contract whose responsibility shall be to oversee the party's performance of its duties and obligations pursuant to the terms of this Contract. As of the Effective Date, the City's Contract Manager is Tim Crutchfield, and Contractor's Project Manager is Cynthia Shannon. Each party shall provide prompt written notice to the other party of any changes to the party's Contract Manager or his/her contact information; provided, such changes shall not be deemed Contract amendments and may be provided via email.
9. Entire Agreement. This Contract constitutes the entire agreement between the parties hereto for the Services to be performed and furnished by Contractor. No statement, representation, writing, understanding, agreement, course of action, or course of conduct made by either party or any representative of either party which is not expressed herein shall be binding. Contractor may not unilaterally modify the terms of this Contract by affixing additional terms to materials delivered to the City (e.g., "shrink wrap" terms accompanying or affixed to a deliverable) or by including such terms on a purchase order or payment document. Contractor acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.
10. Amendments. All changes to, additions to, modifications of, or amendment to this Contract or any of the terms, provisions, and conditions hereof shall be binding only when in writing and signed by the authorized officer, agent, or representative of each of the parties hereto.
11. Counterparts. This Contract and all amendments hereto may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. The parties further agree that electronic transmission of all signatures shall constitute and be evidence of an executed agreement.

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

IN WITNESS WHEREOF, the parties have executed this Contract on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WITNESS:

NATIONAL MEDICAL SERVICES, INC.  
d/b/a NMS Labs, a foreign for-profit corporation

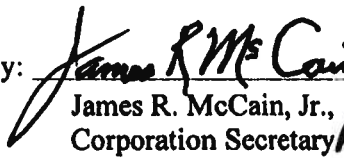
  
Signature  
Virginia R. Satterthwaite  
Type/Print Name

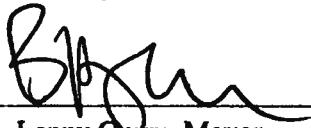
By:   
Dan Monahan  
President & CEO of NMS Labs

ATTEST:



CITY OF JACKSONVILLE

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

By:   
Lenny Curry, Mayor

Brian Hughes  
Chief Administrative Officer  
For: Mayor Lenny Curry  
Under Authority of:  
Executive Order No: 2019-02

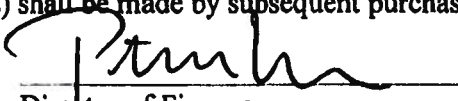
Encumbrance and funding information for internal City use:

Account or PO Number: POA-70159-20

Amount.....\$ 3,632,796.65

This above stated amount is the maximum fixed monetary amount of the foregoing Contract. It shall not be encumbered by the foregoing Contract. It shall be encumbered by one (1) or more subsequently issued purchase orders(s) that must reference the foregoing Contract. All financial examinations and funds control checking will be made at the time such purchase order(s) are issued.

In accordance with Section 24.103(e), of the City of Jacksonville *Ordinance Code*, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; provided however, that this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance(s) shall be made by subsequent purchase order(s).

  
Director of Finance  
City Contract # 70159-20

Form Approved:

  
Office of General Counsel

GC-#1377279-v6-Medical\_Examiners\_Office\_-\_NMS\_Labs\_-\_Services\_Contract\_2020.docx

## EXHIBIT A

### SCOPE OF SERVICES AND DELIVERABLES

The services sought under this award are generally described as follows: To provide postmortem forensic toxicology services (the "Services") in compliance with ISO/IEC 17025:2017 for toxicology ANAB (ANSI/ASQ National Accreditation Board) and American Board of Forensic Toxicology (ABFT) accreditation, College of American Pathology (CAP) ISO 15189 and Clinical Laboratory Improvement Act (CLIA) laboratory accreditations. NMS LABS will provide on-site laboratory management and services, co-located with yet independent of, the City of Jacksonville District 4 Medical Examiner's Office.

#### A) General Testing

- a) NMS LABS will provide an on-site, accredited, post-mortem toxicology lab to support the District 4 ME's Office.
  - (i) Testing performed on-site will consist of:
    - 1 Carboxyhemoglobin in whole blood
    - 2 Basic and Expanded Drug Screening Panels in whole blood and urine.
- b) NMS LABS will provide off-site, accredited, post-mortem toxicology laboratory testing to support to the District 4 ME's Office.
  - (i) Testing performed off-site will consist of:
    - 1 Confirmations and quantifications on positive screens on blood, urine, and vitreous samples
    - 2 Out of scope finding confirmation testing
    - 3 Electrolytes in vitreous
    - 4 Alcohol and volatiles analysis in whole blood
    - 5 Esoteric testing
    - 6 Testing on matrices other than blood, urine, or vitreous
    - 7 Testing not listed in Section A.a.i
- c) NMS LABS will provide all testing, either on-site or off-site, in an ANAB and/or CAP, accredited facility using fully validated and approved testing procedures.
- d) NMS LABS will not use sub-contractors to perform any testing without the prior written consent of District 4 ME's Office.
- e) NMS LABS will provide all collection and shipping supplies necessary to submit cases. NMS LABS will be responsible for all shipping costs related to shipping samples to and from any of its facilities.
- f) NMS LABS will provide access to its other accredited testing including: Body Fluid Identification, DNA, Drug Identification, and General Unknown testing. This testing will be invoiced at negotiated rates, in addition to the monthly service fee that covers all of the toxicological services.

#### B) Instrumentation

- a) NMS LABS will be solely responsible for purchasing, installing, and validating any instrumentation necessary to conduct the testing.
- b) NMS LABS will be solely responsible for the maintenance of the instrumentation necessary to conduct the testing.

C) Toxicological Support Services

- a) NMS LABS will provide interpretive toxicology services through NMS Labs' DirecTox® program.
- b) NMS LABS will provide a dedicated Board Certified Forensic Toxicologist to the District 4 ME's Office, who will provide:
  - (i) Daily interpretative support
  - (ii) Case consultation for daily grand rounds
  - (iii) Case by case reviews

D) Service

- a) NMS LABS will supply District 4 ME's Office with no charge chain of custody requisitions and collection supplies to prepare for biological sample collection from autopsy and non-autopsy cases.
- b) NMS LABS will supply preprinted shipping labels for standard overnight shipping from District 4 ME's Office to their Horsham PA facility.
- c) NMS LABS will establish authorized communication, billing, and resulting conduits, including a secure web portal to obtain electronic results that can be stored in case management software and/or printed directly from the web portal.
- d) NMS LABS will retain samples from the District 4 ME's Office in refrigerated/frozen secured evidence storage for one (1) year from the completion of testing (additional fees may apply for storage exceeding one year). Samples will be returned upon request (additional shipping and handling fees apply).
- e) NMS Labs customer Service Department will provide support and consultation Monday- Friday 8 am - 8:30pm (Eastern Time).

E) Professional Toxicology Services

- a) NMS LABS will provide turnaround time for all postmortem cases with a 7 - 10 business day average following receipt of samples.
- b) NMS Labs will provide Toxicologist consultation via phone or email on an as needed basis during support hours: Monday-Friday 8 a.m. - 5 p.m. (Eastern Time). This will be accomplished by assigning a Primary Responsible Toxicologist assigned to this account and available via NMS Labs DirecTox® service, or by on-site support.

- c) The Primary Responsible Toxicologist will be backed up by a daily on-call Toxicologist (Toxicologist of the Day) for routine case discussion.
  - d) NMS Labs will provide a minimum of one continuing education presentation annually, on site at District 4 ME's Office or Contractor's lab site on relevant topics of interest to the District 4 ME's Office. This may be combined with other Districts and/or agencies in Florida allowing for increased attendance and participation.
  - e) The Primary Responsible Toxicologist will be available for routine "Grand Rounds" case discussion between Contractor's lab toxicologists and District 4 ME's Office via webinar and/or video conferencing.
  - f) The Primary Responsible Toxicologist will be the principal resource to directly review results of individual cases, as needed. (In the event that extensive research or litigation services are required, fees may be quoted at time of request).
- F) Postmortem Toxicology Testing Defined
- a) The management service fee established is based upon an estimated 2,500 postmortem toxicology cases per year. In the event that the testing volumes increase by more than 10%, NMS LABS reserves the right to renegotiate contract pricing.
  - b) The budget for approximately 2,500 postmortem toxicology cases annually includes a combination of the tests.

Postmortem Toxicology Testing:

This includes all test codes for postmortem toxicology testing in blood, urine, serum/plasma, fluid, and tissue as well as confirmation and out of scope testing. Postmortem testing includes the following:

- (i) Routine: basic, expanded, fire death, inhalants, alcohol, electrolytes, and carbon monoxide;
  - (ii) Novel/Designer: novel psychoactive substances, synthetic cannabinoids, designer benzodiazepines, designer opioids;
  - (iii) Other: amphetamines, glucose, cocaine and metabolites, naloxone, nitrous oxide, valproic acid, methamphetamine and metabolite, methemoglobin, fentanyl and metabolites, gabapentin, volatiles, 6-MAM, anabolic steroids, beta-hydroxybutyric acid, and caffeine.
  - (iv) On a case by case basis, additional postmortem toxicology testing outside of this list may be assigned at the discretion of the DirectTox®.
- c) Non-postmortem toxicology testing outside the Scope of Services shall be invoiced at the prevailing list price. For example, DNA testing on unidentified human remains or drug identification of botanicals, paraphernalia or other non-biologics such as powders and pills shall be billed at prevailing list prices.
  - d) New postmortem panels created after the Effective Date may not be included in Scope of Services or Budget attached hereto.

## Exhibit B

### General Terms and Conditions

#### Contents

- B.1 Provision of Services**
- B.2 Relationship of the Parties**
- B.3 City's Right to Make Changes**
- B.4 Service Warranties**
- B.5 City Will Assist Contractor**
- B.6 Use of Subcontractors; Flow-Down Provisions**
- B.7 Meetings and Reports**
- B.8 Ownership of Works**
- B.9 Intellectual Property**
- B.10 Software Development Processes and Standards**
- B.11 Software License Agreements**
- B.12 Limitation of Warranty for City-Furnished Software**
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- B.14 Taxes**
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- B.21 City's Remedies Upon Contractor Default.**
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- B.27 Security Procedures**
- B.28 Restrictions on the Use or Disclosure of City's Information**
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- B.40 Warranty of Ability to Perform**
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- B.43 Construction**
- B.44 Scrutinized Companies**

**B.1 Provision of Services.** Contractor shall provide City with all of the services and deliverables described in Exhibit A and the Contract. If any services, functions, or responsibilities are not specifically described in Exhibit A or the Contract, but are necessary for the proper performance and provision of the Services, they shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described herein.

**B.2 Relationship of the Parties.** In performance of the Services, Contractor shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture, or associate of the City. Contractor shall be solely responsible for the labor, supplies, materials, means, methods, techniques, sequences, and procedures utilized to perform the Services in accordance with the Contract.

**B.3 City's Right to Make Changes.** The City may unilaterally require, by written order, changes altering, adding to, or deducting from the Services ("Changes"), provided that such Changes are within the general scope of the Contract. The City will make an equitable adjustment in the Contract price or delivery date if the Change materially affects the cost or time of performance. Such equitable adjustments require the written consent of Contractor, which shall not be unreasonably withheld. The City and Contractor will cooperate with each other in good faith in discussing the scope and nature of the Change, the availability of Contractor personnel, the expertise and resources to provide such Change, and the time period in which such Change will be implemented.

**B.4 Service Warranties.** Contractor warrants that the Services shall be performed and delivered in a professional, first-class manner in accordance with the Contract and the standards prevailing in the industry. Contractor shall also undertake the following actions without additional consideration during the term of the Contract and for one year thereafter: (i) promptly making necessary revisions or corrections to resolve any errors and omissions on the part of Contractor; and (ii) conferring with the City for the purpose of interpreting any of the Services or information furnished. Acceptance of the Services by the City shall not relieve Contractor of these responsibilities. The warranties and covenants in this paragraph will extend to all subcontractors as well.

The foregoing warranties and covenants shall not apply (i) with respect to any portions of the Services that have been produced by anyone other than Contractor or its subcontractors; (ii) to any modifications made by anyone other than Contractor or its subcontractors or without Contractor's specific prior written consent; or, (iii) to any use of the Services in a manner or for any purpose other than those contemplated in this Contract. **EXCEPT AS EXPRESSLY STATED IN THIS CONTRACT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR'S WARRANTIES EXTEND SOLELY TO THE CITY.**

**B.5 City Will Assist Contractor.** At Contractor's request, the City will provide reasonable assistance and cooperation to Contractor, including the supply of any data and information necessary for Contractor to provide the Services. The City will also designate a Contract Manager who will, on behalf of the City, work with Contractor and administer the Contract in accordance with its terms.

**B.6 Use of Subcontractors; Flow-Down Provisions.** Except to the extent the use of subcontractors is consented to in writing by the City, Contractor shall not be allowed to subcontract or assign any of its duties and obligations hereunder. In all cases, Contractor will be responsible for the acts or omissions of its subcontractors. Contractor will ensure that all relevant contractual obligations will flow down to the subcontractors and will be incorporated into the subcontracts (including the obligations relating to insurance, indemnification, delays, intellectual property rights, public records, non-discrimination, audits, security, location of services, termination, transition assistance, warranties, and the manner in which the Services are to be performed).

**B.7 Meetings and Reports.** Contractor must attend all meetings and public hearings relative to the Services where its presence is determined to be necessary and requested by the City and agreed to by the Contractor. Unless otherwise agreed, Contractor shall provide a monthly report summarizing Contractor's performance. Contractor shall provide other periodic reports respecting the Services as the City reasonably requests.

**B.8 Ownership of Works.**

(a) As used in Sections B.8 and B.9, the term "Work" shall mean each deliverable, drawing, design, specification, rendering, notebook, tracing, photograph, reference book, equipment, expendable equipment and material, negative, report, finding, recommendation, data and memorandum of every description, shared with or delivered to the City pursuant to the Contract.

(b) With the exception of Contractor's pre-existing intellectual capital and third-party intellectual capital as described in Section B.9 below, the City shall own all right, title and interest, including ownership of copyright (limited to the extent permitted by the terms of any governing licenses), in and to each Work, including but not limited to software, source code, reports, deliverable, or work product developed by Contractor specifically for the City in connection with the Contract, and derivative works relating to the foregoing. The use of these Works in any manner by the City shall not support any claim by Contractor for additional compensation.

(c) Each Work and any portion thereof shall be a "work made for hire" for the City pursuant to federal

copyright laws. Any software, report, deliverable, or work product as used in connection with the Work but previously developed by Contractor specifically for other customers of Contractor or for the purpose of providing substantially similar services to other Contractor customers generally, shall not be considered "work made for hire" so long as the foregoing are not first conceived or reduced to practice as part of the Work. To the extent any of the Works are not deemed works made for hire by operation of law, Contractor hereby irrevocably assigns, transfers, and conveys to the City or its designee without further consideration all of its right, title, and interest in such Work, including all rights of patent, copyright, trade secret, trademark, or other proprietary rights in such materials. Except as provided in the foregoing sentences, Contractor acknowledges that the City shall have the right to obtain and hold in its own name any intellectual property right in and to the Work. Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as the City may reasonably request, to perfect or evidence the City's ownership of the Work.

**B.9 Intentionally Omitted.**

**B.10 Software Development Processes and Standards.** To the extent any software is developed, modified, or otherwise procured under the Contract, Contractor will use commercially-accepted software development and documentation processes and standards.

**B.11 Intentionally Omitted.**

**B.12 Limitation of Warranty for City-Furnished Software.** In lieu of any other warranty expressed or implied herein, the City warrants that any programming aids and software packages supplied for Contractor's use as City-furnished property shall be suitable for their intended use on the system(s) for which designed. In the case of programming aids and software packages acquired by the City from a commercial source, such warranty is limited to that set forth in the contractual document covering the product(s). Should the City furnish Contractor with any programming aids or software packages that are found not to be suitable for their intended use on the system(s) for which designed, Contractor shall notify the City and supply documentation regarding any defects and their effect on progress on the Contract. The City will consider equitably adjusting the delivery performance dates or compensation, or both, and any other contractual provision affected by the City-furnished property in accordance with the procedures provided for in Section B.3 above ("City's Right to Make Changes").

**B.13 Loss of Data.** If any City data or record is lost or corrupted due to the negligence of Contractor or any of its subcontractors or agents, Contractor shall be responsible for correcting and recreating all production, test, acceptance, and training files or databases affected which are used in the provision of Services, at no additional cost to the City in the manner and on the schedule set by the City. This remedy shall be in addition to any other remedy the City may be entitled to by law or the Contract.

**B.14 Taxes.** The City is generally exempt from any taxes imposed by the State of Florida or the federal government. Exemption certificates will be provided upon request. Contractor shall not include any state, local, and federal taxes in any prices quoted to the City.

**B.15 Right of Setoff.** The City may, in addition to other remedies available at law or equity and upon notice to Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted in good faith by the City (or any other local government entity or authority located in Duval County, Florida) against Contractor.

**B.16 Retention of Records / Audits**

(a) Contractor must establish and maintain books, records, contracts, sub-contracts, papers, financial records, supporting documents, statistical records and all other documents pertaining to the Contract (collectively,

the "Records"), in whatsoever form or format (including electronic storage media) is reasonable, safe and sufficient.

(b) Contractor must retain all Records for a minimum period of three (3) years after the final payment is made under the Contract. If an audit has been initiated and audit findings have not been resolved at the end of the three (3) year period, the Records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the Contract, at no additional cost to the City. Records shall be retained for longer periods when the retention period exceeds the time frames required by law or ordinance.

(c) At all reasonable times for as long as the Records are maintained, Contractor must allow persons duly authorized by the City (including the City's auditor and inspector general offices), to have full access to and the right to examine, copy, or audit any of the Records, regardless of the form in which kept. Contractor will not charge the City for any setup, supervision, or space in connection with the examination and audit. Photocopying charges will not exceed the actual and reasonable cost of the copies to Contractor, and the City shall be permitted to bring its photocopying equipment if the City so desires.

(d) Contractor must comply with and cooperate in any audits or reports requested by the City, and must ensure that all related party transactions are disclosed to the auditor.

(e) Contractor must permit the City to interview any of Contractor's employees, subcontractors, and subcontractor employees to assure the City of the satisfactory performance of the terms and conditions of the Contract. Unless the parties agree otherwise or the City is willing to pay for the employee's reasonable travel expenses, the interviews will be conducted at the employee's primary place of work. Contractor will not charge the City for any employee time unless the interview time for that employee exceeds eight (8) hours in a calendar year.

(f) Following any audit or review, if performance of Contractor is, in the opinion of the City, deficient, the City will deliver to Contractor a written report of the deficiencies and request for development by Contractor of a corrective action plan. Contractor hereby agrees to prepare and submit to the City said corrective plan within ten (10) days of receiving the City's written report. Thereafter, Contractor must correct all deficiencies in the corrective action plan within a reasonable time after the City's receipt of the corrective action plan.

(g) All reports and other information provided by Contractor pursuant to this Section shall be submitted under penalties of perjury under Section 837.06, Florida Statutes.

(h) Contractor must include the aforementioned audit, inspection, investigation, and record-keeping requirements in all subcontracts and Contract assignments.

(i) Contractor agrees to reimburse the City for the reasonable costs of investigation incurred by the City for audits, inspections, and investigations that uncover a material violation of the Contract. Such costs shall include the salaries of investigators, including overtime, travel, and lodging expenses, and expert witness and documentary fees. Contractor shall not be responsible for any costs of investigations that do not uncover a material violation of the Contract.

**B.17 Indemnification. See Exhibit D.**

**B.18 Insurance. See Exhibit E.**

**B.19 City's Right to Suspend Work.** The City may, in its sole discretion, suspend any or all activities under the Contract by providing a written notice to Contractor at least five (5) days in advance that outlines the particulars of suspension. Within ninety (90) days of providing such notice, or within any longer period agreed to by Contractor, the City shall either (1) authorize the resumption of work, at which time activity shall resume,

or (2) terminate the Contract in accordance with the applicable termination provisions. Suspension of work shall not entitle Contractor to any additional compensation. The parties will reasonably amend any schedules relating to performance of the Services to reflect the suspension of work hereunder. Contractor shall not be entitled to receive compensation for any work it performs after being excused from providing it hereunder.

**B.20 Parties' Right to Terminate for Convenience.** Notwithstanding any other provision contained herein to the contrary, either party may terminate the Contract, in whole or in part, at any time and for any reason by giving ninety (90) days' written notice to the other party. If the Contract is terminated for convenience as provided herein, the City will be relieved of all further obligations other than payment for that amount of Services actually performed to the date of termination. Access to any and all work papers will be provided to the City after the termination of the Contract. In the event of termination of the Contract, the City (in its sole discretion) may also require Contractor to provide the Transition Services as set forth in Section B.26 below.

**B.21 City's Remedies Upon Contractor Default.** Any one or more of the following events, if not cured within ten (10) calendar days after Contractor's receipt of written notice thereof, shall constitute an "Event of Default" on the part of Contractor: (1) Contractor fails to perform the Services within the time specified in the Contract or any extension; (2) Contractor fails to maintain adequate progress, thus endangering performance of the Contract; (3) Contractor fails to honor any other material term of the Contract; or, (4) Contractor fails to abide by any statutory, regulatory, or licensing requirement. The City may extend the 10-day cure period in its discretion.

In addition, a finding that Contractor has made a false representation or certification in any document furnished by Contractor to the City, or a finding that Contractor has violated any local, state or federal law, rule or regulation related to the performance of Services, each shall constitute an immediate Event of Default with no right to cure.

Upon an "Event of Default" on the part of Contractor, the City will be entitled to terminate the Contract and pursue such other remedies available at law or equity, including the recovery of any re-procurement costs and delay damages. The rights and remedies available to the City under the Contract are distinct, separate, and cumulative remedies, and no one of them, whether or not exercised by a party, shall be deemed to be in exclusion of any other.

If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience.

**B.22 Contractor Remedies Upon City Default.** The City shall be in default if the City fails to honor any material term of the Contract and such failure is not cured within forty-five (45) calendar days after receipt of written notice thereof from Contractor. In the event of City's default, Contractor will be entitled to terminate the Contract and pursue such other remedies available at law or equity as it deems appropriate. **Except as expressly provided elsewhere in the Contract, Contractor will not be entitled to recover any lost profits or consequential damages.** The rights and remedies available to Contractor under the Contract are distinct, separate, and cumulative remedies, and no one of them shall be deemed to be in exclusion of any other.

**B.23 Transition Services.** At any time prior to the date the Contract expires or terminates for any reason (the "Termination Date"), the City may request Contractor to provide reasonable transition assistance services ("Transition Assistance"). Contractor shall provide such Transition Assistance until such time as the City notifies Contractor that the City no longer requires such Transition Assistance, but in no event for more than one hundred eighty (180) days following the Termination Date.

Transition Assistance shall mean any services, functions or responsibilities that are ordinarily or customarily provided to a purchaser to ensure that the services provided to that purchaser by a contractor are fully transitioned in a smooth and efficient manner to a new service provider (either the City itself or a third party contractor). Transition Assistance includes the development and implementation of a detailed transition plan. To the extent that Transition Assistance will involve third parties hired by the City, those third parties shall cooperate with

Contractor in its provision of Transition Assistance and sign any reasonable non-disclosure agreements required by Contractor.

Transition Assistance rendered before the Termination Date shall be provided to the City at negotiated rates. Transition Assistance rendered after the Termination Date shall be provided at the rates negotiated by the parties prior to the rendering of such service, which rates shall not exceed the standard market rates that Contractor charges to government entities for comparable services; provided however, that if the City terminates the Contract because of a breach by Contractor, then (i) the Transition Assistance shall be provided at no cost to the City, and (ii) the City will be entitled to any other remedies available to it under law. Contractor may withhold Transition Assistance after the Termination Date if the City does not provide reasonable assurance that the charges for such Transition Assistance will be paid to Contractor in accordance with the invoicing and payment provisions of the Contract.

**B.24 Force Majeure, Notice of Delay, and No Damages for Delay.** Neither party shall be responsible for delays in performance if the delay was beyond that party's control (or the control of its employees, subcontractors, or agents). Contractor shall notify the City in writing of any such delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date Contractor first had reason to believe that a delay could result. Based upon such notice, the City will give Contractor a reasonable extension of time to perform; provided, however, that the City may elect to terminate the Contract in whole or in part if the City determines, in its sole judgment, that such a delay will significantly impair the value of the Contract to the City. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. **THE FOREGOING SHALL CONSTITUTE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** No claim for damages, other than for an extension of time, shall be asserted against the City. Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the City for direct, indirect, consequential, impact, or other costs, expenses, or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever.

**B.25 No Waiver.** The delay or failure by a party to exercise or enforce any of its rights under the Contract shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. Unless otherwise agreed in writing, the City's payment for the Services shall not release Contractor from its obligations under the Contract and shall not be deemed a waiver of the City's right to insist upon strict performance hereof.

**B.26 Qualification of Contractor Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, and agents performing work under the Contract shall be properly trained and qualified. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, and agents performing work under the Contract must comply with all reasonable administrative requirements of the City and with all controlling laws and regulations relevant to the Services they are providing under the Contract. The City may conduct, and Contractor shall cooperate in, a security background check or other assessment of any employee, subcontractor, or agent furnished by Contractor. The City may refuse access to, or require replacement of, any personnel for reasonable cause.

Contractor shall take all actions necessary to ensure that Contractor's employees, subcontractors, and agents are not considered employees of the City. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and agents receive payment and any legally mandated insurance (e.g., workers' compensation and unemployment compensation) from an employer other than the City.

As a condition to providing services to the City, Contractor and any subcontractor will enroll and participate in the federal E-Verify Program within thirty (30) days of the Effective Date of the Contract. Proof of enrollment and participation will be made available to the City upon request.

**B.27 Security Procedures.** Contractor and its employees, subcontractors, and agents shall comply fully with all generally applicable security procedures of the United States, the State of Florida, and the City in performance of the Contract. The City agrees that any security procedures imposed by the City specifically for the Contract will be reasonable and will not impose any unreasonable costs or hardships.

**B.28 Restrictions on the Use or Disclosure of City's Information.** Contractor shall not use, copy, or disclose to third parties, except in connection with performing the Services, any information obtained by Contractor or its agents, subcontractors, or employees in the course of performing the Services, including but not limited to security procedures, business operations information, or commercial proprietary information in the possession of the City. At the City's request, all information furnished by the City will be returned to the City upon completion of the Services. Contractor shall not be required to keep confidential any information that has already been made publicly available through no fault of Contractor or that Contractor developed independently without relying on the City's information. To ensure confidentiality, Contractor shall take appropriate steps as to its employees, agents, and subcontractors, including the insertion of these restrictions in any subcontract agreement. The warranties of this paragraph shall survive the Contract.

**B.29 Public Records Law; Process for Protecting Trade Secrets and Other Information.** Article 1, Section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public records. All documents received by the City in connection with this Contract are subject to Chapter 119, Florida Statutes (the "Florida Public Records Law"). Any specific information that Contractor claims to be a trade secret or otherwise exempt from the Florida Public Records Law must be clearly identified as such by Contractor on all copies furnished to the City. The City agrees to notify Contractor of any third-party request to view such information, but it is Contractor's obligation to obtain a court order enjoining disclosure. If Contractor fails to obtain a court order enjoining disclosure within five (5) business days of Contractor's receiving notice of the request, the City may release the requested information. Such release shall be deemed for purposes of the Contract to be made with Contractor's consent and will not be deemed to be a violation of law, including but not limited to laws concerning trade secrets, copyright, or other intellectual property.

In accordance with Section 119.0701, Florida Statutes, the Contractor shall:

- (a) Keep and maintain public records required by the City to perform the Services; and
- (b) Upon request from the City's custodian of public records, provide the 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 Contract term and following completion of this Contract if Contractor does not transfer the records to the City; and
- (d) Upon completion of this Contract, transfer to the City at no cost all public records in possession of Contractor or keep and maintain public records required by the City to perform the Services. If Contractor transfers all public records to the City upon completion of this Contract, 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 Contract, Contractor shall meet all applicable requirements for retaining public records. All records

stored electronically must be provided to the City upon request from the City's custodian of public records in a format that is compatible with the 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](mailto:PRR@COJ.NET); CITY OF JACKSONVILLE, PUBLIC RECORDS REQUEST, 214 N. HOGAN STREET, SUITE 1180, JACKSONVILLE, FLORIDA 32202.**

**B.30 Assignment.** The City and Contractor each binds itself and its respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of the Contract. Contractor shall not sell, assign, or transfer any of its rights (including rights to payment), duties, or obligations under the Contract without the prior written consent of the City. In the event of any assignment, Contractor shall remain liable for performance of the Contract unless the City expressly waives such liability. The City may assign the Contract with prior written notice to Contractor of its intent to do so. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee, or agent of the City.

**B.31 Notice and Approval of Changes in Ownership.** Because the award of the Contract may have been predicated upon Contractor's ownership structure, Contractor agrees that any transfer of a substantial interest in Contractor by any of its owners shall require the City's prior written approval, which approval shall not be unreasonably withheld or unreasonably delayed. By execution of the Contract, Contractor represents that it has no knowledge of any intent to transfer a substantial interest in Contractor. A substantial interest shall mean at least 25% of the voting shares in Contractor. This Section shall not apply to: (i) transfers occurring upon the incapacitation or death of an owner; (ii) transfers associated with an initial public offering on the NYSE or NASDAQ markets; or, (iii) transfers to a company whose stock is publicly traded on the NYSE or NASDAQ markets.

**B.32 Assignment of Antitrust Claims.** Contractor and the City recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the City. Therefore, Contractor hereby assigns to the City any and all claims under the antitrust laws of Florida or the United States for overcharges of goods, materials, or services purchased in connection with the Contract.

**B.33 Equal Employment Opportunity.** The Equal Opportunity clause in Title 41, Part 60-1.4 of the Code of Federal Regulations (Paragraphs 1 through 7 of President's Executive Order 11246), the provisions of the Equal Opportunity for Individuals with Disabilities Act in 42 U.S.C. Section 12112, the Listing of Employment Openings for Veterans Clause in Title 41, Part 50-260.2 of the Code of Federal Regulations, and the Disabled Veterans and Veterans of the Vietnam Era Clause in Title 41, Part 60-250.5 of the Code of Federal Regulations are incorporated herein by reference if and to the extent applicable. If Contractor is exempt from any of the above-cited terms, written evidence of such exempt status must be provided to the City.

**B.34 Other Non-Discrimination Provisions.** As required by Section 126.404, *Ordinance Code*, Contractor represents that it has adopted and will maintain throughout the term of the Contract a policy of nondiscrimination or non-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. Contractor agrees that on written request, it will permit reasonable access to its records of



employment, employment advertisement, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission or successor agency or commission for the purpose of investigation to ascertain compliance with the non-discrimination provisions of the Contract; *provided however*, that Contractor shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the Effective Date of the Contract. Contractor agrees that if any of the products or Services to be provided pursuant to the Contract are to be provided by a subcontractor, the provisions of this section shall be incorporated into and become a part of the subcontract.

**B.35 Prompt Payment to Subcontractors and Suppliers.** The following is required by Chapter 126, Part 6, *Ordinance Code*; provided however, if Contractor does not use JSEB or MBE subcontractors, as identified below, this Section B.38 shall not apply:

(a) *Generally.* When Contractor receives payment from the City for labor, services or materials furnished by subcontractors and suppliers hired by Contractor, Contractor shall remit payment due (less proper retainage) to those subcontractors and suppliers within fifteen (15) calendar days after Contractor's receipt of payment from the City. Nothing herein shall prohibit Contractor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subcontractors and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after Contractor has provided notice to the City and to the subcontractor or supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to the City and said subcontractor or supplier within ten (10) calendar days after Contractor's receipt of payment from the City. Contractor shall pay all undisputed amounts due within the time limits imposed by this Section.

(b) *Jacksonville Small and Emerging Business Enterprise and Minority Business Enterprise Participation.* Notwithstanding Chapter 126, Part 6, *Ordinance Code*, Contractor shall pay all contracts awarded with certified Jacksonville Small and Emerging Business Enterprises ("JSEB") and Minority Business Enterprises ("MBE"), as defined therein, their pro rata share of their earned portion of the progress payments made by the City under the Contract within seven (7) business days after Contractor's receipt of payment from the City (less proper retainage). The pro-rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB or MBE at the time of payment. As a condition precedent to progress and final payments to Contractor, Contractor shall provide to the City with its requisition for payment documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEBs or MBEs from all prior payments Contractor has received from City. Contractor shall not unreasonably withhold payments to certified JSEBs and MBEs if such payments have been made to Contractor. If Contractor withholds payment to its certified JSEBs or MBEs, which payment has been made by the City to Contractor, Contractor shall return said payment to the City. Contractor shall provide notice to the City and to the certified JSEBs or MBEs whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to the City and said JSEBs or MBEs within five (5) calendar days after Contractor's receipt of payment from the City. Contractor shall pay all undisputed amounts due within the time limits imposed in this section. The failure to pay undisputed amounts to the JSEBs or MBEs within seven (7) business days shall be a breach of the Contract, compensable by one percent (1%) of the outstanding invoice's being withheld by the City, not as a penalty, but as liquidated damages to compensate for additional contract administration by the City.

(c) *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between the City and any subcontractor, supplier, JSEB, MBE, or any third party or create any City liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of Contractor's contractual obligations to the City. As a result of said breach, the City, without waiving any other available remedy it may have against Contractor, may (i) issue joint checks and (ii) charge Contractor a 0.2%

daily late payment charge or the charges specified in said Chapter 126, *Ordinance Code*, for JSEBs or MBEs and in Chapter 218, Florida Statutes, for non-JSEBs or non-MBEs, whichever is greater.

**B.36 Conflicts of Interest.** Contractor acknowledges that Section 126.112, *Ordinance Code*, requires that a public official who has a financial interest in a bid or contract make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract, including but not limited to the public official's name, public office or position held, bid or proposal number, and the position or relationship of the public official with the bidder or contractor.

**B.37 Contingent Fees Prohibited.** In conformity with Section 126.306, *Ordinance Code*, 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 the Contract 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 any other consideration contingent upon or resulting from the award or making of the Contract. For the breach or violation of these provisions, the City shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**B.38 Truth in Negotiation Certificate.** Pursuant to Section 126.305, *Ordinance Code*, the execution of the Contract by Contractor shall be deemed to be a simultaneous execution of a Truth-In-Negotiation Certificate, whereby Contractor states that the wage rates and other factual unit costs supporting the compensation hereunder are accurate, complete, and current at the time of contracting. Further, Contractor agrees that the compensation hereunder shall be adjusted to exclude any significant sums where the City determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of the Contract.

**B.39 Compliance with Applicable Laws.** Contractor (and any subcontractors) must comply with all applicable federal, state and local laws, rules, and regulations as the same exist and as may be amended from time to time, including but not limited to:

- Chapter 119, Florida Statutes (the Florida Public Records Law);
- Section 286.011, Florida Statutes (the Florida Sunshine Law);
- Chapter 602, Jacksonville Ordinance Code (the Jacksonville Ethics Code);
- Chapter 126, Jacksonville Ordinance Code (the Jacksonville Purchasing Code); and
- All licensing and certification requirements applicable to performing the Services.

**B.40 Warranty of Ability to Perform.** Contractor warrants that (i) it is ready, willing, and able to perform its obligations under the Contract, and (ii) to the best of Contractor's knowledge, there are no pending or threatened actions, proceedings, investigations, or any other legal or financial conditions that would in any way prohibit, restrain, or diminish Contractor's ability to satisfy its Contract obligations. Contractor shall immediately notify the City in writing if its ability to perform is compromised in any manner during the term of the Contract.

**B.41 Warranty of Authority to Sign Contract.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

**B.42 Governing State Law/Severability/Venue/Waiver of Jury Trial.** The rights, obligations, and remedies of the parties as specified under the Contract shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of the Contract be determined by the courts to be illegal, unenforceable, or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. Venue for litigation of the Contract shall be exclusively in courts of competent jurisdiction located in Jacksonville, Duval County, Florida. The parties waive any and all rights to a jury trial with respect to disputes arising under the Contract.

**B.43 Construction.** Both parties acknowledge that they have had the opportunity to provide meaningful input into the terms and conditions contained in the Contract. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared the Contract. Article headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

**B.44 Scrutinized Companies.** If this Agreement is for goods or services of \$1 million or more, the City, pursuant to Section 287.135(3)(c), Florida Statutes, may terminate this Agreement at City's option if Contractor:

- (a) Is found to have submitted a false certification under Section 287.135(5), Florida Statutes;
- (b) Has been placed on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel;
- (c) Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes; or
- (d) Has been engaged in business operations in Cuba or Syria. Contractor has read and understands the RFP terms and conditions, and the Response is submitted in conformance with those terms and conditions.

EXHIBIT C

BUDGET

District 4, Jacksonville, Medical Examiner's Office

	Year 1 2021	Year 2 2022	Year 3 2023	Year 4 2024	Year 5 2025	Year 6 2026	Year 7 2027	Year 8 2028	Year 9 2029	Year 10 2030
Personnel (including direct and indirect labor costs)	\$ 352,240.00	\$ 362,808.00	\$ 373,692.00	\$ 384,903.00	\$ 396,450.00	\$ 362,808.00	\$ 373,692.24	\$ 384,903.01	\$ 396,450.10	\$ 408,343.60
Instrumentation (5-year linear depreciation and maintenance)	\$ 55,800.00	\$ 55,800.00	\$ 55,800.00	\$ 55,800.00	\$ 55,800.00	\$ 55,800.00	\$ 55,800.00	\$ 55,800.00	\$ 55,800.00	\$ 55,800.00
QA Budget	\$ 98,560.00	\$ 101,517.00	\$ 104,562.00	\$ 107,699.00	\$ 110,930.00	\$ 114,257.90	\$ 117,685.64	\$ 121,216.21	\$ 124,852.69	\$ 128,598.27
Supplies and consumables	\$ 45,760.00	\$ 47,133.00	\$ 48,547.00	\$ 50,003.00	\$ 51,503.00	\$ 53,048.09	\$ 54,639.53	\$ 56,278.72	\$ 57,967.08	\$ 59,706.09
Confirmations	\$ 234,023.00	\$ 241,043.00	\$ 248,274.00	\$ 255,723.00	\$ 263,394.00	\$ 271,295.82	\$ 279,434.69	\$ 287,817.74	\$ 296,452.27	\$ 305,345.84
Yearly Facility Credit, Yearly	\$ 796,383.00	\$ 808,301.00	\$ 830,875.00	\$ 854,128.00	\$ 878,077.00	\$ 857,209.81	\$ 881,252.10	\$ 906,015.67	\$ 931,522.14	\$ 957,793.80
Total	\$ 1,632,796.00	\$ 1,632,796.00	\$ 1,632,796.00	\$ 1,632,796.00	\$ 1,632,796.00	\$ 1,632,796.00	\$ 1,632,796.00	\$ 1,632,796.00	\$ 1,632,796.00	\$ 1,632,796.00

\*Authorized by Administrative Award POA-70159-20  
 \*Requires additional approval

Laboratory testing services that are rendered outside of the scope of work of this agreement will be billed at prevailing list prices. Ex. DNA, Drug Identification  
 This model assumes 2,500 cases over the course of the contract.

## EXHIBIT D INDEMNIFICATION

Contractor (the "Indemnifying Party") shall hold harmless, indemnify, and defend the City of Jacksonville and the City's 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 Contract, operations, services or work performed hereunder; and

2. Violation of Laws Liability, arising from or based upon the violation of any federal, state or municipal laws, statutes, resolutions, rules or regulations, by the Indemnifying Party or those under its control in the performance of this Contract; and

3. Breach of Representations, Warranties and Obligations, arising directly or indirectly out of any breach of any representation, warranty, covenant or obligation set forth in this Contract or made by the Indemnifying Party in connection with the Contract or in any certificate, document, writing or other instrument delivered by the Indemnifying Party in connection with this Contract; and

4. Environmental Liability, to the extent this Contract 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 Contract; and

5. Intellectual Property Liability, to the extent this Contract contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Contract, 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 rights under this Contract, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2)

allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their 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 Contract or otherwise. Such terms of indemnity shall survive the expiration or termination of the Contract.**

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.

**EXHIBIT E  
INSURANCE REQUIREMENTS**

Without limiting its liability under this Contract, Contractor shall at all times during the term of this Contract procure prior to commencement of work and maintain at its sole expense during the life of this Contract (and Contractor 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**

Schedule	Limits	
<b>Worker's Compensation Employer's Liability</b>	Florida Statutory Coverage \$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 100,000 Each Employee/Disease	
<p>This insurance shall cover the Contractor (and, to the extent they are not otherwise insured, its 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&amp;H and Jones, and any other applicable federal or state law.</p>		
<b>Commercial General Liability</b>	\$2,000,000 \$2,000,000 \$1,000,000 \$1,000,000 \$ 50,000 \$ 5,000	General Aggregate Products & Comp. Ops. Agg. Personal/Advertising Injury Each Occurrence Fire Damage Medical Expenses
<p>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.</p>		
<b>Automobile Liability</b> (Coverage for all automobiles, owned, hired or non-owned used in performance of the Services)	\$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 and Aggregate

Such insurance shall be on a form acceptable to the City and shall cover for those sources of liability arising out of the rendering or failure to render the services required in this Contract. 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.

**Additional Insurance Provisions**

- A. Additional Insured. All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and the City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010, Automobile Liability CA2048.
- B. 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 its members, officials, officers employees and agents.
- C. Contractor's Insurance Primary. The insurance provided by the Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.
- D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Contract shall remain the sole and exclusive responsibility of the named insured Contractor. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Contract.
- E. Contractor's Insurance Additional Remedy. Compliance with the insurance requirements of this Contract shall not limit the liability of the Contractor or its subcontractors, employees or agents to the City or others. Any remedy provided to the City or the City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
- F. Waiver/Estoppel. Neither approval by the City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Contract.



- G. Certificates of Insurance. Contractor shall provide the City certificates of insurance that show the corresponding City Contract Number in the description, if known, Additional Insureds as provided above and waivers of subrogation. 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.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes, 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.
- I. Notice. The Contractor shall provide an endorsement issued by the insurer to provide the City 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 then the Contractor, as applicable, shall provide 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 Contractor under this Contract 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 may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. Special Provisions. Prior to executing this Contract, Contractor shall present this Contract and Exhibits D & E to its insurance agent affirming that: 1) the agent has personally reviewed the insurance requirements of the Contract, and (2) the agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Contractor.

**ADMINISTRATIVE AWARD  
BID NO.: POA-70159-20**

**DESCRIPTION OF GOODS/SERVICES:**

Recommend approval of award to National Medical Services, Inc. dba NMS Labs for Postmortem Forensic Toxicology Services for the District IV Medical Examiner under City of Jacksonville exemption code 126.107c.

Term shall be October 1, 2020 through September 30, 2025 with five (5) one (1) year renewal options. Initial expenditure amount not-to-exceed \$3,632,796.65.

This award is subject to appropriation by the City in the fiscal year beginning October 1, 2020. No funds have been appropriated to date. The City has no obligation for payment and work hereunder is not authorized unless funds are appropriated for work herein. A written notification will be provided in the event the funds are appropriated.

**FUNDING SOURCE:** Funding for this award will be encumbered from account number 0011-118101-531090-00000-00000-00000, executed by formal contract agreement through the Office of General Counsel and processed via Purchase Order(s).

**FOR AGENCY/DEPARTMENT:** Duval County Medical Examiner's Office

**REQUISITION NUMBER:** N/A

**NUMBER FIRMS SOLICITED:** N/A

**NUMBER FIRMS BIDDING:** N/A

**REASON FOR LESS THAN REQUIRED MINIMUM SOLICITATION/QUOTATION:**

Exemption 126.107c: Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration.

**RECOMMEND AWARD TO:** National Medical Services, Inc. dba NMS Labs

**CONCURRENCE BY:** Tim Crutchfield, Director of Operations, Duval County Medical Examiner's Office

**PRICE:** \$3,632,796.65

**TERMS:** NET 30 DAYS

**REASON FOR NOT ACCEPTING LOW BID:** See above


  
\_\_\_\_\_  
David Klages, Analyst

6/12/20  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Manager of Purchasing Services, Assistant

6/19/20  
\_\_\_\_\_  
Date

**APPROVAL:**

  
\_\_\_\_\_  
Gregory Pease, Chief, Procurement Division

6/23/20  
\_\_\_\_\_  
Date



**District IV Medical Examiner's Office**  
*Serving Duval, Clay, Nassau, Hamilton, & Columbia Counties*

Tuesday, May 26, 2020

TO: Greg Pease, Chief, Procurement

THRU: Dr. B. Robert Pietak, Chief Medical Examiner

FROM: Tim Crutchfield, Director of Operations

RE: Request for Award – Forensic Toxicology Services

The Office of the Medical Examiner has the statutory responsibility (Florida Statutes Chapter 406) for the investigation and certification of any death within its jurisdiction that is sudden, unexplained, or unattended.

In accordance with standards of practice, the Chief Medical Examiner incorporates the forensic toxicologic examination of blood, fluids, and/or tissue into investigation process for the determination of the cause and manner of death. This contract will fulfill the needs of toxicological services.

I am requesting an exemption from competitive solicitation as defined by Jacksonville Ordinance Code 126 §126.107c for the services below.

The Medical Examiner's Office respectfully requests permission to select and begin negotiations with National Medical Services, Inc., d/b/a NMS Labs, to provide Postmortem Forensic Toxicology services for the District IV Medical Examiner.

The period of contract would begin on the date of October 1, 2020 through September 30, 2025 for the first period, and with five (5) one (1) year renewal options. The estimated amount of \$3,632,796.65 is for the initial period. The award should be encumbered as follows:

<u>Fund-Center-Account-Project-Interfund-Future</u>	<u>Amount</u>
0011-118101-531090-00000-00000-00000	\$3,632,796.65

If any additional information is required please do not hesitate to contact me at 904-255-4012.

Contract Purchase Agreement POA-70159-20



Agreement	POA-70159-20
Agreement Date	03-JUN-2020
Revision	0
Agreement Amount	3,632,796.65 USD
Validation Number	

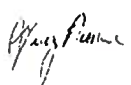
Sold To **City of Jacksonville**  
**117 West Duval Street**  
**JACKSONVILLE, FL 32202**  
**US**

Supplier **National Medical Services, Inc.**  
**NMS Labs**  
**200 West Road**  
**HORSHAM, PA 19044**

Notes **Postmortem Forensic Toxicology Services for the District IV Medical Examiner**

<b>Supplier Number</b>	<b>Payment Terms</b>	<b>Freight Terms</b>	<b>FOB</b>	<b>Shipping Method</b>
<b>21241</b>	<b>Net 30</b>	<b>Freight Prepaid</b>	<b>FOB Destination</b>	<b>Best Way</b>
<b>Start Date</b>	<b>End Date</b>	<b>Confirm To</b>		
<b>01-Oct-2020</b>	<b>30-Sep-2025</b>	<b>David Klages</b>		

DRAFT

<p>This Order is subject to the General conditions attached here to.</p> <p>Manufacturer's Federal excise tax exempt no 59-89-0120K</p> <p>Florida State sales and use tax exemption no. 85-8012621607C-8</p>	<p>Approved by Gregory Pease, Chief Procurement Division</p> 
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**TITLE V - ADMINISTRATION AND PERSONNEL**  
**Chapter 126 - PROCUREMENT CODE**

**PART 1. GENERAL REGULATIONS**

Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization

**Sec. 126.107. Exemptions.**

Unless ordered by the Mayor or Council or otherwise required by the Jacksonville Ordinance Code, the following supplies, contractual services, professional design services, professional services, capital improvements and/or sales transactions are exempt from competitive solicitation:

- (a) Artistic services or performances;
- (b) Lectures by individuals;
- (c) Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration;
- (d) Services provided to persons with mental or physical disabilities by not-for-profit corporations which have obtained exemptions under the provisions of § 501(c)(3) of the United States Internal Revenue Code (in acquiring such services, the ability of the vendor, past performance, willingness to meet time requirements and price shall be considered in an effort to obtain the highest quality services at the greatest economic value to the City)
- (e) Prevention services related to mental health, including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways, operated by not-for-profit corporations (in acquiring such services, the ability of the vendor, past performance, willingness to meet time requirements and price shall be considered in an effort to obtain the highest quality services at the greatest economic value to the City)
- (f) Supplies or services or commodities provided by governmental entity or agencies.
- (g) Supplies or services to be provided by those specifically prescribed within authorizing legislation that appropriates the same
- (h) Supplies or services procured utilizing General Services Administration, State of Florida and other contracts and agreements that have been competitively procured, awarded and contracted by a federal, state, municipal, County, or local governmental entity, body politic, or using agency, provided that said procurement is not otherwise prohibited by law.

(Ord 2004-602-E § 4)

**Sec. 126.108. Access to and examination of records of certain vendors.**

- (a) A person or entity providing capital improvements, contractual services, supplies, professional design services, or professional services purchased by the City pursuant to a method of purchase, unless otherwise provided herein, shall agree and be deemed to have agreed by virtue of doing business under contract with the City to allow access and examination at all reasonable times by the Council Auditor or any duly authorized representative of the Council Auditor to business records directly pertinent to the transaction until the expiration of three years after final payment pursuant to the transaction. No examination shall be conducted until the Council Auditor has made a recommendation to the Council President that the examination should or, in the alternative, should not be conducted and until the Council President has approved the conducting of the examination.
- (b) Specific language that vendors 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, including, but not limited to the Public Records Law, F.S. Ch 119, shall be included in all contracts which fall within the criterion established by subsection (a) of this Section.

## EXHIBIT A

### Description of Services and Deliverables

The services sought under this award are generally described as follows: To provide postmortem forensic toxicology services (the "Services") in compliance with ISO/IEC 17025:2017 for toxicology ANAB (ANSI/ASQ National Accreditation Board) and American Board of Forensic Toxicology (ABFT) accreditation, College of American Pathology (CAP) ISO 15189 and Clinical Laboratory Improvement Act (CLIA) laboratory accreditations. NMS LABS will provide on-site laboratory management and services, co-located with yet independent of, the City of Jacksonville District 4 Medical Examiner's Office.

#### A) General Testing

- a) NMS LABS will provide an on-site, accredited, post-mortem toxicology lab to support the District 4 ME's Office.
  - (i) Testing performed on-site will consist of:
    - 1 Carboxyhemoglobin in whole blood
    - 2 Basic and Expanded Drug Screening Panels in whole blood and urine.
- b) NMS LABS will provide off-site, accredited, post-mortem toxicology laboratory testing to support to the District 4 ME's Office.
  - (i) Testing performed off-site will consist of:
    - 1 Confirmations and quantifications on positive screens on blood, urine, and vitreous samples
    - 2 Out of scope finding confirmation testing
    - 3 Electrolytes in vitreous
    - 4 Alcohol and volatiles analysis in whole blood
    - 5 Esoteric testing
    - 6 Testing on matrices other than blood, urine, or vitreous
    - 7 Testing not listed in Section A.a.i
- c) NMS LABS will provide all testing, either on-site or off-site, in an ANAB and/or CAP, accredited facility using fully validated and approved testing procedures.
- d) NMS LABS will not use sub-contractors to perform any testing without the prior written consent of District 4 ME's Office.
- e) NMS LABS will provide all collection and shipping supplies necessary to submit cases. NMS LABS will be responsible for all shipping costs related to shipping samples to and from any of its facilities.
- f) NMS LABS will provide access to its other accredited testing including: Body Fluid Identification, DNA, Drug Identification, and General Unknown testing. This testing will be invoiced at negotiated rates, in addition to the monthly service fee that covers all of the toxicological services.

- B) Instrumentation
  - a) NMS LABS will be solely responsible to purchase, install, and validate any instrumentation necessary to conduct the testing.
  - b) NMS LABS will be solely responsible for the maintenance of the instrumentation necessary to conduct the testing.
- C) Toxicological Support Services
  - a) NMS LABS will provide interpretive toxicology services through NMS Labs' DirectTox® program.
  - b) NMS LABS will provide a dedicated Board Certified Forensic Toxicologist to the District 4 ME's Office, who will provide:
    - (i) Daily interpretative support
    - (ii) Case consultation for daily grand rounds
    - (iii) Case by case reviews
- D) Service
  - a) NMS LABS will supply District 4 ME's Office with no charge chain of custody requisitions and collection supplies to prepare for biological sample collection from autopsy and non-autopsy cases.
  - b) NMS LABS will supply preprinted shipping labels for standard overnight shipping from District 4 ME's Office to our Horsham PA facility.
  - c) NMS LABS will establish authorized communication, billing, and resulting conduits, including a secure web portal to obtain electronic results that can be stored in case management software and/or printed directly from the web portal.
  - d) NMS LABS will retain samples from the District 4 ME's Office in refrigerated/frozen secured evidence storage for one (1) year from the completion of testing (additional fees may apply for storage exceeding one year). Samples will be returned upon request (additional shipping and handling fees apply).
  - e) NMS Labs customer Service Department will provide support and consultation Monday-Friday 8 am-8:30pm (Eastern Time).
- E) Professional Toxicology Services
  - a) NMS LABS will provide turnaround time for all postmortem cases with a 7 - 10 business day average following receipt of samples.
  - b) NMS Labs will provide Toxicologist consultation via phone or email on an as needed basis during support hours: Monday-Friday 8 a.m. - 5 p.m. (Eastern Time). This will be accomplished by assigning a Primary Responsible Toxicologist assigned to this account and available via NMS Labs DirectTox® service, or by on-site support.



- c) The Primary Responsible Toxicologist will be backed up by a daily on-call Toxicologist (Toxicologist of the Day) for routine case discussion.
  - d) NMS Labs will provide a minimum of one continuing education presentation annually, on site at District 4 ME's Office or Contractor's lab site on relevant topics of interest to the District 4 ME's Office. This may be combined with other Districts and/or agencies in Florida allowing for increased attendance and participation.
  - e) The Primary Responsible Toxicologist will be available for routine "Grand Rounds" case discussion between Contractor's lab toxicologists and District 4 ME's Office via webinar and/or video conferencing.
  - f) The Primary Responsible Toxicologist will be the principal resource to directly review results of individual cases, as needed. (In the event that extensive research or litigation services are required, fees may be quoted at time of request).
- F) Postmortem Toxicology Testing Defined
- a) The management service fee established is based upon an estimated 2,500 postmortem toxicology cases per year. In the event that the testing volumes increase by more than 10%, NMS LABS reserves the right to renegotiate contract pricing.
  - b) The budget for approximately 2,500 postmortem toxicology cases annually includes a combination of the tests.

**Postmortem Toxicology Testing:**

This includes all test codes for postmortem toxicology testing in blood, urine, serum/ plasma, fluid, and tissue as well as confirmation and out of scope testing. Postmortem testing includes the following NMS Labs:

- (i) Routine: basic, expanded, fire death, inhalants, alcohol, electrolytes, and carbon monoxide;
  - (ii) Novel/Designer: novel psychoactive substances, synthetic cannabinoids, designer benzodiazepines, designer opioids;
  - (iii) Other: amphetamines, glucose, cocaine and metabolites, naloxone, nitrous oxide, valproic acid, methamphetamine and metabolite, methemoglobin, fentanyl and metabolites, gabapentin, volatiles, 6-MAM, anabolic steroids, beta-hydroxybutyric acid, and caffeine.
  - (iv) On a case by case basis, additional postmortem toxicology testing outside of this list may be assigned at the discretion of the DirectTox®.
- c) Non-postmortem toxicology testing outside will be invoiced at prevailing list price. For example, DNA testing on unidentified human remains or drug identification of botanicals, paraphernalia or other non-biologics such as powders and pills.
  - d) New postmortem panels created after the contract effective date may fall outside the scope of services.



June 12, 2020

The City of Jacksonville  
Attn.: B. Robert Pietak, M. D., Chief Medical Examiner  
434 East Bay Street  
Jacksonville FL 32202

RE: Postmortem Toxicology Analysis – NMS Labs

Dear Dr. Pietak,

We appreciate the opportunity to continue to partner with your agency for the management of your postmortem toxicology testing laboratory for an additional five (5) years with five one-year extension options. We have reviewed and agree to the description of services and deliverables as described in Exhibit A.

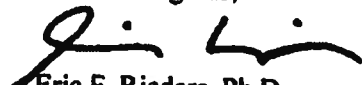
Pricing for the next five (5) year term of October 1, 2020 through September 30, 2025 is listed below.

<b>Personnel (including direct and indirect labor costs)</b>	<b>\$</b>	<b>1,870,093.00</b>
<b>Instrumentation (5 year linear depreciation and maintenance)</b>	<b>\$</b>	<b>279,000.00</b>
<b>QA Budget</b>	<b>\$</b>	<b>523,268.00</b>
<b>Supplies and consumables</b>	<b>\$</b>	<b>242,946.00</b>
<b>Confirmations</b>	<b>\$</b>	<b>1,242,457.00</b>
<b>5 Year Total</b>	<b>\$</b>	<b>4,157,764.00</b>

NMS Labs will issue a yearly facility credit to your office to compensate for the use and maintenance of the laboratory space. The total facility credit for the five-year term is \$524,967.35. This reflects a 5% year over year increase in the credit being issued to your office. This credit then reduces the total 5-year cost of the contract to \$3,632,796.65, that is, a net cost of \$726,559.33/year. NMS Labs is supportive of an extended ten (10) year agreement that offers you budget predictability and assure continuation of sustainable, high quality services.

Kindly let me know if you have any questions. Again, we appreciate the opportunity to continue to work with and support your agency.

Warmest regards,

  
Eric F. Rieders, Ph.D.  
President and COO

Attachment: Exhibit A  
CC: Haneman, Patricia  
Colman, Skyler

200 Welsh Road, Horsham, Pennsylvania 19044

T 800.522.6671

F 215.657.2972

www.nmslabs.com

**EXHIBIT D**

**FORM OF TENANT ESTOPPEL CERTIFICATE**

The undersigned is the Tenant under the Lease (defined below) between \_\_\_\_\_, a \_\_\_\_\_, as Landlord, and the undersigned as Tenant, for the Premises on the \_\_\_\_\_ floor(s) of the office building located at \_\_\_\_\_, Jacksonville, Florida, and commonly known as \_\_\_\_\_, and hereby certifies as follows:

1. The Lease consists of the original Lease Agreement dated as of \_\_\_\_\_, 20\_\_ between Tenant and Landlord and the following amendments or modifications thereto (if none, please state "none"):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The documents listed above are herein collectively referred to as the "**Lease**" and represent the entire agreement between the parties with respect to the Premises. All capitalized terms used herein but not defined shall be given the meaning assigned to them in the Lease.

2. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Section 1 above.

3. The Term commenced on \_\_\_\_\_, 20\_\_ and the Term expires, excluding any renewal options, on \_\_\_\_\_, 20\_\_, and Tenant has no option to purchase all or any part of the Premises or the Building or, except as expressly set forth in the Lease, any option to terminate or cancel the Lease.

4. Tenant currently occupies the Premises described in the Lease and Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreements with respect thereto except as follows (if none, please state "none"):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. All conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and Landlord is not in default thereunder. In addition, Tenant has not delivered any notice to Landlord regarding a default by Landlord thereunder.

6. As of the date hereof, there are no existing defenses or offsets, or, to the undersigned's knowledge, claims or any basis for a claim, that the undersigned has against Landlord and no event has occurred and no condition exists, which, with the giving of notice or the passage of time, or both, will constitute a default under the Lease.

7. No rental has been paid more than thirty (30) days in advance and no security deposit has been delivered to Landlord except as provided in the Lease.

8. If Tenant is a corporation, partnership or other business entity, each individual executing this Estoppel Certificate on behalf of Tenant hereby represents and warrants that Tenant is a duly formed

and existing entity qualified to do business in the state in which the Premises are located and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.

9. There are no actions pending against Tenant under any bankruptcy or similar laws of the United States or any state.

10. Other than in compliance with all applicable laws and incidental to the ordinary course of the use of the Premises, the undersigned has not used or stored any hazardous substances in the Premises.

11. All tenant improvement work to be performed by Landlord, if any, under the Lease has been completed in accordance with the Lease and has been accepted by the undersigned and all reimbursements and allowances due to the undersigned under the Lease in connection with any tenant improvement work have been paid in full.

Tenant acknowledges that this Estoppel Certificate may be delivered to Landlord, or to a prospective purchaser, and their respective successors and assigns, and acknowledges that Landlord, and/or such prospective purchaser will be relying upon the statements contained herein in acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of acquiring such property.

Executed as of \_\_\_\_\_, 20\_\_\_\_\_.

TENANT: \_\_\_\_\_, Inc., a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT E**

**BASIC RENT – CREDIT FOR SERVICES\***

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Year 6</b>	<b>Year 7</b>	<b>Year 8</b>	<b>Year 9</b>	<b>Year 10</b>
	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>
<b>Yearly Facility Credit</b>	\$98,880.00	\$101,846.40	\$104,901.79	\$108,048.85	\$111,290.31	\$114,629.02	\$118,067.89	\$121,609.93	\$125,258.23	\$129,015.97
<b>Monthly Facility Credit</b>	\$8,240.00	\$8,487.20	\$8,741.82	\$9,004.07	\$9,274.19	\$9,552.42	\$9,383.99	\$10,134.16	\$10,438.19	\$10,751.33

\* Basic Rent (Credit for Services) shall increase at a rate of three percent (3%) per year

## **EXHIBIT F**

### **RENEWAL OPTIONS**

Provided no Event of Default by Tenant exists, and Tenant is occupying the entire Premises at the time of such election, Tenant and Landlord mutually may renew this Lease and its associated Services Contract for up to five (5) consecutive additional periods of one (1) year each. Tenant shall deliver written notice to Landlord on or before ninety (90) days before the expiration of the then current Term of Tenant's desire to renew this Lease. Within thirty (30) days after receipt of Tenant's request to renew, Landlord shall deliver to Tenant written notice of its agreement or not to the renewal. If the parties agree to renew the Lease as provided herein then Landlord and Tenant shall execute an amendment to this Lease extending the Term on the same terms provided in this Lease, except Landlord shall lease to Tenant the Premises in their then-current condition, and Landlord shall not provide to Tenant any allowances (e.g., moving allowance, construction allowance, and the like) or other tenant inducements. Renewal of this Lease shall occur contemporaneously with a renewal of the Services Contract.

Tenant's rights under this Exhibit shall terminate if (1) this Lease or Tenant's right to possession of the Premises is terminated, (2) Tenant fails to timely provide notice under this Exhibit, time being of the essence with respect to Tenant's notice of desire to renew, or (3) Landlord determines, in its sole discretion, that Tenant's financial condition or creditworthiness has materially deteriorated since the date of this Lease.

The renewal option herein is personal to the Tenant named in the Lease and may not be transferred or assigned.

**EXHIBIT G**

**INSURANCE REQUIREMENTS**

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

**Insurance Coverages**

Schedule	Limits
<b>Worker’s Compensation</b>	Florida Statutory Coverage
<b>Employer’s Liability</b>	\$100,000 Each Accident \$500,000 Disease Policy Limit \$100,000 Each Employee/Disease

This insurance shall cover the Tenant (and, to the extent they are not otherwise insured, its 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.

<b>Commercial General Liability</b>	\$2,000,000	General Aggregate
	\$2,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$ 300,000	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** \$1,000,000 Each Occurrence – Combined Single Limit

(Coverage for all automobiles, owned, hired or non-owned used in performance of the Services)

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).

**Cyber Liability & Data Storage**

\$1,000,000 per Claim and Aggregate

Such insurance shall be on a form acceptable to the City and shall cover, at a minimum, the following:

- Data Loss and System Damage Liability (when applicable)
- Security Liability
- Privacy Liability
- Privacy/Security Breach Response Coverage, including Notification Expenses

Such Cyber Liability 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 years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis

**Personal Property:** Tenant may place its personal property within the leased space during the Lease Term from time to time at its discretion; however, all Tenant personal property that may within the leased space during the Lease Term shall be thereon at Tenant's sole risk. Under no circumstances will the City be responsible for the Tenant's personal property.

**Additional Insurance Provisions**

- Additional Insured.** All insurance except Workers' Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2011, Automobile Liability CA2048.
- 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 its members, officials, officers employees and agents.
- Tenant's Insurance Primary.** The insurance provided by the Tenant shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.
- Deductible or Self-Insured Retention Provisions.** All deductibles and self-insured retentions associated with coverages required for compliance with this Lease shall remain the sole and exclusive responsibility of the named insured Tenant. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Lease.
- Tenant's Insurance Additional Remedy.** Compliance with the insurance requirements of this Lease shall not limit the liability of the Tenant or its Subcontractors, employees or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Lease or otherwise.
- Waiver/Estoppel.** Neither approval by City nor failure to disapprove the insurance furnished by Tenant shall relieve Tenant of Tenant's full responsibility to provide insurance as required under this Lease.



- G. Certificates of Insurance. Tenant shall provide the City Certificates of Insurance that shows the corresponding City Contract Number in the description, if known, Additional Insureds as provided above and waivers of subrogation. 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.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida Statutes, 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.
- I. Notice. The Tenant shall provide an endorsement issued by the insurer to provide the City 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 then the Tenant shall provide 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 Tenant under this Lease 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 may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. Special Provisions. Prior to executing this Agreement, Tenant shall present this Lease and Exhibits G & H to its insurance agent affirming that: 1) the agent has personally reviewed the insurance requirements of the Lease, and (2) the agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Tenant.

If Tenant fails to comply with the foregoing insurance requirements or to deliver to Landlord the certificates or evidence of coverage required herein, Landlord, in addition to any other remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain such insurance and Tenant shall pay to Landlord on demand the premium costs thereof, plus an administrative fee of 15% of such cost.

## EXHIBIT H

### INDEMNIFICATION

Tenant (the "Indemnifying Party") shall hold harmless, indemnify, and defend the City of Jacksonville and City's 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 under the Lease, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Lease 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 Lease; and

3. Intellectual Property Liability, to the extent this Lease contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the services provided by Tenant, any product generated by the services, or any part of the services as contemplated in this Lease, 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, are 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 any proceeding is filed for which indemnity is required hereunder, Tenant agrees, upon request therefor, to defend Landlord in such proceeding at its sole cost utilizing counsel satisfactory to Landlord. 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 Lease or otherwise. Such terms of indemnity shall survive the expiration or termination or expiration of this Lease and shall not terminate or be waived, diminished or affected in any manner by any abatement or apportionment of Rent under any provision of this Lease.**

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.