



City of Jacksonville Beach

11 North Third Street
Jacksonville Beach, Florida

Agenda

City Council

Monday, October 1, 2018

7:00 PM

Council Chambers

MEMORANDUM TO:

The Honorable Mayor and
Members of the City Council
City of Jacksonville Beach, Florida

Council Members:

The following Agenda of Business has been prepared for consideration and action at the Regular Meeting of the City Council.

OPENING CEREMONIES: INVOCATION, FOLLOWED BY SALUTE TO THE FLAG

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

- 18-181 Special Council Meeting held September 10, 2018
- 18-182 Council Workshop held September 10, 2018
- 18-183 Regular Council Meeting held September 17, 2018

ANNOUNCEMENTS

COURTESY OF THE FLOOR TO VISITORS

MAYOR AND CITY COUNCIL

CITY CLERK

CITY MANAGER

- 18-184** Select City Manager Candidates to Interview with the City Council on October 11, 2018, from the List of Semifinalists Recommended by Colin Baenziger & Associates
- 18-185** Approve the *Software as a Service Agreement with Sensus USA Inc.*, for the Maintenance and Technical Support of the Automated Metering Infrastructure System, for a Five-Year Period Beginning on the Execution Date of the Agreement
- 18-186** Approve a Lease with EZ-GO to Install a Fleet Management GPS System on the Leased Golf Carts Located at the Jacksonville Beach Golf Course
- 18-187** Approve the Purchase, Installation, and Maintenance of Power Over Ethernet Cameras and Battery Backups for the Pollution Control Plant and Water Plants from Archimedes Systems, Inc.
- 18-188** Approve the Emergency Repair of a 36' Stormwater Outfall Pipe, Located Within the 11th Fairway at the Golf Course, Completed by G & H Underground, Inc.
- 18-189**
- a. Approve a Contract with Lloyds Construction & Consulting for the Construction of Three ADA Compliant Dune Walkovers in the Amount of \$344,899.92
 - b. Approve a Contract with Applied Technology Management, Inc. for Administration Services Related to the Construction of Three ADA Compliant Dune Walkovers in the Amount of \$10,450.00

RESOLUTIONS

- 18-191** RESOLUTION NO. 2024-2018

A RESOLUTION OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AUTHORIZING AND DIRECTING EXECUTION AND DELIVERY OF A JOINDER TO AGREEMENT AND DECLARATION OF TRUST CREATING AND ESTABLISHING THE FLORIDA LOCAL GOVERNMENT INVESTMENT TRUST; AND PROVIDING AN EFFECTIVE DATE.

ORDINANCES**ADJOURNMENT**

NOTICE

In accordance with Section 286.0105, Florida Statutes, any person desirous of appealing any decision reached at this meeting may need a record of the proceedings. Such person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The public is encouraged to speak on issues on this Agenda that concern them. Anyone who wishes to speak should submit the request to the City Clerk or to the recording secretary prior to the beginning of the meeting. These forms are available at the entrance of the City Council Chambers for your convenience.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at (904) 247-6299, extension 10, no later than one business day before the meeting.

**Minutes of Special City Council Meeting
held Tuesday, September 10, 2018, at 6:00 P.M.
in the Council Chambers, 11 North 3rd Street,
Jacksonville Beach, Florida.**



CALL TO ORDER:

Mayor Charlie Latham called the meeting to order.

ROLL CALL:

Mayor: Charlie Latham

Council Members: Keith Doherty (*absent*) Christine Hoffman Bruce Thomason
Lee Buck Phil Vogelsang (*absent*) Jeanell Wilson (*absent*)

Also present were Interim City Manager Karen Nelson, City Department Heads, and City Clerk Laurie Scott.

PURPOSE OF MEETING

Mayor Latham stated the purpose of the meeting was to adopt a Proposed Millage Rate for Fiscal Year 2018-2019 and a Tentative Operating Budget for Fiscal Year 2018-2019.

Mayor Latham read the following statement:

The first item to be discussed is the Proposed Millage Rate.

- The budget for the City of Jacksonville Beach was prepared using a millage rate of \$3.9947 mills. The rolled back rate is \$3.7414 mills. The proposed millage rate of \$3.9947 mills is 6.77% more than the rolled-back rate.

The second item to be discussed is the Tentative Operating Budget.

- The tentative operating budget for Fiscal Year 2018-2019 is \$162,517,823.

Public Hearing

At this time, Mayor Latham opened a Public Hearing on the Proposed Millage Rate and Tentative Operating Budget.

No one came forward to address the Council.

Mayor Latham closed the Public Hearing.

PROPOSED MILLAGE RATE – FY 2018-2018

Mayor Latham requested that the City Clerk read Resolution No. 2018-2018 by title only, whereupon Ms. Scott read the following:

“A RESOLUTION OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, ADOPTING THE FINAL LEVYING OF AD VALOREM TAXES FOR THE CITY OF JACKSONVILLE BEACH, FLORIDA FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2018 AND ENDING SEPTEMBER 30, 2019, PROVIDING FOR AN EFFECTIVE DATE.”

Motion: It was moved by Ms. Hoffman, seconded by Mr. Thomason, to adopt the Proposed Millage Rate for Operating Purposes of \$3.9947 mills.

There was no discussion by the Council.

Roll call vote: Ayes - Buck, Hoffman, Thomason, and Mayor Latham
The motion carried.

TENTATIVE OPERATING BUDGET – FY 2019-2018

Mayor Latham requested that the City Clerk read Resolution No. 2019-2018 by title only, whereupon Ms. Scott read the following:

“A RESOLUTION OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, ADOPTING THE OPERATING BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2018 AND ENDING SEPTEMBER 30, 2019; AND PROVIDING FOR AN EFFECTIVE DATE.”

Motion: It was moved by Ms. Hoffman, seconded by Mr. Thomason, to adopt the Tentative Operating Budget for Fiscal Year 2018-2019 of \$162,517,823.

Discussion: There was no discussion by staff or the Council.

Roll call vote: Ayes - Hoffman, Thomason, Buck and Mayor Latham
The motion carried.

ADJOURNMENT

There being no further business coming before the Council, Mayor Latham adjourned the meeting at 6:05 P.M.

Submitted by: Laurie Scott
City Clerk

Approval:

William C. Latham, Mayor

Date: _____

**Minutes of City Council Workshop
Monday, September 10, 2018 – 6:00 P.M.
City Council Conference Room, 1st Floor
11 North 3rd Street, Jacksonville Beach, FL**



The Council Workshop began at 6:08 P.M.

The following City Council Members were in attendance:

Mayor: William C. Latham

Council Members: Lee Buck Keith Doherty (*absent*) Christine Hoffman
Bruce Thomason Phil Vogelsang (*absent*) Jeanell Wilson (*absent*)

Also present was Interim City Manager Karen Nelson and City Attorney Susan Erdelyi.

Purpose of Workshop

The purpose of the workshop was to discuss safety concerns related to alcohol establishments.

City Manager

Mayor Latham stated the purpose of the workshop was to discuss any changes or modifications to be made to the current alcohol ordinance to address the public safety concern.

City Attorney Susan Erdelyi presented Council with a summary of five options to address the public safety problem related to alcohol beverage establishments. The options presented were as follows:

1. Repeal 4-2 completely. Close all alcohol establishments at midnight.
2. Repeal 4-2 as to SRX city wide.
3. Repeal 4-2 as to SRX in the Central Business District.
4. Close new restaurants (SRX) at midnight and revise 4-2 to included new stricter requirements such as security cameras and longer suspensions. Grandfather in existing SRX licenses in the City.
5. Revise 4-2 to include new requirements such as security cameras, longer suspensions & training.

Mayor Latham asked each Council member to state which option they would prefer to address the public safety concern. The results were as follows:

- Mayor Latham preferred option #4
- Council member Thomason preferred option #4
- Council member Buck preferred option #4
- Council member Hoffman preferred option #4

Mayor Latham stated if the alcohol ordinance were to be modified, the ordinance would be presented to the Council for two readings prior to approval.

The workshop adjourned at 6:28 P.M.

Submitted by: Jodilynn Byrd
Administrative Assistant

Approved:

William C. Latham, MAYOR

Date: _____

OPENING CEREMONIES

In lieu of an invocation, Mayor Latham requested a moment of silence to honor the eighteen people in the Carolinas who recently lost their lives during Hurricane Florence. This was followed by the salute to the flag.

CALL TO ORDER

Mayor Latham called the meeting to order at 7:00 P.M.

ROLL CALL

Mayor: William C. Latham
Council Members: Lee Buck Keith Doherty Christine Hoffman
Bruce Thomason Phil Vogelsang Jeanell Wilson

Also present was Interim City Manager Karen Nelson.

APPROVAL OF MINUTES

It was moved by Ms. Wilson, seconded by Ms. Hoffman, and passed unanimously, to approve the following minutes:

- Special City Council Meeting Held September 4, 2018
- City Council Briefing Held September 4, 2018
- Regular City Council Meeting Held September 4, 2018

ANNOUNCEMENTS

Mr. Vogelsang spoke about attending the Jacksonville Jaguars football game on Sunday and the recognition given to the City of Jacksonville Beach Police Corporal Bill Eierman.

Ms. Wilson also spoke about the Jaguars football game and Police Corporal Bill Eierman. She reminded everyone about the Jax Beach Classic Car Cruise Tuesday evening in Latham Plaza.

COURTESY OF THE FLOOR TO VISITORS

Liz Stewart, 1125 Osceola Avenue, Jacksonville Beach, spoke about the increase of short-term/vacation rentals happening in single-family residential neighborhoods and the negative effects and safety concerns created for the surrounding residents. She added one of the homes in her neighborhood advertises accommodations for up to 18 people; and there is inadequate parking, loud parties, and constant disturbances throughout the day and night. The police have been called many times. Ms. Stewart stated she had been contacted about selling her property as there are plans to expand this business in her neighborhood.

Mayor Latham advised Ms. Stewart that the City is working on this and that a meeting was held with Senator Bean and Representative Byrd for guidance about taking action regarding these short-term/vacation rentals.

Planning Director Bill Mann stated the City Attorney is working on a Resolution and determining how staff will enforce the regulations.

Greg Kenny, 1061 Osceola Avenue, Jacksonville Beach, also spoke about the short-term/vacation rentals and how they are being advertised as 'party houses' for 15 or more people at one time. He stated this business has plans to monopolize his neighborhood with more of these rentals. Mr. Kenny noted these homes are operated as a business, yet the owner pays residential rates, not commercial rates, for utilities and other City services.

Ellen Foley, 4235 Marsh Landing Boulevard, Jacksonville Beach, spoke about having a public venue for playing croquet. She stated a croquet court only requires 28 X 35 square yards and suggested using an area at the newly renovated Golf Course, as the two sports share similarities.

Ken Marsh, 2011 Gail Avenue, Jacksonville Beach, spoke about recent articles published in The Beaches Leader regarding the Downtown Vision Plan. Mr. Marsh spoke about his plan to organize the Jacksonville Beach Downtown Vision Coalition and provided a summary to the Council explaining the goals and strategy for citizen involvement.

Mick DuRocher, 41 Millie Drive, Jacksonville Beach, expressed concerns about the out-of-control downtown area, the paid parking program, crime, and the over-serving of alcohol in restaurants and bars.

MAYOR AND CITY COUNCIL

CITY CLERK

CITY MANAGER

(a) **Item #18-173 – Approve the Monthly Financial Reports for the Month of August 2018**

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to accept the monthly financial reports for the month of August 2018, as submitted by the Chief Financial Officer.

Discussion: No discussion.

Roll Call Vote: Ayes – Buck, Doherty, Hoffman, Thomason, Vogelsang, Wilson, and Mayor Latham.

The motion passed unanimously.

(b) **Item #18-174 – Appoint One Member and Two Alternates to the Board of Adjustment**

Discussion: Mayor Latham stated the next two items discuss appointing members and alternates to boards. The Mayor asked the Council to review the application and selection process for the appointees and to allow for any questions before making a motion.

Ms. Hoffman expressed concern about the two-year residency requirement for appointment to a board being too long, in comparison to the six-month requirement to run for City

Council. She stated the City is overlooking very qualified candidates with that current requirement.

Ms. Wilson agreed with Ms. Hoffman about lessening the residency requirement. She suggested having the terms for the all of the board appointees expire at the same time, rather than tracking staggered dates and making appointments multiple times a year.

Mr. Thomason inquired about Mr. Walker's application that identifies the Planning Commission and Community Redevelopment Agency as his choices, yet the spreadsheet indicates he picked the Board of Adjustment.

The City Clerk responded that during his interview on January 18, 2018, Mr. Walker made the request for the Board of Adjustment, and it was noted on the spreadsheet. He did not change his application.

Discussion ensued about postponing the alternate appointments tonight, doing more advertising for recruitment/applicants, and having a workshop to review and clarify the current tracking process.

Planning Director Bill Mann addressed the Council. He stated that lapses in these positions create problems guaranteeing a quorum for meetings, which is problematic for the applicants and will cause delays in the application/hearing schedule. Mr. Mann emphasized the alternates and the regular members are equally important to keep filled to ensure a quorum in the event of an unexpected absence.

Mayor stated he still wants to have a workshop to review and clarify the current application requirements and the tracking process, as this is an on-going issue.

Motion: It was moved by Mr. Vogelsang to reappoint John Moreland to the Board of Adjustment and to table any action for the 2nd Alternate until after the workshop.

Mr. Buck spoke about his prior involvement in the Board of Adjustment. He stated delaying action would be a disservice to this Board and the applicants.

Mr. Thomason inquired about Mr. Cater's application that indicates the Community Redevelopment Agency as the first choice and Board of Adjustment as the second choice, but the spreadsheet shows just the opposite.

The City Clerk responded that Mr. Cater made that request to change the Board of Adjustment to his first choice, and Community Redevelopment Agency to his second choice.

Mr. Doherty concurred the process needs to be streamlined but suggests proceeding with the appointments on the agenda. After the workshop is completed, it could still take a couple of months before any changes are implemented. The goal is to get more people interested in serving and to make it educational and easy.

Mr. Vogelsang withdrew his motion.

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to nominate John Moreland for reappointment to the Board of Adjustment for a four-year term expiring on December 31, 2021.

Roll call vote: Ayes – Doherty, Hoffman, Thomason, Vogelsang, Wilson, Buck, and Mayor Latham.
The motion passed unanimously.

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to nominate Lucas Snyder as 1st Alternate with a term expiring on December 31, 2019 [Board of Adjustment].

Roll call vote: Ayes – Hoffman, Thomason, Vogelsang, Wilson, Buck, Doherty, and Mayor Latham.
The motion passed unanimously.

Motion: It was moved by Ms. Wilson and seconded by Mr. Thomason, to nominate Gary Cater as 2nd Alternate with a term expiring on December 31, 2019 [Board of Adjustment].

Roll call vote: Ayes – Thomason, Vogelsang, Wilson, Buck, Doherty, Hoffman, and Mayor Latham.
The motion passed unanimously.

(c) **Item #18-175 – Appoint One Member and Two Alternates to the Planning Commission**

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to nominate Margo Moehring for appointment to the Planning Commission for a new four-year term expiring December 31, 2021.

Roll call vote: Ayes – Vogelsang, Wilson, Buck, Doherty, Hoffman, Thomason, and Mayor Latham.
The motion passed unanimously.

Motion: It was moved by Mr. Vogelsang and seconded by Ms. Wilson, to nominate Jon Scott Walker as 1st Alternate [Planning Commission, for a term expiring December 31, 2020].

Roll call vote: Ayes – Wilson, Buck, Doherty, Hoffman, Thomason, Vogelsang, and Mayor Latham.
The motion passed unanimously.

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to nominate Bill Spann [Planning Commission, as 2nd Alternate for a term expiring December 31, 2019].

Roll call vote: Ayes – Buck, Doherty, Hoffman, Thomason, Vogelsang, Wilson, and Mayor Latham.
The motion passed unanimously.

Mayor Latham asked the City Clerk to coordinate with the City Manager to put together the materials and agenda for the workshop.

(d) Item #18-176 – Approval of Bid No. 1718-24 – One (1) Distribution Transformer

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to award Bid No. 1718-24 to Gresco, Inc. for the purchase of a 2500 KVA distribution transformer.

Discussion: Ms. Nelson stated Baptist Medical Center Beaches is expanding their surgical facilities which required an upgrade to the electric service. BES recently upgraded two transformers from 1500 KVA to 2500 KVA. To ensure continuity of service at Baptist Medical Center Beaches, the City is purchasing a third 2500 KVA transformer as a spare, which will take 10 – 12 months to receive. Three bids were received, with Gresco, Inc. being the lowest at \$40,835, and this is in the current operating budget.

Roll call vote: Ayes – Doherty, Hoffman, Thomason, Vogelsang, Wilson, Buck and Mayor Latham.

The motion passed unanimously.

RESOLUTIONS:

(a) Item #18-177 RESOLUTION NO. 2022-2018

Mayor Latham requested that the City Clerk read Resolution No. 2022-2018 by title only, whereupon Ms. Scott read the following:

“A RESOLUTION OF THE CITY OF JACKSONVILLE BEACH, FLORIDA ESTABLISHING GOLF COURSE FEES, AND ESTABLISHING DEFINITIONS AND GUIDELINES FOR THE GOLF OPERATION.”

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Resolution No. 2022-2018, establishing rates for the Jacksonville Beach Golf Course.

Summary: Ms. Nelson stated the golf course has been closed for renovation since January 2018 and is expected to re-open October 13, 2018. The current rate structure is being revised for operational efficiency and to be competitive in the local market. Ms. Nelson noted changes for annual membership dues, open rates, weekend rates, driving range fees, City employee rates, afternoon rates, and twilight rates. There is also a comparison chart listing four other golf courses and their rates.

The Council extended their thanks and appreciation to Lorraine Troendle for doing an outstanding job with the course photos and updates.

There was a brief discussion about the annual passes and their discontinuation in 2002. Ms. Nelson stated there are currently six (6) annual pass holders that were grandfathered in and they continue to renew their annual passes. This was kept in the Resolution for reference on how to calculate the rate.

Mr. Doherty addressed the section about City Council members qualifying for employee memberships with no annual membership fees. He would like this section removed.

Ms. Nelson stated the Council would still be eligible for membership at the Beaches Energy Services residential customer rate.

Motion: It was moved by Mr. Doherty and seconded by Mr. Thomason, to remove the section stating City Council members qualify for employee memberships with no annual fees.

Roll call vote: Ayes –Hoffman, Thomason, Vogelsang, Wilson, Buck, Doherty, and Mayor Latham.
The motion passed unanimously.

There was a brief discussion about the difference between the annual passes and annual memberships.

Roll call vote: Ayes –Thomason, Vogelsang, Wilson, Buck, Doherty, Hoffman, and Mayor Latham.
The motion passed unanimously.

(b) Item #18-178 RESOLUTION NO. 2023-2018

Mayor Latham requested that the City Clerk read Resolution No. 2023-2018 by title only, whereupon Ms. Scott read the following:

“A RESOLUTION AMENDING THE CITY OF JACKSONVILLE BEACH POSITION CLASSIFICATION AND PAY PLAN FOR MANAGERIAL, PROFESSIONAL, ADMINISTRATIVE AND UNCLASSIFIED (NON-UNION) POSITIONS. (To add a Golf Course Facility Manager position)”

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Resolution No. 2023-2018, amending the Position Classification and Pay Plan for Managerial, Professional, Administrative and Unclassified (Non-Union) Positions to add a Golf Course Facility Manager position, effective September 17, 2018.

Summary: Ms. Nelson stated the golf course operations review also included an assessment of management and staffing. There is a need for a Golf Course Facility Manager for marketing the golf course; budgeting; supervising staff and instructors; and managing the pro shop, clubhouse, and restaurant.

This position will assume responsibilities currently performed by the Golf Professional. The Golf Professional position is being removed from the pay plan. Golf Professionals will continue to give lessons on a contract basis. The City will employ two full-time and two part-time Golf Shop Attendants, instead of the current nine part-time employees.

Ms. Nelson stated no budget adjustment is necessary because this is a reorganization.

Mr. Vogelsang questioned the requirement for a Bachelors Degree and having previous, progressive managerial experience in a golf club for this position. This could potentially limit qualified candidates. Ms. Nelson explained there would be flexibility considering a combination of education and experience.

Mr. Doherty inquired about financial incentives and additional pays for this (or any) position. Ms. Nelson stated the current pay plan does not allow it.

Roll call vote: Ayes – Vogelsang, Wilson, Buck, Doherty, Hoffman, Thomason and Mayor Latham.

The motion passed unanimously.

ANNOUNCEMENTS (Continued)

Mayor Latham invited a boy scout sitting in the audience to the podium to address the Council. Shane Lee addressed the Council stating he is attending the meeting as part of earning his Communications Merit badge for Boy Scouts.

Vincent Will, another young visitor, is attending the meeting because his mother wanted him to come with her.

ORDINANCES:

(a) Item #18-179 ORDINANCE NO. 2018-8110 (Second Reading)

Mayor Latham requested that the City Clerk read Ordinance No. 2018-8110 by title only, whereupon Ms. Scott read the following:

“AN ORDINANCE TO AMEND AN ORDINANCE ENACTING AND ESTABLISHING A COMPREHENSIVE LAND DEVELOPMENT REGULATION AND OFFICIAL ZONING MAP FOR THE INCORPORATED AREA OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS AUTHORIZED BY CHAPTER 163.3202, FLORIDA STATUTES, BY AMENDING ARTICLE VII. ZONING DISTRICTS, DIVISION 2, SECTION 34-346. INDUSTRIAL DISTRICT: I-1, PARAGRAPH (B) PERMITTED USES TO ADD “TOUR OPERATORS” AS SUBPARAGRAPH (20); TO REPEAL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND FOR OTHER PURPOSES.”

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Ordinance No. 2018-8110, amending the Land Development Code to add “Tour operators” to the list of permitted uses in the City’s *Industrial: I-1* zoning districts. (Applicant – go Tuk’n)

Summary: Ms. Nelson stated the applicant Stephanie Dale would like to lease warehouse tenant space at 1250 Shetter Avenue, for a tour operator business office and storage of passenger touring vehicles. The Planning Commission heard this request, and it is their recommendation to add “Tour Operators” as a permitted use.

Mayor Latham opened a Public Hearing. There were no speakers, and the Public Hearing was closed.

Roll call vote: Ayes –Wilson, Buck, Doherty, Hoffman, Thomason, Vogelsang, and Mayor Latham.

The motion passed unanimously.

(b) Item #18-180 ORDINANCE NO. 2018-8111 (Second Reading)

Mayor Latham requested that the City Clerk read Ordinance No. 2018-8111 by title only, whereupon Ms. Scott read the following:

“AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; AMENDING CHAPTER 5, “ANIMALS AND FOWL,” ARTICLE II. – DOGS AND CATS, DIVISION 1. – IN GENERAL, SECTION 5-36 “RESERVED,” ADDING NEGLECT, ABANDONMENT, CONFINEMENT, TETHERING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.”

Motion: It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Ordinance No. 2018-8111, amending Chapter 5 of the City of Jacksonville Beach Code of Ordinances by adding Section 5-36 titled Neglecting, Abandoning Animals, Animals Confinement, Tethering.

Summary: Ms. Nelson stated the current code does not address animal cruelty for issues of neglect, abandonment, confinement, and tethering, thus hindering the ability of the Animal Control Officer to take action for those offenses. She added there currently isn't a civil enforcement action, nor a possibility of bringing a case before the City's Special Magistrate. This Ordinance will provide and allow enforcement by the City's Animal Control Officer.

Roll call vote: Ayes – Buck, Doherty, Hoffman, Thomason, Vogelsang, Wilson, and Mayor Latham.
The motion passed unanimously.

ADJOURNMENT:

There being no further business, the meeting adjourned at 8:15 P.M.

Submitted by: Laurie Scott
City Clerk

Approval:

William C. Latham, MAYOR

Date: _____

LS/njp

City of

Jacksonville Beach

1460A Shetter Avenue

Jacksonville Beach

FL 32250

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MEMORANDUM

TO: Karen W. Nelson, Deputy City Manager

FROM: Ann Meuse, Director of Human Resources

DATE: September 24, 2018

RE: Selection of City Manager Candidates to be Interviewed on October 11, 2018

ACTION REQUESTED:

Select City Manager candidates to interview with the City Council on October 11, 2018, from the list of semifinalists recommended by Colin Baenziger & Associates.

BACKGROUND:

On April 25, 2018, the City advertised a request for proposal for executive search services to recruit candidates for the position of City Manager. On June 4, 2018, the City Council reviewed the proposals and selected Colin Baenziger and Associates to conduct the executive search.

Colin Baenziger and Associates subsequently met with the City Council, developed a recruitment profile, and initiated the recruitment process. Candidates interested in the position were asked to submit resumes to Colin Baenziger and Associates no later than August 24, 2018.

Colin Baenziger and Associates screened the resumes received and provided a list of recommended semifinalists. The City Council will select candidates from the list to interview on October 11, 2018.

RECOMMENDATION:

Select City Manager candidates to interview with the City Council on October 11, 2018, from the list of semifinalists recommended by Colin Baenziger & Associates.



City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6274

Fax: 904.270.1642

www.jacksonvillebeach.org

MEMORANDUM

TO: Karen W. Nelson, Deputy City Manager

FROM: David Millinor, Public Works Director
Michael Nadeau, Chief Financial Officer

SUBJECT: Software as a Service Agreement – Sensus USA Inc.

DATE: September 25, 2018

ACTION REQUESTED:

Approve the Software as a Service Agreement with Sensus USA Inc., for the maintenance and technical support of the Automated Metering Infrastructure System, for a five-year period beginning on the execution date of the agreement.

BACKGROUND

In order to replace the City's aging inventory of water meters and improve accounting for water use, we issued RFQ #05-1415 in 2015 for a Guaranteed Energy, Water and Wastewater Cost Savings Project.

City Council authorized the Performance Contract agreement with Johnson Controls on November 7, 2016. The Performance Contract accomplished the following objectives:

- Replaced all water meters with new solid-state meters (no moving parts) that communicate water usage wirelessly.
- Upgraded natural gas meters to communicate the gas usage wirelessly.
- Installed a new Automated Metering Infrastructure (AMI) System that allows real time wireless communication with water and gas meters.

Sensus USA Inc. provided the meters, wireless communications equipment, communications license, data gathering and analytical software for the Performance Contract. Johnson Controls contracted with Sensus during the implementation phase of the Performance Contract. Johnson Controls completed the implementation phase on July 20, 2018.

The Software as a Service Agreement with Sensus USA Inc. will continue the relationship established by Johnson Controls under the Performance Contract. The agreement outlines the equipment and service costs, technical support, and the hardware warranties provided by Sensus USA Inc.



Memo to Karen W. Nelson

Sensus USA Inc.

September 25, 2018

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Some key provisions of the Sensus agreement are outlined below.

Sensus will:

- provide and house the required hardware at the Sensus data centers that are necessary to operate the software
- provide production, backup and disaster recovery environments for the software
- provide patches, updates, and upgrades to latest Sensus Hosted Software release
- configure and manage the equipment (server hardware, routers, switches, firewalls, etc.) in the Sensus data centers
- provide up to fifty user logins for the City's use

The City will:

- be responsible for periodic processing of accounts or readings for billing or other analysis purposes
- be responsible for local area network configuration, management, and support
- be responsible for validating the data analyzed by the Sensus Analytics Applications
- identify and research problems with meter reads and meter read performance
- log incidents related to the managed Application with Sensus
- create and manage user accounts
- support application users

Below is a summary of fees included in the agreement:

Annual Fees - Year 1	Amounts
Annual SaaS RNI	\$ 10,815.00
Annual Sensus Analytics SaaS fee (Enhanced Water Module)	\$ 11,350.60
Annual Sensus Analytics SaaS fee (Enhanced Gas Module)	\$ -
Annual Sensus Analytics Text Messaging	\$ 618.00
Annual Onsite RF Equipment Maintenance Inspection Fee	\$ 3,000.00
Annual M400 Base Station Extended Warranty (total for three)	\$ 3,862.51
Annual Fees - Year 1	\$ 29,646.11

Memo to Karen W. Nelson
Sensus USA Inc.
September 25, 2018

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The agreement period is for five years and may be extended with City Manager approval for two additional five-year terms, for a total agreement length not to exceed fifteen years. Funds for the Sensus USA Inc. service agreement are available in the Water and Sewer Fund operating budget.

RECOMMENDATION

Approve the Software as a Service Agreement with Sensus USA Inc., for the maintenance and technical support of the Automated Metering Infrastructure System, for a five-year period beginning on the execution date of the agreement. The agreement may be extended for two additional five-year terms with the approval of the City Manager.



Software as a Service (SaaS) Agreement

between

**City of Jacksonville Beach
("City")**

**and
Sensus USA Inc.
("Sensus")**

IN WITNESS WHEREOF, the parties have caused this SaaS Agreement ("Agreement") to be executed by their duly authorized representatives as of the day and year written below. The date of the last party to sign is the "Effective Date."

This Agreement shall commence on the Effective Date and continue for/until: 5 Years ("Initial Term"). At the end of the Initial Term, this Agreement shall automatically renew for a maximum of two (2) additional terms of 5 years each ("Renewal Term"), unless the Customer provides written notice to Sensus of its desire to not renew the Agreement one hundred twenty (120) days before the end of the then existing Term. The "Term" shall refer to both the Initial Term and each Renewal Term.

Sensus USA Inc.

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

City: City of Jacksonville Beach

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

City: City of Jacksonville Beach

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

Pricing remains firm until 1/1/2020 ("Trigger Date")

All purchase orders shall be sent to the address provided by Sensus. Sensus may change this address upon notice to City.

**Contents of this Agreement:
SaaS Agreement**

- Exhibit A Software
- Exhibit B Technical Support
- Exhibit C Pricing
- Exhibit D Performance Warranty
- Exhibit E G-500 Warranty
- Exhibit F General Limited Warranty

City order acknowledgements shall be sent to: [insert email address or fax number]

Sensus shall send all invoices to: [insert mailing address, email address, fax number, as applicable]



Agreement

1. Equipment.

A. Purchase of Equipment.

- i. **Equipment.** As needed, City shall purchase from Sensus at the quantities and types of Field Devices, RF Field Equipment, and other goods (collectively, "Equipment") as set forth in Exhibit C at the prices set forth in Exhibit C.
- ii. **Delivery.** City shall pay for delivery of the Equipment from Sensus' or Sensus' contracted manufacturers' factory to City's warehouse, unless the order is over seven thousand five hundred (\$7,500) USD, then Sensus shall pay for the delivery of the Equipment from Sensus' or Sensus' contracted manufacturer's factory to City's warehouse. All Equipment is shipped F.O.B. Customer's designated delivery location. Risk of Loss, title to, and property in, the Equipment shall pass to City upon acceptance by Customer. Customer must provide notice to Sensus within five (5) business days from delivery of shipments that are not deemed as accepted; otherwise shipment shall be deemed as successfully accepted by Customer.
- iii. **Project Number.** City shall include the Sensus project number on all Purchase Orders. Orders submitted to Sensus may not be canceled or amended, or deliveries deferred, by City except with Sensus' prior written consent.
- iv. **Warranty.** The Equipment purchased directly from Sensus is warranted as set forth in this subsection (iv).
 - a. Sensus warrants its water metering equipment and gas SmartPoint Modules according to the terms and conditions (including all limitations and exclusions) in the Sensus G-500 warranty, available at: <http://sensus.com/TC/TermsConditions.pdf> (click on the "G500" link), or 1-800-METER-IT ("G-500 Warranty"). To the extent the terms of the G-500 Warranty conflict with the terms in this Agreement, the terms of this Agreement shall control.
 - b. Sensus warrants all other goods, software, and services, except for the water metering equipment and gas SmartPoint Modules, according to the terms and conditions (including all limitations and exclusions) in the Sensus Limited Warranty, available at: <http://sensus.com/TC/TermsConditions.pdf> (click on the "General Warranty" link), or 1-800-METER-IT ("General Limited Warranty"). To the extent the terms of the General Limited Warranty conflict with the terms in this Agreement, the terms of this Agreement shall control.
 - c. The G-500 Warranty and the General Limited Warranty are hereby incorporated by reference as if fully set forth herein.

B. Limitations and Exclusions. THE WARRANTIES IN THIS SECTION 1, THE G-500 WARRANTY, AND THE GENERAL LIMITED WARRANTY ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO THE GOODS, SOFTWARE LICENSES, AND SERVICES SOLD OR OTHERWISE PROVIDED BY SENSUS. SENSUS EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE.

C. Ongoing Maintenance of Equipment.

- i. **Field Devices.** City shall be responsible for the ongoing maintenance of the Field Devices. City shall provide the field services labor to visit a problem Field Device and perform diagnostics and repair or replacement.
- ii. **RF Field Equipment.** City shall be responsible for the ongoing maintenance of the RF Field Equipment. City shall be responsible for the ongoing monthly operations and expenses related to the RF Field Equipment, including any leasing costs, construction costs, taxes and costs of WAN Backhaul. City shall pay for electric power to the RF Field Equipment.

2. Services.

A. Installation of Equipment.

- i. **Field Devices.** City shall install the Field Devices at its End Users' premises, or other location as applicable.
- ii. **RF Field Equipment.** Sensus shall perform the propagation analysis in the Service Territory to determine where to locate the RF Field Equipment. Any installation work related to RF Field Equipment shall be subject to a separate agreement which describes the scope and pricing for such work.

- iii. **Annual Maintenance Inspection of RF Field Equipment.** On an annual basis and at the prices set forth in Exhibit C, Sensus shall perform an on-site Maintenance-Operational Verification inspection of all RF Field Equipment within the Service Territory and provide the City with a report outlining the results of that inspection prior to the 1st of April.
 - B. **IT Systems Integration Services.** Integration of the Software into City's new or existing internal IT systems is not included in this Agreement. Any integration work shall be subject to a separate agreement which describes the scope and pricing for such work.
 - C. **Technical Support.** Sensus shall provide City the technical support set forth in Exhibit B.
 - D. **Project Management.** Project Management is not included under this Agreement and shall be subject to a separate agreement which describes the scope and pricing for such work.
 - E. **Training.** Training is not included under this Agreement and shall be subject to a separate agreement which describes the scope and pricing for such work.
3. **Software.**
- A. **Software as a Service (SaaS).** For the prices and conditions set forth in Exhibit C, Sensus shall provide City with Software as a Service, as defined in Exhibit A, only so long as City is current in its payments for such services.
 - B. **UCITA.** To the maximum extent permitted by law, the Parties agree that the Uniform Computer Information Transaction Act as enacted by any state shall not apply, in whole or in part, to this Agreement.
4. **Spectrum**
- A. **Spectrum Lease.** The parties previously entered into a spectrum manager lease on 10/19/2017 (the "Spectrum Lease"), which is hereby specifically incorporated by reference.
5. **General Terms and Conditions.**
- A. **Payment.** All payment and pricing is subject to the terms in Exhibit C.
 - B. **Limitation of Liability.**
 - i. Sensus' aggregate liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the greater of; (a) the total amount paid by City directly to Sensus under this Agreement; or (b) ten thousand US dollars (USD 10,000.00). This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. As separate and independent limitations on liability, Sensus' liability shall be limited to direct damages. Sensus shall not be liable for; (i) any indirect, incidental, special or consequential damages; nor (ii) any revenue or profits lost by City or its Affiliates from any End User(s), irrespective whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) any In/Out Costs; nor (iv) manual meter read costs and expenses; nor (v) claims made by a third party; nor (vi) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure. The limitations on liability set forth in this Agreement are fundamental inducements to Sensus entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.
 - ii. To the maximum extent permitted by law, no Cause of Action may be instituted by City against Sensus more than TWELVE (12) MONTHS after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.
 - C. **Termination.** Either party may terminate this Agreement earlier if the other party commits a material breach of this Agreement and such material breach is not cured within forty-five (45) days of written notice by the other party. Upon any expiration or termination of this Agreement, Sensus' and City's obligations hereunder shall cease and the software as a service and Spectrum Lease shall immediately cease.
 - D. **Force Majeure.** If either party becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. The party affected by the force majeure will take reasonable steps to mitigate the Force Majeure.
 - E. **Intellectual Property Rights.**
 - i. Software and Materials. No Intellectual Property is assigned to City hereunder. Excluding City Data, Sensus

- shall own or continue to own all right, title, and interest in and to the Intellectual Property associated with the Software and related documentation, including any derivations and/or derivative works (the "Sensus IP"). To the extent, if any, that any ownership interest in and to such Sensus IP does not automatically vest in Sensus by virtue of this Agreement or otherwise, and instead vests in City, City agrees to grant and assign and hereby does grant and assign to Sensus all right, title, and interest that City may have in and to such Sensus IP. City agrees not to reverse engineer any Sensus Products purchased or provided hereunder
- ii. **City Data.** Notwithstanding the prior paragraph, as between City and Sensus, City remains the owner of all right, title or interest in or to any City Data. "City Data" means solely the End User usage data collected by the Field Devices located at City's End Users' premises. To avoid doubt, City Data does not include non-End User usage data collected by the SmartPoint™ Modules, Software, or AMI System, such as network and equipment status information or the like.
 - iii. **Consent to Use of City Data.** City hereby grants to Sensus a royalty-free, non-exclusive, irrevocable right and license to access, store, and use such City Data and any other data or information provided to Sensus, to (1) provide the Service; (2) analyze and improve the Service; (3) analyze and improve any Sensus equipment or software; or (4) for any other internal use. As used herein, "Service" means Sensus' obligations under this Agreement.
 - iv. **Access to City Data.** Upon City's written request, Sensus shall provide City with access to City Data through an application programming interface (API) as determined by Sensus.
- F. **Confidentiality.** Both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, "Confidential Information" shall not include; (i) any information that is in the public domain other than due to Recipient's breach of this Agreement; (ii) any information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) any information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. "Discloser" means either party that discloses Confidential Information, and "Recipient" means either party that receives it. Notwithstanding the foregoing, City shall be allowed to release any information that is a Public Record under Florida Law.
- G. **Compliance with Laws.** City shall comply with all applicable country, federal, state, and local laws and regulations, as set forth at the time of acceptance and as may be amended, changed, or supplemented. City shall not take any action, or permit the taking of any action by a third party, which may render Sensus liable for a violation of applicable laws.
- i. **Export Control Laws.** City shall; (i) comply with all applicable U.S. and local laws and regulations governing the use, export, import, re-export, and transfer of products, technology, and services; and (ii) obtain all required authorizations, permits, and licenses. City shall immediately notify Sensus, and immediately cease all activities with regards to the applicable transaction, if the City knows or has a reasonable suspicion that the equipment, software, or services provided hereunder may be directed to countries in violation of any export control laws. By ordering equipment, software or services, City certifies that it is not on any U.S. government export exclusion list.
 - ii. **Anti-Corruption Laws.** City shall comply with the United States Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd-1, et seq.; laws and regulations implementing the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the U.N. Convention Against Corruption; the Inter-American Convention Against Corruption; and any other applicable laws and regulations relating to anti-corruption in the City's county or any country where performance of this Agreement, or delivery or use of equipment, software or services will occur.
- H. **Non-Waiver of Rights.** A waiver by either party of any breach of this Agreement or the failure or delay of either party to enforce any of the articles or other provisions of this Agreement will not in any way affect, limit or waive that party's right to enforce and compel strict compliance with the same or other articles or provisions.
- I. **Assignment and Sub-contracting.** Either party may assign, transfer or delegate this Agreement without requiring the other party's consent; (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior



written consent of the other, which consent shall not be unreasonably withheld. Furthermore, City acknowledges Sensus may use subcontractors to perform RF Field Equipment installation, the systems integration work (if applicable), or project management (if applicable), without requiring City's consent.

- J. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both City and by a vice president (or higher) of Sensus.
 - K. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Any and all disputes arising under, out of, or in relation to this Agreement, its negotiation, performance or termination ("**Disputes**") shall first be resolved by the Parties attempting mediation in Florida. If the Dispute is not resolved within sixty (60) days of the commencement of the mediation, it shall be litigated in the state or federal courts located in Florida. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.
 - L. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.
 - M. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
 - N. **Four Corners.** This written Agreement, including all of its exhibits, and the Spectrum Lease represents the entire understanding between and obligations of the parties and supersedes all prior understandings, agreements, negotiations, and proposals, whether written or oral, formal or informal between the parties. Any additional writings shall not modify any limitations or remedies provided in the Agreement. There are no other terms or conditions, oral, written, electronic or otherwise. There are no implied obligations. All obligations are specifically set forth in this Agreement. Further, there are no representations that induced this Agreement that are not included in it. The ONLY operative provisions are set forth in writing in this Agreement. Without limiting the generality of the foregoing, no purchase order placed by or on behalf of City shall alter any of the terms of this Agreement. The parties agree that such documents are for administrative purposes only, even if they have terms and conditions printed on them and even if and when they are accepted and/or processed by Sensus. Any goods, software or services delivered or provided in anticipation of this Agreement (for e.g., as part of a pilot or because this Agreement has not yet been signed but the parties have begun the deployment) under purchase orders placed prior to the execution of this Agreement are governed by this Agreement upon its execution and it replaces and supersedes any such purchase orders.
 - O. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Additionally, this Agreement may be executed by facsimile or electronic copies, all of which shall be considered an original for all purposes.
6. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:
- A. "**Affiliate**" of a party means any other entity controlling, controlled by, or under common control with such party, where "control" of an entity means the ownership, directly or indirectly, of 50% or more of either; (i) the shares or other equity in such entity; or (ii) the voting rights in such entity.
 - B. "**AMI System**" identifies the Sensus FlexNet Advanced Meter Infrastructure System comprised of the SmartPoint Modules, RF Field Equipment, Server Hardware, software licenses, FCC licenses, and other equipment provided to City hereunder. The AMI System only includes the foregoing, as provided by Sensus. The AMI System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
 - C. "**Available Meter**" means an installed Sensus FlexNet meter (with a SmartPoint Module installed) or a Sensus SmartPoint Module which has been installed on a third party meter, and which, in either case, is not an Unavailable Meter (or on an Unavailable Meter in the case of SmartPoint Modules on third party meters) and which satisfies all of the following criteria: (i) it functions properly, is powered and is not a damaged or failed meter; (ii) it is in a deployment area of meters for City such that a sufficient number of two-way meters are in range of each other; (iii) it is serviced by RF Field Equipment that has not been subjected to a power failure greater than eight (8) total hours; (iv) neither it nor the RF Field Equipment that serves that meter has been affected by a Force Majeure event; (v) jamming of the radio spectrum is not preventing or interfering with radio communication to or from the meter; (vi) it is installed in the Service Territory; (vii) it has not been reported to City under Sensus' or City's preventative maintenance; (viii) its functioning or performance has not been adversely affected by a failure of City

to perform its obligations or tasks for which it is responsible under this Agreement, including, but not limited to, testing and confirming that the socket to which the meter will be/is connected is in safe operating condition, is fully functional, is not corroded, does not contain improperly installed jaws or other deficiencies, complies with ANSI standards, and is not "hot", damaged, or otherwise in need of maintenance or repair; (ix) its functioning or performance has not been adversely affected by a failure or insufficiency of the back haul telecommunications network of City for communications among the components of the Sensus AMI System; and (x) it has been installed in compliance with the procedures and specifications approved by City and Sensus.

- D. **"Billing Window"** for a meter means the four day period commencing one day prior to the relevant billing day for such meter and ending two days after such billing day. The Billing Window for testing purposes shall be agreed by City and Sensus.
- E. **"Confidential Information"** means any and all non-public information of either party, including the terms of this agreement, all technical information about either party's products or services, pricing information, marketing and marketing plans, City's End Users' data, AMI System performance, AMI System architecture and design, AMI System software, other business and financial information of either party, and all trade secrets of either party.
- F. **"Echo Transceiver"** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them by radio frequency to the relevant FlexNet Base Station.
- G. **"End User"** means any end user of electricity, water, and/or gas (as applicable) that pays City for the consumption of electricity, water, and/or gas, as applicable.
- H. **"Escalator(s)"** means the following:
 - i. **For services:** two and four-tenths percent (2.4%).
 - ii. **For all other goods:** the percentage change, for the relevant period, of the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) "All Items Less Food and Energy" for the U.S. City Average for All Items, 1982-84 = 100, not seasonally adjusted, or substantially similar succeeding index.
 - iii. Any Escalator increases called forth in this Agreement shall be calculated to the third decimal point (e.g. 2.576%)
- I. **"Field Devices"** means the meters and SmartPoint Modules.
- J. **"FlexNet Base Station"** identifies the Sensus manufactured device consisting of one transceiver, to be located on a tower that receives readings from the SmartPoint Modules (either directly or via an Echo Transceiver) by radio frequency and passes those readings to the RNI by TCP/IP backhaul communication. For clarity, FlexNet Base Stations include Metro Base Stations.
- K. **"Force Majeure"** means an event beyond a party's reasonable control, including, without limitation, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosion.
- L. **"Hosted Software"** means those items listed as an Application in Exhibit A.
- M. **"In/Out Costs"** means any costs and expenses incurred by City in transporting goods between its warehouse and its End User's premises and any costs and expenses incurred by City in installing, uninstalling and removing goods.
- N. **"Intellectual Property"** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author's rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
- O. **"LCM"** identifies the load control modules.
- P. **"Ongoing Fee"** means the annual or monthly fees, as applicable, to be paid by City during the Term of this Agreement.
- Q. **"Patches"** means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found previous versions of the Software. For clarity, Patches are not Updates or Upgrades.



- R. **"Permitted Use"** means only for reading and analyzing data from City's Field Devices in the Service Territory. The Permitted Use does not include reading third party meters or reading meters outside the Service Territory.
- S. **"Release"** means both Updates and Upgrades.
- T. **"Remote Transceiver"** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them directly to the RNI by TCP/IP backhaul communication.
- U. **"RF Field Equipment"** means, collectively, FlexNet Base Stations, Echo Transceivers and Remote Transceivers.
- V. **"RNI"** identifies the regional network interfaces consisting of hardware and software used to gather, store, and report data collected by the FlexNet Base Stations from the SmartPoint Modules. The RNI hardware specifications will be provided by Sensus upon written request from City.
- W. **"RNI Software"** identifies the Sensus proprietary software used in the RNI and any Patches, Updates, and Upgrades that are provided to City pursuant to the terms of this Agreement.
- X. **"Service Territory"** identifies the geographic area where City provides electricity, water, and/or gas (as applicable) services to End Users as of the Effective Date. This area will be described on the propagation study in the parties' Spectrum Lease filing with the FCC.
- Y. **"Server Hardware"** means the RNI hardware.
- Z. **"SmartPoint™ Modules"** identifies the Sensus transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at City's End Users' premises that take the readings of the meters and transmit those readings by radio frequency to the relevant FlexNet Base Station, Remote Transceiver or Echo Transceiver.
- AA. **"Software"** means all the Sensus proprietary software provided pursuant to this Agreement, and any Patches, Updates, and Upgrades that are provided to City pursuant to the terms of this Agreement. The Software does not include any third party software.
- BB. **"TouchCoupler Unit"** identifies an inductive coupler connection from a water register to the SmartPoint Module.
- CC. **"Unavailable Meters"** include meters with sockets with power cut at the pole, meters that are booted on the line side, sockets that are not provided power due to a power delivery system failure, meters with tamper, theft or other human induced failures that render the meter or SmartPoint Module incapable of providing a read, a Force Majeure event induced failures of the power delivery system, socket or meter, and/or any system or meter maintenance issue that precludes the meter from transmitting its message to the network. Examples of Unavailable Meters include: (i) Cut At Pole: a meter for which power has been turned off to the socket by City; (ii) Booted on Line Side: nominally a meter for which power has been turned off by placing "boots" in the socket from which the power to the meter has effectively been turned off; (iii) Failed or flawed power delivery to the meter socket: City power generation, distribution or delivery system failure that has effectively turned off power to the socket and/or meter; (iv) Tampered Meters: sockets, meters or distribution assets that have been modified by unauthorized personnel rendering the meter incapable of providing accurate usage readings from that meter; (v) Broken TouchCoupler unit: the TouchCoupler unit is damaged by intentional or unintentional acts; (vi) Broken Clip: the clip that holds the TouchCoupler unit into the radio package housing is broken and the unit cannot complete the inductive electrical connection; (vii) Improper installation of the TouchCoupler unit: the TouchCoupler unit is not pushed all the way into the housing clip causing the unit to not be able to complete the inductive electrical connection; (viii) Unit not installed through the pit lid: the unit is not installed with the antenna positioned through the pit lid and properly secured with the retaining nut. The radio unit must also be securely attached to the antenna section; (ix) Radio unit not securely attached to the Antenna unit: The water-proof SmartPoint Module housing is not properly installed and secured to the antenna unit. Examples of Unavailable Meters include: (i) Intentionally Omitted; (ii) Intentionally Omitted; (iii) Intentionally Omitted; (iv) Intentionally Omitted; (v) Intentionally Omitted; (vi) Intentionally Omitted; (vii) Intentionally Omitted; (viii) Intentionally Omitted; (ix) Intentionally Omitted; (x) Damaged antenna: the unit's antenna is damaged by intentional or unintentional acts; (xi) Damaged radio package: the unit's water-proof radio package is damaged by intentional or unintentional acts; (xii) Data Base errors: the unit is removed from the system but not updated in the database. Still shown as in the system when in fact has been removed; (xiii) Phantom Units: the unit is removed from the system but is still transmitting and being heard by the system; and (xiv) Other Installation Defect: the unit is otherwise installed improperly so that it does not communicate with the FlexNet Base Station.
- DD. **"Updates"** means releases of the Software that constitute a minor improvement in functionality.
- EE. **"Upgrades"** means releases of the Software which constitute a significant improvement in functionality or



architecture of the Software.
FF. **"WAN Backhaul"** means the communication link between FlexNet Base Stations and Remote Transceivers and RNI.

7. **Public Access:** Sensus shall comply with the requirements of Florida's Public Records law. In accordance with Section 119.0701, Florida Statutes, Sensus shall:

- i. Keep and maintain public records that ordinarily and necessarily would be required by City in order to perform the service.
- ii. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided under Florida's Public Law or as otherwise provided by law.
- iii. 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 Term of Agreement and following completion of this Agreement if Sensus does not transfer the records to the public agency; and

iv.

(1) Upon completion of the Agreement and upon City's written request, transfer, at no cost, to the public agency all public records related to the Agreement in possession of Sensus or keep and maintain public records required by the public agency to perform the Agreement. If Sensus transfers all public records to the public agency upon completion of the contract, Sensus shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements, provided that Sensus may keep one copy of any records for its legal files. If Sensus keeps and maintains public records related to the Agreement upon completion of this contract Sensus shall meet all applicable requirements for retaining public records. All records related to the Agreement stored electronically must be provided to the public agency, upon request from public agency's custodian of public records, in a format that is compatible with the information technology systems of the City of Jacksonville Beach.

v. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF JACKSONVILLE BEACH, CITY CLERK'S OFFICE:

TELEPHONE NUMBER: 904-247-6250 EXT # 11
EMAIL ADDRESS: CITYCLERK@JAXBCHFL.NET
MAILING ADDRESS: 11 NORTH THIRD STREET
JACKSONVILLE BEACH, FL 32250.

In the event City initiates litigation against Sensus in order to enforce compliance with Chapter 119, Florida Statutes, or in the event of litigation is filed against the City by a third party because Sensus failed to provide access to public records responsive to a public record request ("Public Records Litigation"), City may be entitled to recover its costs, including but not limited to reasonable attorneys' fees, costs of suit, witness fees, and expert witness fees expended as part of said litigation and any subsequent appeals ("Court Costs"), but only to the extent required by applicable law. For clarity, if Sensus is not mandated by statutory law to pay City's Court Costs in Public Records Litigation, Sensus shall not be required to pay City's Court Costs for such Public Records Litigation.

Exhibit A Software

Software as a Service

I. Description of Services

This exhibit contains the details of the Software as a Service that Sensus shall provide to City if both; (i) pricing for the application of Software as a Service has been provided to the City; and (ii) the City is current in its payments for such application of Software as a Service.

A. Software as a Service Generally.

Software as a Service is a managed service in which Sensus will be responsible for the day-to-day monitoring, maintenance, management, and supporting of City's software applications. In a Software as a Service solution, Sensus owns all components of the solution (server hardware, storage, network equipment, Sensus software, and all third-party software) required to run and operate the application. These software applications consist of the following (each an "Application"):

- Regional Network Interface (RNI) Software
- Sensus Analytics
 - Enhanced Package (City of Jacksonville Beach - Public Works)

The managed application systems consist of the hardware, Sensus Software, and other third-party software that is required to operate the software applications. Each Application will have a production, and Disaster Recovery (as described below) environment. Test environments are not provided unless otherwise specifically agreed by Sensus in writing. Sensus will manage the Applications by providing 24 x 7 x 365 monitoring of the availability and performance of the Applications.

B. **Usage License.** Subject to all the terms and conditions of this Agreement, Sensus hereby gives City a license under Sensus' intellectual property rights to use the Sensus Applications for the Permitted Use for so long as City is current in its payments for the Applications ("Usage License"). This Usage License shall commence on the Effective Date and shall terminate upon the earlier of; (i) the expiration or termination of this Agreement for any reason; (ii) if City uses the Applications provided hereunder other than for the Permitted Use; and (iii) the Application is terminated as set forth below.

C. **Termination of Software as a Service.** City shall have the option at any time after full deployment but before the end of the Term to terminate any Application by giving Sensus one hundred twenty (120) days prior written notice. Such notice, once delivered to Sensus, is irrevocable. Should City elect to terminate any Application, City acknowledges that; (a) City shall pay all applicable fees, including any unpaid Software as a Service fees; and (b) Software as a Service for such Application shall immediately cease. If City elects to terminate the RNI Application in the Software as a Service environment but does not terminate the Agreement generally, then upon delivery of the notice to Sensus, City shall purchase the necessary (a) RNI hardware and (b) RNI software license, each at Sensus' then-current pricing. No portion of the Software as a Service fees shall be applied to the purchase of the RNI hardware or software license.

D. "Software as a Service" means only the following services:

- i. Sensus will provide the use of required hardware, located at Sensus' or a third-party's data center facility (as determined by Sensus), that is necessary to operate the Application.
- ii. Sensus will provide production and disaster recovery environments for Application.
- iii. Sensus will provide patches, updates, and upgrades to latest Sensus Hosted Software release.
- iv. Sensus will configure and manage the equipment (server hardware, routers, switches, firewalls, etc.) in the data centers:
 - a. Network addresses and virtual private networks (VPN)
 - b. Standard time source (NTP or GPS)
 - c. Security access points
 - d. Respond to relevant alarms and notifications
- v. Capacity and performance management. Sensus will:
 - a. Monitor capacity and performance of the Application server and software applications 24x7x365 using KPI metrics, thresholds, and alerts to proactively identify any potential issues related to system capacity and/or performance (i.e. database, backpool, logs, message broker storage, etc.)



- b. If an issue is identified to have a potential impact to the system, Sensus will open an incident ticket and manage the ticket through resolution per Exhibit B, Technical Support.
- c. Manage and maintain the performance of the server and perform any change or configuration to the server, in accordance to standard configuration and change management policies and procedures.
- d. Manage and maintain the server storage capacity and performance of the Storage Area Network (SAN), in accordance to standard configuration and change management policies and procedures.
- e. Exceptions may occur to the system that require Sensus to take immediate action to maintain the system capacity and performance levels, and Sensus has authority to make changes without City approval as needed, in accordance to standard configuration and change management policies and procedures.
- vi. Database management. Sensus will:
 - a. Define data retention plan and policy.
 - b. Monitor space and capacity requirements.
 - c. Respond to database alarms and notifications.
 - d. Install database software upgrades and patches.
 - e. Perform routine database maintenance and cleanup of database to improve capacity and performance, such as rebuilding indexes, updating indexes, consistency checks, run SQL query/agent jobs, etc.
- vii. Incident and Problem Management. Sensus will:
 - a. Proactively monitor managed systems (24x7x365) for key events and thresholds to proactively detect and identify incidents.
 - b. Respond to incidents and problems that may occur to the Application(s).
 - c. Maintain policies and procedures for responding to incidents and performing root cause analysis for ongoing problems.
 - d. Correlate incidents and problems where applicable.
 - e. Sensus personnel will use the Salesforce Self Service Portal to document and track incidents.
 - f. In the event that a Sensus personnel is unable to resolve an issue, the issue will be escalated to the appropriate Subject Matter Expert (SME).
 - g. Maintain responsibility for managing incident and problems through resolution and will coordinate with City's personnel and/or any required third-party vendor to resolve the issue.
 - h. Provide telephone support consistent with Exhibit B, Technical Support in the case of undetected events.
- viii. Security Management. Sensus will:
 - a. Monitor the physical and cyber security of the server and Application(s) 24x7x365 to ensure system is highly secure in accordance with NIST Security Standards.
 - b. Perform active intrusion prevention and detection of the data center network and firewalls, and monitor logs and alerts.
 - c. Conduct period penetration testing of the network and data center facilities.
 - d. Conduct monthly vulnerability scanning by both internal staff and external vendors.
 - e. Perform Anti-Virus and Malware patch management on all systems.
 - f. Install updates to virus protection software and related files (including Virus signature files and similar files) on all servers from the update being generally available from the anti-virus software provider.
 - g. Respond to any potential threat found on the system and work to eliminate Virus or Malware found.
 - h. Sensus adheres to and submits certification to NERC/CIP Cyber Security standards.
 - i. Sensus actively participates/monitors industry regulation/standards regarding security – NERC, FERC, NIST, OpenSG, etc. through the dedicated Sensus Security team.
 - j. Provide secure web portal access (SSL) to the Application(s).
- ix. Backup and Disaster Recovery Management. Sensus will:
 - a. Perform daily backups of data providing one (1) year of history for auditing and restoration purposes.
 - b. Back-up and store data (on tapes or other storage media as appropriate) off-site to provide protection against disasters and to meet file recovery needs.
 - c. Conduct incremental and full back-ups to capture data, and changes to data, on the Application(s).
 - d. Sensus will replicate the Application(s) environments to a geographically separated data center



- location to provide a full disaster recovery environment for the Application production system.
- e. Provide disaster recovery environment and perform fail-over to DR environment within forty-eight (48) hours of declared event.
 - f. Generate a report following each and any disaster measuring performance against the disaster recovery plan and identification of problem areas and plans for resolution.
 - g. Maintain a disaster recovery plan. In the event of a disaster, Sensus shall provide the services in accordance with the disaster recovery plan.
 - h. In the case of a disaster and loss of access to or use of the Application, Sensus would use commercially reasonable efforts per the Recovery Time Objectives and Recovery Point Objectives specified herein to restore operations at the same location or at a backup location within forty-eight (48) hours.
 - i. The Application shall have a Recovery Time Objective (RTO) of forty-eight (48) hours.
 - j. The Recovery Point Objective (RPO) shall be a full recovery of the Application(s), with an RPO of one (1) hours, using no more than a twenty-four (24) hour old backup. All meter-related data shall be pushed from each Base Station/TGB restoring the database to real-time minus external interfaced systems from the day prior.
 - k. Data from external interfaced systems shall be recreated within a forty-eight (48) hour period with the assistance of City personnel and staff, as needed.

E. City Responsibilities:

- i. Coordinate and schedule any changes submitted by Sensus to the system in accordance with standard configuration and change management procedures.
- ii. Participate in all required configuration and change management procedures.
- iii. City will log incidents related to the managed Application with Sensus personnel via email, web portal ticket entry, or phone call.
- iv. Responsible for periodic processing of accounts or readings (i.e. billing files) for City's billing system for billing or other analysis purposes.
- v. Responsible for any field labor to troubleshoot any SmartPoint modules or smart meters in the field in populations that have been previously deployed and accepted.
- vi. First response labor to troubleshoot FlexNet Base Station, Echo Transceivers, Remote Transceivers or other field network equipment.
- vii. Responsible for local area network configuration, management, and support.
- viii. Identify and research problems with meter reads and meter read performance.
- ix. Create and manage user accounts.
- x. Customize application configurations.
- xi. Support application users.
- xii. Investigate application operational issues (e.g. meter reads, reports, alarms, etc.).
- xiii. Respond to alarms and notifications.
- xiv. Perform firmware upgrades over-the-air, or delegate and monitor field personnel for on-site upgrades.

F. "Software as a Service" does not include any of the following services:

- i. Parts or labor required to repair damage to any field network equipment that is the result of a Force Majeure event.
- ii. Any integration between third party applications would require a Professional Services contract agreement to be scoped, submitted, and agreed in a signed writing between Sensus and all the applicable parties.

If an item is not listed in subparagraphs in item (D) above, such item is excluded from the Software as a Service and is subject to additional pricing.

ii. Further Agreements

A. System Uptime Rate

- i. Sensus (or its contractor) shall manage and maintain the Application(s) on computers owned or controlled by Sensus (or its contractors) and shall provide City access to the managed Application(s) via internet or point to



point connection (i.e., Managed-Access use), according to the terms below. Sensus endeavors to maintain an average System Uptime Rate equal to ninety-nine (99.0) per Month (as defined below). The System Uptime Rate, cumulative across all Applications, shall be calculated as follows:

$$\text{System Uptime Rate} = 100 \times \frac{(\text{TMO} - \text{Total Non-Scheduled Downtime minutes in the Month})}{\text{TMO}}$$

ii. **Calculations**

- a. **“Targeted Minutes of Operation”** or **“TMO”** means total minutes cumulative across all Applications in the applicable month (“Month”) minus the Scheduled Downtime in the Month.
- b. **“Scheduled Downtime”** means the number of minutes during the Month, as measured by Sensus, in which access to any Application is scheduled to be unavailable for use by City due to planned system maintenance. Sensus shall provide City notice (via email or otherwise) at least seven (7) days in advance of commencement of the Scheduled Downtime.
- c. **“Non-Scheduled Downtime”** means the number of minutes during the Month, as measured by Sensus, in which access to any Application is unavailable for use by City due to reasons other than Scheduled Downtime or the Exceptions, as defined below (e.g., due to a need for unplanned maintenance or repair).

iii. **Exceptions.** **“Exceptions”** mean the following events:

- a. Force Majeure;
- b. Emergency Work, as defined below; and
- c. Lack of Internet Availability, as described below.

iv. **Emergency Work.** In the event that Force Majeure, emergencies, dangerous conditions or other exceptional circumstances arise or continue during TMO, Sensus shall be entitled to take any actions that Sensus, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the Application(s) (**“Emergency Work”**). Such Emergency Work may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the Application(s) by the City is made available (the **“Managed Systems”**). Sensus shall endeavor to provide advance notice of such Emergency Work to City when practicable and possible.

v. **Lack of Internet Availability.** Sensus shall not be responsible for any deterioration of performance attributable to latencies in the public internet or point-to-point network connection operated by a third party. City expressly acknowledges and agrees that Sensus does not and cannot control the flow of data to or from Sensus’ networks and other portions of the Internet, and that such flow depends in part on the performance of Internet services provided or controlled by third parties, and that at times, actions or inactions of such third parties can impair or disrupt data transmitted through, and/or City’s connections to, the Internet or point-to-point data connection (or portions thereof). Although Sensus will use commercially reasonable efforts to take actions Sensus may deem appropriate to mitigate the effects of any such events, Sensus cannot guarantee that such events will not occur. Accordingly, Sensus disclaims any and all liability resulting from or relating to such events.

B. **SaaS Credits.** For each month that the System Uptime Rate for the production SaaS RNI falls below 98.0%, Customer will accrue SaaS service level credits (**“SaaS Credits”**) in accordance with the table below:

i. **SaaS Credit Table:**

System Uptime Rate per calendar Month	SaaS Credit
Less than 98.0% but at least 97.0%	1.5% of the monthly SaaS fees in which the service level default occurred (Note: SaaS fees are prepaid annually but for purposes of SaaS Credits are computed on a monthly basis.)
Less than 97.0% but at least 95.0%	3% of the monthly SaaS fees in which the service level default occurred
Less than 95.0%	12% of the monthly SaaS fees in which the service level default occurred

- ii. **Complete SaaS Outage Credits.** Withstanding the Exceptions listed in Section II (A)(iii) above, if the System Uptime Rate equals zero percent (0%) for forty-eight (48) consecutive hours during the Term of this Agreement ("Complete SaaS Outage"), Customer will accrue SaaS service level credits equal to the amount of the full monthly SaaS fees attributable to the month in which the Complete SaaS Outage occurred.
 - iii. **Process.** With the exception of Complete SaaS Outage credits outlined above, SaaS Credits for any single month may not exceed 12% of the SaaS fee associated with the month in which the service level default occurred. Sensus records and data will be the sole basis for all SaaS Credit calculations and determinations, provided, however, that Sensus will make such records and data available to Customer for review on request. To receive a SaaS Credit, Customer must issue a written request no later than ten (10) days after the SaaS Credit has accrued. Sensus will apply each valid accrued SaaS Credit to the next Customer invoice for SaaS fees after Sensus' receipt of Customer's request and confirmation of the failure to meet the System Uptime Rate. SaaS Credits will not be payable for failures to meet the System Uptime Rate caused by any of the Exceptions. No SaaS Credit will apply if Customer is not current in its payment obligations under this Agreement. SaaS Credits are exclusive of any applicable taxes charged to Customer or collected by Sensus. SaaS Credits are Customer's sole and exclusive remedy for Sensus' failure to meet the System Uptime Requirement or any defective SaaS performance.
- C. **Data Center Site-Security.** Although Sensus may modify such security arrangements without consent or notice to City, City acknowledges the following are the current arrangements regarding physical access to and support of the primary hardware components of the Managed Systems:
- i. The computer room(s) in which the hardware is installed is accessible only to authorized individuals.
 - ii. Power infrastructure includes one or more uninterruptible power supply (UPS) devices and diesel generators or other alternative power for back-up electrical power.
 - iii. Air-conditioning facilities (for humidity and temperature controls) are provided in or for such computer room(s) and can be monitored and adjusted for humidity and temperature settings and control. Such air systems are supported by redundant, back-up and/or switch-over environmental units.
 - iv. Such electrical and A/C systems are monitored on an ongoing basis and personnel are available to respond to system emergencies (if any) in real time.
 - v. Dry pipe pre-action fire detection and suppression systems are provided.
 - vi. Data circuits are available via multiple providers and diverse paths, giving access redundancy.
- D. **Responsibilities of City**
- i. City shall promptly pay all Software as a Service fees.
 - ii. City may not (i) carelessly, knowingly, intentionally or maliciously threaten, disrupt, harm, abuse or interfere with the Application(s), Managed Systems or any of their functionality, performance, security or integrity, nor attempt to do so; (ii) impersonate any person or entity, including, but not limited to, Sensus, a Sensus employee or another user; or (iii) forge, falsify, disguise or otherwise manipulate any identification information associated with City's access to or use of the Application(s).
 - iii. The provisioning, compatibility, operation, security, support, and maintenance of City's hardware and software ("City's Systems") is exclusively the responsibility of City. City is also responsible, in particular, for correctly configuring and maintaining (i) the desktop environment used by City to access the Application(s) managed by Sensus; and (ii) City's network router and firewall, if applicable, to allow data to flow between the City's Systems and Sensus' Managed Systems in a secure manner via the public Internet.
 - iv. Upon receiving the system administrator account from Sensus, City shall create username and passwords for each of City's authorized users and complete the applicable Sensus registration process ("Authorized Users"). Such usernames and passwords will allow Authorized Users to access the Application(s). City shall be solely responsible for maintaining the security and confidentiality of each user ID and password pair associated with City's account, and Sensus will not be liable for any loss, damage or liability arising from City's account or any user ID and password pairs associated with City. City is fully responsible for all acts and omissions that occur through the use of City's account and any user ID and password pairs. City agrees (i) not to allow anyone other than the Authorized Users to have any access to, or use of City's account or any user ID and password pairs at any time; (ii) to notify Sensus immediately of any actual or suspected unauthorized use of City's account or any of such user ID and password pairs, or any other breach or suspected breach of security, restricted use or confidentiality; and (iii) to take the Sensus-recommended steps to log out from and



otherwise exit the Application(s) and Managed Systems at the end of each session. City agrees that Sensus shall be entitled to rely, without inquiry, on the validity of the user accessing the Application(s) application through City's account, account ID, usernames or passwords.

- v. City shall be responsible for the day-to-day operations of the Application(s) and AMI System. This includes, without limitation, (i) researching problems with meter reads and system performance, (ii) creating and managing user accounts, (iii) customizing application configurations, (iv) supporting application users, (v) investigating application operational issues, (vi) responding to alarms and notifications, and (vii) performing over-the-air commands (such as firmware updates or configuration changes).

III. Sensus Analytics

A. **Essential Package.** The Essential Package of the Sensus Analytics Application shall consist of the following modules:

- i. **Device Access**
 - a. Allows search for meter details by using data imported from the Billing system or the Sensus Device ID or AMI ID.
 - b. Allows a view of the meter interval or register reads.
 - c. Meter data is available to be copied, printed, or saved to certain user programs or file formats, specifically CSV, PDF, and Spreadsheet.
 - d. Allows the current and historical data to be viewed.
 - e. Allows the current usage to be compared to historical distribution averages.
 - f. Allows the user to see the meter location on a map view.
 - g. Allows notifications for an event on a single meter to be forwarded to a City employee.
 - h. Allows details to be viewed about a meter – (dependent on the data integrated from other systems).
- ii. **Meter Insight (provides the following)**
 - a. # of active meters.
 - b. # of orphaned meters with drill down to the list of meters.
 - c. # of inactive meters with drill down to the list of meters.
 - d. # of stale meters with drill down to the list of meters.
 - e. # of almost stale meters with drill down to the list of meters.
 - f. # of meters where no read is available with drill down to the list of meters.
 - g. # of meters with high threshold exceptions with drill down to the list of meters.
 - h. # of unknown radios with drill down to the list of meters.
- iii. **Report Access**
 - a. Allows the user to see meter alarms and choose a report from a list of standard reports.
 - b. Master Route Register Reads: Shows the latest reads for all meters within specified time window.
 - c. Meter Route Intervals Reads: Allows users to inspect intervals of a single meter over a period of time.
 - d. Master Route No Readings: List all meters that are active in the system, but have not been sending reads within the specified time window.
 - e. Consumption Report: List meters' consumption based on meter readings within the specified time window.
 - f. Zero Consumption for Period: List meters whose readings do not change over a period of time.
 - g. Negative Consumption: Shows the number of occurrences and readings of negative consumption for the last 24hr, 48hr and 72hr from the entered roll up date.
 - h. High Low Exception Report: Displays meters whose reads exceed minimum or/and maximum threshold, within a time range.
 - i. Consumption vs Previous Reported Read: Compares latest reading (from RNI) with last known read received from CIS.
 - j. Consumption Exception 24 hour Report: This report shows meters that satisfy these two conditions: (1) The daily average consumptions exceed entered "daily consumption threshold;" (2) The number of days when daily thresholds are exceeded are greater than the entered "exception per day threshold."
 - k. Endpoint Details: Shows the current state of meters that are created within the specified time range.



- reasonable support to explain to City the required vs. optional fields that are in the specification, testing and validation of the file format and content.
- a. In scope of the included integration efforts is the mapping the City's fields to the VFlex specification.
 - b. Out of scope and subject to additional charges will be the transformation of data where business logic including code must be written to modify the field content or format of the data to meet the VFlex specification.
- ii. Sensus' integration services consists of four (4) hours of assistance (remote or on-site, as determined by Sensus). If additional time is needed to complete the integration efforts, Sensus shall invoice City for additional fees on an actual time and materials basis.
 - iii. **If an item is not listed in subparagraphs (i) or (ii) above, such item is excluded from the integration of Sensus Analytics Support and is subject to additional pricing.**
- D. **Data Import.** The Sensus Analytics Application contains adapters for the import of data from; (a) City's FlexNet AMI System; and/or (b) AutoRead application for handheld and drive by systems, as applicable.
- E. **City Acknowledgements.**
- i. City acknowledges that the Sensus Analytics Application provides up to fifty (50) user logins for City's use.
 - ii. City acknowledges and agrees the Sensus Analytics Application is based upon the actual number of End Users within City's Service Territory. Pricing may increase if City's Service Territory or actual number of End Users expands.
 - iii. City acknowledges that all data related to the Sensus Analytics Applications is geographically hosted within the United States of America. City accepts the geographic location of such hosting, and indemnifies Sensus for any claims resulting therefrom.
 - iv. City acknowledges and agrees that the Intellectual Property provisions of this Agreement apply in all respects to City's access to and use of the Sensus Analytics Applications.
 - v. City is responsible for validating the data analyzed by the Sensus Analytics Applications. Sensus makes no promises of improving City's operations or saving City money, nor is Sensus liable for any damages resulting from decisions made by City related to City's use of Sensus Analytics.

By entering into this Agreement, City agrees to abide by and to be legally bound by the terms and conditions of the Red Hat End User License Agreements identified below, each of which are incorporated into this Agreement by reference and are available at the websites identified below. Please read the Red Hat End User License Agreements and incorporated references carefully.

Subscription:
Red Hat Enterprise Linux
JBoss Enterprise Middleware

End User License Agreement:
http://www.redhat.com/licenses/rhel_rha_eula.html
http://www.redhat.com/licenses/jboss_eula.html



Exhibit B Technical Support

1. Introduction

Sensus Technical Services provides City with a single point of contact for Tier 1 support of technical issues as well as any coordination of additional resources required to resolve the issue. Requests that require specialized skills are to be forwarded to a senior support engineer or Technical Advisor within the team for further analysis. If Technical Services has exhausted all troubleshooting efforts for the product type, the issue will escalate to the Engineering Support Team. Occasionally, on-site troubleshooting/analysis may be required. The preferred order of on-site support is:

- a) The City (for assistance with the easiest and lowest time-consuming activities such as power on/power off).
- b) The local distributor.
- c) Sensus employees or contracted personnel, if required to fulfill a contract commitment.

2. Support Categories

- 2.1. General questions regarding functionality, use of product, how-to, and requests for assistance on Sensus AMR, AMI, RF Network Equipment, Metering Products and Sensus Lighting Control.
- 2.2. Proactive reporting and resolution of problems.
- 2.3. Reactive reporting to isolate, document, and solve reported hardware/software defects.
- 2.4. Responding to service requests and product changes.
- 2.5. Addressing City inquiries with printed or electronic documentation, examples, or additional explanation/clarification.

3. Support Hours

- 3.1. Standard Support Hours: Toll-free telephone support (1-800-638-3748 option #2) is available Monday thru Friday from 8:00AM EST to 8:00PM EST. After-hours, holiday and weekend support for Severity 1 and Severity 2 issues is available by calling 1-800-638-3748, option #8.

4. Support Procedures

- 4.1. City identifies an issue or potential problem and calls Technical Services at 1-800-638-3748 Option #2. The City Service Associate or Technical Support Engineer will submit a Support ticket.
- 4.2. The City Service Associate or Technical Support Engineer will identify the caller name and utility by the assigned software serial number, city, and state in which the call originated. The nature of the problem and severity levels will be agreed upon by both parties (either at the time the issue is entered or prior to upgrading or downgrading an existing issue) using the severity definitions below as a guideline. The severity level is then captured into a support ticket for creation and resolution processing. Any time during the processing of this ticket, if the severity level is changed by Sensus, the City will be updated.

Severity Levels Description:

Sev1 City's production system is down. The system is unusable resulting in total disruption of work. No workaround is available and requires immediate attention.

Example: Network mass outage, all reading collection devices inoperable, inoperable head end software (e.g., RNI Software, Sensus MDM).

Sev2 Major system feature/function failure. Operations are severely restricted; there is a major disruption of work, no acceptable work-around is available, and failure requires immediate attention.

Examples: Network equipment failure (e.g., FlexNet Echo, FlexNet Remote, Base Station transceiver, or VGB); inoperable reading devices (e.g., AR5500, VXU, VGB, or CommandLink); head end software application has important functionality not working and cannot create export file for billing system operations.

Sev3 The system is usable and the issue doesn't affect critical overall operation.

Example: Minor network equipment failure (e.g., Echo/Remote false alarms or Base Station transceiver false alarms); head end software application operable but reports are not running properly, modification of view or some non-critical function of the software is not running.



Sev4 Minor system issues, questions, new features, or enhancement requests to be corrected in future versions.

Examples: Minor system issues, general questions, and "How-To" questions.

- 4.3. The City Service Associate or Technical Support Engineer identifies whether or not the City is on support. If the City is not on support, the City is advised of the service options as well as any applicable charges that may be billed.
- 4.4. Calls are placed in a queue from which they are accessible to Technical Support Engineers on a first-come-first-serve basis. A first level City Service Associate may assist the City, depending on the difficulty of the call and the representative's technical knowledge. Technical Support Engineers (Tier 1 support) typically respond/resolve the majority of calls based on their product knowledge and experience. A call history for the particular account is researched to note any existing pattern or if the call is a new report. This research provides the representative a basis and understanding of the account as well as any associated problems and/or resolutions that have been communicated.
 - a. Technical Services confirms that there is an issue or problem that needs further analysis to determine its cause. The following information must be collected: a detailed description of the issue's symptoms, details on the software/hardware product and version, a description of the environment in which the issue arises, and a list of any corrective action already taken.
 - b. Technical Services will check the internal database and product defect tracking system, to see if reports of a similar problem exist, and if any working solutions were provided. If an existing resolution is found that will address the reported issue, it shall be communicated to the City. Once it is confirmed that the issue has been resolved, the ticket is closed.
 - c. If there is no known defect or support that defines the behavior, Technical Services will work with the City to reproduce the issue. If the issue can be reproduced, either at the City site or within support center test lab, Technical Services will escalate the ticket for further investigation / resolution.

If the issue involves units that are considered to be defective with no known reason, the representative will open a Special Investigation RMA through the Support system. If it is determined that a sample is required for further analysis, the City will be provided with instructions that detail where to send the product sample(s) for a root cause analysis. Once it is determined that the issue cannot be resolved by Tier 1 resources, the ticket will be escalated to Tier 2 support for confirmation/workarounds to resolve immediate issue. Technical Services will immediately contact the City to advise of the escalation. The response and escalation times are listed in Section 5. At this time, screen shots, log files, configuration files, and database backups will be created and attached to the ticket.

5. Response and Resolution Targets.

Sensus Technical Support will make every reasonable effort to meet the following response and resolution targets:

Severity	Standard Target Response	Standard Target Resolution	Resolution (one or more of the following)
1	30 Minutes	Immediately assign trained and qualified Services Staff to correct the error on an expedited basis. Provide ongoing communication on the status of a correction.	<ul style="list-style-type: none"> • Satisfactory workaround is provided. • Program patch is provided. • Fix incorporated into future release. • Fix or workaround incorporated into the Support Knowledge Base.
2	4 hours	Assign trained and qualified Services Staff to correct the error. Provide communication as updates occur.	<ul style="list-style-type: none"> • Satisfactory workaround is provided. • Program patch is provided. • Fix incorporated into future release. • Fix or workaround incorporated



			into the Support Knowledge Base.
3	1 Business Day	90 business days	<ul style="list-style-type: none"> • Answer to question is provided. • Satisfactory workaround is provided. • Fix or workaround incorporated into the Support Knowledge Base. • Fix incorporated into future release.
4	2 Business Days	12 months	<ul style="list-style-type: none"> • Answer to question is provided. • Fix or workaround incorporated into the Support Knowledge Base.

6. **Problem Escalation Process.**

- 6.1. If the normal support process does not produce the desired results, or if the severity has changed, the issue may be escalated as follows to a higher level of authority.
- 6.1.1. Severity 1 issues are escalated by Sales or Technical Services to a Supervisor if not resolved within 2 hours; to the Manager level if not resolved within 4 hours; to the Director level if not resolved within the same business day; and to the VP level if not resolved within 24 hours.
 - 6.1.2. The City may escalate an issue by calling 1-800-638-3748, Option 2. Please specify the Support ticket number and the reason why the issue is being escalated.
 - 6.1.3. In the event that the City is not satisfied with the level of support or continual problem with their products, they may escalate a given Support ticket to Manager of Technical Services (1-800-638-3748, Option 2).

7. **General Support Provisions and Exclusions.**

- 7.1. Sensus provides online documentation for Sensus products through the Sensus User Forum (<http://myflexnetsystem.com/Module/User/Login>). The City is provided access to this online database, which includes operation, configuration and technical manuals. Sensus also hosts periodic user group teleconferences to facilitate the interchange of product ideas, product enhancements, and overall City experiences. The City shall provide names and email accounts to Sensus so Sensus may provide access to the Portal.
- 7.2. Specialized support from Sensus is available on a fee basis to address support issues outside the scope of this support plan or if not covered under another specific maintenance contract. For example, specialized systems integration services or out of warranty network equipment repair that is not covered under a separate maintenance contract.

Exhibit C Pricing

Payment Terms

Escalation. City shall pay for all goods and services rendered by Sensus hereunder at the prices set forth in this Exhibit C (or in the Quote if one is referenced on the first page. If there is a Quote referenced on the first page, such Quote is incorporated into this Exhibit C by reference). The pricing in Exhibit C shall remain firm until the Trigger Date (as defined on the first page of the Agreement). Starting on the Trigger Date, and on each anniversary of the Trigger Date thereafter, the pricing in Exhibit C shall automatically adjust to equal the summation of (i) the amount charged for such pricing component during the immediately preceding year ("Base Amount"), plus (ii) the product of the Base Amount multiplied by the percentage rate of increase in the Escalator(s) during the immediately preceding year (which product shall not be less than zero, such that the pricing in Exhibit C cannot decrease under this section). The Escalator(s) will be calculated utilizing the Escalator(s) published the month prior to the anniversary of the Trigger Date compared to the equivalent month from one year earlier to determine the escalation. For example, if the Trigger Date occurs in January 2015, the Escalator(s) will be calculated by comparing December 2013 and December 2014 figures.

Equipment. Invoices for all Field Devices, RF Field Equipment, Server Hardware and any other goods sold by Sensus hereunder shall be delivered along with the relevant goods.

Third Party Devices. In cases where City requests or requires Sensus to deliver SmartPoint Modules to a third party meter manufacturer (or any other third party), payment for such modules is due within thirty (30) days of the invoice date to such manufacturer or other third party, irrespective of how long it takes such third party to deliver the SmartPoint Modules to City.

Services. Invoices for Ongoing Fees and services shall be delivered annually or monthly, as applicable, in advance. Invoices for other services shall be delivered upon completion of the applicable service.

Invoices and Payment. City shall pay all invoices within thirty (30) days of the invoice date. An electronic invoice referencing the purchase order number will be sent to the City via e-mail to the following address: purchasing@jaxbchfl.net

If a purchase order contains multiple lines, the invoice will reference the line number on the purchase order. Sensus reserves the right to establish credit limits for City and may require full or partial payment prior to shipment of any goods or commencement of any services provided hereunder. All payments shall be made via paper check to the account(s) indicated by Sensus.

Late Payments. Any invoices not disputed in good faith by City which City does not pay within the time provided in this Agreement shall bear interest at the lower of (i) one percent (1.0%) per month up to a maximum of twelve percent (12%) per year; or (ii) the highest rate permitted by applicable law (collectively, "Interest Rate").

Disputed Invoices. If City disputes an invoice, it shall give written notice of the dispute to Sensus within thirty (30) days of the invoice date. If it does not do so, the entire invoice shall be deemed payable without reduction, set off, or claim. If City gives written notice of the dispute within the required thirty (30) days, it shall, at such time as the notice is given, pay the undisputed amount of the invoice and the disputed portion shall be resolved by the parties or, if necessary, under the dispute resolution provisions of this Agreement. If it is ultimately determined that some or all of the disputed amount was payable, that amount shall bear interest from the original due date until City pays it at the Interest Rate

Withholding. City may withhold payment on an invoice for defective goods and services. Payment by City of an invoice shall deem Sensus to have fully complied with this Agreement for all goods and services represented in the invoice and with all other terms and conditions of this Agreement prior to the date of such payment.

Taxes. All prices quoted are exclusive of federal, state and municipal taxes. City shall be liable for all sales, use and other taxes (whether local, state or federal) imposed on this Agreement or the goods, services, licenses, and/or other rights provided to City hereunder.

Delivery and Packaging. City shall pay for delivery of the Equipment from Sensus' or Sensus' contracted manufacturers' factory to City's warehouse. Sensus reserves the right to select the manner in which Equipment is packaged. Quoted prices include regular packing. Special requirements for packing will be subject to extra charges. Shipping and completion dates quoted by Sensus are made in good faith but are not guaranteed.

Address for Purchase Orders. All purchase orders shall be sent to the address listed below. Sensus may change this address at any time, upon written notice to the City (such notice may be provided via email).

Sensus USA Inc.
PO Box 487
Uniontown, PA 15401
Attn: City Service
Fax: 800-888-2403
Email: icon.support@sensus.com



Exhibit C
Pricing



The Measure of the Future

Sensus USA, Inc.
450 North Gallatin Ave.
PO Box 487
Uniontown, PA 15401
1-800-METER-IT

DATE August 20, 2018
EFFECTIVE DATE 10/1/2018
EXPIRATION DATE 9/30/2019
QUOTATION NUMBER 27492
Quote Reference

Bill to Customer: 421171

Ship to Customer: 1

Jacksonville Beach, City of
Attn: Chuck Hemden
Central Services Division
1460 Shetter Ave.
Jacksonville Beach, FL 32250

Jacksonville Beach, City of
Central Services Division
1460 Shetter Ave.
Jacksonville Beach, FL 32250

SALESPERSON		SHIPPING METHOD	SHIPPING TERMS	PAYMENT TERMS
Griff Machinski		Freight allowed on \$7,500 or more per order	FOB Destination	Net 30 days
Line	Part Number	DESCRIPTION	UNIT PRICE	
1	I3S1GBXX	3/4" iPERL meter	\$	109.95
2	I4S1GBXX	1" iPERL meter	\$	137.77
3	T11XXXXG1ATUX	1.5" Omni T2 meter	\$	683.71
4	T21XXXXG1ATUX	2" Omni T2 meter	\$	808.04
5	T31XXXXG1ATUX	3" Omni T2 meter	\$	1,067.50
6	C11XXXXG1ATUX	1.5" Omni C2 meter	\$	1,073.77
7	C23XXXXG1ATUX	2" Omni C2 meter	\$	1,202.74
8	C33XXXXG1ATUX	3" Omni C2 meter	\$	1,520.59
9	C43XXXXG1ATUX	4" Omni C2 meter	\$	2,457.51
10	F4XXXXXG1ATUX	4" Omni F2 meter - Compact lay length	\$	7,171.37
11	F6XXXXXG1ATUX	6" Omni F2 meter - Compact lay length	\$	7,603.67
12	H31CXXXXG8ATUXA	3" Omni H2 meter	\$	1,331.02
13	V5VFX9XSGAD	5/8x3/4" Ally meter	\$	375.00
14	5396353752201MI	520M SmartPoint - Single Port TouchCouple Pit-Set FlexNet Transmitter	\$	127.42
15	5396353752203MI	520M SmartPoint - Dual Port TouchCouple Pit-Set FlexNet Transmitter	\$	137.62
16	5396653700002	Smart Gateway - FlexNet Transmitter	\$	280.00
17	5191055500002	1" test port pressure sensor kit	\$	556.00



**Exhibit C
Pricing (con't)**

18	5191055500003	1 5" test port pressure sensor kit	\$ 580.00
19	5191055500004	2" test port pressure sensor kit	\$ 636.00
20	MIS RNI SAA5	SaaS RNI - Annual Fee	\$ 10,815.00
21	539.63.837.00535C	Annual Sensus Analytics SaaS fee (Enhanced Water Module)	\$ 11,350.60
22	SA GA ENH 5-10K	Annual Sensus Analytics SaaS fee (Enhanced Gas Module)	\$ -
23	539.63.837.00507	Sensus Analytics Text Messaging - annual fee	\$ 618.00
24		Annual Onsite RF Equipment Maintenance Inspection Fee	\$ 3,000.00
25		M400 Base Station Extended Warranty (total for three) - annual fee	\$ 3,862.51
26		CommandLink 4 Year Extended Warranty - (total for two units)	\$ 1,253.20
27		FL6501-GB Handheld 3 Year Extended Warranty (total for two units)	\$ 1,748.82
28	SM50535200001	iPERL cable 6' TRPL 2-wire	\$ 18.32
29	5396034600004	Model 520M Pit Lid Housing Assembly Complete	\$ 23.30
30	5396115239001	Model 520R/520M TR/PL Adaptor (available in quantities of 10)	\$ 0.55
31	5396105439003	Model 520R/520M Boot	\$ 4.14
32	5396112039004	Model 520R/520M Pit Locking Nut	\$ 5.05
33	5396112039002	Model 520R/520M Boot Locking Clip	\$ 2.30
34	5396355500054	Model 520M Housing Assembly Complete	\$ 43.48
Meters and parts not listed to be quoted at 24% off current list price			
<p>IF MODIFICATIONS IN METER MATERIALS OR PROCESSING ARE REQUIRED TO MEET NEW REGULATIONS, THE PRICING SUBMITTED IS SUBJECT TO IMMEDIATE CHANGE. Thank you for your interest in quality products by Sensus.</p>			

Current as of: 8/20/2018

Correspondence:
Sensus
207 Windmere Drive
Bowling Green, KY 42103

Purchase Order:
Sensus
PO Box 457
Uniontown, PA 15401
sensus.orders@sensus.com
1-800-METER-IT
1-800-638-3748

Robert Whitaker - Sales Director, Southern Region

This Quotation is an offer to sell which includes and is subject to the Sensus USA Inc. Terms of Sale available for viewing and downloading at www.Sensus.com. Please contact Customer Service at 1-800-638-3748 if you are unable to access this site and require a printed copy of the Terms of Sale.



Exhibit D Performance Warranty

1. **Agreement Terms.** Sensus warrants the performance of the AMI System to the Customer as set forth below. This warranty and all products and services sold or otherwise provided by Sensus directly to the Customer are pursuant to the terms of the Agreement.
2. **Performance Warranty.** The "Performance Warranty" is as follows:

- A. **Warranty.** Sensus warrants to Customer that the AMI System deployed for Customer meets the performance test standards set forth below in section 3 ("Performance Test Standards") from the Effective Date until the Warranty End Date. If the Customer's AMI System does not meet such Performance Test Standards, then as Sensus' sole obligation and Customer's sole remedy, Sensus shall take steps that Sensus deems necessary, in Sensus' sole discretion, to cause the AMI System to satisfy the Performance Test Standards. Such steps may include Sensus' delivery to the Customer (without charge to the Customer) the hardware for additional RF Field Equipment, provided that all RF Field Equipment shall be located and installed as directed by Sensus. Customer shall have title to all equipment provided pursuant to this subsection (A). Notwithstanding anything to the contrary, Customer shall pay for any Recurrent RF Field Equipment Fees and any Ongoing Fees for all equipment provided pursuant to this subsection (A).
- B. **Limitations.** The Performance Warranty shall only apply; (i) to the Meter Data; (ii) from the Effective Date until the Warranty End Date; (iii) if Sensus has completed a propagation study for the applicable Customer based on the Performance Test Standards, such propagation study has been approved in writing (including without limitation, by email) by Sensus, and such propagation study has been agreed to in writing (including without limitation, by email) by the Customer ("Certified Propagation Study") (for clarity, the Certified Propagation Study consists of all documents of the propagation study, including without limitation, the server map and the document describing the Required RF Field Equipment locations and antennae details); (iv) if the Customer is not in breach of the Spectrum Lease terms of this Agreement; (v) if all the Required RF Field Equipment identified in the Certified Propagation Study is installed; (vi) if the Required RF Field Equipment is installed as described in the Certified Propagation Study, including without limitation, in the locations and at the heights identified in the Certified Propagation Study; and (vii) the Required RF Field Equipment is operating and has been maintained to Sensus' specifications (collectively, the "Requirements"). If any Requirement is not satisfied, then: the Performance Warranty is void; Sensus has no obligation to remedy the AMI System performance; Sensus has no obligation to provide RF Field Equipment hardware at no cost; and Customer is responsible for purchasing such RF Field Equipment, even if it is necessary to meet the specifications set forth in the Performance Test Standards. Furthermore, if new and/or different RF Field Equipment locations are required as a result of not meeting any Requirements, Customer agrees to: pay Sensus for the completion of any additional propagation studies; pay Sensus for the additional RF Field Equipment hardware; perform the necessary site preparation; and pay for any Recurrent RF Field Equipment Fees and any Ongoing Fees for all equipment purchased pursuant to this subsection (B). Any equipment required pursuant to this subsection (B) is added to the definition of "Required RF Field Equipment."

3. **Performance Test Standards.**

- i. **Generally.**

- (a) If the Customer's AMI System does not meet such Performance Test Standards, then as Sensus' sole obligation and Customer's sole remedy, Sensus shall take steps that Sensus deems necessary, in Sensus' sole discretion, to cause the AMI System to satisfy the Performance Test Standards.
 - (b) The parties shall mutually agree on specific reading routes (each a "Route"). Each Route will be separately tested with the intent to provide incremental acceptance of distinctly defined geographical areas and populations of meters. Each Route shall contain a statistical sample of Test Units ("Route Units"). Route Units only include the Test Units installed in the applicable Route. For Customers with any combination of water, gas, and electricity Endpoints, the water Endpoints, gas Endpoints, and electricity Endpoints will each be tested separately according to the procedure below. For clarity, a single Route will not have a combination of water, gas and electricity meters, but it will consist of only water, gas or electricity Units.
 - (c) Before beginning the Performance Test Standards, all Route Units must be installed. Customer shall send written notice to Sensus once the Test Equipment and all Route Units are installed ("Route Deployment"). Such notice shall indicate the date on which the Route Deployment was completed ("Route Deployment Date").
 - (d) Within thirty (30) days after the Route Deployment Date, the parties shall begin the Performance Test Standards on the Route. Customer and Sensus shall work in good faith to complete the Performance Test Standards no later than thirty (30) days after commencement of testing.

- ii. **Route Read Success Test.**

- (a) The Route Read Success Test will measure the percentage of Route Units that deliver valid billable meter reads during the Billing Window. The Route Read Success Test only measures reads sent from the Route Units; it does not include on demand reads. The commencement date of the Billing Window shall be agreed by Customer and Sensus.

$$\text{Route Read Success} = 100 \times \frac{\text{\# of Route Units that deliver a valid billable meter read during the Billing Window}}{\text{(total \# of Route Units in the applicable Route)}}$$

- (b) If Route Read Success is equal or greater than the Success Percentage during one Billing Window, the Performance Test Standards for that Route has passed. Customer shall promptly issue written notice to Sensus that either (a) Sensus has not successfully completed the Performance Test



Standards for the applicable Route; or (b) Sensus has successfully completed the Performance Test Standards for the applicable Route and such notice shall specify the applicable Route and shall state the date on which the Route Read Success Test was successfully completed. If Customer does not issue such notice within five days of completion of the test, then the test is automatically deemed successfully passed. Sensus has no obligation to continue optimizing the system and meeting performance specifications upon successful completion of the Performance Test Standards for each Route. This process shall continue until all Routes have successfully completed the Performance Test Standards. If Sensus does not successfully complete the Performance Test Standards for the applicable Route, then upon receipt of notice, Sensus shall fulfill its obligations in Section 2 above, and the applicable Route shall be retested within a reasonable time.

- (c) Upon completion of the Performance Test Standards for all Routes, Customer shall promptly issue written notice to Sensus that either (a) Sensus has not successfully completed the Performance Test Standards for the AMI System; or (b) Sensus has successfully completed the Performance Test Standards for the AMI System and such notice shall state the date on which the Performance Test Standards was successfully completed. If Customer does not issue such notice within five days of completion of the tests, then the Performance Test Standards for the AMI System is automatically deemed successfully passed. If Sensus does not successfully complete the Performance Test Standards, then upon receipt of notice, Sensus shall fulfill its obligations in Section 2 above, and the AMI System shall be retested within a reasonable time.

4. THE WARRANTY SET FORTH IN SECTION 2 OF THIS PERFORMANCE WARRANTY IS THE ONLY WARRANTY RELATED TO THE PERFORMANCE OF THE AMI SYSTEM. SENSUS EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER IN CONNECTION WITH THIS PERFORMANCE WARRANTY, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE.

5. SENSUS ASSUMES NO LIABILITY FOR COSTS OR EXPENSES ASSOCIATED WITH LOST REVENUE OR WITH THE REMOVAL OR INSTALLATION OF EQUIPMENT. THE FOREGOING REMEDIES ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR THE PERFORMANCE OF THE AMI SYSTEM.

6. Definitions. Any terms used in this Performance Warranty as defined terms, and which are not defined herein, shall have the meanings given to those terms in the Agreement.

- A. **"Endpoints"** mean both (a) Sensus FlexNet meters (with a SmartPoint Module installed); and (b) Sensus SmartPoint Modules which have been installed on a third party meter.
- B. **"Meter Data"** means the specific metering information, including without limitation, locations and antenna heights, provided to Sensus by Customer in writing prior to the earlier of the; (i) Effective Date; and (ii) the date set forth on the propagation study (collectively, the **"Data Date"**). The parties recognize and agree that the RF Field Equipment site design and build is based on the specific Meter Data provided to Sensus. For clarity, the Meter Data only contains the information specifically provided to Sensus by the Customer in writing prior to the Data Date. By way of example only (and not as an exhaustive list), the "Meter Data" includes the latitudes and longitudes of each meter, the location of each module either inside or outside (outside is assumed), and, for meters in pits, whether the radio is installed through or under the lid (the assumption is through the lids). New or different metering locations and/or antenna heights provided after the Data Date are not included as part of the Meter Data.
- C. **"Recurrent RF Field Equipment Fees"** means any and all costs, fees, and expenses required to: (i) warrant the RF Field Equipment; and (ii) install and keep the RF Field Equipment located in the field, including without limitation, site procurement and preparation fees, fees related to building poles or towers, tower lease fees, costs of electricity supply, and any local, state, or federal government taxes or charges.
- D. **The "Required RF Field Equipment"** means the following equipment, installed in the locations and at the heights described in the Certified Propagation Study: 10 FlexNet Base Stations; 4 R100NA Collector Units.
- E. **"Success Percentage"** means, of the covered meters in the propagation study, 98.5%.
- F. **"Test Equipment"** means the number of RF Field Equipment and production RNIs set forth in the Certified Propagation Study. The Test Equipment specifically does not include test RNIs or backup RNIs; it only includes production RNIs.
- G. **"Test Units"** means Endpoints that are both, (i) Available Meters throughout the entire test period; and (ii) are covered meters, as depicted on the Certified Propagation Study.
- H. **"Warranty End Date"** means the earlier of; (i) the third anniversary of the Effective Date; (ii) successful completion of the applicable Performance Test Standards; or (iii) the termination or expiration of this Agreement between Customer and Sensus.

Exhibit E
G-500 Warranty

Sensus Limited Warranty

G-500 R21

I. General Product Coverage

Sensus USA Inc. ("Sensus") warrants its products and parts to be free from defects in material and workmanship for one (1) year from the date of Sensus shipment and as set forth below. All products are sold to customer ("Customer") pursuant to Sensus' Terms of Sale, available at sensus.com/TC ("Terms of Sale").

II. SR[®] and accuSTREAM[™] 5/8", 3/4" & 1" Meters...

are warranted to perform to AWWA New Meter Accuracy Standards for five (5) years from the date of Sensus shipment or until the registration shown below, whichever occurs first. Sensus further warrants that the SR[®] and accuSTREAM[™] meters will perform to at least AWWA Replaced Meter Accuracy Standards for fifteen (15) years from the date of Sensus shipment or until the registration shown below, whichever occurs first:

	New Meter Accuracy	Repat Meter Accuracy
5/8" SR [®] Meter and accuSTREAM [™] Meter	500,000 gallons	1,500,000 gallons
3/4" SR [®] Meter and accuSTREAM [™] Meter	750,000 gallons	2,250,000 gallons
1" SR [®] Meter and accuSTREAM [™] Meter	1,000,000 gallons	3,000,000 gallons

III. SR[®] 5/8", 3/4" & 1" Meters...

are warranted to perform to AWWA New Meter Accuracy Standards for one (1) year from the date of Sensus shipment. Sensus further warrants that the 5/8", 3/4" and 1" SR[®] meter will perform to at least AWWA Replaced Meter Accuracy Standards for fifteen (15) years from the date of Sensus shipment or until the registration shown below, whichever occurs first:

	Repat Meter Accuracy
5/8" SR [®] Meter	1,500,000 gallons
3/4" SR [®] Meter	2,250,000 gallons
1" SR [®] Meter	3,000,000 gallons

IV. SR[®] 1-1/2" & 2"

are warranted to perform to AWWA New Meter Accuracy Standards for one (1) year from the date of Sensus shipment. Sensus further warrants that the 1-1/2" and 2" SR[®] meter will perform to at least AWWA Replaced Meter Accuracy Standards for ten (10) years from the date of Sensus shipment or until the registration shown below, whichever occurs first:

	Repat Meter Accuracy
1-1/2" SR	5,000,000 gallons
2" SR	8,000,000 gallons

V. PMM[®] 5/8", 3/4", 1" Meters...

are warranted to perform to AWWA New Meter Accuracy Standards for one (1) year from the date of Sensus shipment. Sensus further warrants that the 5/8", 3/4", and 1" PMM[®] meter will perform to at least AWWA Replaced Meter Accuracy Standards for ten (10) years from the date of Sensus shipment or until the registration shown below, whichever occurs first:

	Repat Meter Accuracy
5/8" PMM	1,500,000 gallons
3/4" PMM	2,000,000 gallons
1" PMM	3,000,000 gallons

VI. PMM[®] 1-1/2", 2" Meters...

are warranted to perform to AWWA New Meter Accuracy Standards for one (1) year from the date of Sensus shipment. Sensus further warrants that the 1-1/2" and 2" PMM[®] meter will perform to at least AWWA Replaced Meter Accuracy Standards for ten (10) years from the date of Sensus shipment or until the registration shown below, whichever occurs first:

	Repat Meter Accuracy
1-1/2" PMM	5,000,000 gallons
2" PMM	8,000,000 gallons

VII. IPERL[™] Water Management Systems...

that register water flow are warranted to perform to the accuracy levels set forth in the IPERL Water Management System Data Sheet available at sensus.com/perldata-sheet or by request from 1-800-METER-IT, for twenty (20) years from the date of Sensus shipment. The IPERL System warranty does not include the external housing.

VIII. Release...

of the SR[®], SR[®] and PMM[®] in both standard and low lead alloy meters are warranted to be free from defects in material and workmanship for twenty-five (25) years from the date of Sensus shipment. Composite and E-coated mancoases will be free from defects in material and workmanship for fifteen (15) years from the date of Sensus shipment.

IX. Sensus "W" Series Turbo Meters, OMNI[®] Meters and Propeller Meters...

are warranted to perform to AWWA New Meter Accuracy Standards for one (1) year from the date of Sensus shipment.

X. Sensus accuMAG[™] Meters...

are warranted to be free from defects in material and workmanship, under normal use and service, for 18 months from the date of Sensus shipment or 12 months from startup, whichever occurs first.

XI. Sensus Registers...

are warranted to be free from defects in material and workmanship from the date of Sensus shipment for the periods stated below or until the applicable registration for AWWA Replaced Meter Accuracy Standards, as set forth above, are surpassed, whichever occurs first:

5/8" thru 2" SR, SR [®] , PMM, accuSTREAM Standard Registers	25 years
5/8" thru 2" SR, SR [®] , PMM, accuSTREAM Encoder Registers	10 years
Electronic Communication Inter (ECI)	10 years
All HCPU, SMP Contactor, R.E.R. Elec. ROFI	1 year
Standard and Encoder Registers for "W" Turbo and Propeller Meters	1 year
OMNI Register with Battery	10 years

XII. Sensus Electric Meters...

are warranted to be free from defects in material and workmanship for one (1) year from the date of Sensus shipment. Spare parts and components are warranted to be free from defects in material and workmanship for one (1) year from the date of Sensus shipment.

Repaired or refurbished equipment repaired by Sensus is warranted to be free from defects in material and workmanship for ninety (90) days from the date of Sensus shipment or for the time remaining on the original warranty period, whichever is longer.

XIII. Batteries, IPERL System Components, AMR and FlexNet[™] System AMR Interface Devices...

are warranted to be free from defects in material and workmanship from the date of Sensus shipment for the period stated below:

Electronic TouchPad	10 years
RadioRead [®] MXU (Model SCSC, S1CR or S2CR) and Batteries	20 years*
AC-Pad [®] Instrumentation	1 year
TouchRead [®] Coupler and AMR Equipment	1 year
FlexNet Water or Gas SmartPoint [™] Modules and Batteries	20 years*
\$500 series (or older) Hand Held Device	1 year
\$600 series Hand Held Device	2 years
Vehicle Gateway Base Station	1 year
FlexNet Base Station (including the Metro and M400 base stations)	1 year
Echo Transceiver	1 year
Retrote Transceiver	1 year
ICORA and FlexNet Electricity SmartPoint Module	1 year
IPERL System Battery and IPERL System Components	20 years*
Residential Electronic Register	20 years*
Smart Gateway	1 year

* Sensus will repair or replace non-performing:

- RadioRead[®] MXU (Model SCSC, S1CR and S2CR) and Batteries,
- FlexNet Water or Gas SmartPoint Modules (configured to the factory setting of six transmissions per day under normal system operation of up to one demand read to each SmartPoint Module per month and up to two firmware downloads during the life of the product) and batteries,
- Residential Electronic Register with hourly reads, and
- IPERL System Batteries, and/or the IPERL System flowtube, the flow sensing and data processing assemblies, and the register ("IPERL System Components") with hourly reads

at no cost for the first ten (10) years from the date of Sensus shipment, and for the remaining ten (10) years, at a prorated percentage, applied towards the published list prices in effect for the year product is accepted by Sensus under warranty conditions according to the following schedule:

Years	Replacement Price	Years	Replacement Price
1 - 10	0%	16	55%
11	30%	17	60%
12	35%	18	65%
13	40%	19	70%
14	45%	20	75%
15	50%	>20	100%

Note: Software supplied and licensed by Sensus is warranted according to the terms of the applicable software license agreement. Sensus warrants that network and monitoring services shall be performed in a professional and workmanlike manner.

XIV. Repairs...

Sensus' obligation, and Customer's exclusive remedy, under this Sensus Limited Warranty is, at Sensus' option, to either (i) repair or replace the product, provided the Customer (a)



returns the product to the location designated by Sensus within the warranty period; and (b) prepay the freight costs both to and from such location; or (i) deliver replacement components to the Customer, provided the Customer installs, at its cost, such components to or on the product (as instructed by Sensus), provided, that if Sensus requests, the Customer (a) returns the product to the location designated by Sensus within the warranty period, and (b) prepay the freight costs both to and from such location. In all cases, if Customer does not return the product within the time period designated by Sensus, Sensus will invoice, and Customer will pay within thirty days of the invoice date, for the cost of the replacement product and/or components.

The return of products for warranty claims must follow Sensus' Returned Materials Authorization (RMA) procedures. Water meter returns must include documentation of the Customer's test results. Test results must be obtained according to ANYWA standards and must specify the meter serial number. The test results will not be valid if the meter is found to contain foreign materials. If Customer chooses not to test a Sensus water meter prior to returning it to Sensus, Sensus will repair or replace the meter, at Sensus' option, after the meter has been tested by Sensus. The Customer will be charged Sensus' then current testing fee. Sensus SmartPoints modules and MKUs returned must be affixed with a completed return evaluation label. For all returns, Sensus reserves the right to request meter reading records by serial number to validate warranty claims.

For products that have become discontinued or obsolete ("Obsolete Product"), Sensus may, at its discretion, replace such Obsolete Product with a different product model ("New Product"), provided that the New Product has substantially similar features as the Obsolete Product. The New Product shall be warranted as set forth in this Sensus Limited Warranty.

THIS SECTION XIV SETS FORTH CUSTOMER'S SOLE REMEDY FOR THE FAILURE OF THE PRODUCTS, SERVICES OR LICENSED SOFTWARE TO CONFORM TO THEIR RESPECTIVE WARRANTIES.

XV. Warranty Exceptions and No Implied Warranties

This Sensus Limited Warranty does not include costs for removal or installation of products, or costs for replacement labor or materials, which are the responsibility of the Customer. The warranties in this Sensus Limited Warranty do not apply to goods that have been: installed improperly or in non-recommended installations, installed to a socket that is not functional, or is not in safe operating condition, or is damaged, or is in need of repair; tampered with; modified or repaired with parts or assemblies not certified in writing by Sensus, including without limitation, communication parts and assemblies; improperly modified or repaired (including as a result of modifications required by Sensus); converted; altered; damaged; read by equipment not approved by Sensus; for water meters, used with substances other than water, used with non-potable water, or used with water that contains dirt, debris, deposits, or other impurities; subjected to misuse, improper storage, improper care, improper maintenance, or improper periodic testing (collectively, "Exceptions"). If Sensus identifies any Exceptions during examination, troubleshooting or performing any type of support on behalf of Customer, then Customer shall pay for and/or reimburse Sensus for all expenses incurred by Sensus in examining, troubleshooting, performing support activities, repairing or replacing any Equipment that satisfies any of the Exceptions defined above. The above warranties do not apply in the event of Force Majeure, as defined in the Terms of Sale.

THE WARRANTIES SET FORTH IN THIS SENSUS LIMITED WARRANTY ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO THE GOODS, SOFTWARE LICENSES AND SERVICES SOLD OR OTHERWISE PROVIDED BY SENSUS. SENSUS EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER IN CONNECTION WITH THIS SENSUS LIMITED WARRANTY OR WITH THE TERMS OF SALE, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE.

SENSUS ASSUMES NO LIABILITY FOR COSTS OR EXPENSES ASSOCIATED WITH LOST REVENUE OR WITH THE REMOVAL OR INSTALLATION OF EQUIPMENT. THE FOREGOING REMEDIES ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR THE FAILURE OF EQUIPMENT, LICENSED SOFTWARE OR SERVICES TO CONFORM TO THEIR RESPECTIVE WARRANTIES.

XVI. Limitation of Liability

SENSUS' AGGREGATE LIABILITY IN ANY AND ALL CAUSES OF ACTION ARISING UNDER, OUT OF OR IN RELATION TO THIS AGREEMENT, ITS NEGOTIATION, PERFORMANCE, BREACH OR TERMINATION (COLLECTIVELY "CAUSES OF ACTION") SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO SENSUS UNDER THIS AGREEMENT. THIS IS SO WHETHER THE CAUSES OF ACTION ARE IN TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY, IN CONTRACT, UNDER STATUTE OR OTHERWISE.

AS A SEPARATE AND INDEPENDENT LIMITATION ON LIABILITY, SENSUS' LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES. SENSUS SHALL NOT BE LIABLE FOR: (i) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; NOR (ii) ANY REVENUE OR PROFITS LOST BY CUSTOMER OR ITS AFFILIATES FROM ANY END USER(S), IRRESPECTIVE OF WHETHER SUCH LOST REVENUE OR PROFITS IS CATEGORIZED AS DIRECT DAMAGES OR OTHERWISE; NOR (iii) ANY IN-COSTS; NOR (iv) MANUAL METER READ COSTS AND EXPENSES; NOR (v) DAMAGES ARISING FROM MAINCASE OR BOTTOM PLATE BREAKAGE CAUSED BY FREEZING TEMPERATURES, WATER HAMMER CONDITIONS, OR EXCESSIVE WATER PRESSURE. "IN-COSTS" MEANS ANY COSTS AND EXPENSES INCURRED BY CUSTOMER IN TRANSPORTING GOODS BETWEEN ITS WAREHOUSE AND ITS END USER'S PREMISES AND ANY COSTS AND EXPENSES INCURRED BY CUSTOMER IN INSTALLING, UNINSTALLING AND

REMOVING GOODS. "END USER" MEANS ANY END USER OF ELECTRICITY/WATER/GAS THAT PAYS CUSTOMER FOR THE CONSUMPTION OF ELECTRICITY/WATER/GAS, AS APPLICABLE.

The limitations on liability set forth in this Agreement are fundamental inducements to Sensus entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.

To the maximum extent permitted by law, no Cause of Action may be instituted by Customer against Sensus more than TWELVE (12) MONTHS after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.





Exhibit F
General Limited Warranty

General Limited Warranty

1. **Terms of Sale.** Sensus USA Inc. ("Sensus") warrants its products and parts as set forth below. All products are sold to the buyer ("Customer") pursuant to Sensus' Terms of Sale, available at [sensus.com](#).

2. **Electricity Meters, Electricity SmartPoint™ Modules, and VeranoPoint™ Lighting Control Modules.** Sensus warrants the Sensus electricity meter, Sensus electricity SmartPoint Modules, and VeranoPoint lighting control modules to be in compliance with their respective specifications under normal use and service, and to be free from material defects in materials and workmanship for a warranty period of twelve (12) months from the date of the installation or eighteen (18) months from the date of shipment, whichever occurs first. The warranty period for repaired or replaced parts shall be twelve (12) months from the date of shipment. The warranty period for repaired or replaced parts required by Sensus to remedy (30) days from the date of shipment, unless repaired pursuant to a warranty, in which case the repair is warranted for the time remaining of the original warranty period.

3. **Gas Products and Gas SmartPoint Modules.**
a. Except for the Sensus meters, Sensus warrants the Sensus gas products to be in compliance with their respective specifications under normal use and service, and to be free from material defects in materials and workmanship for a warranty period of twelve (12) months from the date of the installation or eighteen (18) months from the date of shipment, whichever occurs first. Sensus warrants the Sensus Gas products to be free from material defects in materials and workmanship for a warranty period of fifteen (15) years from the date of shipment. Sensus warrants the batteries in the Sensus Gas products to be free from material defects in materials and workmanship for a warranty period of ten (10) years from the date of shipment. The warranty period for new spare parts and components sold by Sensus to remedy (30) days from the date of shipment, unless repaired pursuant to a warranty, in which case the repair is warranted for the time remaining of the original warranty period.
b. Sensus warrants the Sensus gas SmartPoint Modules as set forth in the "3000P" warranty, as set forth at: [sensus.com](#), or available at 1-800-METER-IT.

4. **Water Meters and Water SmartPoint Modules.** Sensus warrants the Sensus water meter and Sensus water SmartPoint Modules as set forth in the "3000P" warranty, as set forth at: [sensus.com](#), or available at 1-800-METER-IT.

5. **DA Devices and HAN Devices.** Sensus warrants the Sensus DA Devices and Sensus HAN Devices to be in compliance with their respective specifications under normal use and service, and to be free from material defects in materials and workmanship for a warranty period of twelve (12) months from the date of shipment. The warranty period for new spare parts and components sold by Sensus to remedy (12) months from the date of shipment. The warranty period for repaired or replaced parts required by Sensus to remedy (30) days from the date of shipment, unless repaired pursuant to a warranty, in which case the repair is warranted for the time remaining of the original warranty period.

6. **RF Field Equipment.** Sensus warrants the Sensus RF Field Equipment to be in compliance with their respective specifications under normal use and service, and to be free from material defects in materials and workmanship for a warranty period of twelve (12) months from the date of shipment.

7. **Server Hardware.** Sensus provides no warranty on the Server Hardware.

8. **Third Party Goods.** Notwithstanding anything to the contrary herein, Sensus does not warrant any goods manufactured or software supplied by third parties. For example, if Customer elects to buy meters from a third party, the Sensus SmartPoint Modules installed in such third party meters shall, subject to Section 11, below, be covered by the warranty above, but any warranty on the meter itself shall be a matter directly between Customer and such third party meter supplier.

9. **Services.** Sensus warrants that its Services shall, at the time of performance, conform to the contract requirements, and shall be performed in a professional and workmanlike manner, free from material defects in workmanship.

10. **Remedy.**
a. If any Field Device or RF Field Equipment fails during the applicable warranty period (a "Failed Good"), Sensus' obligation, and Customer's exclusive remedy, is, at Sensus' option, to either (i) repair or replace the Failed Good, provided the Customer (A) returns the product to the location designated by Sensus within the warranty period; and (B) prepay the freight costs both to and from such location; or (ii) deliver replacement components to the Customer, provided the Customer (A) at its cost, such components to or on the Failed Good (as instructed by Sensus). In all cases, Customer shall be responsible for returning the Failed Good to Sensus, including all costs associated with the return of the Failed Good, and Sensus shall be responsible for shipping the repaired or replaced good back to Customer's warehouse. Customer shall, in all cases, be responsible for the Out-of-Costs. If Sensus determines that the returned good is not defective, Customer shall pay and/or reimburse Sensus for all expenses incurred by Sensus in the continuation of the returned good.
b. Customers remedy under the warranty for services shall be, at Sensus' sole cost and expense, to correct or re-perform any defective or non-conforming services to assure compliance with the contract requirements.
c. THIS SECTION 10 SETS FORTH CUSTOMER'S SOLE REMEDY WITH RESPECT TO A FAILED GOOD OR ANY DEFECTIVE OR NON-COMFORMING SERVICE.

11. **Warranty Exclusions.** This General Limited Warranty does not include costs for removal or installation of products, or costs for replacement labor or materials, which are the responsibility of the Customer. The warranties in this General Limited Warranty do not apply to and Sensus has no liability for goods that have been: installed improperly or in non-recommended installations; installed in a socket that is not functional; or is not in safe operating condition; is damaged; or is in need of repair; repaired and/or modified or repaired with parts or assemblies not certified in writing by Sensus, including without limitation, communication parts and accessories; improperly installed or repaired (including as a result of modifications required by Sensus); converted; altered; damaged; used by equipment not approved by Sensus; for outdoor use, used with substances other than water, used with non-potable water, or used with water that contains oil, debris, deposits, or other impurities; subjected to extreme, improper storage, improper care, improper maintenance, or improper periodic testing (collectively, "Exclusions"). If Sensus identifies any Exclusions during examination, installation or performing any type of support on behalf of Customer, then Customer shall pay for either reimburse Sensus for all expenses incurred by Sensus in examining, maintaining, performing support activities, repairing or replacing

any equipment that rectifies any of the Exclusions set forth above. The above warranties do not apply in the event of Force Majeure, as defined in the Terms of Sale.

12. **THE WARRANTIES SET FORTH IN THIS GENERAL LIMITED WARRANTY ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO THE GOODS, SOFTWARE LICENSES AND SERVICES SOLD OR OTHERWISE PROVIDED BY SENSUS. SENSUS EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER IN CONNECTION WITH THIS GENERAL LIMITED WARRANTY OR WITH THE TERMS OF SALE, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE.**

13. **SENSUS ASSUMES NO LIABILITY FOR COSTS OR EXPENSES ASSOCIATED WITH LOST REVENUE OR WITH THE REMOVAL OR INSTALLATION OF EQUIPMENT. THE FOREGOING REMEDIES ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR THE FAILURE OF EQUIPMENT, LICENSED SOFTWARE OR SERVICES TO CONFORM TO THEIR RESPECTIVE WARRANTIES.**

14. **Limitation of Liability**
a. **SENSUS' AGGREGATE LIABILITY IN ANY AND ALL CAUSES OF ACTION ARISING UNDER, OUT OF OR IN RELATION TO THIS AGREEMENT, ITS NEGOTIATION, PERFORMANCE, BREACH OR TERMINATION (COLLECTIVELY "CAUSES OF ACTION"), SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO SENSUS UNDER THIS AGREEMENT. THIS IS SO WHETHER THE CAUSES OF ACTION ARE IN TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY, IN CONTRACT, UNDER STATUTE OR OTHERWISE.**
b. **AS A SEPARATE AND INDEPENDENT LIMITATION ON LIABILITY, SENSUS' LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES. SENSUS SHALL NOT BE LIABLE FOR: (i) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; NOR (ii) ANY REVENUE OR PROFITS LOST BY CUSTOMER OR ITS AFFILIATES FROM ANY END USER'S, RESPECTIVE OF WHETHER SUCH LOST REVENUE OR PROFITS IS CATEGORIZED AS DIRECT DAMAGES OR OTHERWISE; NOR (iii) ANY INVOIC COSTS; NOR (iv) MANUAL METER READ COSTS AND EXPENSES.**

c. **The Exclusions on liability set forth in this Agreement are fundamental limitations to Sensus entering into this Agreement. They apply automatically and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.**
d. **To the maximum extent permitted by law, no Cause of Action may be initiated by Customer against Sensus more than TWELVE (12) MONTHS after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.**

15. **Definitions.** Any terms used in this General Limited Warranty as defined herein, and which are not defined herein, shall be as the meanings given to these terms in the Terms of Sale.
a. "Agreement" means this General Limited Warranty, Customer's purchase order (except any Additional Terms), Sensus' Acknowledgment Form (if any), Sensus' Invoice and the Terms of Sale.
b. "DA Devices" means RTUs and RTUs.
c. "Echo Transceiver" (formerly "FlexNet Remote Port" and "RNP") identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them by radio frequency to the relevant FlexNet Base Station.
d. "End User" means any end user of electricity-metering that pays Customer for the consumption of electricity-metering, as applicable.
e. "Equipment" means the Field Device, RF Field Equipment, Server Hardware, and any other goods sold hereunder.
f. "FlexNet Base Station" (formerly "Tower Gateway Base Station" and "TGB") identifies the Sensus manufactured device consisting of one transceiver, to be located on a tower that receives readings from the SmartPoint Modules (either directly or via an Echo Transceiver) by radio frequency and passes those readings to the RAN by TCP/IP backhaul communication.
g. "Field Device" means the meters, SmartPoint Modules, VeranoPoint lighting control modules, DA Devices and HAN Devices.
h. "Force Majeure" shall have the meaning set forth in the Terms of Sale.
i. "HAN Devices" means the PCTs, HDS and LCHs.
j. "HDS" means the in-home displays.
k. "In-Out Costs" means any costs and expenses incurred by Customer in transporting goods between its warehouse and its End User's premises and any costs and expenses incurred by Customer in installing, maintaining and removing goods.
l. "LCMs" means the load control modules.
m. "PCT" means the programmable configurable thermostat.
n. "Remote Transceiver" (formerly "FlexNet Remote Port" and "RNP") identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them directly to the RAN by TCP/IP backhaul communication.
o. "RAN" identifies the regional network interfaces consisting of hardware and software used to gather, store, and report data collected by the FlexNet Base Stations from the SmartPoint Modules.
p. "RF Field Equipment" means, collectively, FlexNet Base Stations, Echo Transceivers and Remote Transceivers.
q. "RTUs" means the telemetric remote telemetry modules.
r. "RTUs" means telemetric MicroRTU (TRSD).
s. "Server Hardware" means the RCH hardware and the Flex server hardware.

t. "SmartPoint™ Modules" identifies the Sensus transmission devices installed on devices such as meters, lighting fixtures, distribution automation equipment and distributed energy devices located at Customer's End User's premises that take the readings of the devices and forward those readings by radio frequency to the relevant FlexNet Base Station, Remote Transceiver or Echo Transceiver.



City of

Jacksonville Beach

1460A Shetter Avenue

Jacksonville Beach

FL 32250

Phone: 904.247.6226

Fax: 904.270.1639

www.jacksonvillebeach.org

TO: Karen W. Nelson, Deputy City Manager

FROM: Jason Phitides, Director of Parks and Recreation

DATE: September 25, 2018

RE: GPS System for Golf Carts

ACTION REQUESTED:

Approve a lease with EZ-GO to install a fleet management GPS system on the leased golf carts located at the Jacksonville Beach Golf Course.

BACKGROUND:

In June 2018, the City Council approved a lease with EZ-GO for sixty new lithium battery golf carts for the golf course.

EZ-GO offers the Textron Fleet Management GPS system, designed to enable the course to operate more efficiently while making the game more enjoyable for golfers.

The system has a number of key features, such as the ability to monitor pace-of-play, geo fencing, two-way communication between the pro shop and golfers on the course, and fleet management.

The appropriate pace-of-play is important to the enjoyment of the golfer and is essential in maintaining tee time integrity and overall operational efficiency. Pace-of-play is currently controlled by a golf course staff member known as a ranger. With the GPS system, staff can send a message directly to golfers playing too slowly without physically going onto the golf course, thereby saving time and money.

Geo fencing is the ability to restrict carts from traveling in certain areas. Should the cart cross a geo-fenced line it will automatically shut off. Carts can be restricted from traveling on greens, getting too close to water features, or even going off the property. Speed limits can be enforced in certain areas, such as the parking lot.



MEMORANDUM
Golf Carts GPS System
September 25, 2018

Page 2 of 2

The system's high resolution, weatherproof touch screen with enhanced HD hole graphics provides the golfer valuable information. One of its chief benefits is a flyover look of each hole. It also gives golfers real-time updates on their distance from water hazards, sand traps and the pin as they near the green. They can use the system to keep score electronically and even ask for help if they have a breakdown or an emergency. Promotions, pictures and videos can be added for advertisement, information or entertainment to enhance the golf experience.

Fleet management would be improved by utilizing GPS, as this system tracks cart travel history and battery maintenance schedules. The cost would be offset by the reduction in labor costs, as fewer course rangers would be required to monitor pace-of-play. In addition, staff would no longer spend valuable time fencing and roping areas that need protection or are off limits.

EZ-GO offers the Textron Fleet Management System through competitively bid pricing under the National Intergovernmental Purchasing Alliance (NIPA). The cost for sixty carts is \$1,797 per month (or \$29.95 per cart per month). The total annual cost of \$21,564 will be included in the mid-year budget modification for Fiscal Year 2019.

RECOMMENDATION:

Approve a lease with EZ-GO for a fleet management GPS system for the leased golf carts at the Jacksonville Beach Golf Course, as described in the memorandum from the Director of Parks and Recreation dated September 25, 2018.

TFM | TEXTRON FLEET MANAGEMENT



Presented To:
 Jacksonville Beach Golf Course
 605 Penman Rd S
 Jacksonville Beach, FL 32250

Prepared By
 Cam Bahler
 Sales Manager
 904-254-4178

QTY	MODEL	Terms	UNIT PRICE	TOTAL MONTHLY PRICE
60	TKV 7	60 month FMV	\$ 29.95	\$ 1,797.00
64	TKV 7	60 month FMV	\$ 29.95	\$ 1,916.80

Wow Factor	Fleet Management	Car Management
High resolution, weatherproof, touch screen	Vehicle location	Vehicle travel history
Enhanced HD hole graphics	Pace monitoring	Automatically scheduled vehicle lockdown
UPDATES - Automatic software updates	Real two way communication	GeoFencing and warnings
Freight and set up	Easy to use advertising setup	BATTERY - Internal battery

Any change to the accessory list must be obtained in writing at least 45 days prior to production date.

LEASE DETAILS

Payment Schedule: 60 month lease
 Delivery: Late August 2018

Payment Months: 12 months per year
 First Pay: October 2018

SPECIAL CONSIDERATIONS:

If the TFM lease does not align with fleet golf car lease, then the TechForce service and sales teams will remove and transfer screens to new cars in the event that the cars are rolled before the TFM lease has matured.

E-Z-GO at its discretion reserves the right to offer an early roll option. Jacksonville Beach Golf Course must enter into a new lease purchase agreement with E-Z-GO and the existing account must be current and credit approved. Prices quoted are those in effect at the time the quote is made and are guaranteed subject to acceptance within 45 days. All lease cars and trades must be in running condition and a fleet inspection will be done prior to pick up. All electric cars must have a working charger. All pricing and trade values are contingent upon management approval. Applicable state taxes, local taxes and insurance are not included. Payment Schedule(s) does not include any finance, documentation or initiation fees that may be required with payment.

Jacksonville Beach Golf Course

Accepted By: _____

Date: _____

Title: _____

E-Z-GO, A Division of Textron, Inc.

Accepted By: Cam Bahler

Date: _____

Title: Sales Manager

City of

Jacksonville Beach

Operations &

Maintenance Facility

Department of Public

Works

1460-A Shetter Avenue

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FL 32250

Phone: 904.247.6219

Fax: 904.247.6117

www.jacksonvillebeach.org

TO: Karen W. Nelson, Deputy City Manager
FROM: David Millinor, Public Works Director
DATE: September 25, 2018
SUBJECT: Video Monitoring and Recording System for the Pollution Control Plant and Water Plants - Archimedes Systems, Inc.

REQUESTED:

Approve the purchase, installation and maintenance of Power Over Ethernet cameras and battery backups for the Pollution Control Plant and Water Plants from Archimedes Systems, Inc.

BACKGROUND:

The current security camera systems at the Pollution Control Plant and Water Plants were installed in 2008. After 10 years of service, the camera technology of the current system is obsolete and, due to the corrosive environment, the systems have begun to fail. Archimedes Systems Inc. (ASI) is offering a solution using modern Power Over Ethernet cameras and a comprehensive maintenance contract to keep the system running optimally.

ASI was responsible for the design and integration of all aspects of the instrumentation and control systems for the Pollution Control Plant. Since 2010, ASI has been under contract with the City to maintain and modernize the system, including the Human/Machine Interface, which assists in plant functionality and its day-to-day operations. The camera system is an integral part of the Human/Machine Interface. ASI is currently under contract to maintain all other control and monitoring equipment at the Pollution Control Plant, making them the most qualified contractor to integrate the video monitoring equipment with their proprietary plant control system. In order for Public Works to have a single maintenance contractor for the Department's monitoring systems, a proposal for the Water Plant's system was requested from ASI. Additionally, with all the plants on the same system, the after-hours water plant operators can easily monitor both plants.

ASI is proposing a complete new system with 200 times the current bandwidth, along with 22 cameras at the Pollution Control Plant and 19 cameras for the Water Plants. The software will be accessible for local viewing at the plants and viewing via a web portal to authorized users. The system costs for the Pollution Control Plant is \$59,950 and \$54,990 for the Water Plants.



The intent is to purchase these systems through the existing ASI contract; however, pricing for a similar system from Siemens was obtained for cost comparison:

PRICE QUOTES		
For video monitoring and recording system		
For Pollution Control Plant and Water Plant #1 & #2,		
Jacksonville Beach, FL		
	Archimedes Systems, Inc.	Siemens Industrial Inc.
Pollution Control Plant	22 Camera	13 Camera
• Price Quote	\$ 59,950.00	\$61,860.00
• 10% Contingency	\$ 5,995.00	\$ 6,186.40
Sub Total:	\$ 65,585.00	\$ 68,046.00
• Annual Service Agreement (1 Year)	\$0.00**	\$7500.00**
Total:	\$65,585.00	\$75,546.00
Water Plant	19 Camera	14 Camera
• Price Quote	\$ 54,990.00	\$59,574.00
• 10% Contingency	\$ 5,499.00	\$ 5,957.40
Sub Total:	\$ 60,489.00	\$ 65,531.40
• Annual Service Agreement (1 Year)	\$4000.00	\$7500.00
Total:	\$64,489.00	\$73,031.00
**Note: ASI stated that, once installed, the PCP system would be covered under the existing HMI maintenance and modernization contract.		

There are sufficient funds remaining in the Pollution Control Plant FY 2018 budget for the PCP portion of the project. The Water Plant system is a line item in the FY 2019 budget and will not be purchased until after the start of the next fiscal year.

RECOMMENDATION:

Approve the purchase, installation and maintenance of Power Over Ethernet cameras and battery backups for the Pollution Control Plant and Water Plants from Archimedes Systems, Inc.

JACKSONVILLE BEACH

City of

Jacksonville Beach

Operations &

Maintenance Facility

Department of Public

Works

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FL 32250

Phone: 904.247.6219

Fax: 904.247.6117

www.jacksonvillebeach.org

TO: Karen Nelson, Deputy City Manager

FROM: David Millinor, Public Works Director

DATE: September 25, 2018

SUBJECT: Emergency Repair of Stormwater Pipe - 11th Fairway at the Golf Course

ACTION REQUESTED:

Approve the emergency repair of a 36" stormwater outfall pipe, located within the 11th Fairway at the Golf Course, completed by G & H Underground Contracting, Inc.

BACKGROUND:

On July 31, 2018, the Deputy City Manager authorized the emergency repair of a 36" stormwater outfall pipe located within the 11th Fairway at the Golf Course north & west of the 12th Ave. S. Stormwater Central Basin.

The damaged stormwater outfall pipe services a large portion of the City's downtown area and was initially funded by the Community Redevelopment Agency (CRA). It conveys stormwater from our downtown vault through the golf course stormwater ponds, which empty into the Intracoastal Waterway. This particular stormwater pipe, a 36" reinforced concrete pipe, was originally installed in 1996 at a depth of six feet below grade. The Golf Course has been under renovation for the past six months and the heavy equipment associated with the renovation has been traveling over the fairways, which exposed the weakened condition of this stormwater pipe.

The Public Works staff inspected the area and, based on the location and size of the hole, were confident that a cracked bell or open joint in the 36" stormwater pipe caused the cave-in. The entire length of the pipe was cleaned and televised before the actual repair was performed to help determine the extent of the repairs needed. Had the stormwater pipe not been repaired in a timely manner, the following could have occurred:

- A delay in the opening of the golf course
- A high potential of flooding to the area immediately surrounding the golf course
- An immediate danger to the public health and safety
- An imminent interruption of an essential government service (stormwater management)



For these reasons, the Deputy City Manager authorized the emergency repair of the stormwater line under the provisions of the City Ordinance.

A summary of the work required for the repair on the 36" stormwater outfall pipe included the following:

REPAIR WORK SUMMARY	
<ul style="list-style-type: none">• Lower & maintain the water level in the north stormwater pond below the discharge invert of the 36" stormwater pipe• Cleaning, televising & obtaining an inspection report of the condition of the existing 36" stormwater pipe• Install a temporary inflatable plug in the end of the 36" stormwater pipe• Install & maintain a dewatering system around the perimeter of the damaged stormwater pipe• Excavate trench and install sheeting and/or shoring around damaged stormwater pipe• Wrap filtration cloth around entire perimeter of damaged portion of stormwater pipe• Pour a 6' thick concrete collar around the entire perimeter of damaged portion of stormwater pipe.• Remove sheeting and/or shoring and begin backfilling and compacting open trench with A-3 sand• Remove dewatering system and temporary inflatable plug• Perform rough grading of site back to original grade• Perform final site grading (Subcontracted to Golf Course Contractor)• Perform sod replacement (Subcontracted to Golf Course Contractor)	

City Staff solicited and received pricing from four contractors that are currently under contract with the City and experienced in performing this type of work. The contractor with the lowest quote was G & H Underground Contracting, Inc.

G & H UNDERGROUND CONTRACTING, INC.	\$38,265.50
PETTICOAT –SCHMITT CIVIL CONTRACTORS, INC.	\$44,023.00
ALLSITE CONTRACTORS, INC	\$44,411.33
JAX UTILITIES MANAGEMENT , INC.	\$72,765.35

MEMORANDUM
Stormwater Pipe Repair
September 25, 2018

Page 3 of 3

The emergency repair was completed by G & H Underground Contracting, Inc. below the authorized amount for a final contract cost of \$34,500.00. Funding for this project was appropriated by the Downtown Redevelopment Agency utilizing Tax Increment Funds at its meeting on August 27, 2018.

The City Procurement Manual states the following:

An emergency purchase in excess of the \$25,000 Bid Threshold Amount must receive prior approval by the City Manager or the Deputy City Manager. Subsequently, the City Council must formally approve the emergency purchase.

RECOMMENDATION:

Approve the emergency repair of a 36" stormwater outfall pipe, located within the 11th Fairway at the Golf Course, completed by G & H Underground Contracting, Inc.



Cave-in over 36" Reinforced Concrete Pipe (RCP) on the 11th hole fairway.

Fairway Ln

Plantation Oaks Dr N

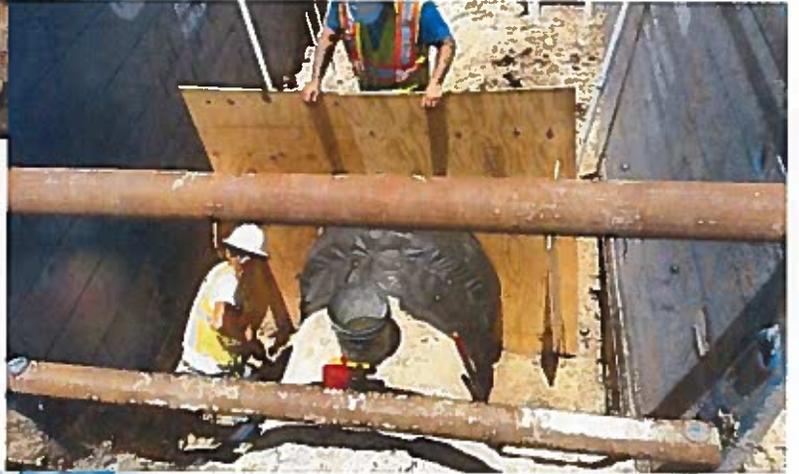
S 15th St

Cave-in on the 11th Fairway over 36" Stormwater Pipe
(Pallet add to show the size of the hole)



36" Stormwater Pipe Point Repair Progress Photos





City of
Jacksonville Beach
Operations &
Maintenance Facility
Department of Public
Works
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FL 32250
Phone: 904.247.6219
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TO: Karen W. Nelson, Deputy City Manager
FROM: David Millinor, Public Works Director
DATE: September 25, 2018
SUBJECT: Construction and Administration Services for ADA Compliant Dune Walkovers within the Community Redevelopment District

ACTION REQUESTED:

Approve contracts with Lloyds Construction & Consulting, LLC and Applied Technology & Management, Inc. for construction and administration services for three ADA compliant dune walkovers within the Downtown Community Redevelopment District.

BACKGROUND:

There are forty-nine dune walkovers located in the City of Jacksonville Beach. Of these, twenty-eight are located within the Downtown Community Redevelopment District limits. The dune walkovers, which were originally constructed in 2002, have been damaged and repaired several times, are overtaken by sand, and have now exceeded their useful life expectancy.

The design was recently completed by Applied Technology and Management, Inc. (ATM) for three ADA dune walkovers within the Downtown Redevelopment District located at 5th Avenue North, Beach Boulevard, and 6th Avenue South. The new ADA dune walkovers were designed to be as close as allowable to the top of the dune crest to minimize the overall length of ramps needed to meet the ADA requirements. These new dune walkovers include enhancements such as reinforced plastic decking and top rails, vinyl coated wire mesh sides and aluminum handrails for a modern design that will provide safety and longevity. These enhancements are initially more expensive when compared to pressure treated lumber; however, the life cycle cost analysis (see attached) prepared by ATM shows that the enhancements are more cost-effective over the 25-year expected life of the decking and railing material.

Staff recommends that we demolish the three existing ADA walkovers within the Downtown Redevelopment District and construct new ADA compliant dune walkovers after sea turtle nesting season (November 1, 2018). Construction will be coordinated with the Army Corps Shore Protection Project.

The City received pricing from Lloyd's Construction & Consulting, LLC for the demolition and construction of the walkovers, and Applied Technology and Management for construction administration services, utilizing existing continuing services contracts. Funding for this project was appropriated by the Downtown Redevelopment Agency utilizing Tax Increment Funds at its meeting on August 27, 2018.

Cost Summary for Three (3) ADA Compliant Dune Walkovers		
DESCRIPTION	COST	RECOMMENDATION
Construction Cost for ADA Dune Walkovers (including freight/bonds)	\$313,545.38	Authorize the demolition and construction of the ADA Dune Walkovers to Lloyd's Construction & Consulting, LLC
10% Contingency	\$31,354.54	
Total Construction Cost (ADA Dune Walkovers)	\$344,899.92	
Construction Administration Fee for ADA Dune Walkovers	\$9,500.00	Authorize Construction Administration Services to Applied Technology & Management, Inc.
10% Contingency	\$950.00	
Total Construction Administration Fee (ADA Dune Walkovers)	\$10,450.00	
Total Construction and Contract Administration Fee (ADA Dune Walkovers)	\$355,349.92	

RECOMMENDATION:

- a. Approve a Contract with Lloyds Construction & Consulting for the Construction of Three ADA Compliant Dune Walkovers in the Amount of \$344,899.92
- b. Approve a Contract with Applied Technology Management, Inc. for Administration Services Related to the Construction of Three ADA Compliant Dune Walkovers in the Amount of \$10,450.00



08/13/2018 14:01

Similarly Designed Walkovers at Guana Bay in Ponte Vedra, FL



CRA ADA Dune Walkover Life Cycle Cost Assessment
5th Ave N, Beach Blvd & 6th Ave S
Revised September 13, 2018

Assumptions

- Desired life expectancy of dune walkovers is 25 years
- Life of wood decking is approximately 10 years
- Wood decking must be sealed annually to minimize splits and achieve 10 years life expectancy
- WearDeck HDPE lumber has 25-year commercial warranty
- Assume material & labor costs increase annually at constant rate

General Maintenance Costs for All Three Walkovers

Replace Wood Deck & Rail	\$15,000	10 years
Seal Wood Decking & Rail	\$6,900	Annually
Replace Mesh Side Rail	\$22,300	10 years

Base Bid – Wood Decking and Wood Handrails

5 th Ave N	\$61,793
Beach Blvd	\$48,460
6 th Ave S	\$61,793
Perf/Payment Bonds	\$5,161
Total	\$177,207

Present Value over 25-Year Life **\$398,757**

Alternate Bid - WearDeck Deck & Top Rail, Aluminum Handrail, Vinyl Coated Galv. Mesh Side Rail

5 th Ave N	\$112,466
Beach Blvd	\$78,293
6 th Ave S	\$112,466
Comp Deck - Freight Charge	\$1,200
Perf/Payment Bonds	\$9,120
Total	\$313,545

Present Value over 25-Year Life **\$346,995**

This analysis indicates that over the expected 25-year life of a walkover, the present value costs are similar for both the Base Bid and the Alternate Bid.

Life Cycle Cost Comparison Between WearDeck and Trex Composite Lumber for Walkover Decking

	WearDeck	Trex
Material	Solid HDPE	HDPE/Wood composite
Warranty	25-year	10-year
Size	Cut to length at no added charge	12', 16' and 20'
2"X6"X12' Cost	\$54.84	\$45.00

Life Cycle Cost Ratio - Trex / WearDeck **2.05**

The life cycle cost ratio is based on a long-term present value analysis and indicates that Trex may be 200% more costly than Wear Deck for walkover decking, assuming the life of each product is equivalent to its warranty period.

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6274

www.jacksonvillebeach.org

MEMORANDUM

TO: Karen W. Nelson, Deputy City Manager
FROM: Michael B. Nadeau, Chief Financial Officer
DATE: September 25, 2018
SUBJECT: Additional Investment Option – Florida Local Government Investment Trust

ACTION REQUESTED:

Adopt Resolution No. 2024-2018 authorizing the City to become a party to the Florida Local Government Investment Trust.

BACKGROUND:

The goal of the City's operating investment strategy is safety of principal, availability of funds, investment return (net of fees), and diversification. In an effort to maximize the net return on short-term investments and ensure that funds are available when needed, we recommend that the City invest in The Florida Local Government Investment Trust (Florida Trust).

The Florida Local Government Investment Trust organized on December 12, 1991. The Florida Trust is the longest running member-owned and member governed local government investment pool in Florida. The current membership includes 59 Florida Counties and 33 other Florida Local Government Entities. The Florida Trust offers a Day-to-Day Fund with a Fitch Rating of AAA-mmf and a Short-Term Bond Fund with a Fitch Rating of AAf/S1.

The City's Investment Policy allows up to 30% of available funds to be invested in intergovernmental investment pools established in accordance with Florida Statutes section 163.01. Our Investment Advisor, AndCo, reviewed the Florida Trust agreement to verify that the investments follow the City's Investment Policy.



Memo to Karen W. Nelson
Florida Local Government Investment Trust
September 25, 2018

2

Membership in the Florida Trust is free. There are no account holder fees and no transactions fees. The funds are available in the Day-to-Day Fund the same day, if requested by 11 am. The funds in the Short-Term Bond Fund are available the next day, if requested by 11 am.

RECOMMENDATION:

Adopt Resolution No. 2024-2018 authorizing the City to become a party to the Florida Local Government Investment Trust.

Introduced by: _____

Adopted: _____

RESOLUTION NO. 2024-2018

A RESOLUTION OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AUTHORIZING AND DIRECTING EXECUTION AND DELIVERY OF A JOINDER TO AGREEMENT AND DECLARATION OF TRUST CREATING AND ESTABLISHING THE FLORIDA LOCAL GOVERNMENT INVESTMENT TRUST; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, THAT:

SECTION 1. DEFINITIONS. Unless the context of use clearly indicates another meaning or intent, the following words and terms as used in this Resolution shall have the following meanings.

"City" shall mean the City of Jacksonville Beach, a municipal corporation organized under the laws of the State of Florida.

"Clerk" shall mean the City Clerk or such other person as may be duly authorized to act on his or her behalf.

"Council" shall mean the City Council of Jacksonville Beach, Florida.

"Florida Trust" shall mean the Florida Local Government Investment Trust.

"Investment Fund" or "Investment Funds" shall mean one or more trust funds established pursuant to the Trust Agreement to enable public entities to pool their surplus funds for joint investment.

"Joinder Agreement" shall mean the Joinder to Agreement and Declaration of Trust between the City and the Florida Trust, in substantially the form appended hereto as Exhibit A.

"Mayor" shall mean the Mayor of Jacksonville Beach, or such other person as may be duly authorized to act on his or her behalf.

"Resolution" shall mean this Resolution, as the same may from time to time be amended, modified or supplemented.

"Trust Agreement" shall mean the Agreement and Declaration of Trust, dated as of December 1, 1991, creating and establishing the Florida Trust, as amended, a composite of which is attached to the Joinder Agreement as Appendix A thereto.

SECTION 2. FINDINGS. It is hereby determined that:

(A) It furthers the public interest for the City to invest any monies not immediately required to be disbursed and to maximize the net earnings on such funds.

(B) The Florida Local Government Investment Trust has been established pursuant to the Trust Agreement for the purpose of establishing one or more Investment Funds for pooling surplus funds of public entities for joint investment.

(C) The City desires to have the Investment Funds available if they become an advantageous investment for the City's surplus funds and the investment policy adopted pursuant to Section 218.415, Florida Statutes, permits investment in the Investment Funds established by the Florida Local Government Investment Trust.

(D) The City is required to become a party to the Trust Agreement as a condition precedent to participation in any Investment Fund.

(E) The City Clerk or comparable officer has approved the City's participation in the Florida Trust, which is a condition precedent to participation in the Florida Trust.

SECTION 3. AUTHORIZATION OF TRUST AGREEMENT. The City Council hereby authorizes and directs the Mayor and City Manager to execute, and the City Clerk to attest under the seal of the City, the Joinder Agreement for the purpose of becoming a party to the Trust Agreement and evidencing the City's agreement to become bound by the terms thereof. The Mayor is further directed to deliver the Joinder Agreement to the Florida Trust for execution by its appropriate officers. Upon execution and delivery of the Joinder Agreement by the City and the Florida Trust, all of the terms and provisions of the Joinder Agreement and the Trust Agreement shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein. The Joinder Agreement shall be in substantially the form attached hereto as Exhibit A, with such changes, amendments, modifications, omissions and additions as may be approved by the Mayor and City Manager. Execution of the Joinder Agreement by the Mayor and City Manager shall be deemed to be conclusive evidence of approval of such changes.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

AUTHENTICATED this _____ day of _____, 2018.

William C. Latham, MAYOR

Laurie Scott, CITY CLERK

(SEAL)

Attest:

By: _____
City Clerk

EXHIBIT A

JOINDER TO AGREEMENT AND DECLARATION OF TRUST

**JOINDER TO
AGREEMENT AND DECLARATION OF TRUST**

THIS JOINDER TO AGREEMENT AND DECLARATION OF TRUST is made and entered into as of October 1, 2018, by and between the City of Jacksonville Beach, Florida (the "City") and the Florida Local Government Investment Trust ("Florida Trust").

WHEREAS, it furthers the public interest for the City to invest any monies not immediately required to be disbursed and to maximize the net earnings on such funds; and

WHEREAS, the Florida Trust has been established for the purpose of establishing one or more investment funds (each referred to herein as an "Investment Fund") for pooling the surplus funds of participating public entities for joint investment in order to seek a higher rate of return without compromising the safety of such funds; and

WHEREAS, the City desires to have the Investment Funds available should they be determined, at any time, to be an advantageous investment for the City's surplus funds; and

WHEREAS, the Investment Funds are only available to public entities that have become parties to the Agreement and Declaration of Trust creating the Florida Local Government Investment Trust, dated as of December 1, 1991 (the "Trust Agreement"), as amended; and

WHEREAS, the City Clerk or comparable officer has previously approved the City's participation in the Florida Trust.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the City and the Florida Trust hereby agree as follows:

SECTION 1. JOINDER IN TRUST AGREEMENT. Upon execution and delivery of this Joinder Agreement, the City shall become a full party to the Trust Agreement, the form of which is attached hereto as Appendix A and incorporated herein by reference, pursuant to Section 2.03 thereof.

SECTION 2. COUNTERPARTS. This Joinder Agreement may be simultaneously executed in two or more counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The signatures of parties appearing on one or more counterparts shall bind them as fully as though all such parties had signed the same counterpart.

IN WITNESS WHEREOF, the Florida Local Government Investment Trust and the City have caused this Joinder Agreement to be executed and attested by its duly authorized officers, all as of the date first above written.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**FLORIDA LOCAL GOVERNMENT
INVESTMENT TRUST**

By: _____
Chairman of the Board of
Trustees

ATTEST:

Secretary of the Board of Trustees

**CITY OF JACKSONVILLE BEACH,
FLORIDA**

By: _____
WILLIAM C. LATHAM
Mayor

KAREN W. NELSON
City Manager

APPENDIX A

**FORM OF
AGREEMENT AND DECLARATION OF TRUST**

**FORM OF
AGREEMENT AND DECLARATION OF TRUST
Creating and Establishing the
FLORIDA LOCAL GOVERNMENT INVESTMENT TRUST
Reflecting Amendments as of March 23, 2012**

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AGREEMENT AND DECLARATION OF TRUST

THIS AGREEMENT AND DECLARATION OF TRUST is made and entered into as of December 1, 1991, by and among Brevard County, Hernando County, Manatee County and Orange County, as the initial participants of the Florida Local Government Investment Trust (the "Initial Participants") and Robert L. Anderson, Scott I. Cowan, Martha O. Haynie, Karen Nicolai, Richard B. Shore and Terry R. Wood, as the initial Trustees of the Florida Local Government Investment Trust (the "Initial Trustees").

WITNESSETH:

WHEREAS, it furthers the public interest for public entities to invest any monies not immediately required to be disbursed and to maximize the net earnings on such funds; and

WHEREAS, the Initial Participants each desire to enter into a trust agreement and thereby establish one or more investment funds (each referred to herein as an "Investment Fund") for pooling their surplus funds for joint investment in accordance with the provisions of this Agreement and Declaration of Trust (the "Agreement"); and

WHEREAS, each of the Initial Participants has duly taken all official action necessary and appropriate to become a party to this Agreement; and

WHEREAS, it is the desire and intent of the Initial Trustees to serve in the capacity of trustees of the Florida Local Government Investment Trust for the purpose of operating, managing and maintaining the assets and liabilities thereof; and

WHEREAS, it is the intent and purpose of this Agreement to invest the pooled funds only in the manner authorized by applicable law; and

WHEREAS, it is proposed that the beneficial interest of any Participant hereunder in the assets of any Investment Fund created pursuant to the provisions of this Agreement shall be divided into non-transferable shares of beneficial interest, which shall be evidenced by share registers maintained by or on behalf of the Trustees; and

WHEREAS, the Initial Participants anticipate that other public entities may wish to become Participants hereunder by becoming parties to this Agreement;

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the Initial Participants and Participants hereafter added pursuant to the provisions hereof, mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns that all monies, assets, securities, funds and property now or hereafter acquired by the Trustees, their successors or assigns under this Agreement, shall be held and managed in trust for the mutual and

proportionate benefit of the holders of record from time to time of shares of beneficial interest in one or more Investment Funds established pursuant to this Agreement, without privilege, priority or distinction among such holders, and subject to the terms, covenants, conditions, purposes and provisions hereof as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

SECTION 1.01. DEFINITIONS. As used in this Agreement and Declaration of Trust, the following terms shall have the following meanings unless the context hereof otherwise requires. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations.

"Administrator" shall mean the person or persons appointed, engaged by the Trustees in accordance with the applicable provisions of Section 5.01 hereof, to perform the duties described in Section 5.03 hereof.

"Affiliate" shall mean, with respect to any person, another person directly or indirectly controlled by or under common control with such person, or any officer, director, partner or employee of such person.

"Agreement" shall mean this Agreement and Declaration of Trust, including any amendments, supplements or joinders hereto executed and delivered in accordance with the terms hereof.

"Annual Report" shall mean the annual report required by Section 4.15 hereof.

"Board" shall mean the Board of Trustees responsible for the operation and administration of the Trust.

"Business Day" shall mean any day upon which banks in the State are open to transact regular business.

"Clerk's Association" shall mean the Florida Association of Court Clerks and County Comptrollers.

"County Association" shall mean the Florida Association of Counties, Inc.

"Custodian" shall mean the bank or trust company engaged by the Trustees in accordance with the applicable provisions of Section 6.01 hereof.

"Custodian Agreement" shall mean the agreement between the Trust and the Custodian referred to in Section 6.01 hereof, as the same may be amended from time to time.

"Development Expenses" means any charges or expenses associated with the initial formation of the Trust, including legal fees and amounts advanced by the County Association and the Clerk's Association.

"Education Expenses" means any charges or expenses associated with education and technical assistance, as set forth in Section 4.20 hereof.

"Fiscal Year" shall mean the annual period beginning October 1 of each year and ending September 30 of the following year unless modified by the Trustees pursuant to Section 4.10 hereof.

"Information Statement" shall mean the information statement or other descriptive document or documents adopted as such by the Trustees and distributed by the Trust to Participants and potential Participants of the Trust as the same may be amended by the Trustees from time to time.

"Initial Participants" shall mean Brevard County, Hernando County, Manatee County and Orange County, which are Public Entities of the State and which, acting with respect to the surplus funds of their respective treasuries, formed this Trust by the execution and adoption of this Agreement.

"Initial Trustees" shall mean Robert L. Anderson, Scott I. Cowan, Martha O. Haynie, Karen Nicolai, Richard B. Shore and Terry R. Wood, as the initial Trustees of the Florida Local Government Investment Trust.

"Investment Advisor" shall mean the person or persons engaged by the Trustees in accordance with the applicable provisions of Section 5.01 hereof to perform the duties described in Section 5.02 hereof.

"Investment Advisory Agreement" shall mean the agreement with the Investment Advisor referred to in Section 5.02 hereof as the same may be amended from time to time.

"Investment Fund" shall mean a trust fund established by the Trustees pursuant to Section 4.02 hereof, to enable the Participants to pool their surplus funds for joint investment in accordance with the provisions of this Agreement.

"Net Asset Value" shall mean the aggregate value of Shares in an Investment Fund, determined in accordance with Section 9.02 hereof.

"Operating Expenses" means any charges or expenses which, in the opinion of the Trustees, are necessary or incidental to or proper for carrying out any of the purposes of this Agreement, including appropriate compensation or fees to persons with whom the Trust has contracted or transacted business.

"Participant" shall mean the Initial Participants and the Public Entities which comply hereafter with the provisions of Section 2.03 hereof.

"Permitted Investments" shall mean the investments authorized by the Trustees for any specific Investment Fund, as authorized by Section 4.02 hereof.

"Public Entity" shall mean any municipality, county, public utility, or other political subdivision of the State, or any department, agency, or instrumentality thereof, or any political or public corporation thereof, existing as a local government entity under the Constitution and laws of the State, which is authorized to invest in the Trust. The term "Public Entity" shall be limited to those types of public entities that are political subdivisions of the State of Florida within the meaning of the Internal Revenue Code of 1986, as amended, integral parts of the State of Florida, or entities whose income qualifies for exclusion from gross income pursuant to Section 115 of the Internal Revenue Code of 1986, as amended.

"Share" shall mean the unit used to denominate and measure the respective pro rata beneficial interest of the Participants in the Trust Property, as described in Article VII.

"Share Register" shall mean the register of Shares maintained pursuant to Article VIII hereof.

"Share Value" shall mean the value of each Share in an Investment Fund, determined in accordance with Section 9.03 hereof.

"State" shall mean the State of Florida.

"Transaction Execution Date" means the Business Day on which a Participant's investment in or redemption from an Investment Fund is executed in accordance with the terms hereof.

"Transaction Valuation Date" means (A) with respect to investments, each Transaction Execution Date, and (B) with respect to redemptions, the Business Day immediately preceding each Transaction Execution Date.

"Trust" shall mean the "Florida Local Government Investment Trust" as established and governed by this Agreement.

"Trust Counsel" shall mean the attorney or firm of attorneys, experienced in matter of local government law and duly admitted to practice law in the State, as may be engaged or employed by the Board pursuant to Section 5.04 of this Agreement.

"Trust Property" shall mean, as of any particular time, any and all property, real, personal, or otherwise, tangible or intangible, which is transferred, conveyed or paid to the Trust or Trustees, and all assets, income, profits and gains therefrom and which, at such time, is owned or held by or for the account of the Trust or the Trustees, including but not limited to Permitted Investments.

"Trustees" shall mean the Initial Trustees of the Florida Local Government Investment Trust designated in Section 3.01 of this Agreement or any successors appointed thereafter as provided in said Section 3.01.

SECTION 1.02. SECTION HEADINGS. Any headings preceding the texts of the several Articles and Sections of the Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

ARTICLE II

CREATION AND PURPOSE OF TRUST

SECTION 2.01. CREATION OF TRUST. There is hereby created and established an investment trust for surplus public funds to be known as the "Florida Local Government Investment Trust," the operation and administration of which shall be the responsibility of the Trustees. The Trustees shall conduct the Trust's activities, hold property, execute all documents and sue or be sued as the "Florida Local Government Investment Trust" and such name (and the name "Trust", wherever used in this Agreement or related documents, except where the context otherwise requires) shall refer to the Board of Trustees in their capacity as Trustees, and not individually or personally, and shall not refer to the officers, agents, employees, counsel, advisors, consultants, accountants, or Participants of the Trust or of such Trustees. Should the Trustees determine that the use of such name is not practicable, legal or convenient, they may use such other designation or adopt such other name for the Trust as they deem proper, and the Trust may hold property and conduct its activities under such designation or name. The Trustees shall take such action as they deem necessary or appropriate to file or register such name in accordance with the laws of the State or the United States of America so as to protect and reserve the right of the Trust in and to such name.

SECTION 2.02. PURPOSE AND NATURE OF TRUST.

(A) The purpose of the Trust is to provide Investment Funds through which Public Entities may pool funds which are not immediately required to be disbursed in order to take advantage of Permitted Investments and maximize net earnings, subject to and in accordance with the provisions of the laws of the State, from time to time in effect, governing the investment of funds by such Public Entities.

(B) The Trust is created pursuant to and shall be subject to and governed by all applicable laws of the State. The Trust is not intended to be, shall not be deemed to be, and shall not be treated as a general partnership, limited partnership, joint venture, corporation, investment company, joint stock company, or any other entity or organization other than a local government surplus funds trust fund. The Participants shall be the beneficiaries of the Trust and their relationship to the Trustees shall be solely in their capacity as Participants and beneficiaries in accordance with the rights conferred upon them hereunder.

(C) This Agreement is an agreement of indefinite term regarding the deposit, redeposit, investment, reinvestment and withdrawal of local government funds within the meaning of the laws of the State. The Trust Property shall be invested in compliance with the laws of the State and the provisions hereof.

SECTION 2.03. PARTICIPANT REQUIREMENTS. A Public Entity may become a Participant by (A) agreeing by written instrument to be bound by the terms of this Agreement, and (B) providing written evidence to the Trust that the Clerk of the Circuit Court, County Comptroller or other comparable officer of such Public Entity has approved participation in the Trust, each in form and substance acceptable to the Trust Counsel. Each Public Entity, once having become a Participant as set forth above, shall continue as a Participant until a subsequent written instrument withdrawing from the Trust is adopted and delivered to the Trustees and Administrator stating that Public Entity's intent to withdraw from participation in the Trust.

SECTION 2.04. PRINCIPAL OFFICE. The Trust shall maintain an office of record in the State and may maintain such other offices or places of business as the Trustees may from time to time determine. The initial office of record of the Trust shall be 3544 Maclay Boulevard, Tallahassee, Florida 32312. The office of record may be changed from time to time by resolution of the Trustees, and notice of such change of the office of record shall be given to each Participant.

ARTICLE III

BOARD OF TRUSTEES

SECTION 3.01. APPOINTMENT OF TRUSTEES. The Trust shall be operated and administered by a Board of Trustees consisting of six members. Three Trustees shall be appointed by and serve at the pleasure of the County Association and three Trustees shall be appointed by and serve at the pleasure of the Clerk's Association. Upon appointment, each Trustee shall execute, acknowledge and deliver to the Board and the organization responsible for such Trustee's appointment an instrument in writing accepting such appointment hereunder, and thereupon such Trustee, without any further act, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of a Trustee. Each Trustee shall be appointed for a term of one year or until his or her successor is appointed and qualified as provided herein. There shall be no limit upon the number of successive terms to be served by any Trustee. Trustees' terms shall commence on July 1. Notwithstanding the foregoing, the term of the initial Trustees shall commence on the effective date of this Agreement and expire on June 30, 1992.

The initial Trustees of the Trust are as follows:

<u>Name</u>	<u>Appointing Organization</u>
Robert L. Anderson	County Association
Scott I. Cowan	County Association
Martha O. Haynie	Clerk's Association
Karen Nicolai	Clerk's Association
Richard B. Shore	Clerk's Association
Terry R. Wood	County Association

SECTION 3.02. RESIGNATIONS. Any Trustee may resign by delivering, either by mail or in person, his or her written resignation to the Chairman of the Board and the organization responsible for such Trustee's appointment. Any person appointed to serve as a Trustee while serving as a County Commissioner, Clerk of the Circuit Court or County Comptroller shall be deemed to resign as a Trustee on the date such person (A) ceases to hold such office or (B) is suspended from such office, notwithstanding any subsequent reinstatement. Any person who ceases being a Trustee for whatever reason shall forthwith turn over to the remaining Trustees, at the principal office of the Trust, any and all records, books, documents, property or other assets in his or her possession owned by the Trust or by the Board incident to the fulfillment of this Agreement and the administration of the Trust. The Trust shall immediately notify the County Association and the Clerks Association in writing of the resignation of any Trustee appointed by such

association. The powers of the Board to act shall not be impaired or limited in any way pending the appointment of a successor Trustee to fill any vacancy.

SECTION 3.03. BOARD MEETINGS.

(A) Notwithstanding any other provisions of this Agreement to the contrary, meetings of the Board of Trustees shall be governed by the substantive provisions of Section 286.011, Florida Statutes, as the same may hereafter be amended and supplemented, and any subsequently enacted statute succeeding to the functions of Section 286.011. The Trustees hereby individually and collectively agree to comply with the provisions thereof.

(B) The annual meeting of the Board shall be held at such times and at such places as determined periodically by the Board.

(C) Special meetings of the Board may be called by the Chairman and in his or her absence by the Vice-Chairman, or by any three Trustees. By unanimous consent of all of the Trustees, special meetings of the Board may be held without written notice at any time and place; otherwise, notice of all special meetings of the Board shall be mailed to each Trustee at least ten days prior to the time fixed for the meeting. The Administrator shall receive notice of all meetings. All notices of special meetings of the Board shall state the purpose thereof.

(D) To the extent permitted by Section 286.011, Florida Statutes, telephonic regular or special meetings by conference call or other method of electronic voice transmission which permits each participant to hear every other participant and join in the discussion are specifically authorized.

(E) To the extent permitted by Section 286.011, Florida Statutes, in the event all of the Trustees shall severally or collectively consent in writing to any action taken or to be taken by the Trust, such action is a valid action as though it had been authorized at a formal meeting.

(F) The Board shall meet not less than semiannually.

(G) Absence of any Trustee for three consecutive meetings in a year without justification, excuse or good cause shall be deemed a resignation by such Trustee and the organization responsible for such Trustee's appointment may declare vacant the position, which shall be filled in the manner indicated above.

SECTION 3.04. QUORUM AND VOTING. A quorum for the transaction of business at any regular or special meeting of the Board shall consist of a majority of the Trustees then in office, but shall never be less than four Trustees; provided however, that a majority of the Trustees present may act to continue the meeting to any time and date specified in such action. Each Trustee shall be entitled to one vote at any meeting of the

Board. No vote by proxy shall be permitted. The affirmative vote of not less than four Trustees shall be required for any action of the Board.

SECTION 3.05. CONFLICTS OF INTEREST. No Trustee shall vote on any matter which inures to his or her special private gain, or the special gain of any principal, other than a Participant, by whom he or she is retained. Such Trustee shall, prior to a vote being taken, disclose the nature of his or her interest in the matter from which he or she is abstaining from voting.

SECTION 3.06. BOOKS AND RECORDS. The books and records pertaining to the Trust shall be "public records" within the meaning of Section 119.01(1), Florida Statutes, and any subsequently enacted statute defining the term "public records." The Trustees hereby individually and collectively agree to comply with all provisions of law applicable to "public records."

SECTION 3.07. OFFICERS OF THE BOARD. Officers of the Board required by this Agreement shall be elected at the annual meeting held in accordance with Section 3.03(A) of this Agreement. In addition, the Board may elect such other officers from their number as it deems advisable. Notwithstanding their stated terms, all officers shall serve at the pleasure of the Board.

(A) The Board shall elect a Chairman from their number, who shall serve for a period of one year, or until a successor shall have been duly elected and qualified, whichever is later and may be elected to an unlimited number of consecutive terms. The Chairman shall be the chief executive officer of the Trust, shall preside at all meetings of the Board, shall have general supervision over the affairs of the Trust and over the other officers, and shall perform all such other acts and duties as are incident to the Chairman's responsibilities as chief executive officer.

(B) The Board shall elect a Vice-Chairman from their number, who shall serve for a period of one year, or until a successor shall have been duly elected and qualified, whichever is later and may be elected to an unlimited number of consecutive terms. In case of the absence or disability of the Chairman, the Chairman's duties shall be performed by the Vice-Chairman. The Vice-Chairman shall perform such additional duties as are authorized by the Board.

(C) The Board shall elect a Secretary from their number, who shall serve for a period of one year, or until a successor shall have been duly elected and qualified, whichever is later and may be elected to an unlimited number of consecutive terms. The Secretary shall record and circulate the minutes of all meetings, shall prepare agendas and records, and perform such additional duties as are authorized by the Board.

SECTION 3.08. COMPENSATION. No Trustee shall be compensated for service as a Trustee. A Trustee may be reimbursed for out-of-pocket expenses in

attending meetings or for other authorized travel on behalf of the Trust. No Trustee shall be employed or engaged by the Board to provide professional or other services to the Trust.

SECTION 3.09. STANDARD OF CARE. The Trustees shall use ordinary care and reasonable diligence in the administration of the Trust. Nothing contained in this Agreement, either expressly or by implication, shall be deemed to impose any duties or responsibilities on the Trustees other than those expressly set forth in this Agreement.

SECTION 3.10. LIABILITY. A Trustee shall not be personally liable for monetary damages to any person for any statement, vote decision, or failure to act, regarding the management or policy of the Trust unless:

(A) the Trustee breached or failed to perform his or her duties as a Trustee; and

(B) the Trustee's breach of, or failure to perform, his or her duties constitutes:

(1) A violation of the criminal law, unless the Trustee had reasonable cause to believe such conduct was lawful or had no reasonable cause to believe such conduct was unlawful. A judgment or other final adjudication against a Trustee in any criminal proceeding for violation of the criminal law shall estop that Trustee from contesting the fact that such breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the Trustee from establishing that such Trustee had reasonable cause to believe that such conduct was lawful or had no reasonable cause to believe that such conduct was unlawful;

(2) A transaction from which the Trustee derived an improper personal benefit, either directly or indirectly; or

(3) Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

For the purposes of this Section 3.10, the term "recklessness" means the acting or omission to act, in conscious disregard of a risk: (i) known, or so obvious that it should have been known to the Trustee; and (ii) known to the Trustee, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

SECTION 3.11. INDEMNIFICATION.

(A) The Trust shall, to the extent permitted by law, indemnify any person who was or is a party (other than an action by, or in the right of, the Trust), by reason of the fact that such person is or was a Trustee, officer or direct employee of the Trust against liability incurred in connection with such proceedings on behalf of the Trust, including

any approval of such proceedings, if such person acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Trust and, with respect to any criminal action or proceedings, had no reasonable cause to believe such conduct was unlawful. The termination of any proceedings by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interest of the Trust, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(B) In case any claim shall be made or action brought against any person in respect of which indemnity may be sought against the Trust, such indemnified person shall promptly notify the Trust in writing setting forth the particulars of such claim or action. The indemnified person shall be entitled to select and retain counsel of his or her choice. The Trust shall be responsible for the payment or immediate reimbursement for all reasonable fees and expenses incurred in the defense of such claim or action.

SECTION 3.12. LEGAL TITLE TO TRUST PROPERTY. Title to all Trust Property shall be vested in the Trust on behalf of the Participants who shall be the beneficial owners. The Trustees shall have full and complete power to cause legal title to any Trust Property to be held, on behalf of the Participants, by or in the name of any other entity or person as nominee, on such terms, in such manner, and with such powers as the Trustees may determine; provided that the interests of the Trust are adequately protected as a consequence thereof.

SECTION 3.13. EXECUTION OF DOCUMENTS. All documents or instruments which require the signature of the Trustees shall be signed by the Chairman of the Board of Trustees (as Trustee) or by such other person as designated by resolution of the Trustees.

SECTION 3.14. BY-LAWS. The Trustees may adopt and from time to time, amend or repeal by-laws for the conduct of the business of the Trust. The by-laws, among other things, may define the duties of the respective officers, agents, employees and representatives of the Trust.

SECTION 3.15. SEAL. The Trustees shall have full and complete power to adopt and use a seal for the Trust, but unless otherwise required by the Trustees, it shall not be necessary for the seal to be placed on, and its absence shall not impair the validity of any document, instrument or other paper executed and delivered by or on behalf of the Trust.

SECTION 3.16. SURETY BONDS. No Trustee shall be obligated to give any bond, surety or other security for the performance of any of his or her duties as

Trustee, except as otherwise determined by the Board of Trustees if necessary to protect the Trust.

SECTION 3.17. RECITALS. Any written instrument duly creating an obligation of the Trust shall be conclusively taken to have been executed by the Trustees, a Trustee or an officer, employee or agent of the Trust only in his or her capacity as a Trustee under this Agreement or in his or her capacity as an officer, employee or agent of the Trust. Any written instrument duly creating an obligation of the Trust shall refer to this Agreement and contain a recital to the effect that the obligations thereunder are not personally binding upon, nor shall resort be had to the property of, any of the Trustees, Participants, Treasurers, officers, employees or agents of the Trust; that only the Trust Property or a specific portion thereof shall be bound; and that such written instrument may contain any similar recital which may be deemed appropriate; provided that the omission of any recital pursuant hereto shall not operate to impose personal liability on any of the Trustees, Participants, Treasurers, officers, employees or agents of the Trust.

SECTION 3.18. RELIANCE ON EXPERTS. Each Trustee and officer of the Trust shall, in the performance of his or her duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other official records of the Trust, upon an opinion of Trust Counsel, or upon official reports made to the Trust by any of its officers or employees or by the Investment Advisor, Administrator, Custodian, accountants, appraisers or other experts or consultants selected with reasonable care by the Trustees or officers of the Trust.

ARTICLE IV

POWERS OF TRUSTEES

SECTION 4.01. GENERAL. The Trustees shall have, without other or further authorization, full, exclusive, and absolute power, control and authority over the Trust Property and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute owners of the Trust Property in their own right, and with such powers of delegation as may be permitted by this Agreement. The Trustees may do and perform such acts and things as in their sole judgment and discretion are necessary and proper for conducting the affairs of the Trust or promoting the interests of the Trust and the Participants in accordance with the objectives of this Trust as set forth in this Agreement. The Trustees shall invest the Trust Property with that degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of the capital, the need for liquidity, and the probable income to be derived from such investment. The enumeration of any specific power or authority herein shall not be construed as limiting the aforesaid general power or authority or any other specific power or authority provided by law. The Trustees may exercise any power authorized and granted to them by this Agreement. Such powers of the Trustees may be exercised without any further consent of the Participants, unless otherwise provided herein, or the necessity of any order of, or resort to, any court. Notwithstanding any other provision hereof, the Trustees are authorized to establish more than one Investment Fund in which the assets of the Trust are held and to establish separate investment criteria for each Investment Fund.

SECTION 4.02. INVESTMENT FUNDS.

(A) Government Fund

(1) The initial Investment Fund established pursuant to this Agreement shall be known as the "Government Fund." Participants shall be entitled to redeem funds from the Government Fund upon provision of notice to the Trust not later than the second Business Day prior to the date of redemption.

(2) The following instruments shall comprise the Permitted Investments for the Government Fund; provided however, that Government Fund assets shall not be invested in any instrument or instruments rated lower than A- by Standard and Poor's and one other nationally recognized rating agency, provided that the overall rating of the Government Fund must always be maintained at the highest rating category (AAA or equivalent) by at least one of the three nationally

recognized rating agencies. In the event that the two rating agencies assigned separate ratings to a particular security, the lower of the two ratings prevail:

(a) direct obligations of the United States Treasury, Federal agencies and instrumentalities of the United States;

(b) repurchase agreements with a term of 30 days or less that are fully collateralized by obligations described in Section 4.02(A)(2)(a), provided that the institution or broker transacting the repurchase agreement shall (a) execute and perform as stated in a master repurchase agreement and (b) take delivery of such collateral either directly or through an authorized custodian;

(c) commercial paper rated "prime-1" by Moody's Investors Service and "A-1" or "A-1+" by Standard and Poor's Corporation, provided that the Government Fund shall not purchase more than 10 percent of the outstanding principal amount of any specific issue of commercial paper;

(d) Securities and Exchange Commission registered money market funds with the highest credit quality rating from a nationally recognized rating agency; provided however, that the investment of Government Fund assets in a money market mutual fund shall not exceed one percent of the Government Fund assets unless such investment is made (a) on an overnight basis pending investment on the next Business Day, (b) in amounts required to pay the purchase price of an investment previously purchased, the purchase price of which has not been paid, or (c) at the express direction of the Investment Advisor;

(e) Asset-backed securities in fully-registered form;

(f) domestic corporate debt obligations and bonds denominated in US Dollars and issued in the United States by foreign banks and corporations (yankee bonds), provided that not more than 2 percent of the Government Fund shall be invested in the debt obligations of any specific issuer.

No Permitted Investment shall mature later than five years following its purchase; provided however, that if a Permitted Investment has a put or reset date or trades on its average maturity, the applicable put date, reset date, or date of average maturity or duration shall be used in lieu of the actual maturity date; and

(g) Taxable and non-taxable municipal securities, provided that, on a per issue basis, the minimum issue size is \$50 million and the portfolio cannot own more than 10% of the issue.

(3) To be classified as Permitted Investments for the Government Fund, collateralized mortgage obligations shall be part of a tranche structured to have a projected stable average life over a wide range of interest rate movement and rate of prepayment, as evidenced by compliance with the average life test, average life sensitivity test and price sensitivity test promulgated by the Federal Financial Institutional Examination Council.

Collateralized mortgage obligations shall not be classified as Permitted Investments if they are secured by principal or interest only, or if they bear interest at an inverse floating rate.

(4) Not less than 30 percent of the Government Fund assets shall be invested in direct obligations of the United States Treasury, federal agencies and instrumentalities.

(B) Short Term Liquidity Fund

(1) There is hereby established the Short Term Liquidity Fund. Participants shall be entitled to redeem funds from the Short Term Liquidity Fund upon provision of notice to the Trust as provided in Section 7.04 hereof.

(2) The objectives of the Short Term Liquidity Fund are a stable share price and as high a level of current income as is consistent with preservation of principal and liquidity.

(3) Except as otherwise provided in this Section 4.02(B), all Permitted Investments for the Short Term Liquidity Fund must satisfy the following criteria:

(a) Such Permitted Investments must be securities eligible to be held in an investment fund regulated and controlled by Securities and Exchange Commission Rule 2a-7;

(b) Such Permitted Investments must have a maturity of not more than 397 days, except for government issued and FDIC-backed floating rate notes which must have a maturity of not more than 762 days;

(c) A minimum of 50% of such Permitted Investments must have an A-1+ rating from Standard & Poor's Corporation and a maximum of 50% of such Permitted Investments must have an A-1 rating from Standard & Poor's Corporation;

(d) Except for government or agency securities, no more than 5% of the Short Term Liquidity Fund's market value will be invested in securities of any single issuer; and

(e) The instruments must be Fixed-Income securities.

(4) Subject to Section 4.02(B)(3) above, the following Fixed-Income instruments shall comprise the Permitted Investments for the Short Term Liquidity Fund:

(a) Obligations of U.S. or foreign Governments or their agencies payable in U.S. Dollars;

(b) U.S. Dollar-denominated Corporate securities;

(c) Money-market instruments including repurchase agreements with minimum 102% collateral of US Treasury and Agency securities only; and

(d) Obligations of U.S. state and local entities.

(e) Notwithstanding anything to the contrary in this Section 4.02(B), investments in asset-backed and mortgage-backed securities shall be limited to a combined maximum of 5% of the Short Term Liquidity Fund's market value, and each asset-backed and mortgage-backed security must have a maximum "final" maturity of 397 days and minimum credit rating of A-1 or equivalent."

(C) Additional Investment Funds may be established by the Board. The action creating any additional Investment Fund shall specify the applicable Permitted Investments and redemption requirements. The Trustees shall not modify the list of Permitted Investments or the period of advance notice required for the redemption of Shares for any Investment Fund without (1) providing 30 day's written notice to each Participant holding Shares in such Investment Fund and (2) permitting each Participant to redeem its Shares in such Investment Fund

SECTION 4.03. ACQUISITION AND DISPOSITION OF ASSETS.

(A) The Trustees shall have full and complete power to establish and maintain Investment Funds for Participants. For such consideration as they may deem proper and as may be required by law, the Trustees shall be authorized to purchase, subscribe for, invest in, sell, assign, transfer, exchange, distribute and otherwise deal in or dispose of Permitted Investments and to contract for and enter into agreements with respect to the purchase and sale of Permitted Investments.

(B) The Trustees shall have full and complete power to sell, exchange or otherwise dispose of any and all Trust Property free and clear of any and all trusts and restrictions, at public or private sale, with or without advertisement, for cash or on terms, and subject to such restrictions, stipulations, agreements and reservations as they shall deem proper, and to execute and deliver any deed, power, assignment, bill of sale or other instrument in connection with the foregoing, including giving consents and making contracts relating to Trust Property or its investment, use or disposition.

SECTION 4.04. DELEGATION. The Trustees shall have full and complete power (consistent with their continuing exclusive authority over the management and administration of the Trust and their duties and obligations as Trustees) to delegate from time to time to one or more Trustees (who may be designated as a Committee of the Trustees) or to officers, employees or agents of the Trust (including the Investment Advisor, the Administrator, the Custodian and the Trust Counsel) such authorities, the performance of such acts and things, the execution of such instruments either in the name of the Trust or as their attorney or attorneys, and such other responsibilities as the Trustees may from time to time deem expedient and appropriate in the furtherance of the business affairs and purposes of the Trust. The provisions of this Section 4.04 shall be deemed to permit the delegation of administrative, ministerial and operational matters, but shall not be deemed to permit the delegation of the authority to determine policies and procedures of the Trust.

SECTION 4.05. COLLECTION. The Trustees shall have full and complete power: (A) to collect, sue for, receive and receipt for all sums of money or other property due to the Trust; (B) to consent to extensions of time for payment or the renewal of any securities, investments or obligations; (C) to engage or intervene in, prosecute, defend, compromise, abandon, or adjust by arbitration or otherwise any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property; (D) to foreclose any collateral, security or instrument securing any investment, note, bill, bond, obligation or contract by virtue for which any sums of money are owed to the Trust; (E) to exercise any power of sale held by them and to convey good title thereunder free of any and all trusts, and in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property; (F) to be parties to any reorganization and to transfer to and deposit with any corporation, committee, voting trustee or other person any securities, investments, or obligations of any person which form a part of the Trust Property, for the purpose of such reorganization or otherwise; (G) to participate in any arrangement for enforcing or protecting the interests of the Trustees as the owners or holders of such securities, investments or obligations and to pay any assessment levied in connection with such reorganization or arrangement; (H) to extend the time (with or without security) for payment or delivery of any debts or property and to execute and enter into releases, agreements, and other instruments; and (I) to pay or satisfy any debts or claims upon any evidence that the Trustees shall deem sufficient.

SECTION 4.06. PAYMENT OF EXPENSES. The Trustees shall have full and complete power (A) to incur and pay Operating Expenses, Development Expenses and Education Expenses and (B) to reimburse others for the payment thereof. The Trustees shall fix the compensation, if any, of all officers and employees of the Trust. The Trustees shall not be paid compensation for their general services as Trustees hereunder but may be reimbursed for their authorized travel and other out-of-pocket expenses reasonably incurred on behalf of the Trust. Except as set forth in Section 7.08 hereof relative to any expenses associated with defective redemption requests, Operating Expenses, Development Expenses and Education Expenses shall be paid from earnings of the Trust.

SECTION 4.07. BORROWING AND INDEBTEDNESS. The Trustees shall not have the power to borrow money or incur indebtedness whether or not the proceeds thereof are intended to be used to purchase Permitted Investments, except as a temporary measure to facilitate withdrawal requests which might otherwise require unscheduled dispositions of portfolio investments and only as and to the extent permitted by law. No such indebtedness shall have a maturity later than that necessary to avoid the unscheduled disposition of portfolio investments.

SECTION 4.08. DEPOSITS. The Trustees shall have full and complete power to deposit, in accordance with the law, any monies or funds included in the Trust Property and intended to be used for the payment of expenses of the Trust, with one or more entities in the State which are eligible under the laws of the State to be a depository for public funds, whether or not such deposits will draw interest. Such deposits are to be subject to withdrawal in such manner as the Trustees may determine, and the Trustees shall have no responsibility for any loss which may occur by reason of the failure thereof. With respect to such deposit, each such entity shall comply with all applicable requirements of law.

SECTION 4.09. VALUATION. The Trustees shall have full and complete power to determine conclusively, in good faith, the value of any Trust Property and to revalue the Trust Property as more specifically set forth in Article IX herein.

SECTION 4.10. FISCAL YEAR AND CHART OF ACCOUNTS. The Trustees shall have full and complete power to determine the fiscal year of the Trust and the method or form in which its accounts shall be kept, and from time to time to change the fiscal year or method or form of accounts. Unless otherwise determined by the Trustees, the fiscal year of the Trust shall commence on October 1 of each year and terminate on September 30 of the following calendar year.

SECTION 4.11. CONCERNING THE TRUST AND AFFILIATES. The Trust shall not enter into separate transactions with or make investments in any Affiliate of the Trust or of any Trustee, Investment Advisor (except as otherwise permitted by written agreement), Administrator, officer, employee or agent of the Trust; provided that

the Trust may purchase and sell Permitted Investments from and to the Custodian or and Affiliate of the Custodian.

SECTION 4.12. INVESTMENT POLICY. The Trustees shall use their best efforts to obtain, through the Investment Advisor or other qualified persons, a continuing and suitable general investment policy for each Investment Fund, consistent with the investment objectives of the Trust set forth herein. The Trustees shall be responsible for reviewing and approving or rejecting all investment policies presented by the Investment Advisor or such other persons.

SECTION 4.13. AGENTS AND EMPLOYEES. The Trustees shall have full and complete power to appoint, employ, retain or contract with any person of suitable qualification (including any corporation, partnership, trust or other entity) as the Trustees may deem necessary or desirable for the transaction of the affairs of the Trust, including any person or persons who, under the supervision of the Trustees, may among other things: (A) serve as the Investment Advisor and consultant in connection with policy decisions made by the Trustees; (B) serve as the Administrator; (C) serve as Trust Counsel; (D) furnish reports to the Trustees and provide research, economic and statistical data in connection with the Trust's investments; (E) act as consultants, accountants, technical advisors, brokers, corporate fiduciaries, escrow agents, depositories, custodians, agents for collection, insurers or insurance agents, registrars for Shares, or in any other capacity deemed by the Trustees to be necessary or desirable; (F) act as attorney-in-fact or agent in the purchase, sale or other disposition of investments and in the handling, prosecution or other enforcement of any lien or security securing investments; and (G) assist in the performance of such ministerial functions necessary in the management of the Trust as may be agreed upon with the Trustees.

SECTION 4.14. INSURANCE. The Trustees shall have full and complete power to purchase and pay for insurance policies or bonds insuring the Trust and the Trustees, officers and direct employees of the Trust individually against all claims and liabilities of every nature arising by reason of holding or having held any such office or position or by reason of any action alleged to have been taken or omitted by the Trust or any such person as Trustee, officer or employee, including any action taken or omitted that may be determined to constitute negligence, whether or not the Trust would have the power to indemnify such person against such liability.

SECTION 4.15. ANNUAL REPORTS. The Trustees, through the Administrator, shall cause to be prepared annual financial reports of the details of the operations of the Trust. Such Annual Report shall include: (A) a report of financial conditions containing a statement of assets and liabilities and statements of operations and of changes in net assets of the Trust prepared in conformity with generally accepted accounting principles; (B) an opinion of an independent certified public accountant on such financial statements based on an examination of the books and records of the Trust made in accordance with generally accepted auditing standards; and (C) sufficient

information to establish compliance with the investment policy established pursuant to this Agreement. A signed copy of such report and opinion shall be filed with the Trustees within 60 days after the close of the period covered thereby. Copies of such reports shall be mailed to all Participants. In addition, the Trustees shall furnish to the Participants a quarterly report containing an unaudited statement of assets and liabilities for such accounting period and statements of operations and of changes in net assets of the Trust for the period from the beginning of the then current Fiscal Year to the end of such current accounting period.

SECTION 4.16. PURSUIT OF REMEDIES. Notwithstanding any provision in this Agreement, when the Trustees deem that there is a significant risk that an obligor to the Trust may default or is in default under the terms of any obligation to the Trust, the Trustees shall have full and complete power to pursue any remedies permitted by law which, in their sole judgment, are in the interests of the Trust. The Trustees shall have full and complete power to enter into any investment, settlement, compromise, commitment or obligation on behalf of the Trust resulting from the pursuit of such remedies as are necessary or desirable to dispose of property acquired as a result thereof.

SECTION 4.17. INFORMATION STATEMENT. The Trustees shall have full and complete power to prepare, publish and distribute an Information Statement regarding the Trust and to amend or supplement the same from time to time.

SECTION 4.18. TAXES. The Trustees shall have full and complete power: (A) to pay all taxes or assessments, of whatever kind or nature, validly and lawfully imposed upon or against the Trust or the Trustees in connection with the Trust Property, or upon or against the Trust Property or income or any part thereof; (B) to settle and compromise disputed tax liabilities; and (C) for the foregoing purposes to make such returns and do all such other acts and things as may be deemed by the Trustees to be necessary or desirable.

SECTION 4.19. RIGHTS AS HOLDERS OF TRUST PROPERTY. The Trustees shall have full and complete power to exercise on behalf of the Participants all of the rights, powers and privileges pertaining to the ownership of all or any Permitted Investments or other Trust Property to the same extent that any individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice either in person or by proxy or power of attorney, with or without the power of substitution, to one or more persons, whose proxies and powers of attorney may be for meetings or actions generally, or for any particular meeting or action, and may include the exercise of discretionary powers.

SECTION 4.20. EDUCATION AND TECHNICAL ASSISTANCE. Pursuant to Section 9.04 hereof, the Trustees shall retain the following amounts to be used for education and technical assistance: (A) prior to March 1, 1998, 0.6666 basis points per month on the total Trust Property in the Government Fund; (B) between March

1, 1998 and October 31, 1998, both dates inclusive, 0.5833 basis points per month on the total Trust Property in the Government Fund; and (C) beginning November 1, 1998, 0.5000 basis points per month on the total Trust Property in the Government Fund, Notwithstanding anything to the contrary herein, the Trustees shall be authorized to modify the amounts to be retained to be used for education and technical assistance for the Government Fund and may establish amounts to be retained to be used for education and technical assistance for the Short Term Liquidity Fund and any other Investment Funds established pursuant to this Agreement. The Trustees may contract only with the County Association and the Clerk's Association for utilization of these funds, which shall be restricted to programs related to local government education and training.

SECTION 4.21. FURTHER POWERS. To the extent permitted by law, the Trustees shall have full and complete power to take all actions, do all matters and things, and execute all instruments as they deem necessary, proper or desirable in order to carry out, promote or advance the interests and purposes of the Trust, although such actions, matters or things are not herein specifically mentioned. Any determination as to what is in the best interest of the Trust made by the Trustees in good faith shall be conclusive. In construing the provisions of this Agreement, the presumption shall be in favor of a grant of power to the Trustees. The Trustees shall not be required to obtain any further consent of the Participants, unless otherwise provided herein, or any court order to deal with the Trust Property.

ARTICLE V

INVESTMENT ADVISOR, ADMINISTRATOR AND TRUST COUNSEL

SECTION 5.01. APPOINTMENT. The Trustees are responsible for the general investment policy and program of the Trust and for the general supervision and administration of the business and affairs of the Trust conducted by the officers, agents, employees, investment advisors, administrators, distributors or independent contractors of the Trust, consistent with the investment policy established in this Agreement. However, the Trustees are not required personally to conduct all of the routine business of the Trust and, consistent with their responsibility as stated herein, the Trustees may appoint, employ or contract on behalf of the Trust with an Investment Advisor, an Administrator and a Trust Counsel and may grant or delegate such authority to the Investment Advisor, the Administrator, the Trust Counsel or to any other person as the Trustees may, in their sole discretion, deem to be necessary or desirable for the efficient management of the Trust.

SECTION 5.02. DUTIES OF THE INVESTMENT ADVISOR. The duties of the Investment Advisor shall be those set forth in the Investment Advisory Agreement to be entered into between the Trustees, on behalf of the Trust, and the Investment Advisor. Such duties may be modified by the Trustees, from time to time, by the amendment of the Investment Advisory Agreement. The Trustees may authorize the Investment Advisor to effect purchases, sales or exchange of Trust Property or may authorize any officer, employee, agent or Trustee to effect such purchases, sales or exchanges pursuant to recommendations of the Investment Advisor, all without further action by the Trustees subject to the Trustee's right of disapproval. Purchases, sales and exchanges of Trust Property shall be deemed to be authorized by all the Trustees in accordance with the provisions of this Agreement unless the Investment Advisor is notified in writing by the Trustees to the contrary. The Investment Advisory Agreement may authorize the Investment Advisor to employ other persons to assist it in the performance of its duties. The Investment Advisor shall be prohibited from accepting direct or indirect monetary or in-kind compensation from any person other than the Trust in connection with the services provided under the Investment Advisory Agreement, unless such compensation is immediately paid or transferred to the Trust.

SECTION 5.03. DUTIES OF THE ADMINISTRATOR. The duties of the Administrator shall be those set forth in a agreement between the Administrator and the Trustees, on behalf of the Trust and shall include supervision of all investment activity, provision of accounting services, and performance of such other duties and responsibilities as may be from time to time declared by the Trustees.

SECTION 5.04. DUTIES OF THE TRUST COUNSEL. The duties of the Trust Counsel shall be: (A) to construe the terms and provisions of this Agreement and advise the Board with respect to its powers and duties thereunder; (B) review and approve the ordinances and joinder agreements of Public Entities desiring to become Participants; (C) attend all meetings of the Board and provide legal advise and consultation as requested; and (D) bring, prosecute, appear in, or defend, all on behalf of the Trust and in the name of the Trust any suit or administrative proceeding, for the enforcement of or arising out of or with respect to this Agreement.

SECTION 5.05. SUCCESSORS. If, at any time, the position of Investment Advisor, Administrator or Trust Counsel shall become vacant for any reason, the Trustees may appoint, employ or contract with a successor. Nothing herein shall be construed to prohibit the Trust from performing the duties of the Administrator through its own direct employees.

ARTICLE VI

CUSTODIAN

SECTION 6.01. QUALIFICATIONS. The Trustees, on behalf of the Trust, shall employ a bank or trust company organized under the laws of the United States of America as Custodian with authority as its agent, but subject to such restrictions, limitations and other requirements, if any, as may be established by the Trustees to perform to duties set forth in the Custodian Agreement to be entered into between the Trust and the Custodian. Such Custodian shall be a qualified "depository" as defined by Chapter 280, Florida Statutes, and shall invest all Trust Property in accordance therewith and in accordance with the objectives of this Trust.

SECTION 6.02. SUCCESSORS. In the event that, at any time, the Custodian shall resign or shall be terminated pursuant to the provisions of the Custodian Agreement, the Trustees shall appoint a successor thereto.

SECTION 6.03. PROHIBITED TRANSACTIONS. With respect to transactions involving Trust Property, the Custodian shall act strictly as agent for the Trust. The Trustees shall not purchase Permitted Investments from the Custodian or sell Permitted Investments to the Custodian.

ARTICLE VII

INTEREST OF PARTICIPANTS

SECTION 7.01. GENERAL. The beneficial interest of the Participants in any Investment Fund and the earnings thereon shall, for convenience of reference, be divided into Shares which shall be used as units to measure the proportionate allocation to the respective Participants. The number of Shares that may be used to measure and represent the proportionate allocation of beneficial interest among the Participants in any Investment Fund is unlimited. All Shares in an Investment Fund shall be of one class representing equal distribution, liquidation and other rights. The beneficial interest hereunder measured by the Shares shall not entitle a Participant to preference, preemptive, appraisal, conversion or exchange rights of any kind with respect to the Trust or the Trust Property. Title to the Trust Property of every description and the right to conduct all affairs of the Trust are vested in the Trustees on behalf, and for the beneficial interest of, the Participants. The Participants shall have no interest therein other than the beneficial interest conferred hereby and measured by their Shares, and they shall have no right to call for any partition or division of any property, profits, rights or interests of the Trust.

SECTION 7.02. INVESTMENTS. Upon compliance with the procedures established by the Administrator and the Custodian, a Public Entity who has become a Participant in accordance with Section 2.03 hereof shall be entitled to invest in any Investment Fund. Participants may invest in more than one Investment Fund and may establish more than one account within a single Investment Fund. With respect to the Government Fund, the Participant shall notify the Trust of its intention to make an investment in an Investment Fund not less than one Business Day prior to the Transaction Execution Date. With respect to the Short Term Liquidity Fund, investment funds received before 11:00 am Eastern Time on a Business Day shall be invested on the same Business Day and investment funds received after 11:00 am Eastern Time may be invested on the next Business Day. With respect to any investment, Shares shall be allocated to the investing Participant by dividing the amount invested by the Share Value for the Investment Fund as of the Transaction Valuation Date. Investments may be made in fractional Shares.

SECTION 7.03. EVIDENCE OF PARTICIPANT SHARES. Evidence of the number of each Participant's Shares shall be reflected in the Share Register for each Investment Fund maintained by or on behalf of the Trust pursuant to Section 8.01 hereof. The Trust shall not issue certificates as evidence of Shares held.

SECTION 7.04. REDEMPTIONS. Payments by the Trust to Participants and the reduction of Shares resulting therefrom are, for convenience, referred to in this

Agreement as "redemptions". Any and all allocated Shares may be redeemed at the option of the Participant whose beneficial interest hereunder is measured by such Shares, upon and subject to the terms, conditions and advance notice requirements promulgated by the Trustees upon the establishment of each Investment Fund. The Trust shall, upon application of any Participant and in accordance with the redemption requirements established by the Trustees, redeem Shares from any Investment Fund. The Participant shall notify the Trust of its intention to make a redemption from an Investment Fund in accordance with the redemption requirements established by the Trustees. With respect to the Government Fund, such notice shall in no event be less than two Business Days prior to the Transaction Execution Date. With respect to the Short Term Liquidity Fund, such notice received before 11:00 am Eastern Time on a Business Day shall be fulfilled on the same Business Day and notices of redemption received after 11:00 am Eastern Time on a Business Day may be fulfilled on the next Business Day. On the Transaction Execution Date, Shares shall be redeemed at the Share Value for the Investment Fund as of the Transaction Valuation Date. The procedures for effecting redemption shall be as adopted by the Trustees. The Trustees may establish (A) penalties for early redemption of Shares; (B) procedures for resolving other contingencies which may jeopardize the earnings potential of the Trust; and (C) procedures for the prompt payment of the principal of any account at any time. Redemptions may be made in fractional Shares.

SECTION 7.05. SUSPENSION OF REDEMPTION OR PAYMENT. Each Participant, by its adoption of this Agreement, agrees that the Trustees may, without the necessity of a formal meeting of the Trustees, temporarily suspend the right of redemption or postpone the date of payment for redeemed Shares for the whole or any part of any period (A) during which there shall have occurred any state of war, national emergency, banking moratorium or suspension of payments by banks in the State or any general suspension of payments by banks in the State or any general suspension of trading or limitation of prices on the New York or American Stock Exchange (other than customary weekend and holiday closing); or (B) during which any situation exists as a result of which disposal by the Trust of Trust Property is not reasonably practicable because of the substantial losses which might be incurred or if it is not reasonably practicable for the Trust at any time to determine fairly the Share Value. Such suspension or postponement shall not alter or affect a Participant's beneficial interest hereunder as measured by its Shares or the accrued interest and earnings thereon. Such suspension or payment shall take effect at such time as the Trustees shall specify but not later than the close of business on the Business Day next following the declaration of suspension, and thereafter there shall be no right of redemption or payment until the Trustees shall declare the suspension or postponement at an end, except that the suspension or postponement shall terminate in any event on the first day on which the period specified in the clauses (A) or (B) above shall have expires (as to which the determination of the Trustees shall be conclusive). In the case of a suspension of the right of redemption or a postponement of payment for redeemed Shares, a Participant

may either withdraw its request for redemption or receive payment based on the Share Value existing after the termination of the suspension.

SECTION 7.06. MINIMUM INVESTMENT. Initially, and until changed by action of the Trustees, there shall be a five thousand dollar (\$5,000.00) minimum total investment for each Participant. If the Trustees create a minimum total investment in an amount greater than the investment of any Participant at the time that such change becomes effective, the investment of such Participant shall not be redeemed without such Participant's consent.

SECTION 7.07. MINIMUM REDEMPTION. There shall be a minimum of one share which may be redeemed at any one time at the option of a Participant.

SECTION 7.08. DEFECTIVE REDEMPTION REQUESTS. If a Participant submits a request for the redemption of a greater number of Shares than are then allocated to such Participant, such requests shall not be honored. Each Participant, by its adoption of this Agreement, agrees that the Trustees shall have full and complete power to redeem an amount of the Shares allocated to such Participant at a redemption price determined in accordance with Section 7.04 hereof sufficient to reimburse the Trust for any fees, expenses, costs or penalties actually incurred by the Trust as a result of such defective redemption request.

ARTICLE VIII

RECORD OF SHARES

SECTION 8.01. SHARE REGISTER. A Share Register for each Investment Fund shall be kept by or on behalf of the Trustees, under the direction of the Trustees, and shall contain (A) the names and addresses of the Participants, (B) the number of Shares representing their respective beneficial interests hereunder, and (C) a record of all allocations and redemptions thereof. Such Share Registers shall be conclusive as to the identity of the Participants to which the Shares are allocated. Only Participants whose allocation of Shares is recorded on such Share Registers shall be entitled to receive distributions with respect to Shares or otherwise to exercise or enjoy the rights and benefits related to the beneficial interest hereunder represented by the Shares. No Participant shall be entitled to receive any distribution, nor to have notices given to it as herein provided, until it has given its appropriate address to such officer or agent of the Trust as designated to keep the Share Registers.

SECTION 8.02. REGISTRAR. The Trustees shall have full and complete power to employ a registrar. Unless otherwise determined by the Trustees, the Share Registers shall be kept by the Administrator. The registrar shall record the original allocations of Shares in the Share Registers and shall perform the duties usually performed by registrars of certificates and shares of stock in a corporation except as such duties may be modified by the Trustees from time to time.

SECTION 8.03. OWNER OF RECORD. No person becoming entitled to any Shares as a consequence of the merger, reorganization, consolidation, bankruptcy or insolvency of any Participant or otherwise by operation of law shall be recorded as the Participant to which such Shares are allocated, unless such person is an entity qualified to participate in the Trust, in which event such person shall be substituted for the previous person upon proper application. Such person shall become entitled to the redemption value of such Shares. Such qualified person may then be designated as the Participant of record to which such Shares are allocated. Persons not qualified as Participants who become entitled to Shares and do not promptly request redemption thereof may be requested by the Trustees to present proof of entitlement and shall be required to redeem such Shares. The Trust shall not be bound by any notice of merger, reorganization, consolidation, bankruptcy, insolvency, or other such event, unless the Shares are transferred in accordance with the provisions of the Trust.

SECTION 8.04. NO TRANSFER OF SHARES. Except as provided for in Section 8.03 hereof, the beneficial interests measured by the Shares shall not be transferable, in whole or in part, other than to the Trust itself for purposes of redemption; provided that Shares may be redeemed from one Participant's account and the proceeds

deposited directly into another Participant's account upon instructions from the authorized representatives of the respective Participants.

SECTION 8.05. LIMITATION OF FIDUCIARY RESPONSIBILITY.

The Trustees shall not, nor shall the Participants or any officer, registrar or other agent of the Trust, be bound to determine the existence of any trust, express, implied, or constructive, or of any charge, pledge or equity to which any of the Shares or any interest therein are subject, or to ascertain or inquire whether any redemption of any such Shares by any Participant or its representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except the Participant recorded as the Participant to which such Shares are allocated. The receipt of monies by the Participant in whose name any Share is recorded or by the duly authorized agent of such Participant shall be a sufficient discharge for all monies payable or deliverable in respect of such Shares and from all responsibility to see to the proper application thereof.

SECTION 8.06. NOTICES. Any and all notices to which any Participant hereunder may be entitled and any and all communications shall be deemed duly served or given if delivered, transmitted or mailed, postage prepaid, addressed to such Participant of record at its address or facsimile transmission telephone number as recorded on the Share Register. Any notice shall be deemed given on the date such notice is delivered by hand or facsimile transmission or three days after the date mailed.

ARTICLE IX

VALUATION OF INVESTMENT FUNDS

SECTION 9.01. ASSET VALUATION.

(A) As of the close of business on each Business Day, the investments of the Government Fund shall be valued by the Trustees, using such consistent method or basis of valuation and based upon such sources of information as will, in the Trustees' opinion, result in the fair and equitable valuation of the Government Fund and its assets. The investments of the Short Term Liquidity Fund shall be valued by the Trustees weekly, using such consistent method or basis of valuation and based upon such sources of information as will, in the Trustees' opinion, result in the fair and equitable valuation of the Short Term Liquidity Fund and its assets. The Trustees, insofar as practicable, shall utilize the following basic guidelines:

(1) The value of each security listed on generally recognized securities exchanges shall be the last sales price as reported by such exchanges on the date of valuation. Where a security is traded on more than one securities exchange, the Trustees may designate that one exchange will be used as the basis of valuations. If no sale has been so reported, the average of the bid and asked price for the date of valuation shall be used, unless in the Trustees' opinion, use of the last reported sale or the last reported bid as reported by such exchanges, whichever is more recent, would more truly reflect the value of such security. If neither a sale nor a bid and asked price has been reported for the date of valuation, then the most recent sales price shall be used.

(2) Non-listed securities shall be valued by taking the most recent published bid as of the date of valuation obtained with the Trustees' approval, from one or more reputable brokers, dealers, investment bankers or pricing or quotation services that regularly deal in or that determine and quote the value of the security being valued or by reference to a valuation supplied by a generally accepted pricing or quotation service. Alternatively, if the Trustees determine that the average of the reported bid and asked prices, if such are reported for the date of valuation, would more truly reflect the value of such security, then such average shall be used. Should no bid and asked prices have been reported for the date of valuation, the last reported sale value shall be used unless, in the Trustees' judgment, the most recent bid price would more truly reflect the value of such security.

(3) The value of marketable United States Government or government agency obligations shall be the most recent published bid as of the date of

valuation obtained from one or more recognized dealers regularly dealing in such securities.

(4) The value of any other investment shall be the market value thereof as determined by the Trustees as of the date of valuation. In determining such market value, the Trustees may obtain and consider: quotations furnished by reputable sources, such as pricing or quotation services, security dealers, brokers or investment bankers; values of comparable property; appraisals; or such other information as the Trustees deem pertinent.

(5) An investment purchased, the purchase price of which has not been paid, shall be included for valuation purposes as a security held, and the cash or any cash equivalents shall be adjusted by deducting the purchase price, including brokers' commissions and other expenses. Brokers' commissions and other expenses which may be incurred on future sales shall not be considered in valuing an Investment Fund.

(6) If, in the opinion of the Trustees, the valuations obtained by the foregoing methods do not fairly indicate the actual market value of an investment, or no reliable data is available, the Trustees shall obtain and use quotations furnished by one or more reputable brokers or investment bankers or, as a basis for such valuation, such other pertinent information, or such other method of valuation, as may, in their judgment, be necessary to determine the value as of the date of valuation. For the purposes of this Section 9.01(B)(6), information reported (a) in newspapers of general circulation, or in New York City, (b) in standard financial publications or periodicals, (c) in the records of any recognized security exchange, (d) statistical or valuation services, or (e) any one or more of such sources may be selected by the Trustees, noted in the records of the Trust, and shall be accepted as evidence thereof.

(B) Valuation of the investments in any Investment Fund may be delegated by the Trustees to the Investment Advisor, the Administrator, the Custodian or such other person as the Trustees may designate by resolution or agreement.

SECTION 9.02. COMPUTATION OF NET ASSET VALUE.

(A) To the aggregate value of investments determined in the manner required by Section 9.01, there shall be added (1) any cash or cash equivalents, adjusted as required by Section 9.01(A)(5) and (2) any other amounts properly allocable to the Investment Fund. From the total so obtained there shall be deducted all charges, reserves and liabilities due, accrued or anticipated, as described in Section 9.04, which are properly chargeable to the Investment Fund. The net amount remaining shall be deemed to be the Net Asset Value of the Investment Fund as of the date of valuation.

(B) Computation of the Net Asset Value of any Investment Fund may be delegated by the Trustees to the Investment Advisor, the Administrator, the Custodian or such other person as the Trustees may designate by resolution or agreement.

SECTION 9.03. COMPUTATION OF SHARE VALUE.

(A) At the inception of any Investment Fund, the Share Value shall be deemed to be ten dollars (\$10.00), unless the Trustees shall, in the records of the Trust, specify a different value therefor. The Share Value on any date of valuation shall be computed by dividing the Net Asset Value of the Investment Fund by the number of Shares into which the Investment Fund is then divided; provided however, that fractions of a cent per Share may be omitted.

(B) Computation of the Share Value of any Investment Fund may be delegated by the Trustees to the Investment Advisor, the Administrator, the Custodian or such other person as the Trustees may designate by resolution or agreement.

SECTION 9.04. EXPENSES, RETAINED EARNINGS AND RESERVES.

The Trustees shall retain first from earnings and profits of the each Investment Fund and, to the extent those funds are not sufficient, from the assets of each Investment Fund, such amount as they may deem necessary (A) to pay any debts of the Trust properly allocable to such Investment Fund and (B) to pay that portion of the Operating Expenses of the Trust properly allocable to such Investment Fund. In addition, the Trustees shall retain for the payment of Development Expenses and Education Expenses the amounts described in Section 4.20 herein. The Trustees shall also have the power to establish from earnings and profits such reasonable reserves as they believe may be required to protect the Trust and the Participants against contingent liabilities.

ARTICLE X

AMENDMENT OR TERMINATION OF TRUST; DURATION OF TRUST

SECTION 10.01. AMENDMENTS. The provisions of this Agreement may be amended or altered at any meeting of the Board of Trustees or pursuant to any vote of the Board called for that purpose. No such amendment shall become effective prior to (1) providing 30 day's written notice to each Participant holding Shares in any Investment Fund and (2) permitting each Participant to redeem its Shares in such Investment Fund.

SECTION 10.02. TERMINATION.

(A) The Trust or any Investment Fund may be terminated at any meeting of the Board of Trustees. The Trust shall also be terminated if either the County Association or the Clerks Association (1) notifies the Trust in writing that it will no longer appoint Trustees or (2) fails to appoint a replacement Trustee within 90 days after notification of any vacancy.

(B) The termination of the Trust or any Investment Fund shall not (1) change any rights with respect to any allocated Shares of a terminated Investment Fund by reducing the amount payable thereon upon liquidation, except with the vote or written consent of 100 percent of the Participants in such Investment Fund; (2) change the limitations on personal liability of the Participants and the Trustees; and (3) change the prohibition of assessments against Participants.

(C) Upon the termination of the Trust: (1) the Trust shall carry on no business, except for the purpose of winding up its affairs; (2) the Trustees shall proceed to wind up the affairs of the Trust, and pursuant thereto all of the powers of the Trustees under this Agreement shall continue until the affairs of the Trust shall have been concluded, including but not limited to the power to fulfill or discharge the contracts of the Trust, to collect Trust assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining Trust Property to one or more persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, to discharge or pay Trust liabilities, and to do all other acts appropriate to liquidate Trust affairs; and (3) after paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreement as they deem necessary for the Trust's protection, the Trustees may distribute the remaining Trust Property, in cash or in kind or partly in each, among the Participants according to their respective proportionate allocation of Shares.

(D) Upon termination of the Trust and distribution to the Participants as herein provided, a majority of the Trustees shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination, and the Trustees shall thereupon be discharged from all further liabilities and duties hereunder, and the right, title and interest of all Participants shall cease and be canceled and discharged.

SECTION 10.03. DURATION. The Trust shall continue in existence in perpetuity, subject in all respects to the provisions of this Article X.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. GOVERNING LAW. This Agreement is executed by the Initial Participants and delivered in the State and with reference to the laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State.

SECTION 11.02. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

SECTION 11.03. RELIANCE BY THIRD PARTIES. Any certificate by an individual who, according to the records of the Trust, or of any official or public body or office in which this Agreement may be recorded, appears to be a Trustee hereunder or the Chairman of the Trust, certifying to: (A) the number or identity of Trustees or Participants; (B) the due authorization of the execution of any instrument or writing; (C) the form of any vote passed at a meeting of the Trustees; (D) the fact that the number of Trustees or Participants present at any meeting or executing any written instrument satisfies the requirements of this Agreement; (E) the form of any by-laws adopted by or the identity of any officers elected by the Trustees; or (F) existence of any fact or facts which in any manner relate to the affairs of the Trust, shall be conclusive evidence as to the matters so certified in favor of any person dealing with the Trustees or any of them or the Trust and the successors of such person.

SECTION 11.04. PROVISIONS IN CONFLICT WITH LAW. The provisions of this Agreement are severable. If the Trustees shall determine, with the advise of its counsel, that any one or more of such provisions (the "conflicting provisions") are in conflict with applicable federal or State laws, the conflicting provisions shall be deemed never to have constituted a part of this Agreement; provided that such determination by the Trustees shall not affect or impair any of the remaining provisions of this Agreement or render invalid or improper any action taken or omitted (including but not limited to the election of Trustees) prior to such determination.