

**061-20 Appendix C – Contract**  
**Progressive Design-Build Terms and Conditions and Articles of Indexes**

061-20 Progressive Design-Build Services for the Southside Services Center (SSSC) Renovation Project

## **Contents**

<b>ARTICLE 1 - THE DESIGN-BUILD TEAM AND EXTENT OF AGREEMENT .....</b>	<b>3</b>
<b>ARTICLE 2 - DESIGN-BUILD FIRM'S SERVICES .....</b>	<b>6</b>
<b>ARTICLE 3 - OWNER'S RESPONSIBILITIES.....</b>	<b>23</b>
<b>ARTICLE 4 - INSPECTION.....</b>	<b>25</b>
<b>ARTICLE 5 - SUBCONTRACTS .....</b>	<b>25</b>
<b>ARTICLE 6.....</b>	<b>28</b>
<b>SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION</b>	<b>28</b>
<b>ARTICLE 7 .....</b>	<b>30</b>
<b>GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION.....</b>	<b>30</b>
<b>ARTICLE 8 .....</b>	<b>31</b>
<b>CONTRACT PRICE.....</b>	<b>31</b>
<b>ARTICLE 9 .....</b>	<b>32</b>
<b>ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE .....</b>	<b>32</b>
<b>ARTICLE 10 .....</b>	<b>36</b>
<b>CHANGE IN THE PROJECT .....</b>	<b>36</b>
<b>ARTICLE 11 .....</b>	<b>38</b>
<b>DISCOUNTS AND PENALTIES .....</b>	<b>38</b>
<b>ARTICLE 12 .....</b>	<b>39</b>
<b>PAYMENTS TO THE DESIGN-BUILD FIRM .....</b>	<b>39</b>
<b>ARTICLE 13 .....</b>	<b>42</b>
<b>INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION.....</b>	<b>42</b>
<b>ARTICLE 14 .....</b>	<b>43</b>
<b>TERM OF AGREEMENT, TERMINATION OF THE AGREEMENT AND OWNER'S .....</b>	<b>43</b>
<b>RIGHT TO PERFORM DESIGN-BUILD FIRM'S OBLIGATION .....</b>	<b>43</b>
<b>ARTICLE 15 .....</b>	<b>49</b>
<b>ASSIGNMENT AND GOVERNING LAW .....</b>	<b>49</b>
<b>ARTICLE 16 .....</b>	<b>49</b>
<b>NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY.....</b>	<b>49</b>
<b>ARTICLE 17 .....</b>	<b>50</b>
<b>MISCELLANEOUS.....</b>	<b>50</b>
<b>ARTICLE 18 .....</b>	<b>57</b>
<b>CPM SCHEDULE REQUIREMENTS .....</b>	<b>57</b>

**AGREEMENT BETWEEN  
JEA  
AND**

---

THIS AGREEMENT is made the \_\_\_\_\_**th** day of \_\_\_\_\_ in the year **2020** (*“Effective Date”*) by and between the JEA hereinafter called the OWNER, and \_\_\_\_\_, a \_\_\_\_\_ *corporation with principal place of business located at* \_\_\_\_\_, hereinafter called the DESIGN-BUILD FIRM.

**ARTICLE 1 - THE DESIGN-BUILD TEAM AND EXTENT OF AGREEMENT**

**Whereas** the DESIGN-BUILD FIRM accepts the relationship of trust and confidence established between it and the OWNER by this Agreement. It covenants with the OWNER to demonstrate high performance in the industry to its best skill and judgment and to cooperate in furthering the interests of the OWNER. It agrees to furnish efficient business administration and superintendence and use its best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the best interest of the OWNER and with the terms and conditions of this Agreement.

- 1.1 The DESIGN-BUILD TEAM – The DESIGN-BUILD FIRM, and the OWNER called the “DESIGN-BUILD TEAM,” shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The DESIGN-BUILD FIRM will provide leadership during the design phase with direction from the OWNER.

The specific representatives of the DESIGN-BUILD TEAM are shown in **Exhibit A** attached.

- 1.2 Extent of Agreement – This Agreement for the planning, design and construction services for the renovation of the Jacksonville Utility Training Center (JUTC) (**JEA Contract No.** \_\_\_\_\_) between the OWNER and the DESIGN-BUILD FIRM, supersedes any prior negotiations, representations or agreements. When drawings, specifications and other descriptive documents defining the work to be included under a construction authorization are complete, they shall be identified in the construction authorization issued by the Project Manager. When drawings, specifications and other descriptive documents defining the work to be included in the guaranteed maximum price (GMP) are complete, an Amendment to the Agreement shall be approved and signed by the OWNER and DESIGN-BUILD FIRM, acknowledging the GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of this GMP Amendment by the OWNER, the DESIGN-BUILD FIRM shall furnish three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which

the GMP is based, and shall acknowledge on the face of each document of each set that it is the set upon which it based its GMP.

This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both OWNER and DESIGN-BUILD FIRM.

### 1.3 Definitions:

- A. Project – The Project is the total work to be performed under this Agreement. The Project consists of planning, design, permitting, construction and code inspection.
- B. Owner – JEA acting through its Project Manager or those persons designated by the Project Manager to act on his/her behalf.
- C. Construction Authorization – The term Construction Authorization shall mean a written work order based on a defined scope of work excluding DESIGN-BUILD fees, prepared by the Project Manager and issued to the DESIGN-BUILD FIRM. Construction Authorizations shall be used prior to the date of the GMP Amendment and all work performed pursuant to Construction Authorizations shall be included in the GMP.
- D. DESIGN-BUILD FIRM – \_\_\_\_\_, the primary and authorized representative of the DESIGN-BUILD FIRM, which includes its architects, consultants and subcontractors.
- E. Design Criteria Professional – Employee of Owner assigned to review, approve and assist in the development of a design criteria package and design guidelines.
- F. Project Manager – The person designated by the OWNER to provide direct interface with the DESIGN-BUILD FIRM with respect to the OWNER's responsibilities. (See **Exhibit A**).
- G. Purchase Order – An accounting document generated by the Owner provided to a contractor or vendor. The terms and conditions of the contract documents, except as expressly and clearly modified by the OWNER, shall be incorporated in any purchase order.
- H. Substantial Completion – The term Substantial Completion, as used herein, shall mean that point at which the Work, or designated portion thereof, is at a level of completion, including a certificate of occupancy from the City of Jacksonville and in substantial compliance with the Contract Documents such that the OWNER or its designee can enjoy use or occupancy for its intended purpose. In the event the Work includes more than one phase, the OWNER, at its discretion, may set Substantial Completion dates for each phase and may impose provisions for liquidated damages for each phase.

- I. Estimate – The DESIGN-BUILD FIRM’s latest estimate of probable project construction cost.
  - J. Multi-Year Funding – The term Multi-Year Funding shall mean a project funded by the Owner over two or more years. However, only the first year has been appropriated by the Owner. Any other provision in this Contract to the contrary and notwithstanding the duration of this Contract, this Contract shall be contingent upon the existence of lawfully appropriated funds.
  - K. Contingency- The amount set forth in the GMP Amendment which is available for the DESIGN-BUILD FIRM’S use for unanticipated costs that are incurred in performing the Work that are not the basis for a Change Order such as overtime, acceleration, and Subcontractor defaults.
  - L. Allowance - The amount established by OWNER and DESIGN-BUILD FIRM in the Contract which is available for changes in the Scope of Work, unforeseen conditions, force majeure or other issues and which is either requested by OWNER or approved by OWNER in advance.
- 1.4 OWNER’s Design and Construction Budget: OWNER’s funds budgeted and requested for design and construction of the Project. The OWNER’s Design and Construction Budget is \_\_\_\_\_ (**Insert dollar amount**), identified in **Exhibit B**, including all DESIGN-BUILD FIRM fees, Cost of the Work and the OWNER’s and DESIGN-BUILD FIRM’s design, construction and interface contingencies as defined in Articles 8 and 9. This acknowledgement of the OWNER’s budgeted funds is not to be construed as the DESIGN-BUILD FIRM’s Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 9.

## **ARTICLE 2 - DESIGN-BUILD FIRM'S SERVICES**

The services which the DESIGN-BUILD FIRM shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

### **PROJECT INFORMATION REPORTING**

#### **2.1.1 General:**

- A. Commencing immediately after contract award, the DESIGN-BUILD FIRM shall implement and shall utilize throughout the life of this Contract all subsystems of Project Management Reporting.
- B. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the OWNER monthly and shall accompany each pay request.
- C. The report shall be described in terms of the following major subsystems: Narrative Reporting, on a monthly basis; Schedule Control, on a monthly basis; Cost Control, and estimating; Project Accounting; Accounting and Payment and Action Reports.

#### **2.1.2 NARRATIVE REPORTING SUBSYSTEM**

- A. The DESIGN-BUILD FIRM shall prepare written reports as described hereunder. All reports shall be in 8 ½" X 11" format.
- B. The Narrative Reporting Subsystem shall include the following reports:
  - 1. A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by Permitting Authority.
  - 2. A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
  - 3. A Monthly Scheduling Narrative summarizing the current status of the overall project schedule. This report shall include an analysis of the project schedule, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

4. A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.
  5. A Daily Construction Diary Report during the construction phase describing events and conditions on the site provided to Owner on a monthly basis. A visitor's log for recording visits by the Architect, Consultants, Owner, Inspectors and all visitors. This log shall include, name and who represented, phone number, date, time of arrival and departures. Daily Construction Reports provided weekly to Owner.
  6. A Monthly Jacksonville Small and Emerging Business Report during the construction phase summarizing the participation of JSEB certified subcontractors/ material suppliers for the current month, and project to date. The report shall include the name, address, and dollar amount of each certified JSEB participant.
- C. The reports outlined in subsection B(1) through (5) above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the OWNER and others designated by the Project Manager with the monthly pay requisition. Additional copies of the report outlined in subsection B(1) shall be bound separately and distributed monthly as directed by the OWNER's Project Representative.
  - D. The report outlined in subsection B(6) above shall be maintained at the site available to the OWNER. A copy, bound, of the complete diary shall be submitted to the OWNER at the conclusion of the project at the OWNER's request, and may be requested earlier by the OWNER without waiving any right to obtain this data at project conclusion.

#### 2.1.3 Scheduled Control Subsystem

- A. Master Project Schedule – Upon award of this Contract, the DESIGN-BUILD FIRM, shall submit a master project schedule covering the planning and design approvals, construction and OWNER occupancy of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project.
- B. Within thirty (30) calendar days after the date of the OWNER's issuance of a Notice to Proceed, the DESIGN-BUILD FIRM shall prepare and submit to the

Owner a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the project, showing the sequence in which the DESIGN-BUILD FIRM proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The Owner shall determine whether the construction schedule developed and submitted by the DESIGN-BUILD FIRM meets the requirements stated above and such determination shall be binding on the DESIGN-BUILD FIRM. Failure of the DESIGN-BUILD FIRM to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the Owner to withhold any payment, or any other remedy that exists pursuant to the contract or Florida law. Following development and submittal of the construction schedule as aforesaid, the DESIGN-BUILD FIRM shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the subject project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to the construction schedule shall be submitted to the OWNER in duplicate. Failure of the DESIGN-BUILD FIRM to update, revise, and submit the construction schedule as aforesaid shall be sufficient grounds for the OWNER to find the DESIGN-BUILD FIRM in default and to withhold payment to the DESIGN-BUILD FIRM until a schedule or schedule update acceptable to the OWNER is submitted, or any other remedy that exists pursuant to the contract or Florida law.

- C. The DESIGN-BUILD FIRM shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

2.1.4 Pre-Bid Schedules (Subnetworks) - The DESIGN-BUILD FIRM shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the work of the successful bidder and that of other subcontractors, and shall establish milestones keyed to the overall master schedule.

- A. Subcontractor Construction Schedules (Subnetworks) – Upon the award of each subcontract, the DESIGN-BUILD FIRM shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as



necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

- B. Occupancy Schedule – The DESIGN-BUILD FIRM shall develop a detailed plan, inclusive of punch lists, final inspections, maintenance training and turnover procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to OWNER occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final OWNER occupancy, and be approved by the OWNER or its designee.

2.1.5 Cost Control Subsystem – The operation of this subsystem shall provide sufficient timely data and detail to permit the DESIGN-BUILD FIRM to control and adjust the project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which will not exceed the OWNER's Construction Budget. Requirements of this subsystem include the following submissions at the following phases of the project: Phase I (Planning/ 60% design/ establishment of the Guaranteed Maximum Price), Phase II (100% design and construction).

2.1.6 Project Accounting Subsystem – The operation of this subsystem shall enable the DESIGN-BUILD FIRM to plan effectively and to monitor and control the funds available for the project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports, which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site element and shall be prepared and maintained pursuant to generally accepted accounting principles.

- A. Costs Status Report presenting the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total cost to complete the work.
- B. A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request in the form of AIA Schedule of Values.
- C. A Detailed Status Report showing the complete activity history of each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history

including change order number, description, proposed and approved rates and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.

- D. A Cash Flow diagram showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

2.1.7 A Job Ledger shall be maintained as necessary to supplement the operation of the project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

## **2.2 DESIGN PHASE (PHASE I)**

### **2.2.1 DESIGN DEVELOPMENT 60% AND GMP PRICING**

- A. The DESIGN-BUILD FIRM shall perform the services necessary to develop the design criteria package and shall perform the services necessary to generate a Guaranteed Maximum Price (GMP).

- i. The Services for this Phase include identification of all JEA requirements, all engineering design and analyses in civil, mechanical, structural, electrical, value engineering, constructability analysis, landscaping plans, all permitting, finalization of bid packages for subcontractor bidding based upon the 60% design documents, establishment of JSEB bidding packages, advertisement of bid packages, receipt, analysis and provision of bid tabulations to OWNER, establishment and submittal of GMP and Schedule (including Guaranteed Completion Date) as further outlined in Article 9.

- ii. Deliverables for this Phase shall include detailed 60% design documents including plans, specifications, permit drawings, permit applications, GMP Proposal, as outlined in Article 9, and Construction Schedule of Values

- iii. The DESIGN-BUILD FIRM shall provide and distribute hard copies and an electronic copy in PDF format on CD for review and comment by the OWNER.

- iv. The OWNER shall review the design documents and other deliverables and shall provide comments at a project meeting to be held within 20 business days of delivery of documents from the DESIGN-BUILD FIRM. If OWNER fails to provide such comments and such failure delays the critical path of the Project, then DESIGN-BUILD FIRM shall be

entitled to a time extension and a Change Order for any direct costs resulting from such OWNER delay to the extent such delay was within the reasonable control of OWNER.

v. The DESIGN-BUILD FIRM shall perform the services necessary to incorporate OWNER's comments from the project meeting and resubmit the deliverables in electronic, PDF format, within 10 business days from the review meeting for the OWNER's review and approval.

B. Prior to commencing Phase II, the GMP proposal will be reviewed and accepted by the OWNER as stated in Article 9.

## **2.3 PHASE II (100% DESIGN AND CONSTRUCTION)**

### **2.3.1 CONSTRUCTION DRAWINGS AND SPECIFICATIONS**

A. The DESIGN-BUILD FIRM shall prepare from the approved Phase I documents, the Phase II Construction drawings consisting of 100% design build construction documents that are consistent with the approved Phase I documents.

B. The DESIGN-BUILD FIRM scope of services for this Phase include acquisition of all permits, any required modification of permits, finalized construction drawings consisting of 100% design build construction documents including plans and specifications, coordination, procurement, demolition, construction, site improvements, quality control, start-up, testing, training, site restoration and all other activities.

C. The Design-Builder shall be responsible for coordinating all construction activities with JEA's engineering personnel and JEA's Project Manager. The Design-Builder shall be responsible for project safety and quality control, as well as all other activities necessary to design and construct the project. The Design-Builder shall prepare Operation and Maintenance Manuals, record drawings, and all other required documentation.

D. The Design-Builder shall demonstrate good project management practices while working on this project. These include communication with the OWNER and others as necessary, management of time and resources, and documentation.

E. Bid Groups

1. The Phase II Documents shall be prepared in Bid Groups for specific work as designated by the DESIGN-BUILD FIRM with the Agreement of the OWNER. Final determination of bid groups shall be the responsibility of the DESIGN-BUILD FIRM.

2. The Phase II Documents prepared by the DESIGN-BUILD FIRM for each Bid Group shall also include the non-technical documents consisting of the necessary bidding information, General Conditions of the Contract, Supplementary General Conditions of the Contract, Division One of the specifications, proposal and contract form.
  3. The DESIGN-BUILD FIRM shall provide and distribute six (6) hard (paper) copies and one (1) electronic copy on CD (compact disc) of the Contract Documents for each Bid Group for review and comment as directed by the Project Manager.
  4. Upon review by the Project Manager of the Phase II Documents for each bid group, the DESIGN-BUILD FIRM shall furnish the OWNER with four copies of the documents for each bid group, which shall be properly sealed and forwarded to the Project Manager. Copies of the Contract Documents for the DESIGN-BUILD FIRM's use will be the responsibility of the DESIGN-BUILD FIRM. Upon approval of the Contract Documents, the DESIGN-BUILD FIRM will furnish the Owner with two (2) copies of the CADD Documents as described in Article 2.3.1(J) below.
  5. The DESIGN-BUILD FIRM shall prepare necessary addenda to each Bid Group. All addenda, prior to distribution, shall be reviewed by the Project Manager. Copies of each addendum, properly sealed, shall be forwarded to the Project Manager.
- F. The OWNER shall review the Phase II construction drawings and specifications and shall provide comments within 20 business days of delivery of documents from the DESIGN-BUILD FIRM. If OWNER fails to provide such comments within 15 business days and such failure delays the critical path of the Project, then DESIGN-BUILD FIRM shall be entitled to a time extension and a Change Order for any direct costs resulting from such OWNER delay to the extent such delay was within the reasonable control of the OWNER.
- G. The DESIGN-BUILD FIRM shall provide design documents, drawings and specifications which conform to applicable standards and regulations including JEA's standards, the City of Jacksonville building codes and zoning codes and generally accepted construction industry standards.
- H. The DESIGN-BUILD FIRM shall signify its responsibility for the Approved for Construction drawings and specifications prepared pursuant to this Agreement by affixing its signature, date and seal thereto as required by Chapters 471 and 481, Florida Statutes. If the facility being constructed meets the definition of a threshold building as defined in Chapter 553.71(7), Florida Statutes, then the DESIGN-BUILD FIRM shall insert the following statement on each sheet required by Chapters 471 and 481, Florida Statutes, to be signed, sealed and dated by the DESIGN-BUILD FIRM: To the best of my knowledge, the plans, specifications and addenda comply with the applicable minimum codes.

- I. Where this Agreement provides for the OWNER's approval of the DESIGN-BUILD FIRM's design suggestions and decisions, such approval shall not relieve the DESIGN-BUILD FIRM of any responsibility or warranty hereunder.
- J. The DESIGN-BUILD FIRM, utilizing a computer-aided design and drafting application (CADD), shall provide the OWNER with one (1) set of CD (compact disc) at the conclusion of 100% Construction Documents defined in Article 3.5(1). Drawing files will be compatible with AutoCAD MAP 3D in a .dwg file format and will contain all font, symbol, block and attribute files used to assemble the documents. Files must be submitted on CD with the contents of each disk appropriately labeled. Layering of drawing files will conform to the industry's generally accepted Standards. The DESIGN-BUILD FIRM shall provide along with the CD files a directory of the layers used and the identification of each layer. The DESIGN-BUILD FIRM shall also provide plot files to enable plotting with correct pen style settings. The Owner recognizes that data, plans, specifications, reports, documents or other information recorded as electronic media are subject to alteration, due to, among other things, transmission, conversion, software error or human alteration. Accordingly, the CADD documents provided are for information only and not as an end product. Technical specifications shall be in a Microsoft Word format.

#### 2.3.2 DESIGN REVIEW AND RECOMMENDATIONS

- A. Review and Recommendations and Warranty - The DESIGN-BUILD FIRM's construction personnel shall familiarize themselves thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications and shall follow the development of design from Phase I through Phase II. They shall make recommendations to the designers with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the 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. They shall furnish pertinent information as to the availability of materials and labor that will be required. They shall call to the DESIGN-BUILD FIRM's designer's attention any apparent defects in the design, drawings and specifications or other documents. They shall prepare an estimate of the construction cost utilizing the unit quantity survey method.
- B. Long Lead Procurements - The DESIGN-BUILD FIRM's construction personnel shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the DESIGN-BUILD FIRM shall notify the subcontractors and the Project Manager of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. The DESIGN-BUILD FIRM shall keep informed of the progress of the respective subcontractors or suppliers, manufacturing or

fabricating such items and advise Project Manager and OWNER of any problems or prospective delay in delivery.

- C. **Separate Contracts Planning** - The DESIGN-BUILD FIRM shall review the design with the OWNER and make recommendations to the OWNER with respect to dividing the work in such manner as will permit the DESIGN-BUILD FIRM to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. It shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the OWNER. The DESIGN-BUILD FIRM shall have final authority for scope of work within bid packages provided, however that OWNER shall review and provide any written comments related to the bid packages, changes to the bid packages or any addenda issued after the bid packages are let to DESIGN-BUILD FIRM within 10 business days of receipt of such bid packages or any changes thereto and any OWNER comments shall comply with the duties and obligations of the parties under this Agreement so as to not delay the Work and/or cause DESIGN-BUILD FIRM to incur additional costs.
- D. **Interfacing** - The DESIGN-BUILD FIRM shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.
- E. **Job-Site Facilities** - The DESIGN-BUILD FIRM shall arrange for all job-site facilities necessary to enable the DESIGN-BUILD FIRM to perform its duties. The DESIGN-BUILD FIRM is responsible for proper care, maintenance and insurance, and all job-site facilities while in its control.
- F. **Weather Protection** - The DESIGN-BUILD FIRM shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced.
- G. **Market Analysis and Stimulation of Bidder Interest**
  - 1. The DESIGN-BUILD FIRM shall monitor conditions in the construction market to identify factors that will or may affect costs and time for

completing the project; it shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, and (2) in light of such determinations, make recommendations as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.

2. The DESIGN-BUILD FIRM shall be responsible for stimulating bidder interest in the local market place and identifying and encouraging bidding competition.
3. The DESIGN-BUILD FIRM shall carry out an active program of stimulating interest of qualified contractors and suppliers in bidding on the work and of familiarizing those bidders with the requirements.

2.3.3 STANDARD OF CARE - Notwithstanding any provision to the contrary, the standard of care for all professional services to be performed by DESIGN-BUILD FIRM pursuant to this Agreement, including but not limited to this Section 2.3, shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the project.

#### 2.3.4 CONSTRUCTION AND CONSTRUCTION ADMINISTRATION

- A. DESIGN-BUILD FIRM's Staff - The DESIGN-BUILD FIRM shall maintain sufficient offsite support staff, and competent full time staff at the Project site authorized to act on behalf of the DESIGN-BUILD FIRM to coordinate, inspect and provide general direction of the work and progress of the subcontractors and he shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit C to this agreement. It shall not change any of those persons named in Exhibit C unless mutually agreed to by the OWNER and DESIGN-BUILD FIRM. In such case, the OWNER shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.
- B. Lines of Authority - The DESIGN-BUILD FIRM shall establish and maintain lines of authority for its personnel, and shall provide this definition to the OWNER and all other affected parties such as the code inspectors of the Permitting Authority, the sub-contractors and the OWNER's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The OWNER may attend meetings between the DESIGN-BUILD FIRM and his Subcontractors; however, such attendance shall not

diminish either the authority or responsibility of the DESIGN-BUILD FIRM to administer the subcontractor.

- C. Schedule, and Project Manual Provisions - The DESIGN-BUILD FIRM shall continue to update scheduling information, coordination of milestones, coordination of subcontractor work and delivery of materials in order to adhere to the project schedule.
- D. Solicitation of Bids
  - 1. The DESIGN-BUILD FIRM shall prepare invitations for bids, or requests for proposal when applicable, for all procurements of long lead items, materials and services, and Subcontractor contracts.
  - 2. As part of such preparation, the DESIGN-BUILD FIRM shall review the specifications and drawings. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the DESIGN-BUILD FIRM shall be brought to the attention of the Project Manager and Permitting Authority in written form and simultaneously corrected.
- E. Bonds - In accordance with the provisions of Section 255.05, *Florida Statutes*, the DESIGN-BUILD FIRM shall provide to the OWNER, on forms furnished by the OWNER, a 100% Performance Bond and a 100% Labor and Material Payment Bond, each in an amount not less than Guaranteed Maximum Price less the Design and Engineering Fees and the DESIGN-BUILD FIRM's FEE. **No qualifications, modifications or riders to the Bond forms are permitted. The Payment and Performance Bonds must be duly recorded in the Duval County Public Records as a condition precedent to the OWNER's issuance of a Notice to Proceed on the Construction phase of the Project.**

To be acceptable to the OWNER as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

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

CONTRACT AMOUNT	POLICY REQUIRED HOLDER'S RATING	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

- b. 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:
  - 1) 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 have been met.
  - 2) 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.

- F. Quality Control - The DESIGN-BUILD FIRM shall develop and maintain a program, acceptable to the OWNER, to assure quality control of the construction. The DESIGN-BUILD FIRM shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and it shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to

not affect the efficient progress of the work. Should disagreement occur between the DESIGN-BUILD TEAM over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

- G. Subcontractor Interfacing - The DESIGN-BUILD FIRM shall be the single point of interface with all subcontractors for the OWNER and all of its agents and representatives. It shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the OWNER of their validity and reasonableness, acting in the OWNER's best interest prior to requesting approval of each change order from the OWNER. Before any work is begun on any change order, a written authorization and approval from the OWNER must be issued. However, when health and safety are threatened, the DESIGN-BUILD FIRM shall act immediately to remove the threat to health and safety. It shall also carefully review all shop drawings and then issue the shop drawings to the affected subcontractor for fabrication or revision. The DESIGN-BUILD FIRM shall maintain a suspense control system to promote expeditious handling. It shall make interpretations of the drawings or specifications requested of it by the subcontractors and shall maintain a suspense control system to promote timely response. It shall advise the Project Manager when timely response is not occurring on any of the above.
- H. Permits - The DESIGN-BUILD FIRM shall secure all necessary permits, the cost of which will be considered a direct cost item.
- I. Job Site Requirements
  - 1. The DESIGN-BUILD FIRM shall provide for each of the following activities as a part of its Construction Phase fee:
    - a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
    - b. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
    - c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
    - d. Provide labor relations management for a harmonious, productive project.
    - e. Provide a safety program for the project to meet JEA & OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.

- f. Provide a quality control program as developed under Article 2.3 (F). herein above.
  - g. Miscellaneous office supplies that support the construction efforts which are consumed by its own forces.
  - h. Travel to and from its home office to the project site as the project requires.
- 2. The DESIGN-BUILD FIRM shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
  - a. Schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
  - b. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.
- J. Job Site Administration - The DESIGN-BUILD FIRM shall provide as part of its job site fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:
  - 1. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the owner and DESIGN-BUILD FIRM either biweekly or monthly, whichever is designated by the Project Manager.
 

Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.
  - 2. Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and closely monitor their submittal and approval process.

3. Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
4. Payments to Subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments. All financial documents and records shall be maintained pursuant to reasonable accounting practices designed to afford the OWNER the ability to have the documents audited with the minimum of cost and disruption.
5. Document Interpretation - Refer all questions for interpretation of the technical documents to the DESIGN-BUILD FIRM and all others to the Owner.
6. Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the OWNER including information on the subcontractor's work, and the percentage of completion. Keep a daily log available to the OWNER and the Permitting Authority inspectors for review and copying.
7. Subcontractor's Progress - Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
8. Substantial Completion - Substantial Completion shall be established by way of the following steps:
  - a. DESIGN-BUILD Firm shall notify the OWNER that the project is ready for Substantial Completion inspections.
  - b. The OWNER shall conduct the Substantial Completion inspections.
  - c. Inspections shall be completed by the OWNER's Representative.
  - d. The OWNER shall consolidate a punch list (OWNER's punch list)
  - e. The OWNER shall issue a Certificate of Substantial Completion with the OWNER's punch list attached.
9. Final Completion - Monitor the Subcontractor's performance on the completion of the project and provide notice to the OWNER that the work is ready for Final inspection. Secure and transmit to the OWNER all required guarantees, affidavits, warranties, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form.
10. Start-Up - With the OWNER's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.

11. Record Drawings - The DESIGN-BUILD FIRM shall monitor the progress of its own forces or its Subcontractors on marked up field prints and at project completion will prepare the final record drawings. Shall submit on monthly basis marked up with field print.
  12. Schedule of Assets (SA) - The DESIGN-BUILD FIRM shall record the assets installed of its own forces or its Subcontractors on marked up field prints schedules and at project completion will prepare the final SA. Shall submit on monthly basis marked up SA.
  13. Equipment Attribute Management (EAM) - The DESIGN-BUILD FIRM shall record the equipment installed of its own forces or its Subcontractors on marked up field prints EAM tables and at project completion will prepare the final EAM. Shall submit on monthly basis marked up EAM.
- K. Administrative Records - The DESIGN-BUILD FIRM will maintain at the job site, or at the Project Manager's Office unless agreed to otherwise by the Project Manager, on a current basis, all project files and records. The project records shall be available at all times to the OWNER for reference, review or copying.
- L. OWNER Occupancy -The DESIGN-BUILD FIRM shall provide services during the design and construction phases, which will provide a coordinated OWNER occupancy of the project. It shall provide consultation and project management to facilitate OWNER occupancy and provide transitional services to get the work, as completed by the subcontractors, "on line" in such conditions as will satisfy OWNER operational requirements.
1. It shall conduct the preliminary punch list inspection and coordinate the completion of all punch list work to be done with OWNER occupancy requirements in mind.
  2. It shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the OWNER in such a manner as to promote their usability. It shall provide operational training in equipment use for building operators.
  3. It shall secure required guarantees and warranties, assemble and deliver same to the OWNER in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.
  4. It shall continuously review "Record" Drawings and mark up progress prints to provide as much accuracy as possible.
  5. The OWNER may not occupy or take control of the project until the above items discussed in this paragraph have been completed and the "Substantial Completion", and "Warranty" requirements specified in paragraphs 2.3.4(J)(8),

2.3.4(J)9, and 2.3.4(M) have been completed to the OWNER's satisfaction excluding the requirements for a warranty inspection. Nothing in this provision shall preclude Owner from taking partial occupancy as necessary.

M. Warranty:

(i) Design Warranty.

- The Company represents and warrants that it has the full corporate right, power and authority to enter into the Contract and to perform the Work, and that the performance of its obligations and duties hereunder does not and will not violate any Contract to which the Company is a party or by which it is otherwise bound.
- The Company represents and warrants that it will conduct the Work in a manner and with sufficient labor, materials and equipment necessary to affect a diligent pursuance of the Work.
- The Company represents and warrants that it has the responsibility and capacity to train and supervise its employees, Subcontractors and suppliers to ensure the Work complies with all safety requirements of the Contract Documents.
- The Company represents and warrants that its employees and Subcontractors shall exercise the degree of skill and care required by customarily accepted good practices and procedures.
- The Company warrants all Work for a period of one year following Acceptance of the Work. If any failure to meet the foregoing warranty appears within one year after Work is Accepted, the Company shall again perform the Work directly affected by such failure at the Company's sole expense.
- The Company warrants that all items provided under the Contract shall be free from Defect in accordance with the requirements of this Contract, and services shall be performed in a professional manner and with professional diligence and skill, consistent with the prevailing standards of the industry.

The obligations and representations contained in this "Warranty" clause are DESIGN-BUILD FIRM's sole warranty and guarantee obligations and OWNER's exclusive remedy in respect of quality of the Work. EXCEPT AS PROVIDED IN THIS ARTICLE, DESIGN-BUILD FIRM MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO DESIGN-BUILD FIRM'S SERVICES AND DESIGN-BUILD FIRM DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This clause governs, modifies, and supersedes any other terms in this Contract which may be construed to address warranties or guarantees or the quality of the Work.

- (ii) Construction Warranty. Where any work is performed by the DESIGN-BUILD FIRM's own forces or by subcontractors under contract with the DESIGN-BUILD FIRM, the DESIGN-BUILD FIRM shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper

workmanship and defective materials and in conformance with the Drawings and specifications. With respect to the same Work, the DESIGN-BUILD FIRM further agrees to correct all work found by the OWNER to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Acceptance or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The DESIGN-BUILD FIRM shall collect and deliver to the OWNER any specific written warranties given by others as required by the Contract Documents.

#### N. Multi-Year Funding:

If Multi-Year Funding is specified for this project, the Design-Build Firm shall not execute any work on the project that exceeds the current year's appropriation and the Owner will not be responsible for any amounts that exceed this amount (being the lesser of the contract amount or annual appropriated budget) should additional funding not be approved. If DESIGN-BUILD FIRM is required to stop work due to an OWNER lack of funding, DESIGN-BUILD FIRM shall be entitled to a Change Order for all additional cost and time resulting from such work stoppage, including but not limited to demobilization cost, remobilization costs, additional general conditions costs, price escalation and any other costs resulting from such work stoppage. Such Change Order shall be properly executed by OWNER prior to DESIGN-BUILD FIRM's obligation to resume work.

### ARTICLE 3 - OWNER'S RESPONSIBILITIES

- 3.1 OWNER's Information - The Owner shall provide information that it possesses regarding its requirements for the project.
- 3.2 OWNER's Representative - The OWNER shall designate a representative who shall be fully acquainted with the project and shall define the lines of OWNER authority to approve Project Construction Budgets, and changes in Project. He/she shall render decisions promptly and furnish information expeditiously. This Representative is referred herein as the OWNER's Project Manager.
- 3.3 Site Survey and Reports - The OWNER shall provide available surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description relating to this project. The OWNER warrants the completeness of the current accuracy of any existing reports and DESIGN-BUILD FIRM is entitled to rely on said reports in the performance of its work for this Project unless DESIGN-BUILD FIRM knows or reasonably should have known such surveys or reports are inaccurate. DESIGN-BUILD FIRM acknowledges that the current reports are not sufficient for DESIGN-BUILD FIRM to complete the design of this Project and that DESIGN-BUILD FIRM will need to perform additional geotechnical reports, including but not limited to soil reports and subsurface investigations. The existing surveys and reports shall be furnished with reasonable promptness in accordance with the approved schedule at the OWNER's expense.

- 3.4 Approvals and Easements - The OWNER shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.5 Legal Services - The OWNER shall furnish such legal services as may be necessary for obtaining any approvals or easements and such auditing services as OWNER may require.
- 3.6 Drawings and Specifications - The OWNER will attempt review and act upon the DESIGN-BUILD FIRM's Drawings and Specifications in fifteen (15) business days so as not to delay the progress of the project.
- 3.7 Project Fault Defects - If the OWNER becomes aware of any fault or defect in the Project or nonconformance with the drawings and specifications, it shall give prompt written notice thereof to the DESIGN-BUILD FIRM.
- 3.8 Funding - The OWNER shall furnish in accordance with the established schedule, reasonable evidence satisfactory to the DESIGN-BUILD FIRM that sufficient funds will be available and committed for the cost of each part of the Project. The DESIGN-BUILD FIRM shall not commence any work, unless authorized in writing by the OWNER.
- 3.9 Lines of Communication - The OWNER shall communicate with the subcontractors or suppliers only through the DESIGN-BUILD FIRM while such method of communication is effective in maintaining project schedules and quality.
- 3.10 Lines of Authority - The OWNER shall establish and maintain lines of authority for his personnel and shall provide this definition to the DESIGN-BUILD FIRM and all other affected parties.
- 3.11 Multi-Year Funding : If Multi-Year Funding is specified for this project, the Owner shall advise the Design-Build Firm of the proposed funding amounts per year and the amount currently appropriated. The Owner shall advise the Design-Build Firm upon any changes in the funding appropriations. If DESIGN-BUILD FIRM is required to stop work due to an OWNER lack of funding, DESIGN-BUILD FIRM shall be entitled to a Change Order for all additional cost and time resulting from such work stoppage, including but not limited to demobilization cost, remobilization costs, additional general conditions costs, price escalation and any other costs resulting from such a work stoppage. Such Change Order shall be properly executed by OWNER prior to DESIGN-BUILD FIRM's obligation to resume work.



## ARTICLE 4 - INSPECTION

- 4.1 Code Inspections - All projects require detailed code compliance inspections during construction in certain disciplines. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing and general building.

All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications. The DESIGN-BUILD FIRM is ultimately responsible for all code compliance.

Cost for all re-inspections of work found defective and subsequently repaired shall be borne by the DESIGN-BUILD FIRM.

## ARTICLE 5 - SUBCONTRACTS

- 5.1 Definition - A subcontractor is a person or organization who has a direct contract with the DESIGN-BUILD FIRM to perform any of the work at the site. Nothing contained in the Contract Document shall create any contractual relation between the OWNER and any subcontractor.

- 5.2 Proposals - Subject to Article 9 and, in accordance with Article 2.3(D), the DESIGN-BUILD FIRM shall request and receive proposals from subcontractors and suppliers and will award those contracts to the responsive qualified low bidder after it has reviewed each proposal and is satisfied that the subcontractor is qualified to perform the work.

- 5.3 Required Subcontractor's Qualifications and Subcontract Conditions

5.3.1 Subcontractual Relations - By an appropriate written agreement, the DESIGN-BUILD FIRM shall require each subcontractor to the extent of the work to be performed by the subcontractor, to be bound to the DESIGN-BUILD FIRM by the terms of the Contract Documents, and to assume toward the DESIGN-BUILD FIRM all the obligations and responsibilities which the DESIGN-BUILD FIRM by these Documents, assumes toward the OWNER. Said agreements shall preserve and protect the rights of the OWNER under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the DESIGN-BUILD FIRM shall require each Subcontractor to enter into similar agreements with his Sub-subcontractor. Copies of all contracts with appropriate required licenses shall be provided to the OWNER.

The DESIGN-BUILD FIRM shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5.3 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to its Sub-subcontractors.

- 5.3.2 Subcontract Requirements

- A. The DESIGN-BUILD Firm shall be responsible for pre-qualifying subcontractors. Prequalification shall include but not be limited to evaluation of previous experience staffing resources, financial condition and overall ability to perform the work.
- B. Workforce - The DESIGN-BUILD Firm shall evaluate subcontractor's percentage of the project construction work to be performed utilizing its own employees.
- C. Subcontractor experience - The subcontractor must demonstrate related experience of similar size and complexity as determined by the DESIGN-BUILD Firm.
- D. Supervision - The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work.
- E. All subcontracts shall provide:

1. LIMITATION OF REMEDY - NO DAMAGES FOR DELAY OR DISRUPTION

That the subcontractor's exclusive remedy for delays or disruptions, except for active interference by the OWNER, in the performance of the contract caused by events beyond its control, including OWNER delays claimed to be caused by the OWNER or attributable to the OWNER and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead and profit and bond costs.

Each subcontract shall require the subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays or disruptions and changes in the work and thus eliminate any other remedies

for claim for increase in the contract price, damages, losses or additional compensation.

2. Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to the DESIGN-BUILD FIRM within seven (7) calendar days in the format in which the DESIGN-BUILD FIRM must submit such claims to the OWNER, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims. Any such claim must include a time impact analysis as a justification for any equitable time or price adjustment and a subcontractor's refusal to provide such a timely analysis shall be considered a failure of a condition precedent to advance the claim in any future litigation.

- 5.4 Responsibilities for Acts and Omissions - The DESIGN-BUILD FIRM shall be responsible to the OWNER for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the DESIGN-BUILD FIRM.
- 5.5 Subcontracts to be Provided - Upon request, the DESIGN-BUILD FIRM shall include a copy of each signed subcontract, including the general supplementary conditions, in the project manual.

## ARTICLE 6

### SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 6.1 At the time the Guaranteed Maximum Price (GMP) is established, as provided for in Articles 7 and 9, a Project **Substantial Completion date**, a **Final Completion date** and an **Owner Occupancy date** for completion of the Project, in accordance with the master project schedule, shall also be established by the DESIGN-BUILD Firm. The OWNER will issue an amendment to this Contract identifying the GMP for said the Project, identifying the drawings, specifications and other documents upon which the Guaranteed Maximum Price is based, and establishing the Substantial Completion date, Final Completion date and the date for the issuance of the Certificate of Occupancy. THE DESIGN-BUILD FIRM agrees to complete the construction in accordance with the agreed upon Substantial Completion date, Final Completion date and date for the Issuance of Occupancy Certificate. The DESIGN-BUILD FIRM acknowledges that failure to complete the project within the construction time set forth in the approved schedule may result in actual damages to the Owner, for which the DESIGN-BUILD FIRM will be liable in the form of Liquidated Damages as set forth in Article 6.4 below.
- 6.2 The date of the OWNER Certificate of Occupancy shall occur as described in Article 2.3.4 (L) hereinabove. Warranties shall commence on the Date of Substantial Completion for that portion of project completed.
- 6.3 At the time the Guaranteed Maximum Price (GMP) is established, the DESIGN-BUILD Firm will furnish to the Owner a current Schedule of Values based on the Guaranteed Maximum Price. A revised Schedule of Values is required after contracts between the DESIGN-BUILD Firm and subcontractors are executed, and with each pay request (or at least monthly).
- 6.4 **Liquidated Damages.**  
If the DESIGN-BUILD FIRM fails to complete the Work for JEA's Acceptance on or before the agreed completion date, the DESIGN-BUILD FIRM shall pay JEA the sum of \$250.00 per day for each and every calendar day, including Sundays and Holidays, until the date the Work is Accepted by JEA.

Liquidated damages will be capped at 5% of the total Contract price.

The DESIGN-BUILD FIRM understands and agrees that said daily sum is to be paid not as a penalty, but as compensation to JEA as a fixed and reasonable liquidated damages for losses that JEA will suffer because of such default, whether through increased administrative and engineering costs, interference with JEA'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 JEA's sole discretion, be deducted from any monies held by JEA that are otherwise payable to DESIGN-BUILD FIRM.

The DESIGN-BUILD FIRM's responsibility for liquidated damages shall in no way relieve the DESIGN-BUILD FIRM of any other obligations under the Contract.

## ARTICLE 7

### GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 Guaranteed Maximum Price (GMP) Proposal - The DESIGN-BUILD FIRM will establish and submit in writing to the OWNER for its approval a Guaranteed Maximum Price, guaranteeing the maximum price to the OWNER, for the entire cost of the project (design, construction, and DESIGN-BUILD FIRM's Fee). Such Guaranteed Maximum Price will be subject to modification for changes in the project as provided in Article 10. However, the actual price paid for the work by the OWNER shall be the actual cost of all design and engineering, all work subcontracts, supply contracts, direct labor costs, direct supervision costs, direct job costs, and the DESIGN-BUILD FIRM's FEE, DESIGN-BUILD FIRM's General Conditions Amount, and DESIGN-BUILD FIRM's Lump Sum Insurance Amount, as may or may not be adjusted by mutual agreement of the Parties or the GMP, as may or may not be adjusted by mutual agreement of the Parties, whichever is less when the work is complete.
- 7.2 GMP Taxes - The GMP shall include all taxes legally applicable to the cost of the work.
- 7.3 Use of Contingency Contained Within GMP - At the time of submission of a Guaranteed Maximum Price, the DESIGN-BUILD FIRM will verify the time schedule for activities and work which were adopted by the DESIGN-BUILD TEAM and used to determine the DESIGN-BUILD FIRM's Cost of Work. In addition to the Cost of Work, the GMP will include an agreed upon sum as the Construction Contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The DESIGN-BUILD TEAM Contingency shall be capped at 5% of the GMP. **The DESIGN-BUILD FIRM will be required to notify the OWNER in writing prior to using any of the contingency funds.** Documentation for use of the Contingency shall be determined by the OWNER, reflected in the Project Manual and displayed monthly in the report. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency upon approval of OWNER, however such events shall not be cause to increase the GMP.

At Project Completion all unused contingency funds, if any, shall revert to OWNER. The OWNER has the option to negotiate a joint contingency fund saving agreement with the DESIGN-BUILD FIRM at time of contract negotiation.

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

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 DESIGN-BUILD FIRM, unless approved by OWNER via change order and contract amendment. The DESIGN-BUILD FIRM shall document to OWNER with a log and detailed backup including receipts, contracts, invoices or communications to itemize the use of Contingency identified in the GMP on a monthly basis. The Contingency for this Project will be negotiated at the time of GMP Proposal submission.

## **ARTICLE 8**

### **CONTRACT PRICE**

8.1 The Maximum Indebtedness of the OWNER for all fees, reimbursable items or other costs for Services provided by the DESIGN-BUILD FIRM pursuant to this Agreement shall not exceed the sum of \_\_\_\_\_. **This shall be the Maximum Indebtedness** for the term of this Agreement; provided, however, if OWNER accepts DESIGN-BUILD FIRM's GMP Proposal as outlined in Article 9 below and thus opts to retain DESIGN-BUILD FIRM for Phase II, the Maximum Indebtedness will be revised accordingly by execution of the GMP Amendment in order to compensate the DESIGN-BUILD FIRM for Phase II work performed after the completion of Phase I.

## **ARTICLE 9**

### **ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE**

#### **9.1 GMP Established After Execution of this Agreement.**

A. GMP Proposal. Upon the completion of Phase I (60%) design, DESIGN-BUILD FIRM shall submit to a GMP Proposal to OWNER, which shall include the following, unless mutually agreed to otherwise by the Parties:

1. A proposed GMP, which shall be the sum of:
  - (a) Lump Sum Amount for Phase I of the Project (60% Design)
  - (b) Fees and Cost of Work for Phase II of Project
    - DESIGN-BUILD FIRM's Lump Sum Amount for Design Services during Phases II
    - Construction Contingency for Phase II
    - DESIGN-BUILD FIRM's Lump Sum General Conditions Amount for Phase II
    - DESIGN-BUILD FIRM's Lump Sum Insurance for Phase II
    - DESIGN-BUILD FIRM's FEE for Phase II
2. A list of the drawings and specifications, including all addenda, used as the basis for the GMP Proposal;
3. A list of all the assumptions and clarifications made by the DESIGN-BUILD FIRM in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;
4. The Guaranteed Completion Date (GCD) upon which the Proposed GMP is based, to the extent said date has not already been established and a schedule upon which the GCD is based;
5. A list of allowances and statement of their basis
6. A schedule of alternate prices;
7. A statement of Additional Services; and
8. The time limit for acceptance of the GMP Proposal.

B. All Lump Sum Amounts set forth above shall be paid in accordance with a schedule of values on a percent complete basis and shall NOT be subject to audit rights.

C. Review and adjustment to GMP Proposal. After submission of the GMP Proposal, the DESIGN-BUILD FIRM 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 DESIGN-BUILD FIRM of such comments or findings. If appropriate, DESIGN-BUILD FIRM shall, upon receipt of OWNER's notice make appropriate adjustments to the GMP Proposal.

D. Acceptance of GMP Proposal. If OWNER accepts the GMP Proposal, as may be amended by DESIGN-BUILD FIRM and OWNER, the GMP and its basis shall be set forth in an amendment to this Agreement (the "GMP Amendment"). The GMP Amendment shall control and take precedence over any conflicting provision contained elsewhere in this Agreement



and any Contract Document unless this Agreement is subsequently amended by the Parties in accordance with the terms of this Agreement.

E. Failure to accept GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify DESIGN-BUILD FIRM in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, OWNER and DESIGN-BUILD FIRM 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, whereupon, if such modifications are accepted in writing by DESIGN-BUILD FIRM, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with 9.1.(D) above;
2. OWNER may terminate this Agreement for Convenience in accordance with Article 14 hereof.

F. Interim GMP Proposals-Portions of Work. At OWNER's discretion, prior to DESIGN-BUILD FIRM's submission of GMP Proposal for the entire Project, OWNER may request interim GMP Proposals for specific portions of the Work.

G. DESIGN-BUILD FIRM does not guarantee any specific line item provided as part of the GMP.

9.2 Savings. If the sum of the actual Cost of the Work, cost of Design, and DESIGN-BUILD FIRM's FEE is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall inure entirely to the OWNER.

9.3 Budget Ceiling. DESIGN-BUILD FIRM acknowledges that the OWNER's Design and Construction Budget for the Project is **INSERT DOLLAR AMOUNT (Insert \$ Amount)** (the "Budget Ceiling") including all fees, Cost of the Work, cost of design and the OWNER's and DESIGN-BUILD FIRM's construction and contingencies, as set forth in this Agreement. This acknowledgement of the OWNER's budgeted funds is not to be construed as DESIGN-BUILD FIRM's GMP, but does represent DESIGN-BUILD FIRM's acknowledgement and commitment that the GMP, including all Contingencies, will be below the Budget Ceiling and the DESIGN-BUILD FIRM will perform the Work in good faith to achieve same. A GMP will be offered by separate documentation as outlined in this Article 9.

9.4 **Cost of the Work.** The term Cost of the Work ("Cost of the Work") during the Construction Phase, after the establishment of the GMP (Phase II), shall mean costs reasonably incurred by DESIGN-BUILD FIRM in the proper performance of the Work. The Cost of the Work shall include the following, all of which are subject to the GMP:

9.4.1 Payments made by DESIGN-BUILD FIRM to subcontractors and design consultants for performance of portions of the Work, including any insurance and bond premiums incurred by subcontractors and Design Consultants. If OWNER directs

DESIGN-BUILD FIRM to engage a subcontractor whose price is greater than the price of another qualified subcontractor that DESIGN-BUILDER intends to engage, then OWNER shall issue a Change Order to DESIGN BUILDER increasing the GMP by the difference in cost between the subcontractor Owner directs DESIGN-BUILD FIRM to engage and the subcontractor that DESIGN-BUILD FIRM intended to engage.

9.4.2 Costs incurred by DESIGN-BUILD FIRM in repairing or correcting defective, damaged or nonconforming Work, provided that such defective, damaged or nonconforming Work was not beyond the reasonable control of DESIGN-BUILD FIRM, or caused by the ordinary mistakes or inadvertence, and not the negligence of DESIGN-BUILD FIRM or those working by or through DESIGN-BUILD FIRM. If the costs associated with such defective, damaged or nonconforming Work are recoverable from insurance, DESIGN-BUILD FIRM shall exercise reasonable efforts to obtain recovery from the appropriate source and credit OWNER if recovery is obtained.

9.4.3 Costs, including purchase, transportation, delivery, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

9.4.4 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 DESIGN-BUILD FIRM, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

9.4.5 Costs of recycling, removal, or disposal of debris and waste (hazardous and non-hazardous) from the Site.

9.4.6 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site.

9.4.7 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 DESIGN-BUILD FIRM at the Site, whether rented from DESIGN-BUILD FIRM or others, and incurred in the performance of the Work.

9.4.8 Premiums for bonds required by this Agreement or the performance of the Work including bonds for subcontractors or subguard bond coverage for subcontractors.

9.4.9 All fuel and utility costs incurred in the performance of the Work.

9.4.10 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

9.4.11 Costs for permits, royalties, licenses, survey, tests, reports and inspections incurred by DESIGN-BUILD FIRM as a requirement of the Contract Documents.

9.4.12 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against DESIGN-BUILD FIRM resulting from such suits or claims, and paying settlements made with OWNER's consent.

9.4.13 Deposits which are lost, except to the extent caused by DESIGN-BUILD FIRM's negligence.

9.4.14 Costs incurred in preventing damage, injury or loss, or responding to an emergency affecting the safety of persons and property. Including but not limited to site security costs.

9.4.15 Accounting and data processing costs related to the Work.

9.4.16 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by OWNER.

9.4.17 Costs reimbursable under the Construction Contingency.

9.4.18 Costs of testing and inspections required for the Work.

9.4.19 Wages of construction workers directly employed by Design Build Firm to perform any portion of the Work at the site, or with the Owner's approval, at off-site workshops.

9.4.20 Wages or salaries of the Design Build Firm's supervisory and administrative personnel when stationed at the Project site.

9.4.21 Costs paid or incurred by the Design Build Firm for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in 9.4.19 or 9.4.20.

9.4.22 JEA is authorized to self-accrue the Florida Sales and Use Tax and is exempt from Manufacturer's Federal Excise Tax when purchasing tangible personal property for its direct consumption.

## 9.5 Allowance Items and Allowance Values

9.5.1 Any and all Allowance Items, as well as their corresponding Allowance Values will be set forth in the GMP Amendment.

9.5.2 The Allowance shall only be used for (i) costs not included in the Cost of the Work for a Project as submitted in the GMP Proposal, and (ii) costs that are either requested by OWNER in writing, or approved by the OWNER in writing in advance of

DESIGN-BUILD FIRM incurring such cost. The DESIGN-BUILD FIRM shall document to OWNER on a monthly basis a log and detailed backup including receipts, contracts, invoices or communications to itemize all costs associated with the use of the Allowance. The Allowance for a Project will be negotiated at the time of each GMP Proposal submission. Any remaining Allowance at the completion of the Project shall not be paid to DESIGN-BUILD FIRM and shall remain with OWNER. The Allowance shall not be included in the determination of Savings under Section 9.2 of this Contract.

9.5.3 Allowance Items and Allowance Values to be included in the GMP Amendment will be based then available information to provide an estimate for the Allowance Item. Nothing herein is intended in any way to constitute a guarantee by DESIGN-BUILD FIRM that any Allowance Item in question can be performed for the Allowance Value.

9.5.4 No work shall be performed on any Allowance Item without DESIGN-BUILD FIRM first obtaining in writing advanced authorization to proceed from OWNER. OWNER agrees that if DESIGN-BUILD FIRM is not provided written authorization to proceed by the date set forth in the Project schedule included as part of the GMP Amendment, DESIGN-BUILD FIRM shall be entitled to an adjustment of the Contract Time(s) and/or Contract Price to the extent impacted by such delay.

9.5.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the GMP shall be adjusted accordingly by Change Order to reflect the difference between the actual costs incurred by DESIGN-BUILD FIRM for the particular Allowance Item and the Allowance Value.

## **ARTICLE 10**

### **CHANGE IN THE PROJECT**

10.1 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, the GMP, and the Construction Completion Date, 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.

10.1.1 Change Order Definition - A Change Order is a written order on an approved change order form under the authorization of JEA to the DESIGN-BUILD FIRM signed by the OWNER issued after the execution of this Agreement, authorizing a Change in the Project, the DESIGN-BUILD FIRM's fee, or the Construction 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 DESIGN-BUILD FIRM serves as a waiver and an accord and satisfaction of all issues related to the work identified in the Change Order.

10.1.2 Acceptable Ways of Determining Increases or Decreases in the GMP on Change Orders - The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:

- A. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the OWNER;
- B. by unit prices stated in the Agreement or subsequently agreed upon, if less;
- C. by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee if less than the negotiated fee; or
- D. by the method provided in Subparagraph 10.1.3.

10.1.3 Itemized Accounting on Change Orders - If none of the methods set forth in Clause 10.1.2 is agreed upon, the DESIGN-BUILD FIRM, provided it 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 DESIGN-BUILD FIRM shall not perform any work whose cost exceeds that estimate without prior written approval by the OWNER. In such case, and also under Article 10.1.2 above, the DESIGN-BUILD FIRM 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 Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the DESIGN-BUILD FIRM 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.

10.1.4 Adjustments In Unit Prices & GMP Due To Inequitable Quantity Changes - If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the OWNER or the DESIGN-BUILD FIRM, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.1.5 Concealed Conditions - Should concealed conditions be encountered in the performance of the Work below the surface of the ground or should unknown physical conditions below the surface of the ground be encountered, or should concealed or unknown conditions in an existing structure of an unusual nature be encountered, differing materially from those ordinarily encountered in work of the character provided for in this Agreement, the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2, along with the markups set forth in 10.1.3 for insurance/bond and overhead/profit.

10.2 Claims For Additional Cost Or Time - All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16.

If there is any time delay or disruption during the project, the Substantial Completion date shall be extended by Change Order. The DESIGN-BUILD FIRM must provide a time impact analysis justifying any request for equitable time extension. Time extensions will only be granted for those delays which affect the Critical Path.

Only delays or disruptions which are determined to extend the critical path for the schedule or constructing the project will result in a time extension. Neither the OWNER nor the DESIGN-BUILD FIRM shall be considered to own the schedule float time.

No OWNER'S representative has the authority to allow or require constructive acceleration; actual acceleration shall only be compensable upon specific written approval by the OWNER after receipt of an acceptable time impact analysis and evaluation of a recovery schedule that would reasonably justify such action.

- 10.3 Minor Changes In The Project - The Project Manager will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be effected by written order. Documentation of changes shall be determined by the DESIGN-BUILD TEAM, included in the Project Manual. Changes shall be approved by the Project Manager.
- 10.4 Emergencies - In any emergency affecting the safety of persons or property, the DESIGN-BUILD FIRM shall act at its discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the DESIGN-BUILD FIRM on account of emergency work shall be determined as provided in Article 10.

## **ARTICLE 11**

### **DISCOUNTS AND PENALTIES**

- 11.1 JEA offers any or all of the following option payment terms, one of which may be executed at the request of the Company by sending an email to the JEA Buyer listed in this Solicitation:

1% 20, net 30  
2% 10, net 30

Company may request alternate payment terms for JEA's consideration, however, alternate payment terms are not effective until acceptance by JEA in writing. Please note, all payment dates are calculated from the date of the Invoice receipt by JEA's Accounts Payable.

- 11.2 All discounts for prompt payment shall accrue to the OWNER to the extent the Cost of the project is paid directly by the OWNER or from a fund made available by the OWNER to the DESIGN-BUILD FIRM for such payments. To the extent the Cost of the Project is paid

with funds of the DESIGN-BUILD FIRM, all cash discounts shall accrue to the DESIGN-BUILD FIRM. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project. All penalties incurred due to fault of the DESIGN-BUILD FIRM for late payment of cost of the project will be paid by the DESIGN-BUILD FIRM.

## **ARTICLE 12**

### **PAYMENTS TO THE DESIGN-BUILD FIRM**

12.1 Monthly Statements - The DESIGN-BUILD FIRM shall submit to the OWNER a sworn statement along with the cost reports required under Article 2.1.5, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the DESIGN-BUILD FIRM's fees due. This data shall be attached to the Partial Pay Request form. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. For the purposes of this Agreement, fifty percent completion is defined as the point at which OWNER has expended 50 percent of the total cost of the construction services purchased as identified in the Agreement together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the Agreement. At fifty percent (50%) completion, the Owner shall reduce to five percent (5%) the amount of retainage withheld from each subsequent progress payment made to the DESIGN-BUILD FIRM. Retainage shall not be withheld on the following:

- i. Lump Sum Amounts for services or fees for design and engineering work under Phase I and Phase II.
- ii. DESIGN-BUILD FIRM's fee for construction phase services; and,
- iii. DESIGN-BUILD FIRM's general conditions costs for construction phase services

12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project shall be due and payable after the OWNER has accepted occupancy of the project, provided that the Project be then finally completed, that the DESIGN-BUILD FIRM has verified by its signature that it has completed all items specified, and that this Agreement has been finally performed. However, if there should remain work to be completed, the DESIGN-BUILD FIRM and the OWNER shall list those items prior to receiving final payment. Upon completion of all items on the list, the contractor may submit a payment request for all remaining retainage withheld by OWNER. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the contract, OWNER may continue to withhold up to one hundred fifty percent (150%) of the total costs to complete such items provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, OWNER shall pay to DESIGN-BUILD FIRM, monthly, the amount retained for each incomplete item after each of said items is completed.

- 12.3 Payments to Subcontractors - The DESIGN-BUILD FIRM shall promptly, within 10 days after receipt of payment from the OWNER, pay all the amount due subcontractors less a retainage of ten percent (10%) until the project is fifty percent (50%) complete. After 50-percent completion, as defined above, of the construction services purchased pursuant to the contract, the DESIGN-BUILD FIRM may elect to withhold retainage from payments to its subcontractors at a rate higher than 5 percent. The specific amount to be withheld must be determined on a case-by-case basis and must be based on the DESIGN-BUILD FIRM's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the DESIGN-BUILD FIRM's ability to rely on other safeguards. The DESIGN-BUILD FIRM shall notify the subcontractor, in writing, of its determination to withhold more than 5 percent of the progress payment and the reasons for making that determination, and the DESIGN-BUILD FIRM may not request the release of such retained funds from the local governmental entity. If at Final Completion there should remain items to be completed, the DESIGN-BUILD FIRM and OWNER shall list those items required for completion and the DESIGN-BUILD FIRM shall continue to withhold up to one hundred fifty percent (150%) of the total costs to complete such items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. If a local governmental entity makes any payment of retainage to the DESIGN-BUILD FIRM which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the DESIGN-BUILD FIRM shall timely remit payment of such retainage to those subcontractors and suppliers.

Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the OWNER's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the OWNER.

- 12.4 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the OWNER on each occasion.
- 12.5 Withholding Payments to Subcontractors - The DESIGN-BUILD FIRM shall not unreasonably withhold payments to subcontractors if such payments have been made to the DESIGN-BUILD FIRM. If there is a dispute as to payment of a subcontractor DESIGN-BUILD FIRM must notify subcontractor whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The DESIGN-BUILD FIRM must pay all undisputed amounts due within the time limits imposed by The Local Government Prompt Payment Act, § 218.735, *Florida Statutes*.



#### 12.6 Invoicing

Within sixty (60) days from completion of the Work, the Company shall submit all Invoices in accordance with the payment method agreed upon in these Contract Documents. Invoices shall be submitted to the following address: JEA Accounts Payable, P.O. Box 4910, Jacksonville, FL 32201-4910.

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

JEA may reject any Invoice or Application for Payment within twenty (20) calendar days after receipt. JEA will return the Invoice or Application for Payment to the Company stating the reasons for rejection.

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

JEA may withhold payment if the Respondent is in violation of any conditions or terms of the Contract Documents.

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

#### 12.7 Discount Pricing

JEA offers any or all of the following option payment terms, one of which may be executed at the request of the Respondent by sending an email to the JEA Buyer listed in this Solicitation:

- 1% 20, net 30
- 2% 10, net 30

Respondent may request alternate payment terms for JEA's consideration, however, alternate payment terms are not effective until acceptance by JEA in writing. Please note, all payment dates are calculated from the date of the Invoice receipt by JEA's Accounts Payable.

#### 12.8 Discount Pricing

In case the Company is in violation of any requirement of the Contract, JEA may withhold payments that may be due the Company, and may offset existing balances with any JEA incurred costs against funds due the Company under this and any other Company Contract with JEA, as a result of the violation, or other damages as allowed by the Contract Documents and applicable law.

## **ARTICLE 13**

### **INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION**

#### **13.1 INDEMNITY**

##### **A. INDEMNIFICATION**

For ten dollars (\$10.00) acknowledged to be included and paid for in the contract price and other good and valuable considerations, the Company shall hold harmless and indemnify JEA 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, arising out of or incidental to the negligence, recklessness or intentional wrongful misconduct of the Company and any person or entity used by Company in the performance of this Contract or Work performed thereunder. For purposes of this Indemnification, the term "JEA" shall mean JEA 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.

#### **13.2 DESIGN-BUILD FIRM's INSURANCE**

##### **A INSURANCE REQUIREMENTS**

Before starting and until acceptance of the Work by JEA, and without further limiting its liability under the Contract, Company 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; including Pollution Liability, 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; including Pollution Liability, 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, including Pollution Liability);** Insurance Limits: \$4,000,000 each occurrence and annual aggregate.

##### **Professional Liability**

Errors & Omissions; Insurance Limits: \$2,000,000.00 each claim and \$2,000,000.00 annual aggregate

Company's Commercial General Liability, Excess or Umbrella Liability, and Professional Liability policies shall remain in force throughout the duration of the project and until the Work is completed to JEA's satisfaction. Company's Commercial General Liability, Automobile Liability, and Excess or Umbrella Liability insurance Policies shall include Pollution Liability coverage for sudden and accidental occurrence, including clean-up expenses.

The Indemnification provision provided herein is separate and is not limited by the type of insurance or insurance amounts stated above.

Company shall specify JEA as an additional insured for all coverage except Workers' Compensation and Employer's Liability, and Professional Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by JEA. Company shall include a Waiver of Subrogation on all required insurance in favor of JEA, 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 JEA. Prior to commencing any Work under this Contract, certificates evidencing the maintenance of the insurance shall be furnished to JEA for approval. Company's and its subcontractors' Certificates of Insurance shall be mailed to JEA (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 JEA.

Any subcontractors of Company shall procure and maintain the insurance required of Company hereunder during the life of the subcontracts. Subcontractors' insurance may be either by separate coverage or by endorsement under insurance provided by Company. Note: Any JSEB firms identified by Bidders for this Solicitation are considered "Subcontractors" under the direct supervision of the Prime or General Contractor (herein referred to as "Company"). Companies should show good faith efforts in providing assistance to JSEB firms in the securing of the Subcontractors' insurance requirements stated herein. Company shall submit subcontractors' certificates of insurance to JEA prior to allowing Subcontractors to perform Work on JEA's job sites.

## **ARTICLE 14**

### **TERM OF AGREEMENT, TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM DESIGN-BUILD FIRM'S OBLIGATION**

#### **14.1 Term of Agreement**

The Agreement shall be in force from the Effective Date until Project Completion, unless revised by mutual agreement of the Parties. Certain provisions of this Agreement may extend past termination, including warranty provisions and insurance and indemnification obligations of DESIGN-BUILD FIRM.

14.2 **Termination Due to Lack of Funding:** If Multi-Year Funding is specified for this project, and should additional funding NOT be appropriated, the Owner shall pay the Design-Build Firm for all work performed up to the approved appropriation for the work completed. The Design-Build Firm is not entitled and shall not be paid additional compensation for termination due to additional funding not being approved. If DESIGN-BUILD FIRM stops work as a result of the OWNER's lack of sufficient funding to pay for the remaining work and after OWNER obtains additional funding DESIGN-BUILD FIRM is directed to recommence work, then DESIGN-BUILD FIRM shall be entitled to a Change Order for all cost and damage incurred as a result of the work stoppage and remobilization, along with a time extension.

14.3 **Termination by OWNER Without Cause**

- A. OWNER shall have the right to terminate this Agreement for convenience. In the event that OWNER elects to terminate DESIGN-BUILD FIRM for convenience, OWNER shall notify DESIGN-BUILD FIRM in writing of same. Upon receipt of OWNER's notice of termination, DESIGN-BUILD FIRM shall stop work and tabulate all costs to date and OWNER shall pay to DESIGN-BUILD FIRM the following:
- i. Payment for all amounts owed under the terms of the Agreement up to the date of termination;
  - ii. Payment for all costs and expenses made in settling or discharging outstanding commitments entered into by DESIGN-BUILD FIRM prior to the Notice of Termination;
  - iii. Payment of profit in the amount equal to the estimated total profit on the entire Contract Price or GMP, multiplied by the percentage completed at the date of termination;
  - iv. Demobilization costs;
  - v. OWNER shall also pay to the DESIGN-BUILD FIRM fair compensation, either by purchase or rental at the election of the OWNER, for any equipment retained by OWNER;
  - vi. The DESIGN-BUILD FIRM shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights, as the OWNER may require for the purpose of fully vesting in him the rights and benefits of the DESIGN-BUILD FIRM under such obligations or commitments; and,
  - vii. The OWNER does not assume any responsibility for liabilities of the DESIGN-BUILD FIRM relating to issues that were in dispute between the DESIGN-BUILD FIRM or any subcontractor or supplier existing prior to termination.
- B. After the establishment of the Guaranteed Maximum Price or at the completion of the Design Phase (Phase I), if the final cost estimates, lack of legislative funding, or for any reason whatsoever make the Project no longer feasible from the

standpoint of the OWNER, the OWNER may terminate this Agreement. DESIGN-BUILD FIRM shall provide OWNER with five sets of printed copies and (1) CD of the Phase I work product deliverables, previously specified herein. Further, OWNER shall have the rights to use the documents and deliverables subject to the following:

- Satisfactory payment to DESIGN-BUILD FIRM for all Phase I services; and
- OWNER's delivery of a letter to DESIGN-BUILD FIRM acknowledging that use of the documents is subject to the statutes and provisions of professional practice of Architecture and Engineering
- OWNER's delivery of a letter to DESIGN-BUILD FIRM acknowledging that such documents/drawings/specifications or other design related information is provided to OWNER "AS IS" with no warranty or guaranty of any kind, that OWNER shall remove DESIGN-BUILD FIRM's name from all such documents prior to providing them to a 3<sup>rd</sup> party and that OWNER will defend and indemnify DESIGN-BUILD FIRM from any and all claims or causes of action asserted against DESIGN-BUILD FIRM related to or arising out of OWNER's use of such documents/drawings/specification or other design related documents, including but not limited to attorneys' fees. OWNER's indemnification obligation is for tort claims only, subject to §768.28, Fla. Stat.

#### **14.4 Termination for Default-Bond**

A. OWNER may give the DESIGN-BUILD FIRM written notice to discontinue all or part of the work on the project under the Agreement or a Notice to Cure a material breach in the event that:

1. The DESIGN-BUILD FIRM assigns or subcontracts the Work without prior written permission;
2. Any petition is filed or any proceeding is commenced by or against the DESIGN-BUILD FIRM for relief under any bankruptcy or insolvency laws;
3. A receiver is appointed for the DESIGN-BUILD FIRM's properties or the DESIGN-BUILD FIRM commits any act of insolvency (however evidenced);
4. The DESIGN-BUILD FIRM makes an assignment for the benefit of creditors;
5. The DESIGN-BUILD FIRM suspends the operation of a substantial portion of its business;
6. The DESIGN-BUILD FIRM suspends the whole or any part of the Work to the extent that it impacts the DESIGN-BUILD FIRM's ability to meet the Work schedule, or the DESIGN-BUILD FIRM abandons the whole or any part of the Work;
7. The DESIGN-BUILD FIRM, at any time, violates any of the conditions or provisions of the Agreement Documents, or the DESIGN-BUILD FIRM fails to perform as specified in the Agreement Documents, or the

DESIGN-BUILD FIRM is not complying with the Agreement Documents.

8. The DESIGN BUILD Firm attempts to willfully impose upon OWNER items or workmanship that are, in OWNER's sole opinion, defective or of unacceptable quality.
  9. The DESIGN-BUILD FIRM breaches any of the representations or warranties
  10. The DESIGN-BUILD FIRM is determined, in OWNER's sole opinion, to have misrepresented the utilization of funds or misappropriate property belonging to OWNER.
  11. There is an adverse material change in the financial or business condition of the DESIGN-BUILD FIRM such that DESIGN-BUILD FIRM cannot reasonably be expected to complete the Project.
- B. If, within 30 days after service of such notice to discontinue or notice to cure upon the DESIGN-BUILD FIRM, an arrangement satisfactory to OWNER has not been made by the DESIGN-BUILD FIRM for continuance of the Work or the material breach has not been remedied, OWNER may declare the DESIGN-BUILD FIRM to be in default and terminate the Agreement.
- C. Once DESIGN-BUILD FIRM is declared in default and the Agreement 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 DESIGN-BUILD FIRM with OWNER's consent, which shall not be unreasonably withheld, to complete the Agreement 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 DESIGN-BUILD FIRM under the Agreement;
  - (b)
    - i) 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 Agreement price.
    - ii) Alternatively, OWNER may elect to have Surety determine jointly OWNER the lowest responsible qualified bidder, to have Surety arrange for a contract between such bidder and the OWNER, and for Surety to make

available as work progresses sufficient funds to pay the cost of completion less the balance of the Contract price (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph). The term "balance of the Contract price," as used in this bond, shall mean the total amount payable by JEA to DESIGN-BUILD FIRM or under the Contract and any approved changes orders thereto, less the amount paid by the OWNER to DESIGN-BUILD FIRM.

iii) Either way, Surety shall pay the OWNER all remaining losses, delay and disruption damages and all other damages, expenses, costs and statutory attorneys' fees, including appellate proceedings, that the OWNER sustains because of a default by DESIGN-BUILD FIRM under the Contract; 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 Agreement 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 Agreement in accordance with its terms and conditions less the balance of the Agreement price, and shall also indemnify and save harmless on account of all claims and damages arising from DESIGN-BUILD FIRM's default under the Agreement, and pay OWNER for all losses, delay and disruption damages and all other damages, expenses, costs, and statutory attorneys' fees, including appellate proceedings, that the OWNER sustains because of a default by DESIGN-BUILD FIRM under the Agreement.

- D. OWNER shall have the right to take possession of and use any of the materials, supplies and of any kind provided for the purpose of this Work.
- E. OWNER will charge the expense of completing the Work to the DESIGN-BUILD FIRM and will deduct such expenses from monies due, or which at any time thereafter may become due, to the DESIGN-BUILD FIRM. If such expenses are more than the sum that would otherwise have been payable under the Agreement, then the DESIGN-BUILD FIRM 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 Agreement, 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.
- F. The Agreement 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 DESIGN-BUILD FIRM shall immediately surrender all Work records to OWNER. In such a case, OWNER may set off any money owed to the DESIGN-BUILD FIRM against any liabilities resulting from the DESIGN-BUILD FIRM's nonperformance.

- G. OWNER has no responsibility whatsoever to issue notices of any kind, including but not limited to deficient performance letters and scorecards, to the DESIGN-BUILD FIRM regarding its performance prior to default by DESIGN-BUILD FIRM for performance related issues after it has complied with the procedures found in Article 14.5.
- H. OWNER shall have no liability to the DESIGN-BUILD FIRM for termination costs arising out of the Agreement, or any of the DESIGN-BUILD FIRM's subcontracts, as a result of termination for default.
- I. Immediately upon termination or expiration of this Agreement, DESIGN-BUILD FIRM must return to OWNER all materials, documents and things used by DESIGN-BUILD FIRM 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, DESIGN-BUILD FIRM 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.
- J. Any other provision in this Agreement to the contrary notwithstanding the duration of this Agreement after the initial year, shall be contingent upon the existence of lawfully appropriated funds for each subsequent year of the term.



## **ARTICLE 15**

### **ASSIGNMENT AND GOVERNING LAW**

- 15.1 **Assignment Consent** - Neither the OWNER nor the DESIGN-BUILD FIRM shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 **Governing Laws, Venue** - This Agreement shall be governed by the Laws of the State of Florida, venue for any action arising out of or related to this Agreement shall be in a court of competent jurisdiction located exclusively in Duval County, Florida.

## **ARTICLE 16**

### **NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY.**

- 16.1 **Governing Provisions** - The OWNER's liability to DESIGN-BUILD FIRM for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of contract time, for payment by the OWNER of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
- A. All claims must be submitted as a Request for Change Order in the manner as provided herein;
  - B. The DESIGN-BUILD FIRM must submit a Notice of Claim to OWNER within seven (7) days of when the DESIGN-BUILD FIRM was or reasonably should have been aware of the occurrence of the event giving rise to the claim; and
  - C. Within fourteen (14) days of submitting its Notice of Claim, the DESIGN-BUILD FIRM shall submit to the OWNER its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.
  - D. The DESIGN-BUILD FIRM agrees that the OWNER shall not be liable for any claim that the DESIGN-BUILD FIRM fails to submit as timely notice a Request for Change Order as provided herein.
- 16.2 **Written Determination of Claim** - After receipt of a Request for Change Order, the OWNER shall deliver to the DESIGN-BUILD FIRM its written determination of the claim. As to matters subject to the determination by final agency action (not actions for breach of contract or tort) the OWNER's written decision shall be final agency action unless the DESIGN-BUILD FIRM requests an administrative proceeding pursuant to JEA Policies.

- 16.3 **Exclusive Remedy of Claim** (No Damages for Delay). Damage, loss, expense or delay incurred or experienced by the DESIGN-BUILD FIRM in the prosecution of the Work by reason of unforeseen circumstances, unanticipated difficulties and obstructions, bad weather, or other mischance's that are generally considered to be a part of the usual hazards associated with Work, shall be borne entirely by the DESIGN-BUILD FIRM and shall not be the subject of any claim for additional compensation or change in Approved Schedule.

DESIGN-BUILD FIRM agrees that its sole remedy for any claims, damages or losses related to any delay, disruption or hindrance alleged to be caused by OWNER or any of OWNER's agents or other contractors, including claims based on breach of contract or negligence, shall be an extension of the Contract completion date.

Any demand for equitable time adjustment must be served in writing to OWNER within the time period as described in 16.1 above. Any request for an equitable time adjustment shall be accompanied by a logical time impact analysis, demonstrating the nature and magnitude of the event to the critical path.

Failure to strictly comply with these requirements shall be deemed a waiver of any right to seek equitable adjustment.

In the event the "no damage for delay" clause is inapplicable or unenforceable, there shall be no recovery for home office overhead and any damages claimed shall be proven by discreet accounting of direct project costs and no theoretical formula or industry estimating reference manuals shall be permissible.

## **ARTICLE 17**

### **MISCELLANEOUS**

- 17.1 **Harmony** - DESIGN-BUILD FIRM is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by DESIGN-BUILD FIRM and its 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 of the project.

DESIGN-BUILD FIRM further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the DESIGN-BUILD FIRM'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.

- 17.2 **Apprentices** - If the DESIGN-BUILD FIRM employs apprentices on the project, the behavior of the DESIGN-BUILD FIRM and the OWNER shall be governed by the provisions of Chapter 446, *Florida Statutes*, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the

State of Florida Department of Labor and Employment Security. The DESIGN-BUILD FIRM will include a provision similar to the foregoing sentence in each subcontract.

- 17.3 **Invoices Submitted** - Invoices submitted for payment shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Chapter 106, Part 7 of the *Jacksonville Ordinance Code* governing payments by the City for travel expenses.
- 17.4 **DESIGN-BUILD FIRM's Project Records** - The DESIGN-BUILD FIRM's Project Records shall be maintained as prescribed hereinabove for the minimum period required by 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 15 days of written request to Owner or its agent.
- 17.5 **Public Entity Crime Information Statement** - "A person or affiliate who has been placed on the 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 consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."
- 17.6 **Severability** - Should any provision of this agreement be deemed or determined to be unenforceable by a court of competent jurisdiction, the remaining contract provisions shall remain in full force and effect.
- 17.7 **Unauthorized Aliens** - The Owner shall consider the employment by the DESIGN-BUILD FIRM 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.
- 17.8 **Drawings and technical specifications** furnished to the OWNER by the DESIGN-BUILD FIRM as described in the Agreement shall become the property of the OWNER, but shall not be used in whole by the Owner without notification to the DESIGN-BUILD FIRM. The OWNER reserves the right to use the drawings and technical specifications furnished under this Agreement in part and at no cost to the OWNER. In the event that the OWNER uses the drawings and technical specifications for use on another site the DESIGN-BUILD FIRM or his/her successors shall be reasonably compensated by the OWNER for adapting the drawings and technical specifications and contract administration as required by the OWNER.
- 17.9 The DESIGN-BUILD FIRM and OWNER waive any right to seek attorney fees and claim preparation costs.
- 17.10 The DESIGN-BUILD FIRM shall not present nor recover on any claim from the OWNER based on any formula(s), hypothetical or statistical methodologies used in damage

computation. The DESIGN-BUILD FIRM may only recover for damages, which are documented using discreet accounting records, and with pay records that specifically indicate any alleged damage, loss or cost.

#### 17.12 **Jacksonville Small and Emerging Business (JSEB) Program**

As official policy, JEA encourages the maximum participation of Jacksonville Small and Emerging Business Enterprise (JSEB) in its contract awards based upon availability. JEA intends to adopt this program to reflect the philosophy with regard to enhancing participation of JSEB in all areas of procurement.

JSEBs participating on JEA projects must be certified as a JSEB with the City of Jacksonville's Equal Business Opportunity Division of the Department of Procurement.

During the development of GMP during Phase I of the project, the DESIGN-BUILD FIRM shall provide project definition and budget to the JEA JSEB manager, who will develop a JSEB goal for the Phase II of the project. The DESIGN-BUILD FIRM shall provide a completed JSEB subcontractor form with the submission of the GMP for review and approval by the JEA JSEB Manager.

#### 17.13 **Notification of Surety**

The DESIGN-BUILD FIRM shall notify its surety of any change affecting the general scope of the work or altering the contract price. The amount of the applicable bonds shall be adjusted accordingly and the DESIGN-BUILD FIRM shall furnish proof of such adjustment to the OWNER within 10 days of the change order or purchase order.

#### 17.14 **Payment of Overtime**

Any Overtime required for the DESIGN-BUILD FIRM to complete the Work within the Contract Time shall be at the sole cost and expense of the DESIGN-BUILD FIRM. If OWNER requires the DESIGN-BUILD FIRM to perform Overtime Work in order to complete the Work prior to the Guaranteed Completion Date, the DESIGN-BUILD FIRM shall bill OWNER for the Overtime such that only the actual costs incurred by the DB Firm relating to the payment of Overtime premiums, in accordance with its labor policies and applicable laws. Such actual costs include Overtime wage premium, and additional taxes and insurance directly associated with the Overtime wage premium. The DESIGN-BUILD FIRM agrees that it will not charge for personnel paid a salary, or other form of compensation such that the DESIGN-BUILD FIRM incurs no direct costs as a result of the Overtime.

The DESIGN-BUILD FIRM shall total the direct Overtime charges, and add the agreed upon overhead rate, but in no case, shall such overhead rate exceed 10 percent of the total overtime costs.

Overtime may only be charged to OWNER if the DESIGN-BUILD FIRM was directed in writing by the OWNER to incur the Overtime. Such authorization for Overtime shall be accompanied by a Change Order.

**17.15 Scheduling of Overtime**

DESIGN-BUILD FIRM shall include within the Guaranteed Maximum Price (GMP) amount the cost associated with overtime required based on the Construction Schedule provided at the time of GMP submission. The DESIGN-BUILD FIRM shall not be entitled to request additional reimbursement of any overtime expenses due to delays within the DESIGN-BUILDER's control.

**17.16 Show-Up Pay**

In the event that inclement weather prevents the DESIGN-BUILD FIRM from performing Work, and the DESIGN-BUILD FIRM is obligated to pay its crew a show-up pay, then such costs shall be reimbursable as Cost of the Work subject to the GMP and subject to DESIGN-BUILD FIRM taking reasonable actions to mitigate such costs.

**17.17 Proprietary Information**

The DESIGN-BUILD FIRM shall not copy, reproduce, or disclose to third parties, except in connection with the Work, any information that OWNER furnishes to the DESIGN-BUILD FIRM. The DESIGN-BUILD FIRM shall insert in any subcontract a restriction on the use of all information furnished by OWNER. The DESIGN-BUILD FIRM shall not use this information on another project. All information furnished by OWNER will be returned to OWNER upon completion of the Work.

**17.18 Confidentiality and Public Record Laws**

**General**

Article I, Section 24, Florida Constitution, guarantees every person access to all public records and Chapter 119, Florida Statutes, provide a broad definition of public records. JEA is a body politic and corporate and subject to these laws and related statutes ("Florida's Public Records Laws"). All documents associated with this Contract and the Solicitation are public records and available for public inspection unless specifically exempt by law.

IF A DESIGN-BUILD FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILD FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**JEA**

Attn: Public Records  
21 West Church Street  
Jacksonville, Florida 32202  
Ph: 904-665-8606  
publicrecords@jea.com

**Redacted Submissions**

If a DESIGN-BUILD FIRM believes that any portion of the documents, data or records submitted in response to this Solicitation are exempt from Florida's Public Records Law, DESIGN-BUILD FIRM must (1) clearly segregate and mark the specific sections of the

document, data or records as "Confidential," (2) cite the specific Florida Statute or other legal authority for the asserted exemption, and (3) provide JEA with a separate redacted copy of its response (the "Redacted Copy"). The cover of the Redacted Copy shall contain JEA's title and number for this Solicitation and DESIGN-BUILD FIRM's name, and shall be clearly titled "Redacted Copy." DESIGN-BUILD FIRM r should only redact those portions of records that DESIGN-BUILD FIRM claims are specifically exempt from disclosure under Florida's Public Records Laws. If DESIGN-BUILD FIRM fails to submit a redacted copy of information it claims is confidential, JEA is authorized to produce all documents, data and other records submitted to JEA in answer to a public records request for such information.

In the event of a request for public records to which documents that are marked as confidential are responsive, JEA will provide the Redacted Copy to the requestor. If a requestor asserts a right to any redacted information, JEA will notify DESIGN-BUILD FIRM that such an assertion has been made. It is DESIGN-BUILD FIRM's responsibility to respond to the requestor to assert that the information in question is exempt from disclosure under applicable law. If JEA becomes subject to a demand for discovery or disclosure of DESIGN-BUILD FIRM's redacted information under legal process, JEA shall give DESIGN-BUILD FIRM prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law.) DESIGN-BUILD FIRM shall be responsible for defending its determination that the redacted portions of its response are not subject to disclosure.

By submitting a response to this Solicitation, DESIGN-BUILD FIRM agrees to protect, defend and indemnify JEA from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, costs and expenses (including but not limited to reasonable attorney fees and costs) arising from or relating to DESIGN-BUILD FIRM's determination that the redacted portions of its response to this Solicitation are not subject to disclosure.

#### **17.19 Conflict and Order of Precedence**

- A. The Contract shall consist of OWNER's Contract or Purchase Order together with these specifications and conditions including, but not limited to, the RFP and the DESIGN-BUILD FIRM's Proposal, which shall be collectively referred to as the Contract Documents. This Contract is the complete agreement between the parties. Parol or extrinsic evidence will not be used to vary or contradict the express terms of this Contract. The Contract Documents are complementary; what is called for by one is binding as if called for by all. The DESIGN-BUILD FIRM shall, upon discovery, inform OWNER in writing of any conflict, error or discrepancy in the Contract Documents. Should the DESIGN-BUILD FIRM proceed with the Work prior to written resolution of the error or conflict by OWNER, all Work done is at the sole risk of the DESIGN-BUILD FIRM. OWNER will generally consider this precedence of the Contract Documents in resolving any conflict, error, or discrepancy:

- Executed Change Orders / Amendment
- GMP Amendment

- Contract Agreement and Exhibit(s) thereto
- Addenda Issued Prior to Receipt of Proposals
- Special Conditions of the Specifications
- Technical Provisions of the Specifications
- Drawings
- Request for Proposal (RFP)
- Instructions for RFP Respondents
- DESIGN-BUILD FIRM's Proposal in response to RFP

B. Any specific item stated in the Agreement or Technical Specifications, takes precedence over an item which is made part of the documents by being added by reference.

#### 17.20 **Force Majeure**

No party shall be liable for any default or delay in the performance of its obligations under this Contract 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; inability of OWNER or the DESIGN-BUILD FIRM to obtain any required permits, licenses or zoning; blockades; embargoes; sabotage; epidemics; fires; hurricanes, tornados, floods; or strikes.

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.

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.

#### 17.21 **Nonwaiver**

Failure by either party to insist upon strict performance of any of the provisions of the Contract will not release either party from any of its obligations under the Contract.

#### 17.22 **Waiver of Claims**

A delay or omission by OWNER to exercise any right or power under this Contract shall not be construed to be a waiver thereof. A waiver by OWNER under this Contract shall not be effective unless it is in writing and signed by the party granting the waiver. A waiver by

a party of a right under, or breach of, this Contract shall not be construed to operate as a waiver of any other or successive rights under, or breaches of, this Contract.

The DESIGN-BUILD FIRM's obligations to perform and complete the Work in accordance with the Contract shall be absolute. None of the following will constitute a waiver of any of OWNER's rights under the Contract: approval or payment of any progress payments or any other payments, including final payment; issuance of the Certificate of Substantial Completion or Certificate of Contract Completion; any use or occupancy of the Work by OWNER; nor any correction of faulty or defective work by OWNER.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS AGREEMENT. THIS PROVISION IN NO WAY WAIVES OR LIMITS THE SOVEREIGN IMMUNITY GRANTED TO OWNER THROUGH THE FLORIDA CONSTITUTION AS CODIFIED IN § 768.28, *Florida Statutes*.

#### **17.23 Prohibited Future Employment**

It shall be unlawful and a class C offense for any person, who was an officer or employee of JEA, after his or her employment has ceased, to be employed by or enter into any contract for personal services, with a person or company who contracted with, or had a contractual relationship with JEA, while the contract is active or being completed, or within two (2) years of the cessation, completion, or termination of the person's or company's contractual relationship with JEA, where (1) the contract with JEA had a value that exceeded \$250,000, and (2) the officer or employee had a substantial and decision-making role in securing or negotiating the contract or contractual relationship, or in the approval of financial submissions or draws in accordance with the terms of the contract; except that this prohibition shall not apply to an employee whose role is merely as a review signatory, or to contracts entered into prior to January 1, 2008, or to contracts that have been competitively procured. With respect to this subsection a contract is competitively procured if it has been obtained through a sealed low bid award. A "substantial and decision-making role" shall include duties and/or responsibilities that are collectively associated with: (i) approving solicitation or payment documents; (ii) evaluating formal bids and proposals; and (iii) approving and/or issuing award recommendations for JEA Awards Committee approval. The contract of any person or business entity who hires or contracts for services with any officer or employee prohibited from entering into said relationship shall be voidable at the pleasure of JEA. This prohibition shall not apply to any former officer or employee after two (2) years from cessation from JEA employment.

#### **17.24 Hiring of Other Party's Employees**

Each party recognizes that the other party has incurred or will incur significant expenses in training its own employees and agrees that it will not pursue or hire, without the other party's consent, the other party's employees or the employees of its subsidiaries for a period of two (2) years from the termination date of this Contract.



#### **17.25. Legal Workforce**

JEA shall consider the DESIGN-BUILD FIRM 's employment of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for termination of the Contract for default upon thirty (30) days' prior written notice of such termination, notwithstanding any other provisions to the contrary in the Contract Documents.

#### **ARTICLE 18**

##### **CPM SCHEDULE REQUIREMENTS**

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

The CPM Schedule shall be completed using Microsoft Project 2016. Contractor shall submit all schedules in the format preferred by the OWNER (paper or electronic). Contractor to respond to SmartSheet update request from OWNER within three (3) calendar days.

Contractor shall provide a Master Schedule that adequately demonstrates their understanding of the Project and the sequencing of work. The schedule shall include: Submittals, Material Procurement, Construction, and Owner Move-In.

The Master Schedule shall be broken out by Phases as agreed upon between the Contractor and Owner.

The Master Schedule shall be updated monthly and submitted with the Application for Payment.

The Contractor shall also be responsible to provide a weekly "Look Ahead" Schedule that shows in detail the work that will be taking place over a three to four week period. This Schedule shall be more detailed than the Master Schedule and should be tied back to the Milestone Dates within the Master Schedule.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY  
SIGNATURE PAGE FOLLOWS**

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement, in triplicate,  
the day and year first above written.

ATTEST:

DESIGN-BUILD FIRM

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

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

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

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

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

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

ATTEST:

JEA

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

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

Heather Burnett

Jenny McCollum

Manager, Procurement Contract Administration

Director, Procurement Services

Approved by Awards Committee on \_\_\_\_\_, \_\_\_\_\_, Award Item # \_\_\_\_\_