

AGREEMENT FOR CONSTRUCTION MANAGER SERVICES

between JEA and

This **AGREEMENT** is made as of the _____ day of _____, _____ (the "**Effective Date**"), by and between the following parties, for services in connection with the Project identified below:

OWNER:

JEA
21 W. Church St., CC-6
Jacksonville, FL 32202

CONSTRUCTION MANAGER: _____

PROJECT(S): Construction Management at Risk (CMAR) Services for the Bartram/US1 and Cecil Field Water Main Project

In consideration of the mutual covenants and obligations contained herein, Owner and Construction Manager agree as set forth herein.

This Agreement **X** is is not for construction management services on more than one substantially similar project as referenced in Sections 255.103(2) and 287.055(2)(f), F.S.

If this Agreement is for construction management services on more than one substantially similar project, OWNER reserves the right to have the projects designed and/or constructed separately. If OWNER elects to do so, the terms of this Agreement shall apply separately to each such project. By way of example and without limitation: GMP's and completion deadlines will be negotiated separately and implemented through separate amendments; separate construction schedules will be developed and maintained; separate payment and performance bonds will be required; separate substantial and final completion determinations will be made; and separate payment applications will be submitted; and separate payments will be made.

Article 1

Scope of Work

1.1 The Construction Manager accepts the relationship of trust and confidence established between itself and the Owner by this Agreement. The Construction Manager covenants with the Owner to demonstrate high performance in the industry to its best skill and judgment and to cooperate with Owner's architect-engineer of record: _____ ("Architect-Engineer") in furthering the interests of the Owner. The Construction Manager agrees to use sound business administration and superintendence and use of high efforts industry wide to complete the project in a very sound expeditious and economical manner consistent with the interest of the Owner.

1.2 The Construction Manager shall familiarize itself thoroughly with the evolving plans and specifications and shall follow the development of design from preliminaries through working drawings. The Construction Manager shall make recommendations in its capacity as Construction Manager with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer and Owner in evaluating alternative comparisons versus long term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the Project. The Construction Manager shall furnish known pertinent information as to the availability of materials and labor that will be required. The Construction Manager shall submit to the Owner and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. The Construction Manager shall call to the Owner and the Architect-Engineer's attention any defects in the design, drawings and specifications or other documents that it discovers. The Construction Manager shall prepare an estimate of the construction cost for each design phase utilizing the unit quantity survey method, with details according to the Master Format of the Construction Specifications Institute format, and instructions of the Owner Representative. Additional preconstruction phase responsibilities of the Construction Manager are

set forth in Section 1.3 below. In addition to the foregoing, the Construction Manager shall perform all construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents, as more specifically set forth in **Exhibit "A"** attached hereto ("**Scope of Work**"). The Scope of Work shall include, but not be limited to, the start-up of all systems to make the Project a fully functioning facility.

1.3 The Construction Manager's preconstruction responsibilities include the following:

See **Exhibit A**, attached hereto and incorporated herein.

Article 2

Contract Documents

2.1 The "Contract Documents" in order of priority are comprised of the following:

2.1.1 All written modifications, amendments (including the GMP Proposal accepted by Owner in accordance with Section 6.5.1 hereof) and change orders to this Agreement issued in accordance with *General Conditions of Contract Between Owner and Construction Manager* ("General Conditions of Contract");

2.1.2 This Agreement, including all exhibits (but excluding, if applicable, the GMP Exhibit) and attachments, as follows:

- A. JEA's Scope of Work – **Exhibit "A"**
- B. Contract Fee Summary Form – **Exhibit "B"** (to be provided by CMAR)
- C. Construction Manager Labor Rates – **Exhibit "C"** (to be provided by CMAR)
- D. Project Information, Scheduling and Reporting Requirements – **Exhibit "D"**
- E. Subcontractor Qualifications and Subcontract Conditions – **Exhibit "E"** (to be provided by CMAR)

2.1.3 The General Conditions of Contract attached hereto as **Exhibit "F"**

2.1.4 Construction documents prepared by the Architect-Engineer in accordance with the terms and conditions of JEA Contract No. _____.

Article 3

Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.2 Terms, words and phrases (whether capitalized or not) used in the Contract Documents, including this Agreement, shall have the meanings given to them in the General Conditions of Contract, and if such terms, words and phrases are not defined in the General Conditions of Contract, they shall have the meanings given to them in this Agreement.

3.3 The Contract Documents form the entire agreement between Owner and Construction Manager and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties on which any party is entitled to rely except as specifically stated in the Contract Documents.

Article 4

Intentionally Deleted.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Construction Manager's receipt of Owner's Notice to Proceed ("**Date of Commencement**"), and the remaining Work for the Project shall commence within five (5) days of Construction Manager's receipt of a separate and additional second Owner's Notice to Proceed ("**Second Date of Commencement**"), unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion

5.2.1 For purposes of this Agreement, "**Substantial Completion**" shall be defined as in the General Conditions attached hereto as **Exhibit F**.

5.2.2 Substantial Completion of the entire Work shall be achieved by the date set forth in the GMP Amendment (the "**Scheduled Substantial Completion Date**"). Construction Manager acknowledges that it is the Owner's desire that the Scheduled Substantial Completion Date be attained on or before _____. This acknowledgement of the Owner's desired Scheduled Substantial Completion Date is not to be construed as a firm deadline but does represent Construction Manager's acknowledgement and commitment to perform the Work in good faith to achieve same.

5.2.3 Final Completion of the Work shall occur when all items on the Substantial Completion punch list have been resolved to Owner's satisfaction and accepted by Owner, but in no event more than ninety (90) days beyond the Scheduled Substantial Completion Date.

5.2.4 All of the dates set forth in this Article 5 ("**Contract Time(s)**") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Construction Manager mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Construction Manager understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date (on each project, if this Agreement is for more than one substantially similar project), Owner will suffer damages which are difficult to determine and accurately specify. Construction Manager agrees that if Substantial Completion (of any project under this Agreement) is not attained the Scheduled Substantial Completion Date (the "**LD Date**"), Construction Manager shall pay Owner _____ Dollars (\$_____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion and shall be Owner's sole remedy for the delay.

Construction Manager understands and agrees that said daily sum is to be paid not as a penalty, but as compensation to Owner as a fixed and reasonable liquidated damages for losses that Owner will suffer because of such default, whether through increased administrative and engineering costs, interference with Owner's normal operations, other tangible and intangible costs, or otherwise, which costs will be impossible or impractical to measure or ascertain with any reasonable specificity.

Liquidated damages may, at Owner's sole discretion, be deducted from any monies held by Owner that are otherwise payable to Construction Manager.

Article 6

Contract Price

6.1 Contract Price

6.1.1 Owner shall pay Construction Manager, in accordance with the payment method stated hereof, a contract price ("**Contract Price**") equal to Construction Manager's Fee (as defined in Section 6.1.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to the GMP established in Section 6.5 hereof and any adjustments made in accordance with the General Conditions of Contract.

6.1.2 For the specific Work set forth below, Owner agrees to pay Construction Manager, as part of the Contract Price, on the following basis, as more specifically described on **Exhibit "A"** and **Exhibit "B"** attached hereto:

6.1.2.1 For Preconstruction Services a lump sum amount of _____, to be paid incrementally in proportion to satisfactory progress towards the completion of the Scope of Work.

6.1.2.2 The maximum indebtedness of Owner for all Work performed pursuant to this Agreement is _____) (the "**Maximum Indebtedness**").

6.2 Construction Manager's Fee

6.2.1 Construction Manager's Fee for the Project shall be:

_____ % of the Cost of the Work, to be paid incrementally in proportion to satisfactory progress, in Owner's sole discretion, towards the completion of the Scope of Work (**Exhibit "A"**), as adjusted in accordance with Section 6.2.2 below.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably incurred by Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the following:

6.3.1 Wages of direct employees of Construction Manager performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Construction Manager performing services under this Agreement shall be those rates set forth in **Exhibit "C"** to this Agreement. Construction Manager certifies, pursuant to Section 837.06, Florida Statutes, that the rates set forth on **Exhibits "C"** are correct and current as of the Effective Date of this Agreement.

6.3.2 Wages or salaries of Construction Manager's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work, as set forth on **Exhibit "C"**.

6.3.3 Wages or salaries of Construction Manager's personnel stationed at Construction Manager's principal or branch offices and performing the functions as set forth on **Exhibit "C"**.

6.3.4 Costs incurred by Construction Manager for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Construction Manager (the "**Combined Fringe Benefit & Administrative Overhead Rate**"), to the extent such costs are based on wages and salaries paid to employees of Construction Manager covered under Sections 6.3.1 through 6.3.3 hereof.

- 6.3.5** The reasonable and documented portion of the cost of travel, accommodations and meals for Construction Manager's personnel necessarily and directly incurred in connection with the performance of the Work.
- 6.3.6** Payments properly made by Construction Manager to Subcontractors for performance of portions of the Work, including any required insurance and bond premiums incurred by Subcontractors.
- 6.3.7** Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.
- 6.3.8** Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Construction Manager, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
- 6.3.9** Costs of removal of debris and waste from the Site.
- 6.3.10** The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and DSL internet services.
- 6.3.11** Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Construction Manager at the Site, whether rented from Construction Manager or others, and incurred in the performance of the Work.
- 6.3.12** Premiums for insurance and bonds required by this Agreement or the performance of the Work, including, but not limited to, errors and omissions insurance, including any subcontractors bonds as the Construction Manager deems appropriate.
- 6.3.13** All fuel and utility costs incurred in the performance of the Work.
- 6.3.14** Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.
- 6.3.15** Costs for permits, royalties, licenses, tests and inspections incurred by Construction Manager as a requirement of the Contract Documents.
- 6.3.16** Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property to the extent not covered by Construction Manager's insurance and the emergency was not caused by the Construction Manager.
- 6.3.17** Other documented costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.
- 6.3.18** If approved by the Owner, Construction Manager, when qualified, may perform all or a portion of the Work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the Work.
- 6.3.19** Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the Project.
- 6.3.20** Costs for watchmen and security services for the Project.

- 6.3.21** Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
- 6.3.22** Costs for efficient logistical control of the Site, including horizontal and vertical transportation and materials and personnel. Also, costs for adequate storage.
- 6.3.23** Cost for any Site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Work.
- 6.3.24** Cost of utilizing a computer aided design and drafting application (CADD) for record drawings as described in **Exhibit "A"** (Scope of Work). Upon completion of the Work, the Construction Manager shall obtain two (2) sets of disk files from the Architect-Engineer and record to scale all as-built conditions. The disk shall be submitted to the Owner's Representative when completed, together with two sets of blue line or black line prints at the time of final completion.

6.4 Non-Reimbursable Costs

The following shall be excluded from the Cost of the Work:

- 6.4.1** Compensation for Construction Manager's personnel stationed at Construction Manager's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.
- 6.4.2** Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.
- 6.4.3** The cost of Construction Manager's capital used in the performance of the Work.
- 6.4.4** Once the parties have agreed on a GMP, costs that would cause the GMP, as may be adjusted in accordance with the Contract Documents, to be exceeded.
- 6.4.5** Costs associated with Construction Manager's negligence.

6.5 The Guaranteed Maximum Price ("GMP")

6.5.1 GMP Established after Execution of this Agreement

6.5.1.1 GMP Proposal. When requested by Owner, Construction Manager shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

- .1** A proposed GMP, which shall be the sum of:
 - i.** Construction Manager's Fee as defined in Section 6.2.1 hereof;
 - ii.** the estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Construction Manager's Contingency as defined in this Section 6.5.1.1; and
 - iii.** if applicable, any prices established under Section 6.1.2 hereof.
 - iv.** For purposes of this Agreement, "**Contingency**" means the amount set forth in the GMP Amendment which is available for Construction Manager's use for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order such as overtime, acceleration, and Subcontractor defaults, .

v. The Construction Manager will be required to receive OWNER authorization, which shall not be unreasonably withheld without limitation, prior to using any of the Contingency funds. If the OWNER does not approve within three (3) business days of request, the Construction Manager may use the Contingency funds as if the request had been approved by OWNER.

vi. The Contingency may be used for any costs of the work, as defined herein, that are required to execute the work as defined in the GMP. No increase in the Contingency will be allowed once the GMP is established, unless such cost arises from a latent condition or differing site condition. Risk to any other unforeseen circumstance shall be at the risk of the Construction Manager, unless approved by the OWNER via change order and contract amendment.

The Construction Manager shall document to the OWNER with receipts, contracts, invoices or communications to itemize the use Contingency identified in the GMP.

vii. The Contingency for this Project shall not exceed three percent (3%) at the time of GMP Proposal submission. Any remaining Contingency at the completion of the Project shall be disbursed in accordance with Section 6.5.2 hereof.

.2 A list of the drawings and specifications, including all addenda, used as the basis for the GMP Proposal;

.3 A list of the assumptions and clarifications made by Construction Manager in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;

.4 The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;

.5 A list of allowances and a statement of their basis;

.6 A schedule of alternate prices;

.7 A schedule of unit prices;

.8 A statement of Additional Services; and

.9 Copies of all bids and subcontracts upon which the GMP is based.

6.5.1.2 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Construction Manager and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Construction Manager of such comments or findings. If appropriate, Construction Manager shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

6.5.1.3 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Construction Manager and Owner, the GMP and its basis shall be set forth in an amendment to this Agreement (the “**GMP Amendment**”).

6.5.1.4 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Construction Manager shall meet and confer as to how the Project will proceed, with Owner having the following options:

.1 Owner may suggest modifications to the GMP Proposal, including, but not limited to, value engineering options, bid alternates, alternate materials, alternate finishes, scope revisions, performance requirements, etc., whereupon, if such modifications are accepted in writing by Construction Manager, the Construction Manager shall submit a revised GMP Proposal for Owner’s consideration:

.2 Owner may authorize Construction Manager to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

.3 Owner may terminate this Agreement for convenience in accordance with Article 8 hereof.

6.5.2 Savings

6.5.2.1 If the sum of the actual Cost of the Work and Construction Manager’s Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference (“**Savings**”) shall be shared as follows; provided, however, that any liquidated damages due to Owner under Section 5.4 herein shall be deducted from any Savings due to Construction Manager:

Twenty-five percent (25%) to Construction Manager and seventy-five percent (75%) to Owner.

6.5.2.2 Except as provided in Section 6.5.2.1, savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Construction Manager incurs costs after Final Completion which would have been payable to Construction Manager as a Cost of the Work, Construction Manager shall be entitled to payment from Owner for that portion of such costs that were distributed to Owner as Savings.

6.5.3 Budget Ceiling

6.5.3.1 Construction Manager acknowledges that the Owner’s construction budget for the Project is _____ and No/100 Dollars (\$_____) (the “**Budget Ceiling**”), including all Construction Manager’s fees, costs of the Work and Contingencies, as set forth in Article 6 herein. This acknowledgement of the Owner’s budgeted funds is not to be construed as Construction Manager’s Guaranteed Maximum Price but does represent Construction Manager’s acknowledgement and commitment that the Guaranteed Maximum Price, including all Contingencies, will be below the Budget Ceiling and that Construction Manager will perform the Work in good faith to achieve same. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 6.

Article 7

Procedure for Payment

7.1 Progress Payments

- 7.1.1** The Construction Manager shall invoice Owner in accordance with the Schedule of Values as further described in Article 6 of the General Conditions attached hereto as **Exhibit "F"**.
- 7.1.2** Progress payments under this Section only will be made upon Owner's receipt from Construction Manager of updated schedules and reports submitted with each invoice, as set forth in Section 2.1.2 of the General Conditions and **Exhibit "D"** hereto (Project Information Reporting Requirements).

7.2 Retainage on Progress Payments

- 7.2.1** As security for the proper performance of the Work, OWNER may deduct ten percent (10%) retainage, or such other amount allowable pursuant to Florida law, from the amount stipulated in the Invoice or Application for Payment. In accordance with Florida Statutes, after completion of fifty percent (50%) of the Work, a maximum retainage of five percent (5%) may be deducted. For the purposes of this section, "completion of fifty percent of the Work" shall be defined as the point at which fifty percent of the total cost of the Work, as defined, and inclusive of authorized change orders, has been expended by OWNER.

In the case of early termination of the Agreement, all payments made by OWNER against the Contract Price prior to notice of termination shall be credited to the amount, if any, due the Construction Manager. If the parties determine that the sum of all previous payments and credits exceeds the sum due the Construction Manager, the Construction Manager shall refund the excess amount to OWNER within ten (10) days of determination or written notice.

7.3 Final Payment. Construction Manager shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract, attached hereto as **Exhibit "F"**. Owner shall make payment on Construction Manager's properly submitted and accurate Final Application for Payment within the number of days required under the Florida Prompt Payment Act (Chapter 218, Florida Statutes) after Owner's receipt of the Final Application for Payment, provided that Construction Manager has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Record Keeping and Finance Controls. Construction Manager acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as provided in the Contract Documents and, specifically, Section 12.32 of the General Conditions of Contract. During the performance of the Work and for a period of three (3) years after receipt of Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Construction Manager's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Construction Manager shall preserve for a period of three (3) years after receipt of Final Payment.

Article 8

Termination

8.1 Termination for Convenience - OWNER shall have the absolute right to terminate the Contract in whole or part, with or without cause, at any time after the Award effective date upon written notification of such termination.

In the event of termination for convenience, OWNER will pay the Construction Manager for all disbursements and expenses that the Construction Manager has incurred, or has become obligated prior to receiving Owner's notice of termination.

Upon receipt of such notice of termination, the Construction Manager shall stop the performance of the Work hereunder except as may be necessary to carry out such termination and take any other action toward termination of the Work that OWNER may reasonably request, including all reasonable efforts to provide for a prompt and efficient transition as directed by OWNER.

OWNER will have no liability to the Construction Manager for any cause whatsoever arising out of, or in connection with, termination including, but not limited to, lost profits, lost opportunities, resulting change in business condition, except as expressly stated within these Contract Documents.

8.2 Termination for Default – Owner shall terminate this Agreement for Default in accordance with **Exhibit “F”**, attached hereto.

Article 9

Representatives of the Parties

9.1 Owner's Representatives

9.1.1 Owner designates the individual listed below as its **“Owner's Representative,”** which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: _____ (insert name)

9.2 Construction Manager's Representatives

9.2.1 Construction Manager designates the individual listed below as its Construction Manager's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: _____ (insert name)

Article 10

Bonds and Insurance

Prior to the issuance of the second Owner's Notice to Proceed for the Work for the Project as defined in Section 5.1 hereof, the parties agree to review this Article 10 and to make changes as appropriate and as mutually agreed to by the parties. Any such changes shall be incorporated by amendment to this Agreement.

10.1 Insurance.

Before starting and until Acceptance of the Work by OWNER, and without further limiting its liability under the Contract, the Construction Manager shall procure and maintain at its sole expense, insurance of the types and in the minimum amounts stated below:

Workers' Compensation

Florida Statutory coverage and Employer's Liability (including appropriate Federal Acts); Insurance Limits: Statutory Limits (Workers' Compensation) \$500,000 each accident (Employer's Liability).

Commercial General Liability

Premises-Operations, Products-Completed Operations, Contractual Liability, Independent Contractors, Broad Form Property Damage, Explosion, Collapse and Underground, Hazards (XCU Coverage) as appropriate; Insurance Limits: \$1,000,000 each occurrence, \$2,000,000 annual aggregate for bodily injury and property damage, combined single limit.

Automobile Liability

All autos-owned, hired, or non-owned; Insurance Limits: \$1,000,000 each occurrence, combined single limit.

Excess or Umbrella Liability

(This is additional coverage and limits above the following primary insurance: Employer's Liability, Commercial General Liability, and Automobile Liability); Insurance Limits: \$4,000,000 each occurrence and annual aggregate.

Company's Commercial General Liability and Excess or Umbrella Liability policies shall remain in force throughout the duration of the project and until the Work is completed to JEA's satisfaction. The Indemnification provision provided herein is separate and is not limited by the type of insurance or insurance amounts stated above.

Construction Manager shall specify OWNER as an additional insured for all coverage except Workers' Compensation, Employer's Liability, and Professional Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by OWNER. Construction Manager shall include a Waiver of Subrogation on all required insurance in favor of OWNER, its board members, officers, employees, agents, successors and assigns.

Such insurance shall be written by a company or companies licensed to do business in the State of Florida and satisfactory to OWNER. Prior to commencing any Work under this Contract, certificates evidencing the maintenance of the insurance shall be furnished to OWNER for approval. Construction Manager's and its Subcontractors' Certificates of Insurance shall be mailed to OWNER (Attn. Procurement Services), Customer Care Center, 6th Floor, 21 West Church Street, Jacksonville, FL 32202-3139.

The insurance certificates shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until 30 days after receipt of written notice by OWNER.

Any Subcontractors of Construction Manager shall procure and maintain the insurance required of Construction Manager hereunder during the life of the subcontracts. Subcontractors' insurance may be either by separate coverage or by endorsement under insurance provided by Construction Manager. Note: Any JSEB firms identified by Construction Manager for this Solicitation are considered "Subcontractors" under the direct supervision of the Prime or General Contractor (herein referred to as "Construction Manager"). Companies should show good faith efforts in providing assistance to JSEB firms in the securing of the Subcontractors' insurance requirements stated herein. Upon request by OWNER, Construction Manager shall submit Subcontractors' certificates of insurance.

10.2 Bonds and Other Performance Security. After receipt of the Contract, the Construction Manager awarded the Work shall furnish a Payment and Performance Bond in the amount indicated on the Response Form, made out to OWNER in forms and formats approved and provided by OWNER, as security for the faithful performance of the Work of Contract. OWNER will send the approved bond forms to the Construction Manager for execution along with the Contract, however, in no case shall the date on the bond forms be prior to that of the executed Contract. The surety must be authorized and licensed to transact business in Florida. A fully executed Payment Bond and Performance Bond must be recorded with the Clerk of Duval County Court and delivered to OWNER before OWNER will issue a Purchase Order to begin the Work. No Purchase Order shall be issued until the Payment and Performance Bonds are recorded and delivered to the Owner's Procurement Department. If the Construction Manager fails or refuses to furnish or record the required bonds, OWNER will retain the Construction Manager's Bid Bond as liquidated damages.

The Payment and Performance Bond requirements may be less than the full Contract amount. The Construction Manager should be aware that their bond premiums may be adjusted by their bonding company, if actual Work exceeds the amount of the bond, however, any increase in total premiums required will not be approved by OWNER for any change in Contract price as either a change order or as an adjustment through the use of a Supplemental Work Authorization. Unless otherwise specified on the Bid Form, the Construction Manager shall be solely responsible for obtaining and maintaining the required Payment and Performance Bonds throughout the term of the Contract. To be acceptable to OWNER as Surety for Performance and Payment Bonds, a Surety company shall comply with the following provisions:

1. The Surety Company shall have a current and valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The Surety Company shall have a current and valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Codes.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this agreement.
5. If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:

The Surety Company shall have at least the following minimum ratings in the latest issue of A.M. Best's Key Rating Guide.

POLICY HOLDER'S CONTRACT AMOUNT AND REQUIRED FINANCIAL RATING

\$500,000 TO 1,000,000: A-CLASS IV

\$1,000,000 TO 2,500,000: A-CLASS V

\$2,500,000 TO 5,000,000: A-CLASS VI

\$5,000,000 TO 10,000,000: A-CLASS VII

\$10,000,000 TO 25,000,000: A- CLASS VIII

\$25,000,000 TO 50,000,000: A- CLASS IX

\$50,000,000 TO 75,000,000: A- CLASS X

The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance, to conduct business in this state has been met.

In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

Article 11

Representations, Warranties and Covenants by Construction Manager

Construction Manager hereby represents and warrants to Owner, which representations and warranties shall be true and shall be deemed to be restated throughout the term of the Project.

11.1 Warranty. Construction Manager shall provide Owner with a warranty on accordance with **Exhibit "F"**, attached hereto.

11.2 Authority. Construction Manager is a validly existing corporation under the laws of the State of Florida. The individual executing this Agreement has full and lawful authority to bind and obligate

Construction Manager to perform its obligations as herein provided and upon execution hereof, this Agreement shall be the binding and legal obligation of Construction Manager and is enforceable against Construction Manager under the laws of the State of Florida.

11.3 Pending Litigation and Judgments. There are no legal actions, suits, or other legal or administrative proceedings against Construction Manager, and Construction Manager is not aware of any facts which might result in any such action, suit or other proceedings, and there are no outstanding judgments owed by Construction Manager which may impair or frustrate the Construction Manager's ability to perform its obligations under this Agreement.

11.4 Insolvency. There has not been filed by or against Construction Manager a petition in bankruptcy or any other insolvency proceeding, or for the reorganization or appointment of a receiver or trustee, nor has Construction Manager made an assignment for the benefit of creditors, nor filed a petition for arrangement, nor entered into an arrangement with creditors, nor admitted in writing its inability to pay debts as they become due.

[The remainder of this page was intentionally left blank by the parties. Signature page to follow.]

In executing this Agreement, Owner and Construction Manager each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

ATTEST:

(Company Name)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

JEA

By: _____

By: _____

Name:

Jenny McCarthy

Title:

Director, Procurement Services

Date: _____

Date: _____

Approved by the JEA Awards Committee on Thursday, _____, Award Item No. _____.

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
CONTRACT FEE SUMMARY FORM

EXHIBIT C
CONSTRUCTION MANAGER LABOR RATES

EXHIBIT D

PROJECT INFORMATION, SCHEDULING AND REPORTING REQUIREMENTS

The Construction Manager shall use the Critical Path Method (CPM) to schedule and manage the Work. A qualified member of the Construction Manager's personnel shall create the schedule. If the Construction Manager does not have staff capable of preparing and managing CPM schedules, the Construction Manager shall obtain such qualified personnel on a subcontract basis for supporting this Contract.

All CPM scheduling will be performed using CPM precedence diagramming method (PDM) scheduling software such as Primavera P6, Primavera Construction Manager or a CPM scheduling software compatible with Primavera P6 import capabilities (.xer file format). The Construction Manager shall submit all schedules and associated reports to the Owner Representative in paper and electronic formats as described below in order to allow both complete analysis of the schedules and accurate record keeping.

Construction contracts less than \$10 million will have a cost-loaded schedule. Construction contracts equal to or more than \$10 million will be cost and resource loaded.

Project Schedule Definitions

Activity - A single, continuous, and identifiable task in the total Work. The project work scope is subdivided into work tasks that are represented in the schedule software as activities. How finely the project scope is subdivided into tasks determines the "level of detail" within the schedule. OWNER retains the right to reject a schedule for insufficient levels of activity detail.

Baseline Schedule - The Baseline Schedule comprises the plan and schedule that the Construction Manager intends to use to perform and complete the Work. Upon approval by the OWNER Representative, the Baseline Schedule shall be the schedule of record from which entitlement for adjustments in the completion deadline(s) shall be measured until a Revised Baseline Schedule is approved by the OWNER Representative.

Contract Float - Contract Float is the number of days between the Construction Manager's anticipated date for early completion of the Work, or specified part, and the corresponding Contract Time.

Contract Milestone - A Contract Milestone is a Milestone required in every project schedule to identify significant Contract events. Required Contract Milestones include Notice to Proceed (NTP), Substantial Completion (SC) and Final Completion (FC).

CPM Network - The CPM Network is a transferable electronic copy of project software data and files. It includes, but is not limited to, activities, milestones, calendar definitions, precedence relationships including any relationship lag periods, date constraints, baseline schedules, project and activity code definitions, resource definitions, resource assignments, project values (e.g. the data date/time now value, settings for project-activity processing options, etc.), and all information that can be generated from such data.

Critical Path - The Critical Path is defined as the longest continuous series of activities through the network to the Substantial Completion Contract Milestone.

Current Schedule - The Current Schedule has progress information (updates) reported against in-progress and completed activities. Update information is used to re-calculate / reforecast the most likely "early start" dates of the remaining incomplete activities as sequenced by the network. This calculation establishes the earliest forecasted completion date of the project, which allows Project Managers to determine if they are ahead, on, or behind schedule to meet the Contract Milestones. A current schedule is used to evaluate Construction Manager progress against the Baseline Schedule.

Interim Contract Milestone - An Interim Contract Milestone is a Milestone that is specifically called out by the Contract to be included in the project schedule. Example Interim Contract Milestones could be completion of specific phases of work at a specific number of contract days from NTP or required delivery dates of material or equipment.

Interim Schedule - The Interim Schedule and schedule narrative describes the activities to be performed within the first 120 calendar days after NTP and their interdependencies subject to all requirements of the Contract. The Interim Schedule shall include a separate proposed payment plan for its duration, which upon written approval by OWNER, shall be used by the Construction Manager for payment purposes during the Interim Schedule period.

Milestone - A task with zero duration that identifies the instant of time at which a significant task within the project is starting or stopping. Start Milestones shall be used to represent the start of a significant task while Finish Milestones shall be used to represent the completion of a significant task.

Precedence Relationships - The logical relationships created in the scheduling software to sequence the performance of the work tasks identified by activities or milestones. Precedence relationships can be categorized in 4 groups - Finish-to-start, Start-to-Start, Finish-to-Finish, and Start-to-Finish. The interface between activities created by precedence relationships creates a PDM network logic. A PDM logic where estimated durations have not been assigned to the activities constitutes a network "Plan". Once activities are assigned estimated durations, the software interfaces durations and the network logic to calculate a "Schedule" based on the Plan.

Proposed Schedules - Proposed schedules are schedules in which the Construction Manager proposes revisions and/or changes to the Baseline Schedule for Owner's acceptance. If a Proposed Schedule is accepted by OWNER, it shall be incorporated into a Revised Baseline Schedule and all work progress shall be reported against it going forward.

Revised Baseline Schedule - A Revised Baseline Schedule is submitted by the Construction Manager whenever changes in the Current Baseline Schedule are required to accurately reflect any changes in the Construction Manager's plan for performing the Work or the impact of any approved changes in the Work. The Revised Baseline Schedule, once approved by OWNER, comes the Baseline Schedule from which progress and entitlement for adjustments to the Completion Deadline is measured.

Schedule Progress Updates - Schedule Progress Updates are submitted monthly by the Construction Manager to update the Current Schedule with status during the period of the update and to reflect the Construction Manager's current plan for performing the Work.

Three Week Look-ahead Schedule - A schedule, submitted by the Construction Manager, of all planned work to be performed over the next three weeks in sufficient detail to enable the tracking of the day-to-day field activities. The detail and format are as directed by the OWNER project representative but a Three Week Look-Ahead produced from the Current Schedule is preferred. These Three Week Look-ahead Schedules are to be submitted weekly by the Construction Manager in PDF format.

Total Float - Total Float is the amount of time a scheduled activity can be delayed without delaying the completion of the Work beyond the Contract Milestones.

Purpose of the Project Schedule

Project schedules shall be used for evaluating all issues related to time for this Contract. The project schedules shall be used by OWNER and the Construction Manager for the following purposes as well as any other purpose where the issue of time is relevant:

1. To communicate to OWNER the Construction Manager's current plan for carrying out the Work;
2. To identify work paths that are critical to the timely completion of the Work;
3. To identify upcoming activities on the critical path(s);
4. To evaluate the best course of action for mitigating the impact of unforeseen events;
5. As the basis of establishing the predecessors for each contract milestone;
6. As the basis for analyzing the time impact of changes in the Work;
7. As a reference in determining the cost associated with increases or decreases in the Work;
8. To prioritize activities for which OWNER is responsible;
9. To document the actual progress of the Work;
10. To evaluate the resource requirements of the Construction Manager;
11. To integrate the Work with the operational requirements of Owner's facilities;
12. To schedule and coordinate interfaces with adjacent contracts;

13. As a basis for determining valid acceleration plans;
14. To facilitate efforts to complete the Work in a timely manner;
15. To verify progress of the Work as it pertains to billing periods and invoices for payment.

The project schedules provide a basis for decisions that may affect the Work under this Contract, as well as other concurrent or future contracts. The Construction Manager shall submit schedule submittals per the requirements of this specification. Project schedules should always reflect the Construction Manager's current plan for the Work and be updated as described in this specification.

Schedule Type

All project schedules shall be a computer generated, Critical Path Method (CPM) network utilizing the precedence diagram method of scheduling.

Software

The Project Schedule in CPM format (the "CPM schedule") shall be created in a format compatible with the latest version of Primavera P6, or as otherwise specified by OWNER. The Construction Manager shall purchase and maintain a valid software maintenance agreement for each license of software necessary to produce the Project Schedule. The Construction Manager shall not upgrade to a new version of the scheduling software during a project unless previously approved in writing by OWNER. If the Construction Manager desires, they may procure the services of a third party to provide scheduling services at no additional cost to OWNER.

OWNER currently uses Primavera P6 version 15.1 and would prefer Construction Manager's use either Primavera P6 or Primavera Construction Manager.

Use of Float

Total Float and Contract Float are not for the exclusive use or benefit of either OWNER or the Construction Manager, but must be used in the best interest of completing the project within the Contract Time relative to the contract milestones. If the Early Dates in any Progress Schedule Submittal forecasts any slippage or overrun of the contract milestones, the Construction Manager shall indicate such slippage or overrun by reporting negative float. Total and Contract Float shall be available to OWNER, consultants, or the Construction Manager to accommodate changes in the Work or to mitigate the effect of events which may delay performance or completion. Total and Contract Float are an expiring resource available to all parties, acting in good faith, as needed to meet the contract milestones. OWNER will monitor and optimize the use of float for the benefit of the project.

Early Completion

An early completion schedule is one that anticipates completion of all or a specified part of the work ahead of the corresponding contract time. Since Contract Float belongs to the project, the Construction Manager shall not be entitled to any extension in contract time or recovery for any delay incurred because of extensions of an early completion date until all Contract Float is used or consumed and performance or completion of the work extends beyond the contract time.

Pacing

If the Work is delayed on the Critical Path due to a delay caused by OWNER, thereby creating additional float on any other path, then use of such float shall be construed as a concurrent delay to any delay caused by OWNER. The Construction Manager shall maintain its original schedule on the other paths and activities not affected by the delay.

Non-Compliance

OWNER may refuse to recommend/authorize a progress payment in the event of the Construction Manager's failure, refusal or neglect to provide the required schedule information, since this will preclude the proper evaluation of the Construction Manager's progress. Remedies for the Construction Manager's failure, neglect or refusal to comply with the requirements of this section are in addition, and not limited to, those provided under other sections of the Contract.

Quality Assurance

The Construction Manager shall perform the Work covered by this section with personnel having substantial experience in the use of scheduling software on construction projects that required the development and maintenance of the schedule throughout the project duration.

It is the responsibility of the Construction Manager to work with each subcontractor and supplier to obtain information pertinent to the planning and updating of their respective activities in the schedule.

Baseline Schedule Preparation and Submittal

In achieving an approved Baseline Schedule there will be no adjustment in the Contract Price. In general, the Baseline Schedule shall demonstrate a complete understanding of the Work, inclusive of all phasing and sequencing considerations and shall include, but not be limited to:

1. The order in which the Construction Manager intends to prosecute the Work, outlining the intended flow of Work, including submittals, submittal reviews, procurement of equipment and materials, maintenance of traffic, pollution control measures, utility interfaces, right-of-way, and other information as required by the contract;
2. All relevant work constraints to performing the Work including, but not limited to, right-of-way access constraints (with clear logical connections to the commencement of various work), accommodation of utility relocations, permitting restrictions, and environmental/seasonal constraints;
3. The dates on which the Construction Manager plans to start and complete various Work stages, operations, and principle items of Work, including the Contract Milestones; and
4. Interfaces with other entities such as Utility Owners, Third Parties, adjacent Construction Managers and other stakeholders;
5. The Baseline Schedule will be accompanied by a payment breakdown. This breakdown will identify the costs associated with each schedule activity.
6. All schedule submittals shall be in accordance with Section 7: Review, Acceptance and Approval of Project Schedule Submittals.

Completion, Timeliness and Review of Baseline Schedule Submittals

To promote the efficient use of Construction Manager and OWNER scheduling resources, the submittal requirements have been phased. The Construction Manager shall complete and submit schedules in accordance with the submittal deadlines contained in Table 1. For the determination of submittal deadline dates and total contract schedule duration, the date of NTP shall be working day number one.

Baseline schedule submittals will be reviewed for conformity with the Contract and the requirements in this specification. Each submittal required by this section shall reflect the incorporation of all of Owner's comments on the Baseline Schedule to date. With each submittal, the Contractor shall provide a written response to each of Owner's comments to date.

Failure of the Contractor to provide complete, timely Baseline Schedule submittals as specified, and in the sequence and timeframes specified below, may result in delays or extensions to OWNER review periods. Baseline Schedule Submittals may be rejected for incompleteness or failure to meet the specification requirements and re-submittal will be required. The Contractor may submit information earlier than required in the Baseline Schedule Submittal Schedule in Table 1.

Once approved by OWNER, the Baseline Schedule shall be assigned as the Project Baseline in the scheduling software used by the Construction Manager. All subsequent printed schedules produced by the Construction Manager shall show both the Current Schedule and Baseline Schedule Gantt Chart bars.

Baseline Schedule Submittals

In the course of developing the Baseline Schedule, the Construction Manager shall submit the deliverables below for OWNER review in accordance with the following schedule:

		Construction Duration	Construction Duration 6 - 12 Months	Construction Duration > 12 Months
Step	Description	Submittal Deadline Working Days after NTP)	Submittal Deadline (Working Days after NTP)	Submittal Deadline Working Days after NTP)
1	Interim Schedule Submittal	10	10	10
2	Proposed Payment Breakdown	15	20	20
3	Baseline Schedule Submittal	20	30	60
4	Corrected Baseline Schedule Submittal	30	45	80

Table 1: Baseline Schedule Submittal Schedule

Step 1 - Interim Schedule Submittal

No later than the deadline specified in table 1, the Construction Manager shall submit an Interim Schedule detailing activities that are to be performed within the first 120 calendar days after NTP. OWNER will review and may approve an acceptable Interim Schedule within 10 working days of submittal. OWNER may require the full Interim Schedule, or parts thereof, to be resubmitted throughout the review period. The Interim Schedule Submittal shall include:

- o Narrative Report describing work to be performed during the Interim Schedule period using the Baseline Schedule Narrative format described below.
- o Electronic schedule file.
- o A proposed payment plan, which upon written approval by OWNER, shall be used by the Construction Manager for payment purposes during the Interim Schedule period.

APPROVAL OF THE INTERIM SCHEDULE IS A CONDITION PRECEDENT FOR PAYMENT.

Step 2 - Proposed Payment Breakdown Submittal

No later than the deadline specified in table 1, the Construction Manager shall submit the proposed Schedule of Values (SOV), which upon approval by OWNER, shall be used by the Construction Manager for payment application purposes. When preparing the SOV, consideration should be given to Enterprise Asset Management reporting requirements that are required at the end of the contract.

As part of the Proposed Payment Breakdown Submittal, the Construction Manager shall also submit a list of all submittals required by the contract.

Step 3 - Baseline Schedule Submittal

No later than the deadline specified in table 1, the Construction Manager shall complete the Baseline Schedule submittal for approval representing all Work required by the contract. The Baseline Schedule submittal shall include:

- o Baseline Narrative Report;
- o Electronic schedule file;
- o Contract Payment Breakdown Report - a report forecasting monthly cash flow that details all costs loaded to the schedule;
- o Cumulative and monthly total project costs curves reflecting the total contract amount.

APPROVAL OF THE BASELINE SCHEDULE IS A CONDITION PRECEDENT FOR PAYMENT BEYOND THE INTERIM SCHEDULE.

Step 4 - Corrected Baseline Schedule Submittal

In the event the Baseline Schedule submittal (Step 3) is not approved, and no later than the deadline specified in table 1, the Construction Manager shall complete the Corrected Baseline Schedule Submittal.

The Construction Manager shall correct the Baseline Schedule submittal for approval by incorporating all of Owner's comments on the initial Baseline Schedule submittal. No additional changes shall be made. The corrected Baseline Schedule submittal shall be revised and resubmitted until receipt of OWNER approval.

Schedule Requirements

General - For the purpose of enabling both OWNER and the Construction Manager to readily evaluate the Project Schedule, including derived data and reports, the Project Schedules shall be administered in accordance with the following requirements.

All schedules shall be prepared by the Construction Manager and reflect the Construction Manager's plans, means and methods, techniques and sequences for performing the Work.

The schedules shall break down the Work into distinct activities with interdependencies to the extent required to clearly depict the planned approach for completion of the Work and to effectively manage the execution of the Work. The schedules shall:

1. Divide the Work into manageable and logical segments and specify the progression from Notice to Proceed (NTP) to Substantial Completion (SC) to Final Completion (FC) within the Contract Time.
2. Include, at a minimum, appropriate time allowances for submittals, procurement, coordination with others, construction, start-up/check-out (if applicable), operational and performance testing (if applicable), commissioning (if applicable), and Contract closeout.
3. The NTP activity shall be the first activity in the schedule and shall be a Start Milestone with an assigned 7-day, no holiday calendar. The SC and FC activities shall be Finish Milestones with assigned "Finish on or Before" constraints, set to the contract milestone dates, with a 7-day no holiday calendar.
4. The NTP, SC and FC milestones may include the contract milestone dates in the activity description for quick reference by all parties.

Schedule Settings and Setup - If the Construction Manager will be using Oracle Primavera P6, the settings shall be as follows:

1. The Project ID will be the contract number between OWNER and the Construction Manager. It will be appended as described in the following section titled "Project ID Suffix". The Project Name shall be as defined in the contract between OWNER and the Construction Manager.
2. The Project WBS will, at a minimum consist of the following:

Level 1 - Project

Level 2 - Executive Summary

- a) Shall be populated with sufficient Level of Effort activities and milestones to provide management an overview of the contract. All Contract Milestones will be included at this level.

Level 3 - Submittal Preparation

Level 4 - Submittal Review and Acceptance

Delivery

The WBS for the remaining construction related work is at the discretion of the Construction Manager. The Construction Manager must ensure that the WBS structure is sufficiently robust to segregate, manage, and present the various work types, phases, segments, elements and locations in a clear logical manner and convey the sequence at which the Construction Manager intends to construction the Work.

3. Project ID Suffix:

Each schedule submittal shall have a unique identifier appended to the Project ID specified in the previous section titled "Project ID/Name", in the form of:

- a. For Baseline Schedules, "-BL".
 - b. For Proposed Schedules, "-Pbbb", where "bbb" is sequential starting at 001.
 - c. For Revised Baseline Schedules, "-RBLccc", where "ccc" is sequential starting at 001.
 - d. For Schedule Progress Updates, "-PUyymm", where "yy" and "mm" correspond to the year and month of the monthly submittal.
4. Activity Codes must be maintained at the Project level.
5. Calendars must be maintained at the Project level and account for all work scenarios in the Contract and planned by the Construction Manager.
6. Units.
7. Percent Complete Type shall be "Physical".
8. Make Open Ended Activities Critical should be checked.
9. Scheduling method for progressed activities shall be set to "Retained Logic".
10. Total Float Calculations shall be set to "Finish Float = Late Finish - Early Finish".
11. Define Critical Activities as "Longest Path".

Activity Identification - each activity in the Project Schedules shall have an activity identifier (Activity ID). The Construction Manager shall utilize an Activity ID that is simple and allows space between existing activities for the future addition of activities for continuing sort and display capability. The Activity ID of an existing activity shall not be modified or assigned to another activity. The scope of work for an activity shall not be substantially changed once the Baseline Schedule is approved since this would result in re-use of the Activity ID for a different scope of work. If the Contractor opts to use an intelligent Activity ID, the Construction Manager must provide a breakdown of what each character of the Activity ID represents.

Activity Description - the activity description shall identify the unique scope of the activity. There shall not be any two activities with the same activity description. It shall not be necessary to investigate activity code assignments or logic relationships to identify the scope of an activity. For example, the description "POUR FOOTINGS" or "INSTALL MANHOLE" will not be acceptable; the description "POUR FOOTINGS OF BIOSOLIDS BUILDING" or "INSTALL MANHOLE - Sta. 112+00" will be acceptable. At the same time, the Activity Description shall be concise enough to not require excessive column width in the Oracle Primavera P6 layout. The terms "Miscellaneous, Misc." or other vague adjectives shall not be used as an activity description. The Construction Manager shall standardize the use of terms and their spelling in all activity descriptions. Abbreviations used in activity descriptions shall be consistent with the abbreviations used throughout the Contract and the design drawings. Once the Baseline Schedule is approved, activity descriptions shall not be modified except at the direction or with the consent of OWNER.

Activity Duration - unless otherwise specified, construction activities shall have a duration between one (1) and fifteen (15) working days. At the request of OWNER, the Construction Manager shall substantiate the need for specific activities having shorter or longer durations than stated herein. Certain non-labor activities such as procurement or delivering of materials may have durations in excess of 15 working days. After approval of the Baseline Schedule, changes in activity durations shall be addressed exclusively with the Duration Remaining data field. OWNER shall be the final authority regarding the appropriate level of schedule detail for all schedules submitted for approval.

Activity Dates - Early and Late start and finish dates of activities shall be calculated for each activity based upon the schedule data date, actual dates, schedule logic, schedule constraints, calendars, original duration or remaining duration, in accordance with the schedule parameters defined in this specification.

Activity Predecessors and Successors - every activity shall have logically assigned predecessors and successors in conformance with the requirements of this section. The logical predecessors for each activity will be limited to those activities whose scope of work necessarily must be completed in order to perform the current activity. Unless otherwise specified, NTP shall be the only activity in the Project Schedules without predecessors and the Final Completion activity shall be the only activity in the Project Schedules without a successor.

Activity Constraints - Activity Constraints can affect activity float calculations and will not be used unless approved by OWNER or allowed by this specification. The imposition of a date constraint on any activity other than the contract completion deadlines will only be permitted when the Construction Manager substantiates the need for the constraints to the satisfaction of OWNER.

Activity Percent Complete - Activity remaining durations and percent complete shall be entered in the Project Schedules by the Construction Manager as appropriate to indicate activity progress and status as of the current Data Date for the update. The Construction Manager is to insure that progress is based on a current estimate of remaining duration to complete the Work and not the activity's percent complete which calculates the remaining duration based on the original estimated duration.

Activity Codes - The Project Schedules shall contain activity code classifications and code values. The coding shall also incorporate the appropriate OWNER provided data elements to allow reporting by any individual element or a combination thereof. These activity codes shall be the first codes defined for the activities, followed by any other codes, and shall use the values provided by OWNER following award. The Construction Manager may add additional codes to satisfy its own requirements. In addition to Owner's activity codes, the Construction Manager shall propose a coding structure for Owner's review and acceptance. The activity code structure combined with the activity identification number shall provide the capability to organize information by location, road or ramp, structure, work type, subcontractor, discipline, etc.

Activity Calendar -The planning unit for the Work shall be whole working days. The use of other calendars may be used as required with a clear definition within the calendar description and/or the Baseline Schedule Narrative as to what the calendar is intended to be used for and/or what specific non-working periods they include. Level of Effort or WBS Summary activities used to show project durations from NTP to a Contract Milestone shall use a seven-day no holiday calendar. A common calendar base time of eight (8) consecutive hours (e.g., 8 AM to 4 PM) will be used on all calendars unless approved by OWNER. To ensure activity start and finish dates are accurately calculated, time will be turned on when performing updates to the Project Schedule. This ensures activity durations are not inadvertently calculated as a partial workday or result in a 1-day duration activity spanning multiple dates.

Resource Loading -All Project Schedules on contracts in excess of \$10 million shall be resource loaded with labor man-hours for both the Construction Manager and all of its sub-contractors.

Cost Loading - Project Schedules shall be cost loaded. All costs necessary to meet the particular requirements of each payment activity will be included in the payment breakdown and that breakdown will total up to the Contract Price.

Change Orders/SWA - New activities will be added to the project schedules upon approval of a Change order or SWA. These new activities will also include the costs associated with the Change Order/SWA. The Activity ID of these new activities should clearly show it represents a Change Order or SWA. For example, an activity with an ID of "CO1-100" indicates that it represents Change Order #1. If multiple activities are to be added under a single Change Order or SWA they shall be sequentially numbered such as CO1-100, CO1-110, CO1-120, etc.

CPM Logic - The Construction Manager shall be responsible for developing the CPM logic of the Baseline Schedule and for updating that CPM logic each month to accurately reflect the progress of the Work to date and the Construction Manager's current plan for completion of the work. All paths through the Project Schedules shall proceed in the direction representing the progression of time. Activity lag

durations shall not have a negative value. Activity lags shall not be used in lieu of activities. Redundant ties to preceding activities in a sequential series of activities will not be permitted. For example, if activity C is the successor in a Finish-Start relationship to activity B, and activity B is the successor in a Finish-Start relationship to activity A, then activity A shall not have a redundant Finish-Start relationship to activity C. A tie representing a different constraint will not be considered redundant. For example, a logic tie showing that the completion of the work scope of a predecessor is required before the successor can start is different from a logic tie representing a resource limitation and will not be considered redundant.

Timely Completion - Unless otherwise specified, timely completion shall refer to completion on or before a date that supports the Contract Milestones.

Use of Constraints or Float Suppression Techniques - Any use of Start constraints within the schedule shall be documented in the schedule narrative. The only instance where a Late Finish constraint may be used is for the Substantial Completion or Final Completion Milestones. Any other use of constraints is prohibited. The use of negative lags or the use of any other float suppression techniques is also prohibited from use in project schedules.

Resource Leveling - In schedule submittals to OWNER, the Construction Manager shall not use restraints or constraints to optimize and/or level manpower and equipment requirements. Activities shall be duration and logic driven.

Default Progress Data -Actual Start and Finish dates shall not be automatically updated by default mechanisms that may be included in the CPM scheduling software systems.

Out-of-Sequence Logic -The Construction Manager shall correct all incorrect logic relationships in the schedule update to eliminate any out-of-sequence logic. The Construction Manager shall make all changes in the logic or other adjustments found to be incorrect by OWNER.

Narratives

Baseline Schedule Narrative

The Baseline Schedule narrative shall demonstrate a feasible approach to achieving or improving the planned schedule and contains the following information:

Identification of the Data Date and schedule file name.

A description of the planned flow of work, identifying all key or driving resources. Identify key constraints and potential problems influencing the Construction Manager's approach to the work. Describe all construction interfaces with third parties at the Project site. Also identify temporary Construction Manager plants, facilities or fixed equipment that the Construction Manager or subcontractor plan to use within the right-of-way. Include in this discussion the length of time the plant is to be used, any planned moves, and any potential conflicts that could arise, if the plan is not adhered to.

A summary of planned labor utilization for the Contract, identifying the average and maximum number of workers on site each month based on the resource loaded Project Schedules. Identify actual and potential labor resource limitations. A summary of planned equipment utilization for the Contract, identifying each type of operated equipment to be used on the Work, the planned quantity of each type of operated equipment utilized each month, and the criteria for mobilizing and demobilizing each piece of equipment to and from the site. Identify actual and potential equipment resource limitations.

An explanation of how adverse weather conditions have been addressed in the Baseline Schedule. Identify all activities, if any, that contain contingency days for adverse weather conditions and the duration of such contingency included for each.

An explanation of special calendars that only allow work to take place during a pre-defined window of time.

The narrative shall address the Construction Manager's material procurement plan and identify the strategy for any long lead item(s). There shall be no fabrication and delivery activities for concrete and asphalt concrete. Fabrication and delivery activities for short lead-time items shall not be included in the project schedules. "Short lead-time" shall be defined as a period of two weeks or less from placement of order to delivery of material to the Project site.

Schedule Progress Update Narrative

All Schedule Progress Update submittals shall include a narrative containing the following information:

Identification of the update period, the Data Date, and the schedule file name.

Identification of activities with critical or near critical float (within 14 Days of the Critical Path) that were planned to occur during the update period, of which did not occur or occurred later than the scheduled Early Start or Early Finish date, and an explanation of these delays. Provide a listing of all activities that may overrun or have overrun their planned duration by more than 20 percent and any justification for maintaining original planned durations for future activities of like Work.

Identification of delays occurring to activities taking place off the Project site, e.g., submittal preparation, fabrication, and delivery activities.

A summary of planned labor utilization for the Contract, identifying the average and maximum number of workers on site each month. Identify actual and potential labor resource limitations. A summary of the actual labor utilization used over the past month.

A summary of planned equipment utilization for the Project, identifying each type of operated equipment to be used on the Work, the planned quantity of each type of operated equipment utilized each month, and all changes to the criteria for mobilizing and demobilizing each piece of equipment to and from the Project site. Identify actual and potential equipment resource problems. A summary of the actual equipment utilized over the past month.

Revisions to logic or duration(s) by the Construction Manager to effectively use labor and resources that have no adverse effect on Completion Deadlines or Contract Price shall be detailed in the update. These revisions shall contain the following information:

Identification of the activities changed.

A description of the scope of the logic change and identification of the advantages and disadvantages of implementing the change.

Identification of all driving resources, if any.

Identification of key constraints influencing the Construction Manager's approach to the Work.

Required Submittal and Delivery Activities

Submittal List

The Construction Manager shall submit a list of all submittals required by the Contract, as part of Step 2 no later than the deadline identified in Table 1.

The submittal list shall conform to the following format or any other format approved by OWNER:

Submittal List		
Submittal Reference Number	Description of Submittal	Activity ID

Table 2: Submittal List Format

Submittal Activities

Submittal activities shall be included in the Project Schedules in a manner consistent with the level of detail shown below:

Activity	Abbreviation in Activity Description
Prepare and Submit	P/S
Review and Approve	R/A
Revise and Re-submit	R/R
Fabricate and Deliver (Material or Equipment)	F/D or FAB or DEL

Table 3: Submittal Activity Detail

Submittals with Multiple Activities

When multiple items are included in a single submittal, that submittal shall be represented in the

schedule by an activity in accordance with the following conditions:

The "Review and Approve" activity for that submittal shall be a predecessor to every activity representing the fabrication and delivery of any of the materials submitted.

If the submittal is returned and the disposition is sufficient to enable the commencement of a successor activity, then the original submittal activity shall be broken down into multiple activities, as necessary, to accurately reflect the logic of the Construction Manager's current plan.

As part of the monthly update procedure, submittal activities shall be reviewed and modified to ensure that the scope and logic of the activities are consistent with the Construction Manager's current plan.

Delivery Activities

Activities representing the delivery of materials or equipment for more than one installation activity will be permitted in accordance with the following conditions:

The material delivery activity shall be a predecessor to the first activity representing the installation of that material in each area;

When partial deliveries are received and those deliveries are adequate to enable the commencement of some, but not all, successor activities, then the original delivery activity shall be broken down into multiple activities, as necessary to accurately reflect the logic of the Construction Manager's current plan;

As part of the monthly update procedure, a discussion of delivery activities shall be reviewed and modified to ensure that the scope and logic of delivery activities are consistent with the Construction Manager's current plan; and

There shall be no fabrication and delivery activities for concrete and asphalt concrete. Fabrication and delivery activities for short lead-time items shall not be included in the project Schedules. "Short-lead time" shall be defined as a period of two weeks or less from placement of order to delivery of material to the Project site.

Timely Completion

Unless otherwise specified, timely completion shall refer to completion on or before a date that supports the Completion Deadlines.

Use of Constraints or Float Suppression Techniques

Any use of constraints within the schedule shall be documented in the schedule narrative. The only instance where a constraint may be used is a Finish on or Before constraint on Contract Milestones. Any other use of constraints is prohibited. This includes the following: Start On, Mandatory Start or Finish. The use of negative lags or the use of any other float suppression techniques is also prohibited from use in the project schedules.

Resource Leveling

In schedule submittals to OWNER the Construction Manager shall not use restraints or constraints to optimize and/or level manpower and equipment requirements. Activities shall be duration and logic driven.

Default Progress Data

Actual Start and Finish dates shall not be automatically updated by default mechanisms that may be included in the CPM scheduling software systems.

Out-of-Sequence Logic

The Construction Manager shall correct all incorrect logic relationships in the schedule update to eliminate any out-of-sequence logic. The Construction Manager shall make all changes in the logic or other adjustments found to be incorrect by OWNER.

Electronic Schedule Naming and Formatting

OWNER will provide guidance on schedule name designation to be used. The Construction Manager shall not submit any two schedules with the same file name.

Electronic Project Schedule Files

Electronic schedule files shall be in ".xer" format compatible with Oracle Primavera P6. Electronic narrative files shall be in readable PDF format (not scanned).

Printed Project Schedules

PDF or printed schedules shall be no larger than 11"x17" in landscape format and no more than one page wide. PDF or printed schedules should show Activity ID, Activity Name, Original Duration, Remaining

Duration, Start, Finish and Total Float columns. The Gantt Chart shall show bars for Actual Work, Remaining Work, Critical Remaining Work, Current Bar Labels, Milestones, Project Baseline and Baseline Milestone. The Data Date line shall also be displayed on the Gantt Chart.

The header of PDF or printed schedules shall contain the project name, the run date and the data date at a minimum. The footer shall contain a Gantt Chart legend, page number, total pages number and active filters at a minimum.

Schedule Progress Updates

The Construction Manager shall update the Current Baseline Schedule in the form of a Schedule Progress Update on a monthly basis for the duration of the Contract. This shall not constitute a modification of the Current Baseline Schedule. The purpose of Schedule Progress Updates shall be to accurately document the progress of the Work to-date and to correct the schedule to accurately reflect the Construction Manager's current plan for the timely completion of the Work. Schedule Progress Updates shall be used to record progress for payment purposes and to reflect how the Work is being performed.

Schedule Progress Updates shall never be used as the basis for any adjustment in the Completion Deadlines. Any acceptance of the Schedule Progress Update by OWNER, either expressed or implied, shall only apply to the issue of progress and not to any issue of acceptability or accuracy of the Schedule Progress Update for use as a basis for measuring adjustments in Completion Deadlines. The Schedule Progress Update submittal shall be due with Construction Manager's invoice for payment, and shall be a prerequisite to payment by OWNER.

Monthly Schedule Progress Update Period

A monthly Schedule Progress Update of the Current Baseline Schedule shall be submitted for each calendar month from the date of the NTP through the date of Final Acceptance. The Data Date of each monthly Schedule Progress Update shall be coordinated with the OWNER Project Manager but is typically one of three options:

The last calendar day of the month, meaning that the progress of the Work to date shall be documented and progressed through the last day of the month; or

The last day of the pay application billing period so that schedule progress and billing are in alignment; or

The day of monthly progress meetings where the Construction Manager will supply the updated monthly schedule.

Monthly Schedule Progress Update Data

A joint monthly schedule update meeting shall be held in conjunction with the construction progress update meeting. The purpose of this meeting is to review and discuss the contents of the most recent Schedule Progress Update submittal. The OWNER review period for the monthly Schedule Progress Update data submittal is 10 working days. The Schedule Progress Update data submittal shall consist of the following submittal components:

A schedule narrative consistent with the Narrative section above;

Electronic files with record schedule incorporating all submitted Schedule Update Data (PUXXX);

The actual progress achieved on each operation and its effect upon the timing of the remaining work;

All required documentation required under the Contract in support of the invoice;

A comparison report showing all changes made to the schedule since the last Schedule Update;

Production curves showing the approved baseline production (planned) values and the actual production values; and

Should any Work be conducted on a time and materials basis then this update shall contain all necessary data to record progress;

In the event of discrepancies between the submitted data and Owner's records of progress, Owner's records shall govern. Owner's decision shall be final regarding all Schedule Progress Update data. The

submittal of incomplete, illegible, or unchecked data or of reports that do not conform to the requirements of this specification may result in the rejection of Schedule Progress Update data, and as such will require a revision and re-submittal.

SUBMITTAL TO OWNER OF THE CONSTRUCTION MANAGER'S MONTHLY SCHEDULE PROGRESS UPDATE IS A CONDITION PRECEDENT FOR PAYMENT TO BE INITIATED.

Acceptance of the Schedule Progress Update shall not relieve the Construction Manager of its obligation to make appropriate corrections to all of the Project Schedules.

OWNER shall not be liable for delays to the Construction Manager's Work that occur during a time when the Construction Manager has failed to provide a Schedule Progress Update in accordance with the requirements of the Contract, when having the Schedule Progress Update at the specified time could have influenced Owner's decisions or actions.

The Schedule Progress Update submittal shall reflect updated progress to the Data Date, forecasted finish for in-progress activities, and re-forecasted Early Dates and Late Dates for remaining activities. The Construction Manager shall submit any changes in activity durations, logic ties or constraints for review and acceptance by OWNER prior to inclusion of the change into the current Schedule Progress Update. OWNER may also submit changes to the Construction Manager for inclusion in the current Schedule Progress Update. These changes should be forwarded to the Construction Manager for review prior to the monthly construction progress meeting for discussion in that meeting.

Progress Delays

The Construction Manager shall identify and promptly report to OWNER as soon as they become aware of any matter that could:

Increase the project budgeted cost or Contract Price,

Delay the Substantial Completion Deadline,

Delay meeting a key date or Interim Contract Milestone (if applicable),

Impair the performance of the work in progress,

Affect the work of OWNER or third parties.

The Construction Manager shall promptly develop a schedule recovery or mitigation plan whenever the Construction Manager's actual physical progress is behind schedule by thirty (30) days when compared to the Current Baseline Schedule or could potentially be delayed by thirty (30) days, or within ten (10) days of a written request by OWNER. The Construction Manager shall submit a schedule recovery or mitigation plan in the form of a Proposed Schedule, whenever the Project Schedule becomes thirty (30) or more Days late to Substantial Completion. The submission of the recovery or mitigation plan shall be at no cost to OWNER and shall be submitted within thirty (30) days of the submittal of the Schedule Progress Update that indicates the Project is thirty (30) or more Days late or at Owner's request. Failure to submit such a recovery plan within the stated timeframe shall provide a basis for future withholdings for payment, either in whole, or in part, by OWNER.

Monthly Progress and Invoice Procedure

On a monthly basis, prior to formal submittal of the monthly invoice, the Construction Manager shall confirm with OWNER the percent complete of work performed prior to submitting the invoice, including the following:

Activity percent completes, which are based on physical percent complete estimated by the field personnel relating to a resource and cost loaded schedule activity. To streamline this process, earning rules will be established to detail how various activities are progressed and partially paid. These rules will describe how discrete elements of work are to be measured for the purposes of measuring percent completion and be submitted in conjunction with the resource and cost loaded baseline schedules.

Incorporation of approved Change Orders as individual activities with proper title, coding by Change Order number, associated logic, duration, as well as cost/resource loading.

Verification of any unit price or time and material items.

Backup documentation for cost reimbursable procurement and Change Order schedule activities.

Revised Baseline Schedules

Any proposed changes and/or revisions to the Current Baseline Schedule approved by OWNER pursuant to its review of Change Orders shall be incorporated into the Current Baseline Schedule and submitted as a Revised Baseline Schedule Submittal. A Revised Baseline Schedule Submittal shall be due with the invoice for payment following Owner's approval of the changes and/or revisions, as submitted in executed Change Orders. The Revised Baseline Schedule shall include a cost distribution for added Work and will be submitted for review and approval by OWNER.

Revised Baseline Schedule Submittals shall include a comprehensive listing of all activities added to or deleted from the Current Baseline Schedule as well as a complete listing of all logic and activity relationship changes that have been made. All changes in the schedule must be fully described in an accompanying narrative. No Revised Baseline Schedule Submittal will be approved unless it satisfies the following:

Any out-of-sequenced logic is corrected or explained to the satisfaction of OWNER;

Start and Finish dates are verified for accuracy; and

The schedule accurately reflects the Construction Manager's plan for completing the remaining Work.

Once a Revised Baseline Schedule Submittal is approved by OWNER it shall become the Current Baseline Schedule of record (and be used for subsequent Schedule Progress Update Submittals), and shall be referred to by its revision number.

Except as otherwise designated by Change Order, no Revised Baseline Schedule that extends performance beyond a Completion Deadline shall qualify as a Current Baseline Schedule, or schedule of record, allowing it to be used to demonstrate entitlement to an extension in a Completion Deadline. In no case shall a Schedule Progress Update be construed as a Revised Baseline Schedule or schedule of record unless it is specifically submitted and approved as such by OWNER pursuant to this section.

Short Term Schedule

Short Term Schedules shall be submitted by the Construction Manager upon request from OWNER and shall be provided for within the Contract Price. OWNER will specify the period the Short Term Schedule shall encompass. The Construction Manager shall produce the Short Term Schedule electronically and it will include a Gantt Chart and details of the daily work activities, including multiple shift work, that the Construction Manager intends to conduct. The daily activities shall correspond to the Current Baseline Schedule activities but shall be at a greater level of detail. The Construction Manager shall be prepared to discuss the Short Term Schedules, in detail, with OWNER to coordinate field inspection staffing requirements, scheduling of Work affecting any adjacent work by other utilities or contractors.

The Three Week Look Ahead Schedule is an example of a Short Term Schedule. Three Week Look Ahead Schedules are to be submitted weekly by the Construction Manager in addition to the Construction Manager's monthly Schedule Progress updates.

Review, Acceptance and Approval of Project Schedule Submittals

Failure to meet any of the following conditions shall result in the non-acceptance of the schedule submittal:

The project budgeted cost shall equal the Contract Price;

The schedule submittal shall show the timely completion of each activity, as well as, reflect all contractual access requirements and limitations of operations specified;

All activity relationships and date constraints shall comply with the requirements of the Contract Documents; and

The Submittal shall be complete in accordance with the requirements of this Specification.

If the schedule submittal is returned to the Construction Manager with comments, the submittal shall not

be considered accepted until all of Owner's comments are incorporated into the schedule to Owner's satisfaction. If the comments are not satisfactorily incorporated into the schedule by the Construction Manager, the submittal shall be deemed unacceptable by OWNER.

It is the Construction Manager's responsibility to ensure that all Project Schedule documents comply with the requirements of the Contract. Errors in any Project Schedule document accepted by OWNER, including but not limited to activity durations, relationships between activities, resource allocation or other float suppression techniques that do not accurately reflect the Work, may be identified at any time and once identified, shall be corrected by the Construction Manager. OWNER is not responsible for any erroneous assumptions or information in any Project Schedule document, regardless of origin.

During the review of any Project Schedule document, if any of the following conditions are discovered, the document may be returned by OWNER without further review for correction and re-submittal:

The document is incomplete.

The document does not comply with the specified format.

A component of the document has not been prepared in accordance with the requirements of this section.

The quality of the document indicates that the Construction Manager has failed to perform an internal quality control review prior to submission.

There is an inconsistency between electronic files and printed material.

The Construction Manager has made unauthorized changes to any Project Schedule document.

The Construction Manager has failed to incorporate OWNER comments concerning the Project Schedule document.

Owner's failure to return a submittal shall not be construed to mean that the submittal complies with the requirements of the Contract. OWNER may, at its discretion, choose to complete a review even though the submittal fails to meet one or more of the conditions for rejection stated herein. The Construction Manager shall be responsible for all delays due to its failure to submit complete Project Schedule submittals in accordance with the requirements of the Contract.

Owner's acceptance or approval of a Project Schedule document indicates only that the submittal appears to comply with the requirements of the Contract. It is the Construction Manager's responsibility to ensure that each submittal complies with the requirements of the Contract. Inconsistencies or errors in any Project Schedule document, including but not limited to activity durations, relationships between activities, resource allocation or other float suppression techniques that do not accurately reflect the Work, may be identified at any time and once identified, shall be immediately corrected by the Construction Manager.

OWNER shall review schedule submittals for conformance with the requirements of the Contract. Review comments by OWNER may address whether items of Work are omitted, activity durations are reasonable or that the level of labor, materials, and equipment, the means, methods, timing and sequencing of the Work are practical. The planning, scheduling or execution of the Work and the accuracy of any Project Schedule shall remain the sole responsibility of the Construction Manager.

Notwithstanding any review, review comments, approval, acceptance, scheduling assistance or direction to change and/or revise any Project Schedule by OWNER the Project Schedules shall at all times be the Construction Manager's schedule for performing the Work and not be considered as any OWNER direction constituting a change. The Construction Manager shall not be relieved from completing the Work within the Completion Deadlines due to the failure of the Construction Manager to submit acceptable Project Schedule documents.

Requirements for Demonstrating Entitlement to an Adjustment in the Contract Time or Obtaining Approval of a Plan to Recover Delay

Schedule Analysis Requirements

The Construction Manager shall develop and submit a time impact analysis and a Proposed Schedule

when one or more of the following conditions occur:

The Construction Manager's plan for the Work as reflected in the Current Baseline Schedule is materially changed;

OWNER has approved a Change Order that affects the Critical Path of the Work necessitating an adjustment in a Completion Deadline;

The Construction Manager's progress on the Work is behind the Substantial Completion date by thirty (30) days or more;

In Owner's opinion, the Current Baseline Schedule no longer accurately reflects the Construction Manager's plan for performing the Work;

The Construction Manager is required by the Contract or chooses to submit a time impact analysis demonstrating entitlement to an adjustment to a Completion Deadline or to submit a plan demonstrating how the Construction Manager intends to recover delay; or

Any allowable change has occurred according to the Contract.

The Construction Manager shall use *AACEi Recommended Practice 52R-06 Time Impact Analysis - As Applied to Construction* when preparing a time impact analysis.

The Construction Manager shall submit a time impact analysis and a Proposed Schedule within fourteen (14) days following a request by OWNER. This required fourteen (14) day period may be extended as necessary subject to the approval of OWNER. The Proposed Schedule shall be developed using duplicate electronic files of the Current Baseline Schedule and shall include all statuses to reflect current progress using information from agreed to Schedule Progress Updates, but shall not allocate costs to any proposed activities. Multiple delays will be analyzed chronologically in the order of occurrence. Costs may be allocated to activities only when the Change Order Proposal has been approved by OWNER. Under no circumstances shall a time impact analysis based on Schedule Progress Update(s) be acceptable as a basis for an adjustment to a Completion Deadline.

Proposed Schedules shall be used by the Construction Manager to:

Request revisions to logic ties and activities in the Current Baseline Schedule,

Propose changes in the Current Baseline Schedule required to implement schedule recovery plans,

To negotiate the schedule impact of a Change Order Proposal with OWNER, or

To propose changes for any other reason in the Current Baseline Schedule.

Proposed Schedules shall code affected and added activities to each Change Order Proposal or schedule recovery plan. Furthermore, Proposed Schedules shall accurately reflect all revisions and/or adjustments made to activities, logic ties and restraints that are necessary to reflect the Construction Manager's current approach for Work remaining. At a minimum, Proposed Schedules shall:

Incorporate all proposed activities and logic ties required to implement any proposed revisions,

Detail all impacts on pre-existing activities and logic ties,

Include a narrative describing the causes of any delay and actions planned to recover the schedule to meet Contract Deadlines.

Each Proposed Schedule shall include a subnet demonstrating how the Construction Manager plans to incorporate a Change Order Proposal or other change and/or revision into the Current Baseline Schedule. A subnet is defined as a sequence of new or revised activities that are proposed to be added to the Current Baseline Schedule.

Notwithstanding any other provision or provisions to the contrary, the Construction Manager shall have no

claim for damages of any kind, or extension or increase to a Completion Deadline, or adjustment of Contract Price, on account of any delay, interruption or suspension of the Work or any portion thereof (herein after collectively referred to as "Delay"), due to whatever cause, unless in addition to all other requirements of the Contract Documents the prerequisites of this section are strictly complied with.

If the Construction Manager does not submit a time impact analysis for a specific change order or delay within the specified period, the Construction Manager shall be deemed to have irrevocably waived any rights to additional time and cost.

Mitigation of Delays

The Construction Manager shall be responsible to develop mitigation measures for all delays, regardless of responsibility for the delays, and to identify all time and cost impacts to the Work associated with those mitigation measures. Unless circumstances otherwise require, the Construction Manager shall not pursue mitigation action for which it expects OWNER to be liable, prior to notifying OWNER and receiving OWNER authorization to proceed with the mitigation action.

All Construction Manager proposals for mitigation action, including proposed revisions for timely completion, shall confirm that the Construction Manager has verified the accuracy of all critical paths to the Substantial Completion Deadline.

Whenever it is possible for the Construction Manager to mitigate delay without added cost, the Construction Manager shall do so. The Construction Manager shall mitigate all delays as efficiently and economically as possible, with the objective of minimizing both the time and cost impact of the delay, regardless of responsibility for the delay. OWNER will not be liable for damages that the Construction Manager could have avoided by reasonable means, such as prudent scheduling of the Work and judicious handling of forces, equipment, or materials.

EXHIBIT E
SUBCONTRACTOR QUALIFICATIONS AND SUBCONTRACT CONDITIONS

EXHIBIT F
GENERAL CONDITIONS OF CONTRACT

Article 1

General

This General Conditions of Contract ("General Conditions of Contract") between JEA ("Owner") and Construction Manager (as defined herein) supplements the Agreement between Owner and Construction Manager, and is incorporated therein and is made as of the Effective Date of the Agreement. All capitalized terms not defined herein shall have the meanings given to them in the Agreement.

1.1 Mutual Obligations

1.1.1 Owner and Construction Manager commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Acceptance* refers to the Owner's written notice by the Owner's Representative to the Construction Manager that all work has been completed in accordance with the Contract Documents. Approval or recognition of the Construction Manager meeting a Milestone or interim step does not constitute Acceptance of that portion of the work. Acceptance is only applicable to the entirety of the work as specified in the Contract. Acceptance does not in any way limit the Owner's rights under the Contract or applicable laws, rules and regulations.

1.2.2 *Agreement* refers to the executed contract between Owner and Construction Manager, also sometimes referred to as the "Contract".

1.2.3 *Architect-Engineer* means _____, having an address of _____, who will assist the Owner's Representative in the management and administration of the Project.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Final Completion* refers to the point in time after Owner makes the determination that the Project is completed and there is Acceptance by the Owner, and the Construction Manager has fulfilled all requirements of the Contract Documents

1.2.6 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.7 *General Conditions of Contract* refer to this *General Conditions of Contract Between Owner and Construction Manager*.

1.2.8 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.9 *Notice to Proceed* is the written notice, duly authorized and delivered by Owner, that authorizes the Construction Manager to begin the Work. The Notice to Proceed is normally issued in the form of a purchase order, unless otherwise specified in the Contract Documents.

1.2.10 *Site* is the land or premises on which the Project is located.

1.2.11 *Subcontractor* is any person or entity retained by Construction Manager as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.12 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.13 *Substantial Completion* is the time when OWNER determines that the Work (or a specified part thereof) is substantially complete, in accordance with the Contract Documents. Additionally, all work other than incidental corrective and incidental punch list work items shall be completed. Substantial Completion shall not have been achieved if all systems and parts are not functional, if utilities are not connected and operating normally, if all required regulatory permits and approvals have not been issued, or if all vehicular and pedestrian traffic routes affected by the Work have not been restored. The date of Substantial Completion shall be established in writing by OWNER. Recognition of the Work as Substantially Complete, as evidenced by issuance of a Certificate of Substantial Completion, does not represent Owner's Acceptance of the Work.

1.2.14 *Work* is comprised of all Construction Manager's construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Construction Manager's Services and Responsibilities

2.1 General Services

2.1.1 Construction Manager's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Construction Manager's Representative shall communicate regularly with Owner's Representative and shall be vested with the authority to act on behalf of Construction Manager. Construction Manager's Representative may be replaced only with the mutual agreement of Owner and Construction Manager. Construction Manager covenants with the Owner that it will cooperate with Owner's Representative, Architect-Engineer and other Owner personnel in fostering the interests of the Owner.

2.1.2 Construction Manager shall provide Owner with a monthly status report, as required by **Exhibit "D"** to the Agreement. The scheduling subsystem referenced in **Exhibit "D"** shall detail the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (v) other items require resolution so as not to jeopardize Construction Manager's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Construction Manager shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Construction Manager to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Construction Manager of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Construction Manager of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after Owner's issuance of Notice to Proceed to discuss issues affecting the administration of the Work and to implement the necessary procedures to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Intentionally deleted.

2.3 Intentionally deleted.

2.4 Intentionally deleted.

2.5 Legal Requirements

2.5.1 Construction Manager shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted upward or downward to compensate Construction Manager for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Construction Manager is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Intentionally Deleted.

2.7 Construction Manager's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Construction Manager shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Construction Manager to complete construction of the Project consistent with the Contract Documents. Architect-Engineer may provide additional inspection and testing services outside the cost of the Work.

2.7.2 Construction Manager shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Construction Manager shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Construction Manager's employees and Subcontractors shall be fluent in the English language, and shall be legally able to perform work in the United States. Additionally the

2.7.4 Construction Manger shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Construction Manager's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Construction Manager's cost and/or time of performance.

2.7.5 Construction Manager assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Construction Manager shall coordinate the activities of all Subcontractors. If Owner performs other Work on the Project or at the Site with separate contractors under Owner's control, Construction Manager agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Construction Manager shall keep the Site reasonably free from debris, trash and construction wastes to permit Construction Manager to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Construction Manager shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Construction Manager's Responsibility for Project Safety

2.8.1 Construction Manager recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Construction Manager assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Construction Manager shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Construction Manager's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold periodic safety meetings with Construction Manager's personnel, Subcontractors and others as applicable.

2.8.2 The Construction Manager shall comply with all applicable federal, state and local laws, ordinances, all OWNER procedures and policies including, but not limited to, Owner's Contractor Safety Management Process (available at JEA.com), and orders of any public body having jurisdiction for the safety of persons or protection of property. **The Construction Manager understands and agrees that a violation of any provision of this Section is grounds for an immediate termination of the Contract for default**, with no requirement for OWNER to provide Construction Manager with advanced notice and opportunity to cure. Additionally, the Construction Manager shall be responsible for all OWNER damages associated with such termination.

2.8.3 The Construction Manager shall only use those employee's and Subcontractors who have met JEA Safety Prequalification requirements in the JEA Contractor Safety Management Process. The Construction Manager shall ensure that Subcontractors and their personnel have all the necessary personal protective equipment and training needed to perform the Work safely.

2.8.4 The Construction Manager understands and agrees that OWNER Representatives may stop Work at any time that OWNER, at its sole discretion, considers the Construction Manager's Work to be unsafe or a risk to person or property, and to direct the Construction Manager to, at a minimum, perform as directed in such a way as to render the Work environment safe. The Construction Manager understands and agrees that it is responsible for paying all costs associated with providing a safe work environment including, but not limited to, any costs associated with any OWNER directed safety improvements. The Construction Manager also understands and agrees that it is solely responsible for the safety of personnel and property associated with the Work, and that any actions taken by OWNER to prevent harm to persons or damage to equipment does not, in any way, relieve the Construction Manager of this responsibility.

2.8.5 The Construction Manager shall be designated as the Construction Manager's representative responsible for the prevention of accidents.

2.8.6 If the nature of the Work requires, the Construction Manager shall notify the police and fire departments as to its Work Location in order to ensure prompt response in an emergency.

2.9 Construction Manager's Warranty

2.9.1 Construction Manager warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and Workmanship. Construction Manager's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Construction Manager or anyone for whose acts Construction Manager may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Construction Manager will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.9.2 If Work includes items covered under a manufacturer's or Subcontractor's warranty that exceeds the requirements stated herein, Construction Manager shall transfer such warranty to OWNER. Such warranties, do not in any way limit the warranty provided by the Construction Manager to OWNER.

2.10 Correction of Defective Work

2.10.1 Construction Manager agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of **one year** from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents, at no additional cost to Owner.

2.10.2 Construction Manager shall, within fourteen (14) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Construction Manager fails to commence the necessary steps within such fourteen (14) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Construction Manager with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Construction Manager shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the fourteen (14) day periods identified herein shall be deemed inapplicable.

2.10.3 The one year period referenced in Section 2.10.1 above applies only to Construction Manager's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Construction Manager's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Construction Manager and perform its responsibilities, obligations and services in a timely manner to facilitate Construction Manager's timely and efficient performance of the Work and so as not to delay or interfere with Construction Manager's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim submissions and Construction Documents consistent with the turnaround times set forth in Construction Manager's schedule, as approved by Owner.

3.2 Verification of Existing Conditions & Owner's Furnishing of Services and Information

The Construction Manager understands and agrees that it is its responsibility to conduct due diligence prior to the Work. Such due diligence includes, but is not limited to, research for known existing utilities, verifying Work conditions, measurements, dimensions and latent and patent obstructions, the accuracy of drawings, as built information, test results, inspections and other informational materials provided to the Construction Manager, and other causes for existing or potential changes to the Work prior to initiating the Work. In the event that the Work must be changed due to the Construction Manager's failure to fulfill the above requirements, the Construction Manager understands and agrees that it will be solely responsible for costs associated with the changed condition.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, within ten (10) days after issuance of the Notice to Proceed, for Construction Manager's information and use the following, however, OWNER does not warrant the accuracy of such information:

3.2.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable Construction Manager to perform the Work;

3.2.1.4 A legal description of the Site;

3.2.1.5 To the extent available, as-built and record drawings of any existing structures at the Site; and

3.2.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.3 Multi- Year Funding

3.3.1 This Agreement, after the initial year, shall be contingent upon the existence of lawfully appropriated funds for each subsequent year of the Agreement. If funds are not available for any subsequent year of the Contract, OWNER may terminate this Contract for convenience in accordance with the terms of this Agreement.
Intentionally Deleted.

3.4 Owner's Representative

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Construction Manager to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Construction Manager with prompt notice if it observes any failure on the part of Construction Manager to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.5 Government Approvals and Permits

3.5.1 Construction Manager shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees necessary to perform and construct the Work.

3.5.2 If requested by Construction Manager, Owner shall provide reasonable assistance to Construction Manager in obtaining those permits, approvals and licenses that are Construction Manager's responsibility; provided however, nothing in this Section 3.5.2 herein shall relieve Construction Manager of the ultimate responsibility of obtaining all necessary permits, approvals and licenses in accordance hereof.

3.6 Owner's Separate Contractors

3.6.1 Owner is responsible for all Work performed on the project or at the Site by separate contractors under Owner's control. Owner shall require its separate contractors to reasonably cooperate with, and coordinate their activities so as not to unreasonably interfere with, Construction Manager in order to enable Construction Manager to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

4.1.1 Unless otherwise expressly provided herein or in the Contract Documents to be part of the Work, Construction Manager is not responsible for any Hazardous Conditions encountered at the Site that are not introduced to the Site by Construction Manager, Subcontractors or anyone for whose acts they may be liable. Upon encountering any such Hazardous Conditions, Construction Manager will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Construction Manager shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Construction Manager will be entitled, in accordance with these General Conditions of Contract, to an adjustment in the GMP and/or Contract Time(s) to the extent Construction Manager's cost and/or time of performance have been materially adversely impacted by the presence of Hazardous Conditions and provided the Construction manager has complied with this section 4.1.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Construction Manager, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site notified in accordance with this Section 4.1. Notwithstanding, Owner's indemnification obligations shall be limited by Florida Statue 768.28, which is partial waiver of sovereign immunity for tort claims only.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Construction Manager, Subcontractors or anyone for whose acts they may be liable. Construction Manager and its Subcontractors shall comply with all Legal Requirements for the handling of such Hazardous Conditions and shall bear full responsibility for such Hazardous Conditions, including, but not limited to, payment and liability for the transportation, use and disposal of any hazardous materials under Construction Manager's control during the performance of the Work. Construction Manager shall provide Owner with appropriate documentation showing proper disposal of its hazardous materials.

4.1.7 Construction Manager shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Construction Manager, Subcontractors or anyone for whose acts they may be liable or for violating any Legal Requirements for the handling of such Hazardous Conditions.

4.2 Unforeseen Conditions

4.2.1 The Construction Manager understands and agrees that it is its responsibility to conduct due diligence prior to the Work. Such due diligence includes, but is not limited to, verifying all Work conditions, measurements, dimensions and latent and patent obstructions, the accuracy of drawings, test results, inspections and other informational materials provided in the Contract Documents, and any other causes for existing or potential changes to the Work prior to initiating the Work. In the event that the Work must be changed due to the Construction Manager's failure to fulfill the above requirements, the Construction Manager understands and agrees that it will be responsible for all costs associated with the changed condition.

4.2.2 In the event that the Construction Manager exercises the requisite due diligence and a change to the Work becomes necessary resulting from conditions that are clearly unforeseen and that could not have been discovered, the costs for adjusting the Work in response to such unforeseen conditions shall be addressed in a Change Order or an amendment to the Contract executed by OWNER and Construction Manager. Any Work the Construction Manager performs prior to receipt of such Change Order or approved Contract amendment will be at the Construction Manager's sole risk.

Article 5

Insurance and Bonds

5.1 Construction Manager's Insurance Requirements

5.1.1 Construction Manager's Insurance Requirements shall be as set forth in Article 10 of the Agreement.

5.2 Bonds and Other Performance Security

5.2.1 Construction Manager's requirements as to performance and payment bonds and other forms of performance security shall be as set forth in Article 10 of the Agreement.

Article 6

Payment

6.1 Schedule of Values

6.1.1 Within ten (10) days of issuance of the Notice to Proceed, Construction Manager shall submit for Owner's review and approval a schedule of values for all of the Work (the "Schedule of Values"). The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Construction Manager throughout the Work, provided said progress is consistent with actual Work completed.

6.2 Monthly Progress Payments

6.2.1 The Construction Manager shall submit all Invoices in accordance with the payment method agreed upon in this Agreement. Invoices shall be submitted to the following email address: acctpaycustsrv@jea.com, or if the Construction Manager does not have email capability, it can mail hard copies to: JEA Accounts Payable, P.O. Box 4910, Jacksonville, FL 32201-4910.

6.2.2 OWNER will pay the Construction Manager the amount requested within thirty (30) calendar days after receipt of an Invoice from the Construction Manager subject to the provisions stated below.

6.2.3 OWNER may reject any Invoice or Application for Payment within 20 calendar days after receipt. OWNER will return the Invoice or Application for Payment to the Construction Manager stating the reasons for rejection.

6.2.4 Upon receipt of an acceptable revised Invoice or Application for Payment, OWNER will pay the Respondent the revised amount within ten (10) days.

6.2.5 OWNER may withhold payment if the Construction Manager is in violation of any conditions or terms of the Contract Documents.

6.2.6 In the case of early termination of the Contract, all payments made by OWNER against the Contract Price prior to notice of termination shall be credited to the amount, if any, due the Construction Manager. If the parties determine that the sum of all previous payments and credits exceeds the sum due the Construction Manager, the Construction Manager shall refund the excess amount to OWNER within ten (10) days of determination or written notice.

6.2.7 Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof and must be certified by the Architect-Engineer as a condition of payment.

6.2.8 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.9 The Application for Payment shall constitute Construction Manager's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Construction Manager's receipt of payment, whichever occurs earlier.

6.2.10 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Construction Manager all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.3 Intentionally Deleted.

6.4 Right to Stop Work and Interest

6.4.1 If Owner fails to pay Construction Manager any undisputed amount that becomes due, Construction Manager, in addition to all other remedies provided in the Contract Documents, may stop

Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Construction Manager's Payment Obligations

6.5.1 Construction Manager will pay Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Construction Manager has received from Owner on account of their Work. Construction Manager will impose similar requirements on Subcontractors to pay those parties with whom they have contracted. Construction Manager will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.4 hereof.

6.6 Substantial Completion

6.6.1 Construction Manager shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within ten (10) days of Owner's receipt of Construction Manager's notice, Owner, Construction Manager and Architect-Engineer will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Construction Manager's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Construction Manager all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to two (2) times the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion, upon consent of Surety.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Construction Manager and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Construction Manager agree that Owner's use or occupancy will not interfere with Construction Manager's completion of the remaining Work.

6.7 Final Payment

6.7.1 After receipt of a Final Application for Payment from Construction Manager, as certified by the Architect-Engineer, Owner shall make final payment by the time required in the Agreement, provided that Construction Manager has completed all of the Work in conformance with the Contract Documents.

6.7.2 At the time of submission of its Final Application for Payment, Construction Manager shall provide the following information:

6.7.2.1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 a general release executed by Construction Manager waiving, upon receipt of final payment by Construction Manager, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 consent of Construction Manager's surety to final payment;

6.7.2.4 all operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Construction Manager except claims relating to (i) Construction Manager's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Construction Manager's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

Article 7

Indemnification

7.1 Construction Manager's General Indemnification of Owner.

For ten dollars (\$10.00) acknowledged to be included and paid for in the contract price and other good and valuable considerations, the Construction Manager shall hold harmless, indemnify, and defend OWNER against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, reasonable attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Construction Manager and any person or entity used by Construction Manager in the performance of this Contract or Work performed thereunder. For purposes of this Indemnification, the term "OWNER" shall mean OWNER as a body politic and corporate and shall include its governing board, officers, employees, agents, successors and assigns. This indemnification shall survive the term of a Contract entered into pursuant to this solicitation, for events that occurred during the Contract term. This indemnification shall be separate and apart from, and in addition to, any other indemnification provisions set forth elsewhere in this Contract. It is the intent of the parties that this indemnification shall be in accord with Section 725.08, Florida Statutes.

7.2 Payment Claim Indemnification

7.2.1 Except to the extent caused by Owner's breach of its contractual obligation to make payments to Construction Manager for the Work, Construction Manager shall indemnify, defend and hold harmless Owner from any claims or brought against Owner or against the Project as a result of the failure of Construction Manager, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within ten (10) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Construction Manager shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Construction Manager fails to do so, Owner will have the right to discharge the claim or lien and hold Construction Manager liable for costs and expenses incurred, including attorneys' fees.

Article 8

Time

8.1 Obligation to Achieve the Contract Times

8.1.1 Construction Manager agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Force Majeure

8.2.1 No party shall be liable for any default or delay in the performance of its obligations under this Agreement due to an act of God or other event to the extent that: (a) the non-performing party is without fault in causing such default or delay; (b) such default or delay could not have been prevented by reasonable precautions; and (c) such default or delay could not have been reasonably circumvented by the non-performing party through the use of alternate sources, work-around plans or other means. Such causes include, but are not limited to: act of civil or military authority (including but not limited to courts or administrative agencies); acts of God; war; terrorist attacks; riot; insurrection; inability of Owner to secure approval, validation or sale of bonds; blockades; embargoes; sabotage; epidemics; fires; hurricanes, tornados, floods; or strikes.

8.2.2 In the event of any delay resulting from such causes, the time for performance of each of the parties hereunder (including the payment of monies if such event actually prevents payment) shall be extended for a period of time reasonably necessary to overcome the effect of such delay, except as provided for elsewhere in the Contract Documents.

8.2.3 In the event of any delay or nonperformance resulting from such causes, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement and the anticipated impact of such delay or nonperformance. Such written notice, including Change Orders, shall indicate the extent, if any, to which it is anticipated that any delivery or completion dates will be thereby affected within seven (7) calendar days.

Article 9

Changes in the Project

9.1 Change Orders. The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, with the GMP and the Contract Time being adjusted accordingly. All changes in the Project not covered by an authorized Contingency shall be authorized by Change Order signed by the Owner before the change is implemented.

9.1.1 Change Order Definition - A Change Order is a written order on an approved change order form under the authorization of the Owner to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a Change in the Project, the Construction Manager's fee, or the Substantial Completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the Cost of the Project. Execution of a Change Order by the Construction Manager serves as a waiver and an accord and satisfaction of all issues related to the Work identified in the Change Order. All Change Orders shall require a written amendment to this Agreement to be executed by the Construction Manager and Owner in order for such Change Order to become effective.

9.1.2 Acceptable Ways Of Determining Increases Or Decreases In The GMP On Change Orders
- An increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project or other factor entitling Construction Manager to an equitable adjustment of the GMP shall be determined in one or more of the following ways:

9.1.2.1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Owner;

9.1.2.2 by unit prices stated in the Agreement or subsequently agreed upon, if less;

9.1.2.3 by cost as defined in Section 6.3 of the Agreement and a mutually acceptable fixed or percentage fee if less than the negotiated fee; or

9.1.2.4 by the method provided in Subparagraph 9.1.3.

9.1.3 Itemized Accounting On Change Orders - If none of the methods set forth in Clause 9.1.2 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, the Owner will establish an estimated cost of the Work and the Construction Manager shall not perform any Work which cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 9.1.2 above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data organized and maintained consistent with reasonable generally accepted accounting principles and practices of the increase in the Cost of the Project as outlined in Section 6.3 of the Agreement. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

9.2 Emergencies

In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency Work shall be determined as provided in this Article 9, as long as the emergency was not caused by the Construction Manager.

Article 10

Contract Adjustments and Disputes

10.1 Procedure For Requesting Changes Orders

To request or claim any change in the Work including, but not limited to change in scope, quantities, pricing, or schedules, the Construction Manager shall submit a letter to the Owner's Representative stating such request or claim. The Owner shall have the right to approve or disapprove any request or claim for change as it deems necessary and in its best interests consistent with the other Contract requirements. Whether requested by the Construction Manager, claimed by the Construction Manager, or contemplated by the Owner, no change shall be authorized unless made on a Change Order signed by the Owner's Representative or through a formal written amendment to this Contract.

10.2 Duty to Continue Performance

Unless provided to the contrary in the Contract Documents, Construction Manager shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed invoices or claims to Construction Manager, pending the final resolution of any dispute or disagreement between Construction Manager and Owner.

10.3 Consequential Damages

10.3.1 Notwithstanding anything herein to the contrary (except as set forth in section 10.2.2 below), neither Construction Manager nor Owner shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

10.3.2 The consequential damages limitation set forth in Section 10.2.1 above is not intended to affect the payment of liquidated damages, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

10.4 Dispute Resolution

Any disputes that arise under this Agreement, shall be handled in accordance with Article 5 of the JEA Procurement Code which can be found at JEA.com.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work

11.1.1 Owner may, without cause and for its convenience, order Construction Manager in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Construction Manager is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause

11.2.1 OWNER may give the Construction Manager written notice to discontinue all or part of the Work under the Contract or a Notice to Cure a material breach in the event that:

- The Construction Manager assigns or subcontracts the Work without prior written permission;
- Any petition is filed or any proceeding is commenced by or against the Construction Manager for relief under any bankruptcy or insolvency laws;
- A receiver is appointed for the Construction Manager's properties or the Construction Manager commits any act of insolvency (however evidenced);
- The Construction Manager makes an assignment for the benefit of creditors;
- The Construction Manager suspends the operation of a substantial portion of its business;
- The Construction Manager suspends the whole or any part of the Work to the extent that it impacts the Construction Manager's ability to meet the Work schedule, or the Construction Manager abandons the whole or any part of the Work;
- The Construction Manager, at any time, violates any of the conditions or provisions of the Contract Documents, or the Construction Manager fails to perform as specified in the Contract Documents, or the Construction Manager is not complying with the Contract Documents;

- The Construction Manager attempts to willfully impose upon OWNER items or workmanship that are, in Owner's sole opinion, defective or of unacceptable quality;
- The Construction Manager breaches any of the representations or warranties;
- The Construction Manager is determined, in Owner's sole opinion, to have misrepresented the utilization of funds or misappropriate property belonging to OWNER; or
- There is an adverse material change in the financial or business condition of the Construction Manager.

If within thirty (30) days after service of such notice to discontinue or notice to cure upon the Construction Manager an arrangement satisfactory to OWNER has not been made by the Construction Manager for continuance of the Work or the material breach has not been remedied, OWNER may declare the Construction Manager to be in default and terminate the Contract.

Once Construction Manager is declared in default and the Contract has been terminated, OWNER will notify the Surety in writing of the termination. The Surety shall, at Owner's sole option take one (1) of the following actions:

- (a) Within a reasonable time, but in no event later than thirty (30) days, from Owner's written notice of termination for default, arrange for Construction Manager with Owner's consent, which shall not be unreasonably withheld, to complete the Contract and the Surety shall pay OWNER all losses, delay and disruption damages and all other damages, expenses, costs and statutory attorney's fees, including appellate proceedings, that OWNER sustains because of a default by the Construction Manager under the Contract ;
- (b) Within a reasonable time, but in no event longer than sixty (60) days after Owner's written notice of termination for default, award a contract to a completion contractor and issue notice to proceed or alternatively, OWNER may elect, to have the Surety determine jointly with OWNER the lowest responsible qualified bidder, to have the Surety arrange for a contract between such bidder and OWNER, and for the Surety to make available as Work progresses sufficient funds to pay the cost of completion less the balance of the Contract price; or
- (c) Within a reasonable time, but in no event later than thirty (30) days from Owner's notice of termination for default, OWNER may waive its right to complete or arrange for completion of the Contract and, within twenty-one (21) days thereafter, determine the amount for which the Surety may be liable to OWNER and tender payment to OWNER of any amount necessary in order for OWNER to complete performance of the Contract in accordance with its terms and conditions less the balance of the Contract price.

OWNER shall have the right to take possession of and use any of the materials, plant, tools, equipment, supplies and property of any kind provided by the Construction Manager for the purpose of this Work.

OWNER will charge the expense of completing the Work to the Construction Manager and will deduct such expenses from monies due, or which at any time thereafter may become due, to the Construction Manager. If such expenses are more than the sum that would otherwise have been payable under the Contract, then the Construction Manager or Surety shall pay the amount of such excess to OWNER upon notice of the expenses from OWNER. OWNER shall not be required to obtain the lowest price for completing the Work under the Contract, but may make such expenditures that, in its sole judgment, shall best accomplish such completion. OWNER will, however, make reasonable efforts to mitigate the excess costs of completing the Work.

The Contract Documents shall in no way limit Owner's right to all remedies for nonperformance provided under law or in equity, except as specifically set forth herein. In the event of termination for nonperformance, the Construction Manager shall immediately surrender all Work records to OWNER. In

such a case, OWNER may set off any money owed to the Construction Manager against any liabilities resulting from the Construction Manager's nonperformance.

OWNER has no responsibility whatsoever to issue notices of any kind, including but not limited to deficient performance letters and scorecards, to the Construction Manager regarding its performance prior to default by Construction Manager for performance related issues.

OWNER shall have no liability to the Construction Manager for termination costs arising out of the Contract, or any of the Construction Manager's subcontracts, as a result of termination for default.

Immediately upon termination or expiration of this Contract, Construction Manager must return to OWNER all materials, documents and things used by Construction Manager and belonging to OWNER, including proposals, computer files, borrower files, building keys, and any other property or information regarding continued business compliance or goodwill, whether in electronic or hard-copy form. Furthermore, upon Owner's request, Construction Manager shall certify in writing that all of the foregoing documents or materials, including archival or backup copies, whether in electronic or hard-copy form, have been returned to OWNER, deleted from any computer system, or otherwise destroyed.

11.2.2 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Governing Law and Venue

12.3.1 The rights, obligations and remedies of the parties as specified under the Agreement and all Contract Documents shall be interpreted and governed in all aspects by the laws of the State of Florida. Venue for litigation of this Agreement shall be in courts of competent jurisdiction located in Jacksonville, Duval County, Florida.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5 No Waiver

12.5.1 The failure of either Construction Manager or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address

indicated in the Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.9 Non-Discrimination Provisions

12.9.1 In conformity with the requirements of Section 126.404, *Ordinance Code*, Construction Manager represents that it has adopted and shall maintain a policy of non-discrimination against an employee or applicant for employment on account of race, religion, sex, color, national origin, age or handicap, which policy applies to all areas of employee relations throughout the term of this Agreement. On written request, Construction Manager shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission of the Owner the purpose of investigation to ascertain compliance with the non-discrimination provisions of this Agreement. Construction Manager shall not be required to produce for inspection any records covering periods of time more than one (1) year prior to the date of this Agreement. Construction Manager agrees that if any of the obligations of this Agreement are to be performed by a subcontractor, then the provisions of this Section 12.9.1 shall be incorporated into and become a part of the subcontract.

12.10 Compliance With State And Other Laws/Licenses and Certifications

12.10.1 In the provision of the Services, the Construction Manager must comply with any and all applicable Federal, State and local laws, rules, regulations and ordinances, as the same exist and may be amended from time to time. Such laws, rules, regulations and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). Such laws, rules, regulations and ordinances must also include, but are not limited to, obtaining and maintaining all licenses and certifications that are required to perform the Services contemplated in this Agreement. If any of the obligations of this Agreement are to be performed by a Subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

12.10.2 Construction Manager shall comply with any and all applicable Federal, State and local laws, rules, and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes, (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

12.11 Accuracy of Work

12.11.1 Construction Manager shall be responsible for the accuracy of its Work, including Work by any subcontractors, and shall promptly make necessary revisions or corrections resulting from errors and omissions on the part of Construction Manager or subcontractors without additional compensation. Acceptance of the Work by the Owner shall not relieve Construction Manager of the responsibility for subsequent corrections of any such errors and the clarification of any ambiguities. At any time during the construction of the Project provided for by the Contract Documents or during any phase of Work performed by others based on data furnished by Construction Manager under this Agreement, Construction Manager shall confer with the Owner for the purpose of interpreting the information furnished and/or to correct any errors and/or omissions made by Construction Manager. Construction Manager shall prepare all drawings or data to correct its errors and/or omissions without added compensation, even though final payment may

have already been received therefore. Construction Manager shall be and shall remain liable, in accordance with applicable law, for all damages to the Owner caused by Construction Manager's breach of contract or its negligent performance of any of the services furnished under this Agreement. Construction Manager shall not be responsible for any time delays in the Project caused by circumstances beyond Construction Manager's control.

12.12 Public Utilities and Permitting Authorities

12.12.1 Where privately, publicly or cooperatively owned utility companies will require re-arrangements in connection with the proposed construction, and when certain permits will be required for construction, Construction Manager shall make the necessary contacts and confer with the owners of such utilities regarding the requisite revisions in their facilities, apprising the Owner of the results of all such contacts. Construction Manager shall make no commitments with utilities or permitting authorities which are binding upon the Owner. Owner shall conduct all negotiations with public utilities and authorities. However, Construction Manager shall participate in such negotiations at the request of the Owner.

12.13 Prohibition Against Contingent Fees

12.13.1 Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee Working solely for Construction Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee Working solely for Construction Manager, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the Owner shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

12.14 Truth-in-Negotiation Certificate

12.14.1 Construction Manager understands and agrees that execution of this Agreement by Construction Manager shall be deemed to be simultaneous execution of a truth-in-negotiation certificate under this provision to the same extent as if such certificate had been executed apart from this Agreement, such certificate being required by Section 126.305, *Ordinance Code*, for professional service contracts over fifty thousand dollars. Pursuant to such certificate, Construction Manager hereby states that the wage rates and other factual unit costs supporting the compensation hereunder are accurate, complete and current at the time of contracting. Further Construction Manager agrees that the compensation hereunder shall be adjusted to exclude any significant sums where the Owner determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of this Agreement.

12.15 Independent Contractor

12.15.1 In the performance of this Agreement, Construction Manager shall be acting in the capacity of an independent contractor, and not as an agent, employee, partner, joint venture or associate of the Owner. Construction Manager shall be solely responsible for the means, methods, techniques, sequences and procedures utilized in the full performance of this Agreement.

12.16 Construction

12.16.1 Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Agreement

12.17 Entire Agreement

12.17.1 This Agreement constitutes the entire agreement between the parties hereto for the Services to be performed and furnished by the Construction Manager hereunder. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party, or any representative of either party, which is not expressed herein shall be binding. All changes to, additions to, modifications of, or amendment to this Agreement, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

12.18 Counterparts

12.18.1 This Agreement may be executed in several counterparts, each of which shall be deemed to be an original; and all of such counterparts together shall constitute one and the same instrument.

12.19 Harmony

12.19.1 Construction Manager hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for Work on the Project shall Work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the Site.

12.19.2 Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to Work as guaranteed by Article 1, Section 6 of the Florida Constitution.

12.20 Construction Manager's Project Records.

12.20.1 Construction Manager's Project Records shall be maintained as prescribed hereinabove for the minimum period required by local ordinance or federal law, and shall be made available to the Owner or his authorized representative at mutually convenient times. Any records relating to claims, directly or indirectly, shall be provided within fifteen (15) days of written request to Owner or its agent.

12.21 Vendor Performance

OWNER may evaluate the Construction Manager's performance using the evaluation criteria shown on the vendor scorecard which is attached hereto as **Exhibit "G"**.

The purpose of the Owner's Vendor Performance Program is to ensure vendors are successful in their completion of the Work. A vendor that scores a 1 on any evaluation criteria, or scores an average of less than 2.8 on all evaluation criteria, is considered by Owner to be a deficient performer and may be in default of its contract. Once a vendor is determined to be a deficient performer, Owner's Procurement department will schedule a meeting with a corporate officer from the vendor's company, and will review the deficient scorecard with the vendor. During the meeting a performance plan will be agreed upon, and OWNER will then re-evaluate the vendor's performance in a certain number of days. If the vendor's performance doesn't not improved in the agreed upon number of days, the vendor may be provided with a notice that they are in default of the contract, and they risk having their contract terminated for default. A vendor's contract that is terminated by default by OWNER, will not be allowed to bid on an OWNER project for 2 years from the date of the termination of default.

12.22 E-Verify and Unauthorized Aliens

12.22.1 Construction Manager shall utilize the E-Verify system to verify the employment eligibility of: (i) all persons employed during the Agreement term by the Construction Manager to perform employment duties within Florida; and (ii) all persons (including subcontractors) assigned by the Construction Manager to perform Work pursuant to the Agreement with Owner. Upon request Construction Manager shall provide Owner with documentation evidencing the E-Verification of the persons described above in accordance with applicable laws.

12.22.2 Owner shall consider the employment by Construction Manager and/or its subcontractors of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this contract, at the Owner's sole discretion, in accordance with the termination for cause provision above.

12.22.3 No person, including Construction Manager, its subcontractors, employees, representatives, and agents, shall be assigned a badge authorizing such person to enter the Site until such person has been E-Verified pursuant to Section 12.26.1 and has completed and returned to the Owner a Personal Information Sheet (PIS), which PIS must be reviewed and approved by Owner prior to such person being issued a badge for the Site. Owner approval may take up to five (5) business days.

12.23 Sales Tax Exemption

12.23.1 Owner is exempt for Florida Sales Tax and will provide documentation upon request.

12.24 Jacksonville Small Emerging Business (JSEB) Participation.

The Construction Manager shall achieve the _____% JSEB participation goal, except as allowed under the good faith efforts exception as defined in the City of Jacksonville Ordinance. In no case shall the Construction Manager make changes to the JSEB firms listed in its proposal, revise the JSEB scope of Work or amount of Work as stated in its proposal without prior written notice to the Owner Representative, and without subsequent receipt of written approval from the Owner Representative.

The City of Jacksonville requirements as outlined in the City of Jacksonville Ordinance relating to JSEBs shall apply in their entirety to this Contract. Where the City of Jacksonville ordinance refers to "Chief", it shall be construed to mean, for purposes of this Contract, Owner's Chief Purchasing Officer. In a like manner, where it refers to "City", or "City of Jacksonville", it shall be construed to mean OWNER.

Use of brokering, as defined in the City of Jacksonville Ordinance, or other techniques that do not provide a commercially useful function are strictly prohibited as means of achieving the JSEB requirements of the Contract. Only the amount of fees or commissions charged by a JSEB for providing a bona fide service such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract shall be counted towards a JSEB participation requirement, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

Payment terms for participating JSEB firms shall be the same or better than the payment terms the Construction Manager receives from OWNER, except that in all cases JSEB firms shall be allowed to submit invoices to the Construction Manager at least bimonthly, and the Construction Manager shall pay proper invoices no later than 3 days after its receipt of OWNER payment. The Construction Manager shall obtain written approval from the Owner Representative prior to withholding any payment from JSEB firm.

If the Construction Manager uses a JSEB qualified firm for the performance of any part of this Work, the Construction Manager shall submit to OWNER, with its Invoice, a listing of JSEB qualified firms that have participated in the Work. Such listing shall be made using the form "Monthly Report for COJ/JEA JSEB Participation" available at www.jea.com.

The Construction Manager agrees to let OWNER audit its financial and operating records with one day of notice, and during normal business hours, at its corporate offices for the purpose of determining compliance with all JSEB requirements of the Contract Documents.

If the Construction Manager violates any provision regarding JSEB, including, but not limited to, program intent, the Construction Manager shall be subject to any or all of the following, plus any other remedies available to OWNER under law:

- Terminate the Contract for breach
- Suspend the Proposer/Bidder from bidding any OWNER projects as follows:
 - First offense: six months
 - Second offense: one year
 - Third offense: three years
- Revoke Proposer/Bidder's JSEB certification if the Proposer/Bidder itself is certified as a JSEB.

12.25 Prompt Payment to Subcontractors and Suppliers

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

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

by the Owner as liquidated damages. Continued failure to adhere to this clause may be cause for termination.

12.25.3 Third Party Liability. The prompt payment requirements hereunder shall in no way create any contractual relationship or obligation between the Owner and any subcontractor, supplier, JSEB, or any third-party, nor create any Owner liability for Construction Manager's failure to make timely payments hereunder. However, Construction Manager's failure to comply with the Prompt Payment requirements shall constitute a material breach of its contractual obligations to Owner. As a result of said breach, the Owner, without waiving any other available remedy it may have against Construction Manager, may: (i) issue joint checks; and (ii) charge Construction Manager a 0.2% daily interest penalty or penalties specified in Chapter 126 of the Code for JSEBs and Chapter 218, Florida Statutes, for non-JSEBs, whichever is greater.

12.26 Conflict of Interest

12.26.1 A public official who has a financial interest in a bid or contract shall make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract, including, but not limited to, the public official's name, public office or position held, bid or proposal number, and the position or relationship of the public official with the bidder or offeror.

12.27 State of Florida Convicted Vendor

12.27.1 A person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public Work, may not submit bids on leases of real property to a public entity, may not be awarded or perform Work as a contractor, supplier, subcontractor, or firm under a contract with any public entity, and may not transact business with any public entity for a period of 36 months from the date of being placed on the convicted vendor list.

12.28 Conformity to Applicable Laws

12.28.1 Construction Manager must comply with all applicable federal, state and local laws, rules and regulations as the same exist and as may be amended from time to time, including, but not limited to, the "Public Records Law", Chapter 119, Florida Statutes (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a Subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

12.29 Retention of Records/Audit.

12.29.1 The Construction Manager and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred in the performance of the Services and shall make such materials available at all reasonable times, during the period of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection and/or audit by the Owner. All such documents relating to the services performed or money expended under this Agreement shall be open to the Owner's inspection and audit during the Construction Manager's regular business hours.