

JOBS GROWTH INCENTIVE ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT is effective as of the 7th day of September, 2016 by and between the CITY OF DEBARY, a municipal corporation, whose address is 16 Colomba Road, DeBary, Florida 32713 (hereinafter referred to as the “CITY”) and NuLine Sensors and NuLine Telemetry, a corporation authorized to do business in the State of Florida, whose address is 901 S. US Hwy 17-92, Suites 7-12, DeBary, FL 32713 (hereinafter referred to as the “COMPANY”).

W I T N E S S E T H:

WHEREAS, it is the policy of the CITY to aggressively stimulate economic growth in the City of DeBary by, among other things, either attracting new industries and businesses to the City of DeBary or by encouraging the expansion of existing industries and businesses within the City of DeBary; and

WHEREAS, the creation of new employment opportunities for residents of the City of DeBary and the increased tax revenue resulting from such industries or business expansion or relocation within the City of DeBary is beneficial to the local economy; and

WHEREAS, the Mayor and City Council members have determined that offering a Jobs Growth Incentive Program encourages either existing industries and business to expand or new industries and business to enter the City of DeBary and thereby create diverse positive employment opportunities for the residents of the City of DeBary; and

WHEREAS, the City of DeBary, through its City Council members, has enacted a Jobs Growth Incentive Ordinance 13-98, and has the fiscal capacity to conduct and accomplish the programs relating thereto; and

WHEREAS, the COMPANY will locate its industry or business in the City of DeBary and thereby create certain full-time employment opportunities at certain average salary levels and to make certain capital investments all in accordance with the CITY'S Jobs Growth Incentive Ordinance; and

WHEREAS, the COMPANY and the CITY desire to enter into this Agreement for the purpose of giving additional assurances to the CITY that certain expenditures by the CITY will produce a positive economic effect in the City of DeBary as a result of the COMPANY's

activities in the City of DeBary; and

WHEREAS, the COMPANY is proposing to enter into a lease agreement of a facility at 901 S. US Hwy 17-92, Suites 7-12, which represents a significant capital investment; and

WHEREAS, the new jobs created and capital investment made by the COMPANY will make the project economically viable in terms of economic development; and

WHEREAS, the COMPANY is eligible to receive a Jobs Growth Incentive Grant from the CITY; and

WHEREAS, the CITY has determined that in order to enhance and preserve the health, education and welfare of the citizens of the CITY it is necessary, proper and desirable to enter into this Agreement with the COMPANY in order to enhance the economic development of the City of DeBary: and

WHEREAS, the CITY finds and declares that it is in the public's best interest and serves a public purpose to award a Jobs Growth Incentive Grant to COMPANY pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

SECTION 1: Recitals The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

SECTION 2: Definitions

- (A) "New Permanent Jobs" is as defined in Ordinance No. 13-98 as amended.
- (B) "Project" means the lease of the building space at 901 S. US Hwy 17-92, Suites 7-12, within the City of DeBary.

SECTION 3: Representations of the COMPANY The COMPANY hereby represents and warrants to the CITY the following:

- (A) The COMPANY is duly organized and validly existing under the laws of the State of Florida and is authorized to do business in the State of Florida.
- (B) The COMPANY has the corporate power, authority and legal right to execute, deliver and perform this Agreement. The execution, delivery and performance of this

Agreement by the COMPANY has been duly authorized by all necessary corporate and shareholder action.

(C) The COMPANY's Project Manager shall be Michael Vosch or his designee.

SECTION 4: Covenants of the COMPANY The COMPANY hereby covenants with the CITY to do the following:

(A) The COMPANY shall locate its business operations to the City of DeBary and agrees to lease a building in the City of DeBary as more specifically set forth below.

(B) In consideration of approval of its application for funds under the provisions of this Agreement by the CITY, the COMPANY shall locate at least ten (10) employees, average salary of \$75,000 and ten (10) employees, average salary of \$50-60,000, from outside the CITY to fulltime employment positions with the COMPANY in the CITY and the Company anticipates that it will add up to twenty (20) new employees, average salary of \$35,000.00, during the first two (2) years of continued operations. Residents of the City of DeBary will have hiring preference if the applicant is qualified.

(C) The COMPANY agrees that all of the jobs described in this Agreement that the COMPANY creates or relocates within the CITY, shall be of duration of a minimum of two (2) years with said new jobs being retained within the City during that period of time.

(D) The COMPANY agrees that the project will result in the expenditure of at least \$85,000.00 of capital investment relating directly to the Project.

(E) When the jobs have been relocated and capital investments made, the COMPANY shall cause notice to be given to the CITY and will make the documentation pertaining to such available for review and inspection by the CITY, and the CITY may at any time inspect any documentation within the COMPANY's possession pertaining to or evidencing the COMPANY's performance of any covenant under this Agreement.

SECTION 5: Covenants of the City

(A) The CITY agrees to provide the COMPANY \$500.00 for each employee relocated to the City of DeBary or new employee hired upon inception, which equates to \$10,000.00 for the first twenty (20) employees. Additionally the CITY agrees to provide the COMPANY \$600.00 for up to a maximum of fifteen (15) additional

employees hired within the first two (2) years of operation, which equates to a maximum of \$ 9,000.00 for the fifteen (15) additional employees hired.

- (B) The incentive described in this Section 5 will provide funds to assist the COMPANY in the payment of relocation costs, infrastructure cost, building improvements and other costs associated with the relocation of COMPANY to the City of DeBary. The total incentive will not exceed \$19,000.00. At the written request of the COMPANY, the above incentive will be paid within 45 days of receipt of such request by the City, provided that the COMPANY provides sufficient documentation evidencing entitlement to such incentive. Payments to the COMPANY shall be made upon proof of the hiring of the new positions for the facility at 901 S. US Hwy 17-92, Suites 7-12, and establishment and verification of relocated or new jobs created in the CITY during the twelve (12) months commencing with the initial date of relocation. Proof of new jobs created shall include quarterly State UCT 6 forms or similar payroll documentation. Approval by the DeBary City Council is required.

SECTION 6: Term This Agreement shall become effective upon execution by the CITY and the COMPANY and shall remain in effect until the parties have fulfilled all obligations under this Agreement or for four (4) years after this Agreement becomes effective, whichever occurs first (“Termination Date”).

SECTION 7: Reports The COMPANY shall provide the CITY with annual written verifications regarding the number of relocated and created jobs that have been provided by the Project according to Section 4 of this Agreement.

SECTION 8: Force Majeure In the event any party hereunder fails to satisfy any requirement imposed by this Agreement in a timely manner, due to a hurricane, tornado, or other Act of God of force majeure, then said party shall not be in default herein; provided, however, that performance shall recommence upon such event ceasing its effect.

SECTION 9: Binding Effect This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees and assigns of the parties.

SECTION 10: Assignment This Agreement shall not be assigned by either party without the prior written approval of the other.

SECTION 11: Public Records The COMPANY shall allow public access to all documents, papers, letters or other material which have been made or received by the COMPANY in conjunction with this Agreement pursuant to the Public Records Act, Florida Statutes, Chapter 119.

SECTION 12: Records and Audits

The COMPANY shall maintain in its place of business all books, documents, papers and other evidence pertaining to the COMPANY's obligations under this Agreement. Such records shall be and remain available at the COMPANY's place of business at all reasonable times during the term of this Agreement and for five (5) years after the Termination Date. The COMPANY shall provide copies of any document related to its obligations under this Agreement to the City upon request.

SECTION 13: Notices

(A) Whenever either party desires to give notice unto the other, notice may be sent to:

CITY

Ron McClemore, Interim City Manager
16 Columba Road
DeBary, FL 32713

COMPANY

Michael Vosch, Chief Technical Officer
NuLine Sensors and NuLine Telemetry, Inc.
901 S. US Hwy 17-92, Suites 7-12
DeBary, FL 32713

(B) Either of the parties may change, by written notice as provided herein, the addresses or person for receipt of notices or invoices. All notices shall be effective upon receipt.

SECTION 14: Indemnity and Insurance

(A) Each party to the Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions of their own officers, employees and agents.

(B) The COMPANY hereby indemnifies and saves and holds harmless the CITY and all of its elected and appointed officers, staff, agents, consultants, advisors, and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of every nature and description whatsoever, including claims for property damage and claims for injury and death of persons brought or recovered against the CITY which is caused by or related to any act or omission of the COMPANY, its officers, agents, subcontractors or employees relating to this Agreement.

(C) The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State of Florida, nor as a waiver of sovereign immunity of the CITY beyond the waiver provided for Section 768.28, Florida Statutes.

(D) The COMPANY shall provide workers compensation coverage and unemployment compensation for its employees.

SECTION 15: Conflicts of Interest

(A) The COMPANY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the CITY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(B) The COMPANY hereby certifies that no officer, agent or other employee of the CITY has any material interest (as defined in Section 112.312, Florida Statutes) either directly, in the business of the COMPANY to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(C) Pursuant to Section 216.347, Florida Statutes, the COMPANY hereby agrees that monies received from the CITY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal Agency.

SECTION 16: Equal Opportunity Employment

(A) The COMPANY agrees that it will not discriminate against any contractor, employee or applicant of race, color, religion, sex, age or natural origin and will insure that applicants and employees are treated during employment without regard to race, color, religion, sex, age or natural origin. This provision shall include, but not be limited to the following: retention; award of contracts; employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(B) The COMPANY agrees that it will comport all of its activities with the provisions of Chapter 760, Florida Statutes.

SECTION 17: Compliance with laws and regulations In performing under this Agreement, the parties shall abide by all laws, statues, ordinances, rules and regulations pertaining to, or regulating the performance set forth herein, including those now in effect and hereafter adopted. Any material violation of said laws, statutes, ordinances, rule or regulations shall constitute a material breach of this Agreement, and shall entitle the non-violating party to terminate this Agreement immediately upon delivery of written notice of termination to the violating party.

SECTION 18: Employees/COMPANY Status

(A) Persons employed or retained by the COMPANY in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers compensation, unemployment compensation, civil services or other employee rights or privileges granted to the CITY's officers and employees either by operation of law or by the CITY.

(B) The COMPANY assumes total responsibility for salaries, employment benefits, contractual rights and benefits, contract payments and Federal, State and local employment taxes, if any, attributable to the COMPANY personnel or contractors and agrees to indemnify and hold the CITY harmless from any responsibility for same.

(C) In performing this Agreement and in planning, developing, constructing, equipping and operating the Project and in carrying out any activities related to this Agreement, the

COMPANY is acting independently from the CITY, in the capacity of an independent entity, and not as a joint venturer, partner, associate, employee, agent or representative of the CITY.

SECTION 19: No Third-Party Beneficiaries This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns, including any successor in interest to the COMPANY's interest in the Project, and is not intended to and shall not benefit any third party. No third party shall have any rights hereunder or as a result of this Agreement or any right to enforce any provisions of this Agreement.

SECTION 20: Contingents Fees/Conflicting Employment

(A) The COMPANY covenants that it has employed and retained only bona fide employees working for the COMPANY and attorneys and consultants, to solicit or secure this Agreement.

(B) The COMPANY agrees that at the time of execution of this Agreement, the COMPANY has no retainer or employment agreement, oral or written, with any third party relating to any matters, which adversely affect any interest or position of the CITY. The COMPANY shall not accept during the terms of this Agreement any retainer or employment from a third party whose interest appear to be conflicting or inconsistent with those of the CITY.

SECTION 21: Governing Law/ Attorney's Fees This Agreement shall be construed and interpreted according to the laws of the State of Florida. In the event of litigation between the parties arising from or pertaining to this Agreement, the prevailing party shall be entitled to recover from the other, reasonable trial and appellate attorney's fees and costs.

SECTION 22: Construction of Agreement This Agreement shall not be construed more strictly against one party than the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both parties, CITY and COMPANY, have contributed substantially and materially to the preparation hereof.

SECTION 23: Constitutional and Statutory Authority of the CITY The terms and conditions of this Agreement placed upon the City are applicable only to the extent they

are within and consistent with the constitutional and statutory limitations on the authority of the CITY. Specifically, the parties acknowledge that the CITY has not and does not grant or pledge a security interest in any of the CITY's revenue sources or property.

SECTION 24: Events of Default/Remedies

(A) For purpose of this Agreement, event of default shall mean any of the following:

(1) The COMPANY's misapplying or causing the misapplication of CITY funds or credits received pursuant to this Agreement.

(2) Any representation or warranty made by the COMPANY herein or in any statement, invoices or certificate furnished to the CITY in connection with the performance of the Agreement which proves to be untrue in a material respect as of the date of issuance or making thereof and which shall not be corrected or brought into compliance within thirty (30) days after written notice thereof to COMPANY by CITY.

(3) The COMPANY materially breaching any covenant in this Agreement which is not corrected or cured within thirty (30) days after written notice thereof to the COMPANY by the CITY; provided, however, that the CITY may declare a lesser cure period in the event that it finds, in its sole and absolute discretion, that such lesser period is necessary to protect the public health, safety, or welfare.

(4) The COMPANY fails to provide to the CITY the written verification, satisfactory to the CITY, of its performance obligations herein.

(5) The COMPANY fails to relocate and/ or create the minimum number of permanent new jobs and retain such jobs in the City within the time limit prescribed in this Agreement.

(B) If within forty-five (45) days after receiving written notice from the CITY that an Event of Default has occurred, the COMPANY shall: (i) refund to the CITY that amount of funds equal to (per job award in dollars) per new job relocated, created, retained and maintained pursuant to the terms of this Agreement; or (ii) refund such disbursed refund which the CITY determines have been misapplied under terms of this Agreement.

SECTION 25: Counterparts This Agreement may be executed in any number of

counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

SECTION 26: Heading All sections and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

SECTION 27: Time Time is of the essence of this Agreement.

SECTION 28: Severability If any provision, term or clause of this Agreement is determined to be invalid or unenforceable by a Court of competent jurisdiction, said determination shall not, in any way, effect the obligation of the parties as provided for or referred to herein and, to that end, the provisions of this Agreement shall be deemed severable. However, such invalidity or unenforceability shall preclude the continuing effect of this Agreement if a failure of consideration were to occur.

SECTION 29: Entire Agreement

(A) This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and may not be modified or amended except by written instrument equal in dignity herein and executed by the parties to be bound thereby.

(B) No waiver or consent to any departure from any term, condition of provision of this Agreement shall be effective or binding upon any party hereto unless waiver or consent is in writing, signed by an authorized officer of the party giving the same and delivered to the other party.

(C) The COMPANY agrees that no representation have been made by the CITY in order to induce the COMPANY to enter into this Agreement other than as expressly stated in this Agreement.

IN WITNESS WHEREOF, The parties hereto have made and executed this Agreement for the purpose stated herein.

ATTEST:

CITY OF DEBARY, FLORIDA

BY: _____

Ron McClemore, Interim City Manager

_____, Mayor

For the use and reliance of the City of DeBary. Approved as to form and legal sufficiency.

As authorized by the Mayor and City Council at their _____, 2016 Regular Meeting.

Nuline Sensors and Nuline Telemetry

BY: _____

Michael Vosch, Chief Technical Officer