





7. Contract Managers. Each party hereby designates a Contract Manager whose responsibility during the term of this Contract shall be to oversee that 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 Nikki Kimbleton, Director of Public Affairs (telephone: (904) 255-5020; email: nkimbleton@coj.net) and Contractor's Contract Manager is Susan Kaniut, President, (telephone: (734) 476-1728; email: tallguy511@hotmail.com). Each party shall provide prompt written notice to the other party of any changes to the party's Contract Manager or his or her contact information; provided, such changes shall not be deemed Contract amendments and may be provided via email.

8. Entire Agreement. This Contract constitutes the entire agreement between the parties 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.

9. Amendments. All changes to, additions to, modifications of, or amendments 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.

10. 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.]**

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the Effective Date.

WITNESS: **LITERACY PROS OF JACKSONVILLE, INC.**

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

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

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

**ATTEST: CITY OF JACKSONVILLE**

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

James R. McCain, Jr.  
Corporation Secretary

Lenny Curry, Mayor

Encumbrance and funding information for internal City use:

Amount.....**\$20,000.00**

In accordance with Section 24.103(e), of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Contract; provided however, 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] as specified in said Contract.

\_\_\_\_\_  
Director of Finance  
City Contract # \_\_\_\_\_  
Purchase Order # \_\_\_\_\_

Form Approved:

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

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**Exhibit A**

**Scope of Work & Budget**

Literacy Pros Jacksonville  
#YRead Scope of Work & Budget

Scope of Services:

Literacy Pros Jacksonville, Inc., will provide oversight and coordination of the #YRead campaign. This campaign seeks to engage and achieve the following:

1. Prominent marketing, outreach and engagement material featuring local Jacksonville youth promoting reading, literacy and positive educational choices and behaviors.
2. Specifically, Literacy Pros Jacksonville, Inc. will leverage the provided funds to develop and launch:
  - a. Two Billboards in high crime areas of Jacksonville (Golfair & Haines) for the period of August 2021 to January 2022.
  - b. 50 posters in area:
    - i. Middle & High Schools
    - ii. City libraries
    - iii. City offices
    - iv. Community based organizations
    - v. Juvenile diversion and corrections programs
  - c. Teen Youth Literacy Ambassador representatives at area high schools, with a focus on specific high crime zip codes (Raines, Ribault, Jackson, Ed White, Terry Parker, and other designated schools).

Activity	Cost	Funded By
22 weeks of 2 large billboards featuring selected and recommended youth ages 13 to 18	\$20,000	COJ Social Justice Committee awarded funds
40 hours of professional photography and editing	(\$5000)	(In-Kind, Provided by Literacy Pros, Jacksonville)
50 poster sized versions of each print	(\$1000)	(In-Kind, Provided by Literacy Pros, Jacksonville)

50 young adult books	(\$750)	(In-Kind, Provided by Literacy Pros, Jacksonville & InJenuity Solutions)
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Deliverables:

- Two completed billboards
- 50 posters: Will be hung in schools and community centers, areas where youth frequent
- 50 youth participants (13-18) to be photographed
- 50 youth books: The youth “ambassadors” will each select one book to be photographed with and will receive a personal copy of that book to keep.

**Exhibit B**  
**General Terms and Conditions**

**B.1 Provision of Services.** Contractor shall provide the City the Services and deliverables described in **Exhibit A**. If any services, functions, or responsibilities are not specifically described in **Exhibit A** 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 therein.

**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 this 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 this 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 this Contract and the standards prevailing in the industry. Contractor shall also undertake the following actions without additional consideration during the term of this 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 shall extend to all subcontractors.

**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 has also designated a Contract Manager who will, on behalf of the City, work with Contractor and administer this Contract in accordance with its terms.

**B.6 Location Requirements for Services.** The majority of the Services shall be performed within the State of Florida and no Services will be performed outside of the United States. These restrictions may be modified in writing if the City determines, in its sole discretion, that these

restrictions impose an undue burden on Contractor's ability to perform the Services as contemplated in this Contract.

**B.7 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 shall ensure that all relevant contractual obligations flow down to the subcontractors and are incorporated into the subcontracts (specifically including, but not limited to, 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.8 Meetings and Reports.** Contractor shall attend all meetings and public hearings concerning the Services where its presence is determined to be necessary and requested by the City and Contractor can reasonably schedule its appearance. 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.9 Intentionally Omitted.**

**B.10 Intellectual Property.**

(a) As used in this Section, 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 this Contract. Contractor grants to City an irrevocable, perpetual, royalty free, and fully paid-up right to use (and such right includes, without limitation, a right to copy, modify, and create derivative works from the subject matter of this Contract and the right to sublicense all or any portion of the foregoing rights to an affiliate or a third party who provides services to the City) Contractor's intellectual property (including, without limitation, all trade secrets, patents, copyright, and know-how) that is contained or embedded in, required for the use of, that was used in the production of, or is required for the reproduction, modification, maintenance, servicing, improvement, or continued operation of any applicable unit of Work.

(b) If the Work contains, has embedded in, or requires for the use of, any third-party intellectual property, or if the third party intellectual property is required for the reproduction, modification, maintenance, servicing, improvement, or continued operation of the Work, Contractor shall secure for the City an irrevocable, perpetual, royalty free, and fully paid-up right to use all third party intellectual property. Contractor shall secure such right at its expense and prior to incorporating any third party intellectual property (including, without limitation, all trade secrets, patents, copyright, and know-how) into any Work, including, without limitation, all drawings or data provided under this Contract, and such right must include, without limitation, a right to copy, modify, and create derivative works from the subject matter of the grant of the right



and a right to sublicense all or any portion of the foregoing rights to an affiliate or a third party service provider. This subparagraph does not apply to standard office software (e.g., Microsoft Office).

(c) The Contractor will, at its expense, defend all claims, actions or proceedings against the City based on any allegation that the Work, or any part of the Work, constitutes an infringement of any patent or any other intellectual property right, and will pay to the City all costs, damages, charges, and expenses occasioned to the City by reason thereof. The City will give the Company written notice of any such claim, action or proceeding and, at the request and expense of the Company, the City will provide the Company with available information, assistance and authority for the defense. If, in any action or proceeding, the Work, or any part thereof, is held to constitute an infringement, the Company will, within 30 days of notice, either secure for the City the right to continue using the Work or will, at the Company's expense, replace the infringing items with non-infringing Work or make modifications as necessary so that the Work no longer infringes.

**B.11 Software Development Processes and Standards.** To the extent any software is developed, modified, or otherwise procured under this Contract, Contractor will use commercially-accepted software development and documentation processes and standards.

**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 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 this 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 this Contract.

**B.14 Purchase Orders.** If this Contract requires a Service to be ordered by the City via purchase order, Contractor shall not deliver or furnish the Service until the City transmits a purchase order. All purchase orders shall bear this Contract or solicitation number, shall be placed by the City directly with Contractor, and shall be deemed to incorporate by reference this Contract. Any

discrepancy between this Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the City.

**B.15 Best Pricing for Comparable Services to Other Government Entities.** Compensation for the Services shall be as set forth in this Contract. During the Contract term, if Contractor offers better pricing to other government entities for substantially the same or a smaller quantity of Services upon the same or similar terms of this Contract ("Better Pricing"), then the price under this Contract shall be immediately reduced to the better price. The City may require Contractor to certify on an annual basis that Better Pricing (as defined above) does not exist.

**B.16 Invoicing and Payment.**

(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. Invoices shall 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 this Contract. Payments will be made to Contractor approximately forty-five (45) 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) 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*.

(c) The City's obligations to make payment are contingent upon availability of lawfully appropriated funds for the Services.

**B.17 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.18 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.19 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 this 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 this 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 this 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, but not limited to, the City Council 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 this 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 action 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 this 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 this Contract.

**B.20 Indemnification.** Contractor shall comply with the indemnification provisions in **Exhibit C** of this Contract.

**B.21 Insurance.** Contractor shall comply with the insurance requirements in **Exhibit D** of this Contract.

**B.22 City's Right to Suspend Work.** The City may, in its sole discretion, suspend any or all activities under this 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 this 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.23 City's Right to Terminate for Convenience.** The City reserves the right to terminate this Contract at any time and for any reason by giving written notice to Contractor. If this 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 this Contract. The parties understand and agree that Contractor shall not have a reciprocal right to terminate this Contract for convenience, it being understood that the City's payment for Services forms the consideration for Contractor's not having this right. In the event of City's termination of this 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.24 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 this Contract or any extension; (2) Contractor fails to maintain adequate progress, thus endangering performance of this Contract; (3) Contractor fails to honor any other material term of this 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 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 this 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 this 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.25 Contractor Remedies Upon City Default.** The City shall be in default if the City fails to honor any material term of this 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 this Contract and pursue such other remedies available at law or equity as it deems appropriate. **Except as expressly provided elsewhere in this Contract, Contractor will not be entitled to recover any lost profits or consequential damages.** The rights and remedies available to Contractor under this Contract are distinct, separate, and cumulative remedies, and no one of them shall be deemed to be in exclusion of any other.

**B.26 Transition Services.** At any time prior to the date this 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 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 at no additional cost to the City. 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 this 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 this Contract.

**B.27 Force Majeure, Notice of Delay, and No Damages for Delay.** Neither party shall be responsible for delays in performance to the extent that 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 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 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 this Contract in whole or in part if the City determines, in its sole judgment, that such a delay will significantly impair the value of this 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.28 No Waiver.** The delay or failure by a party to exercise or enforce any of its rights under this 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 this Contract and shall not be deemed a waiver of the City's right to insist upon strict performance hereof.

**B.29 Qualification of Contractor Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, and agents performing work under this 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 this 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 this 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 this Contract. Proof of enrollment and participation will be made available to the City upon request.

**B.30 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 this Contract. The City agrees that any security procedures imposed by the City specifically for this Contract will be reasonable and will not impose any unreasonable costs or hardships.

**B.31 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 this Contract.

**B.32 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 this 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 service. If Contractor transfers all public records to 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 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.33 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 this Contract. Contractor shall not sell, assign, or transfer any of its rights (including rights to payment), duties, or obligations under this Contract without the prior written consent of the City. In the event of any assignment, Contractor shall remain liable for performance of this Contract unless the City expressly waives such liability. The City may assign this 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.34 Notice and Approval of Changes in Ownership.** Because the award of this 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 this 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.35 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 this Contract.



**B.36 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.37 Other Non-Discrimination Provisions.** As required by Section 126.404, *Jacksonville Ordinance Code*, Contractor represents that it has adopted and will maintain throughout the term of this 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 upon 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 this 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 this Contract. Contractor agrees that if any of the products or Services to be provided pursuant to this 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.38 Prompt Payment to Subcontractors and Suppliers.** The following is required by Chapter 126, Part 6, *Jacksonville 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, *Jacksonville 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 this 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 the 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 this Contract, compensable by one per-cent (1%) of the outstanding invoice’s being withheld by the City, not as a penalty, but as liquidated damages to compensate for the 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, *Jacksonville Ordinance Code*, for JSEBs or MBEs and in Chapter 218, Florida Statutes, for non-JSEBs or non-MBEs, whichever is greater.

**B.39 Conflicts of Interest.** Contractor acknowledges that Section 126.112, *Jacksonville 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.40 Contingent Fees Prohibited.** In conformity with Section 126.306, *Jacksonville 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 this 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 this Contract. For the breach or violation of these provisions, the City shall have the right to terminate this 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.41 Truth in Negotiation Certificate.** Pursuant to Section 126.305, *Jacksonville Ordinance Code*, the execution of this 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 this Contract.

**B.42 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.43 Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of Contractor, other entities may be permitted to make purchases at the terms and on the conditions contained herein. These purchases are independent of the agreement between the City and Contractor, and the City shall not be a party to such transactions.

**B.44 Warranty of Ability to Perform.** Contractor warrants that (i) it is ready, willing, and able to perform its obligations under this 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 this Contract.

**B.45 Warranty of Authority to Sign Contract.** Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to this Contract.

**B.46 Governing State Law/Severability/Venue/Waiver of Jury Trial.** The rights, obligations, and remedies of the parties as specified under this Contract shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of this 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 any action arising out of or relating to this 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 this Contract.

**B.47 Construction.** Both parties acknowledge that they have had the opportunity to provide meaningful input into the terms and conditions contained in this Contract. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this 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.48 Scrutinized Companies.**

(a) Pursuant to Section 287.135(2), *Florida Statutes*, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of:

(1) Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, Contractor is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, *Florida Statutes*, or is engaged in a boycott of Israel; or

(2) One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, Contractor:

- i. Is 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
- ii. Is engaged in business operations in Cuba or Syria.

(b) Pursuant to Section 287.135(3)(a)4, *Florida Statutes*, the City may terminate this Contract at the City's option if this Contract is for goods or services in an amount of one million dollars or more and Contractor:

(1) Is found to have submitted a false certification under Section 287.135(5), *Florida Statutes*;

(2) 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

(3) Is engaged in business operations in Cuba or Syria.

(c) Pursuant to Section 287.135(3)(b), *Florida Statutes*, the City may terminate this Contract at the City's option if this Contract is for goods and services of any amount and Contractor:

(1) Is found to have been placed on the Scrutinized Companies that Boycott Israel List; or

(2) Is engaged in a boycott of Israel.

## **Exhibit C Indemnification**

Contractor and its subcontractors (individually an “**Indemnifying Party**” and collectively the “**Indemnifying Parties**”) 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 this Contract, operations, services or work performed hereunder; and

2. 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 this Contract; and

3. 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, 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 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 Buyer, so that the Service or product is non-infringing.

If an Indemnified Party exercises its rights under this Contract, the Indemnified Party will (1) provide reasonable notice to the Indemnifying Party of the applicable claim or liability, and (2) allow Indemnifying Party, at its own expense, to participate in the litigation of such claim or liability to protect 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 this Contract or otherwise. Such terms of indemnity shall survive the expiration or termination of this 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 D  
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

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&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
	\$ 50,000	Fire Damage
	\$ 5,000	Medical Expenses

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

<b>Automobile Liability</b>	\$1,000,000	Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of this Contract)		

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).

### **Additional Insurance Provisions**

- A. **Certificates of Insurance.** Contractor shall deliver to the City certificates of insurance that show the corresponding City Contract or Bid Number in the description, Additional Insureds, Waivers of Subrogation and Primary & Non-Contributory statement as provided below. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- B. **Additional Insured.** All insurance **except** Worker's Compensation 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 and, if products and completed operations is required, CG2037, Automobile Liability CA2048.
- C. **Waiver of Subrogation.** All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.
- D. **Carrier Qualifications.** The above insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida 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.
- E. **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.
- F. **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 or its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Contract.
- G. **Contractor's Insurance Additional Remedy.** Compliance with the insurance requirements of this Contract shall not limit the liability of 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.



- H. Waiver/Estoppel. Neither approval by the City nor the City's failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Contract.
- 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, 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 C and D to its Insurance Agent affirming that: 1) the Agent has personally reviewed the insurance requirements of this Contract, and (2) the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Contractor.