

**Solicitation**  
**For Participation in an Invitation to Negotiate**  
**Water/Wastewater General Construction Services for JEA**



**Jacksonville, FL**  
**Solicitation Number 104-17**

**Mandatory Pre-Response Meeting in Person on June 14, at 9:00 a.m.**  
**Mandatory Pre-Response Meeting Location: to JEA Bid Office, Customer Center 1<sup>st</sup> Floor, Room 002**  
**21 W. Church Street, Jacksonville, FL 32202**

**Responses are due on July 11, 2017 by 12:00 pm**  
**Direct delivery or mail to JEA Bid Office, Customer Center 1<sup>st</sup> Floor, Room 002**  
**21 W. Church Street, Jacksonville, FL 32202**

**JEA will publicly open all Responses received from qualified Respondents July 11, 2017, at**  
**2:00 p.m. in the JEA Bid Office, Customer Center 1<sup>st</sup> Floor, Room 002, 21 W. Church Street, Jacksonville, FL**

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## **SOLICITATION**

### **1. INTENT TO NEGOTIATE**

#### **1.1. INVITATION**

##### **1.1.1. SCOPE OF WORK (ITN)**

The purpose of this Invitation to Negotiate (the "ITN") is to solicit pricing and select a general services contractor (the "Company") that can provide water and wastewater general construction services at the best value and lowest price to JEA.

JEA is seeking the services of experienced industrial contractors that possess technical expertise in the operations, maintenance, and construction for a large municipal utility. JEA intends to award multiple Contracts for the Work. The Work will consist primarily of capital projects that are planned or developed throughout the course of a five (5) year contract period. Individual projects may vary widely in size and scope. The services that are performed will be those not already contracted for in other JEA service contracts. Work will be assigned by a closed bid method between contract holders and is only limited by the ability of the contractor(s) to perform the work. The construction and maintenance activities performed under this contract will take place primarily at water and wastewater (WW) plants, water well sites and WW pump stations; however, they can also occur at various locations and business units within JEA.

Individual Task Authorizations associated with this Contact will be limited to a maximum value of \$2,000,000.00 for all maintenance & repair projects for water/wastewater business units.

Individual Task Authorizations for new construction or improvement projects will be limited to a maximum value of \$300,000.00, pursuant to Florida Statutes.

General Water/Wastewater work areas may include, but not be limited to, the following:

- Water and Wastewater Plants, water well sites and WW pumping stations;
- Water and Wastewater environmental projects associated with the W/WW sites;

General Water/Wastewater work scope may include, but not be limited to, the following:

- Equipment furnish, install, repair, removal, re-installation and alignment
- Piping, valves, and tubing installation, modification, and repair, above and below ground
- Installation, repair, cleaning, or rebuilding of chemical system piping, pumps, and appurtenances
- Concrete installation, repair and demolition
- Steel fabrication, installation, repair and demolition
- Ancillary electrical installation, repair or demolition
- Duct and expansion joint installation, repair and replacement
- Conveyor system installation, modification, and repair
- Storage tank installation, modification and repair
- Instrumentation and communications installation, modification, or repair
- Process equipment installation, repair, cleaning and rebuild
- Earth work and civil work, including foundations incidental to the above
- Insulation of new and repaired work
- Protective coating, furnishing and install

- Demolition and disposal of existing facilities
- Well Head installation and repair
- Pump removal, repair and installation
- Production water well rehabilitation

Note: Work shall not include asbestos or lead abatement unless a specific situation is discussed and arrangements are made to account for the cost difference.

All Contract Work shall include the following:

- Providing labor, material, equipment and subcontracts for construction services;
- Providing schedule, cost control, reporting and other audit systems;
- Providing technical, administrative and supervisory construction personnel;

A more detailed description of the Work is provided in the Technical Specifications included as Appendix A to this ITN.

#### **1.1.2. BACKGROUND**

JEA owns, operates and manages the electric system established by the City of Jacksonville, Florida in 1895. In June 1997, JEA also assumed operation of the water and sewer system previously managed by the City. JEA is Florida's largest municipally owned utility and the seventh largest municipal in the United States. JEA's electric system currently serves more than 420,000 customers in Jacksonville and parts of three adjacent counties. JEA's water system serves more than 300,000 water customers and 230,000 sewer customers, which is more than 80 percent of all water and sewer utility customers in our service area.

#### **1.1.3. INVITATION TO NEGOTIATE**

You are invited to submit a Response to the Invitation To Negotiate noted below:

**JEA ITN Title: Water/Wastewater General Construction Services for JEA**

**JEA ITN Number: 104-17**

**A complete copy of this ITN and any applicable documents can be downloaded from [jea.com](http://jea.com).**

**Response Due Time: 12:00P.M. - ALL LATE RESPONSES FOR WHATEVER REASON WILL BE RETURNED UNOPENED.**

**Response Due Date:** July 11, 2017

All Responses must reference the JEA ITN Title and Number noted above. All Responses must be made on the appropriate forms as specified within this ITN, and placed in an envelope marked to identify this ITN and delivered or mailed to:

JEA Procurement, Bid Office, 21 West Church Street, Customer Center 1<sup>st</sup> Floor, Room 002, Jacksonville, FL 32202

The Respondent shall be solely responsible for delivery of its Response to the JEA Bid Office. Please note, JEA employs a third party courier service to deliver its mail from the local U.S. Post Office (USPS), which could cause a delay of Response delivery if mailed through the USPS. Therefore, JEA recommends hand delivery to the JEA Bid Office. Reliance upon the USPS, the courier service employed by JEA, or public carriers is at the Respondent's risk. Responses are due by the time and on the date listed above.

**ALL LATE RESPONSES FOR WHATEVER REASON WILL BE RETURNED UNOPENED.**

**1.1.4. QUESTIONS (ITN)**

All Questions must be submitted in writing to the **JEA Buyer** listed below at least five (5) **business** days prior to the opening date. Questions received within five (5) **business** days prior to the opening date will not be answered.

For Procurement Questions:

Buyer: Rodney Lovgren

E-mail: [lovgrd@jea.com](mailto:lovgrd@jea.com)

Technical Questions:

Contact: William Clendening

E-mail: [ClenWM@jea.com](mailto:ClenWM@jea.com)

**1.1.5. MANDATORY PRE-RESPONSE MEETING IN PERSON**

There will be a mandatory Pre-Response meeting. All interested parties must attend the Pre-Response meeting. Each Respondent will be required to sign in at the beginning of the meeting. A Respondent shall only sign in representing one (1) company, unless otherwise specified by JEA. Respondents not attending the Pre-Response meeting shall have their Responses rejected, and returned unopened.

Respondents shall be on time to the Pre-Response meeting and Respondents must be present at the starting time of the meeting. Respondents not arriving on time for the meeting will have their Responses rejected, and returned unopened.

**PLEASE BE AWARE DUE TO JEA SECURITY PROCEDURES IT MAY TAKE UP TO FIFTEEN (15) MINUTES TO OBTAIN ACCESS TO A JEA FACILITY. PLEASE PLAN ACCORDINGLY SO AS TO ARRIVE TO THE PRE-RESPONSE MEETING ON TIME.**

**PRE-RESPONSE MEETING TIME:** 9:00 AM

**PRE-RESPONSE MEETING DATE:** June 14, 2017

**PRE-RESPONSE MEETING LOCATION:** JEA CUSTOMER CENTER, BID OFFICE, 1ST FLOOR, ROOM 002, 21 WEST CHURCH STREET, JACKSONVILLE, FL 32202.

**1.1.6. OPENING OF RESPONSES**

All Responses received shall be publicly announced and recorded at 2:00 PM on July 11, 2017 in the JEA Bid Office, 21 West Church Street, Customer Center, 1<sup>st</sup> Floor, Room 002, Jacksonville, FL 32202. At the opening of the Responses, a JEA representative will publicly open each Response that was received prior to the due date and time, except for those Responses that have been properly withdrawn. JEA has the right to waive any irregularities or informalities in the Responses.

**1.2. SPECIAL INSTRUCTIONS**

**1.2.1. MINIMUM QUALIFICATIONS**

Respondent shall meet the following Minimum Qualifications to be considered eligible to submit a Response to this ITN. A Respondent not meeting all of the following criteria will have their Response rejected:

- Company must have a current and valid State of Florida Business license and State of Florida Certified General Contractor's License. Enter the License number on the top of the Appendix B Response Form.

- At the Bid Due Date and Time, the Respondent must be on the Responsible Bidder List (RBL) for categories:
  - **WP-2-WATER and SEWER PLANT SYSTEMS INSTALLATION, CONSTRUCTION, MAINTENANCE and REPAIR**

**AND**

- **WP-1 PUMP STATION INSTALLATION, CONSTRUCTION MAINTENANCE & REPAIR**
- The Respondent shall have successfully completed at least three (3) similar projects in each of the past three (3) years, date ending May 31, 2017.
  - A similar project is defined as a water or wastewater plant, wastewater pump station or water well renovation, construction or maintenance project. Each similar project shall have been greater than \$2,000,000.00 in value.

\*The similar projects may overlap, as long as the three (3) year time frame for project work has been covered.

- The Respondent shall have a local office in Duval or surrounding counties, where the Project Manager, and Project Superintendent work out of regularly. The office shall have been in place six (6) months, prior to bid due date and shall have been occupied and staffed with at least three (3) employees. The company will enter this office location on the Minimum Qualifications Forms.

**A Minimum Qualification Form, which is required to be submitted with the Response Form, is provided in Appendix B of this ITN.**

**Please note, any Respondent whose contract with JEA was terminated for default within the last two (2) years shall have their Response rejected.**

**1.2.2. SAFETY QUALIFICATION REQUIREMENTS (RFP)**

Company shall be approved as JEA Safety Qualified within ten (10) business days of receiving written notice from the JEA Bid Office that it is the highest ranked Proposer. If the Company fails to obtain JEA approval as a JEA Safety Qualified Company by 4:00 p.m. Eastern time on the 10th business day, JEA will reject the Company's Response, and proceed to Award to the next highest ranked Proposer (Company).

JEA Safety Qualification information is available online at [jea.com](http://jea.com). Please note that it may take up to five (5) business days for a Company to be approved as JEA Safety Qualified. It is the Company's responsibility to ensure it is JEA Safety Qualified. A list of Safety Qualified vendors can be found on [jea.com](http://jea.com). For additional information, contact Jerry Fulop at (904) 665-5810.

**1.2.3. TIME**

In computing any period of time prescribed or allowed by this solicitation, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or JEA holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or JEA holiday.

#### 1.2.4. BID SECURITY / BID BOND

All Responses shall be accompanied by a bid security in the amount stated on the Bid Form. The bid security must be furnished by the Respondent at or before the opening of Responses. The bid security shall either be issued by a surety company authorized to do business in the State of Florida, or Respondent shall furnish a certified check or cashier's check in the amount of five percent (5%) of the total Bid amount shown on the Bid Form. The JEA Bid Bond form can be found at [jea.com](http://jea.com). Failure to furnish the required bid security will disqualify the Bid. If the Respondent is Awarded the Work and fails to execute the Contract within ten (10) days of postmarked date on the Contract Documents, JEA shall retain the Bid Bond or check as liquidated damages.

#### 1.2.5. INSURANCE REQUIREMENTS

Prior to JEA issuing a Purchase Order to the Bidder to begin the Work or Services, the Bidder shall submit a certificate of insurance (COI) that is in compliance with amounts and requirements as indicated in the Section herein entitled "Insurance Requirements". **Note that the COI shall specifically indicate JEA (and Florida Power and Light Company ("FPL"), if applicable) as additional insured(s) on all required insurance except Worker's Compensation and Professional Liability (if applicable). Furthermore, waiver of subrogation shall be provided for all required insurance in favor of JEA, FPL (if applicable), including their board members, officers, employees, agents, successors, and assigns.**

#### 1.2.6. PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Once the Bidder is Awarded the Contract and upon receipt of the Contract Documents, the Bidder shall furnish a Payment and Performance Bond, or alternate form of security, in the amount indicated on the Bid Form, made out to JEA in forms and formats approved and provided by JEA, as security for the faithful performance of the Work or Services. No modifications to the JEA bond form is allowed.

A fully executed Payment and Performance Bond must be recorded with the Clerk of Duval County Court and delivered to JEA before the JEA Purchase Order will be issued. JEA will send the approved bond forms to the Bidder for execution along with the Contract; however, in no case shall the date on the bond forms be prior to that of the executed Contract. The surety must be authorized and licensed to transact business in Florida. **Note, that the Bidder is responsible for the costs associated with the required Payment and Performance Bonds; therefore, the costs should be included in the Bidder's total Bid Price.** If the Bidder fails or refuses to furnish or record the required bonds, JEA will retain the Bidder's bid bond as liquidated damages.

To be acceptable to JEA as surety for Performance and Payment Bonds, a surety company shall comply with the following provisions:

- o 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.
- o 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.
- o The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- o 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.
- o If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:

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

POLICY HOLDER'S CONTRACT AMOUNT AND REQUIRED FINANCIAL RATING

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

\$1,000,000 TO 2,500,000: A-CLASS V  
\$2,500,000 TO 5,000,000: A-CLASS VI  
\$5,000,000 TO 10,000,000: A-CLASS VII  
\$10,000,000 TO 25,000,000: A- CLASS VIII  
\$25,000,000 TO 50,000,000: A- CLASS IX  
\$50,000,000 TO 75,000,000: A- CLASS X

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

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

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

#### **1.2.7. NUMBER OF CONTRACTS TO BE AWARDED**

JEA intends to Award up to four (4) Contract(s) for the Work. JEA reserves the right to Award more than one (1) Contract based on certain groupings of the Work items, or JEA may exclude certain Work items, if JEA determines that it is in its best interest to do so.

#### **1.2.8. AWARD OF WORK POST CONTRACT EXECUTION**

Once the Contracts have been Awarded, JEA reserves the right to solicit closed bids (among the Awarded GC's) for small WW Plant, WW Pump station and Production Water Well renovation projects that fall within the General Scope of Work/Project Description of this RFP and with an estimated value of less than \$300,000.00 for New Construction and less than \$2,000,000.00 for renovation or rehabilitations. A closed bid is solicited only from those firms who are under Continuing Contracts at the time services are required. A closed bid may be a Time and Material Not-To-Exceed or Lump Sum value and the fee type shall be stipulated at the time the project is bid.

#### **1.2.9. REQUIRED FORMS TO BE SUBMITTED WITH RESPONSE**

The following forms must be completed and submitted to JEA at the timeframes stated below. The Respondent can obtain the required forms, other than the Minimum Qualification Form, Response Form and Response Workbook, by downloading them from JEA.com.

**A.** The following forms are required to be submitted with the Response:

- o Bid Bond
- o Minimum Qualifications Form- This form can be found in Appendix B of this ITN
- o Response Form- This can be found in Appendix B of this ITN
- o Response Workbook - This can be found in Appendix B of this ITN
- o List of JSEB Certified Firms

**If the above listed forms are not submitted with the Response by the Response Due Time and Date, JEA shall reject the Response.**

**B.** JEA also requests the following documents to be submitted prior to Contract execution. A Response will not be rejected if these forms are not submitted at the Response Due Date and Time. However, failure to submit these documents prior to Contract execution could result in Response rejection.

- o List of subcontractors/Shop Fabricators (if any)
- o Conflict of Interest Certificate Form - This form can be found at JEA.com
- o Insurance certificate
- o W-9
- o Evidence of active registration with the State of Florida Division of Corporations (www.sunbiz.org)
- o Any technical submittals as requires by the Technical Specifications

### **1.3. JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM REQUIREMENTS**

#### **1.3.1. USE OF JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM (GOAL)**

The specific minimum mandatory JSEB participation goal for the Scope of work described in this Solicitation is: **Five Percent (5%)**. This percentage is the percentage of the Company's total RFP price that must be awarded or subcontracted to JSEB firms. Failure to fully comply with the JSEB requirements stated herein may disqualify the Company's Response.

Companies are required to complete and submit with their Response, the JSEB form which can be found at [www.jea.com](http://www.jea.com). Companies must specify on the JSEB form how they intend to comply with the JSEB goal stated herein. Companies that do not submit a JSEB form with their Response may have their Responses rejected, unless they are exempted under the good faith exception described below.

In no case shall the Company make changes to the JSEB firms listed in its Response, revise the JSEB Scope of work or amount of Work as stated in its Response without prior written notice to the JEA Contract Administrator, and without subsequent receipt of written approval from the JEA Contract Administrator.

JSEB firms that qualify for this Contract are those shown on the current City of Jacksonville JSEB directory appearing at [www.COJ.net](http://www.COJ.net). Certification of JSEB firms must come for the City of Jacksonville. No other agency or organization is recognized for purposes of this Contract.

If the Response does not comply with the JSEB requirements established in this Solicitation, the Company must submit documentation as part of its Response describing in detail its good faith efforts to comply with the JSEB requirements of the Solicitation. This documentation shall include at a minimum the following items:

A written and signed statement describing the level of effort for each of the requirements listed below. Include dates times, people whom the Company contacted and phone numbers to enable JEA to confirm good faith efforts.

Copies of written solicitations of participation the Company sent to qualified JSEB firms, showing adequate response time was provided, defining the scope and nature of the work Company is asked to perform, Company contact information for questions and follow-up, and an offer to meet to review plans, specifications and scope.

A statement of the Company's efforts to negotiate a suitable agreement with JSEB firms including call logs showing participants, dates, times, topics discussed, and open issues.

A statement of the Company's efforts to help qualified firms that may require assistance in obtaining bonding, insurance, financing, technical support, procedural information, or other items necessary to compete for and perform the Work.

For each offer received from a qualified JSEB firm but rejected by Company, a statement explaining why such offer was not made part of the Response.

For each qualified JSEB firm contacted but considered unqualified by the Company to perform a portion of the Work, a statement of the reasons Company considered firm to be unqualified.

The Company shall contact the JEA JSEB Office for assistance when all independent attempts (emails, phone calls, faxes and letters) to contact qualified JSEB firms have failed, and shall do so in adequate time for JSEB firms to be identified and to allow JSEB firms adequate time in which to respond. Failure by the Company to contact the JEA JSEB Office as required herein will be considered when determining if the Company has made a good faith effort.

The Company understands and agrees that receipt of a lower Response from a non-JSEB qualified firm, will not in and of itself, be sufficient reason to justify failing to meet the JSEB requirements of the Solicitation.

The determination as to whether the Company made a good faith effort in trying to achieve the JSEB requirements of this Solicitation will be made solely by JEA and prior to Award.

All questions and correspondence concerning the JSEB program should be addressed to the following contact:

G. Nadine Carswell  
JSEB Manager  
(904) 665-6257  
carsgs@jea.com

## **1.4. EVALUATION METHODOLOGY**

### **1.4.1. EVALUATION AND NEGOTIATION PROCESS**

JEA intends to select up to four (4) Respondents (the "Short-list") with which to commence negotiations. A selection committee (hereinafter referred to as the "Selection Committee"), will be appointed by the Chief Procurement Officer (the "CPO"), or his designee, to review and evaluate each Response submitted. The CPO's office will distribute a copy of each Response to each member of the Selection Committee, and the members of the Selection Committee will separately and independently evaluate and rank the Responses using the "Selection Criteria" as stated below in this ITN. JEA will use this ranking to develop the Short-list of companies in which to proceed with contract negotiations.

Prior to developing the Short-list, JEA may request that the Respondents provide additional information to clarify their Response. JEA will NOT allow Respondents to submit additional reference projects or change said reference projects that were initially submitted for the purposes of meeting the Minimum Qualifications stated in this ITN. However, JEA may request clarification of submitted documentation so that JEA may make an accurate assessment in developing the Short-list. JEA must be satisfied that the successful Respondent has the necessary technical expertise, experience, and resource capabilities to satisfactorily perform the Work described in this ITN.



JEA reserves the right to Award a Contract based on the Selection Committee's initial evaluation of the Responses if JEA deems the Responses demonstrate adequate competition, compliance, and responsiveness to this ITN. If JEA determines the previously stated criteria have not been met, JEA will finalize the Short-list and proceed with contract negotiations.

Respondents are cautioned to present the best possible pricing offer in their initial Responses. Failing to do so may result in a Respondent not making the Short-list, and will not be allowed to proceed with contract negotiations.

**Additionally, the prices submitted with the initial Response cannot be increased during the ITN process.**

Once a Short-list is developed, the CPO, or his designee, will appoint a negotiating team (the "Negotiating Team"). The Negotiation Team may be comprised of the same individuals as were members of the Selection Committee. JEA reserves the right to negotiate concurrently or separately with the Short-list Respondents. JEA reserves the right to seek clarifications, to request Response revisions, and to request any additional information deemed necessary for proper evaluation of the Responses. JEA reserves the right to incorporate value added services or industry standard innovations recommended by a Respondent into the Contract's scope of work.

A Respondent that is included on the Short-list may be required, at the sole option of JEA, to make an oral presentation, provide additional written clarifications to its Response, or JEA may require site visits to Respondent's facilities. Oral presentations, hand-outs, and written clarifications will be attached to the Respondent's Response and will become a part of the Response as if originally submitted. The CPO or his designee will initiate and schedule a time and location for any presentations which may be required.

As a part of the negotiation process, JEA may contact the references provided by the Respondent for the purpose of independently verifying the information provided in the Response, and to assess the extent of success of the projects associated with those references. JEA also reserves the right to contact references not provided by Respondents. Respondents may be requested to provide additional references. The results of the reference checking may influence the final negotiation, ranking, and Award recommendation.

After written clarifications, oral presentations, site visits, and any other negotiations deemed by JEA to be in its best interest, the Short-list Respondents will be given a deadline to submit their best and final offer (the "Best and Final Offer" or "BAFO"). The negotiation process will stop upon submission of the BAFO. Respondents will not be allowed to make further adjustments to their BAFO or communicate further with JEA, except to respond to requests for clarification from the Negotiating Team.

The JEA Negotiating Team will adjust and calculate the final rankings of the Short-list based on the BAFO submissions. JEA does not anticipate reopening negotiations after receiving the BAFOs, but reserves the right to do so if it believes doing so will be in the best interests of JEA. In the event that JEA reopens negotiations, any final rankings will be revised accordingly.

Negotiations will not be open to the public, but will be recorded. All recordings of negotiations and any records, documents, and other materials presented at negotiation sessions are public records and can be released pursuant to a public records request after a notice of intended decision for this ITN is posted, or thirty (30) days after the opening of the Responses, whichever occurs earlier.

The Award recommendation of the Negotiating Team will be based upon the scoring of the BAFOs and the Selection Criteria described below in this ITN. The Respondent with the highest score will be submitted to the CPO for approval. Once approved, the CPO will then present an Award to the JEA Awards Committee for final approval.

In its sole discretion, JEA reserves the right to withdraw this ITN either before or after receiving Responses, to reject any and all Responses either in whole or in part, with or without cause, or to waive any ITN requirement

informalities, minor irregularities, and deficiencies in any Response, and to determine such action is in the best interest of JEA. Issuance of this ITN in no way constitutes a commitment by JEA to make an Award or enter into a Contract.

All Responses submitted to JEA are subject to the JEA's terms and conditions contained in this ITN and JEA's Procurement Code. Any and all additional terms and conditions submitted by Respondents are rejected and shall have no force.

#### **1.4.1.1. BASIS OF AWARD – HIGHEST EVALUATED RESPONDENT**

JEA will Award this Contract to the highest evaluated Respondent(s) whose Response meets or exceeds the Minimum Qualifications set forth in this Solicitation, and the Respondents Response is evaluated as the highest evaluated Respondent(s) by JEA.

#### **1.4.2. ALTERNATE PROVISIONS AND CONDITIONS**

Responses that contain provisions that are contrary to requirements found on this ITN, including, but not limited to, the Contract terms and conditions contained in Section 2 of this ITN, and any requirements found in the Technical Specifications attached as Appendix A to this ITN, will be reviewed but may not be accepted by JEA. However, as this is an ITN, JEA reserves the right to negotiate the best terms and conditions if determined to be in the best interests of JEA, and negotiate different terms and related price adjustments if JEA determines that it provides the best value to JEA.

### **1.5. SELECTION CRITERIA**

#### **1.5.1. EVALUATED RESPONSE**

JEA will use the "Selection Criteria" listed below to evaluate the Company's Response. JEA may make its Award decision based solely upon the information submitted in the Response. JEA may also choose to have one or more Companies make presentations to representatives of JEA. It is always in the best interest of the Company to provide informative, concise, well-organized technical and business information relative to the Work, in both the initial submittal of its Response and in any subsequent submittals.

#### **1.5.2. QUOTATION OF RATES – (30 POINTS)**

In the Respondent Rates Workbook, the billable labor rates provided for each job classification shall include wages, taxes, benefits, workers compensation, required personal safety equipment (PPE), mobilization and demobilization, and any other salary burdens for the workers' employment. This includes, but is not limited to, all applicable training, certifications, and approvals required to operate vehicles and/or equipment and to safely perform the Work in an environmentally responsible manner. Unit rates shall not include profit or overhead. These rates will be applicable to the Respondent and all levels of the Respondent's Subcontractors. Each labor classification will apply to work to be completed in the JEA service area. All travel expenses (per diem) will be reimbursed in accordance with JEA's Contractor Travel Policy.

**Please note, the prices, rates and percentages quoted by Respondent on the Response Form must be firm-fixed prices, not estimates.**

#### **1.5.3. PROFESSIONAL STAFF EXPERIENCE – (20 Points)**

The Respondent shall provide a maximum of three (3) resumes of the professional staff to be assigned to perform the Work. The resumes provided shall identify the Program Manager, Lead Project Manager,

Lead Field Superintendent. (collectively, the "Team Members"). Persons whose resumes are submitted as a Team Member must actually perform the Work unless Respondent receives prior approval by the JEA. Finally, if Respondent submits a resume of a Subcontractor that is employed by a JSEB firm, please note this on the resume.

At a minimum, each resume shall present the Team Member's name, title, years of service with company, applicable professional registrations, education, and work experience. Resumes shall also identify any specialty or technical process expertise. Resumes shall be no more than two (2) pages in length; single sided, and on 8.5" by 11" sized paper. If more than two pages are submitted, only the information contained on the first two pages will be evaluated by JEA. No more than six (6) resumes will be evaluated.

#### **1.5.4. SAFETY – (5 Points)**

Respondent shall submit documented proof of their Experience Modification Rate (EMR) for the past three (3) years (2014, 2015, & 2016). The average of these rates will be used to determine the number of points that each Respondent will receive in this category.

Points will be scaled between Respondents. Lowest RIR will receive full points, the remaining RIR's will be scaled based on percentage

#### **1.5.5. WATER/WASTEWATER EXPERIENCE – (35 Points)**

Evidence of experience that best illustrates that the firm has successfully completed a minimum of five (5) water/wastewater utility projects as a prime or subcontractor in the last five (5) years of the type and size of that described in the General Scope of Work and Technical Specifications. The Respondent may use the minimum qualification projects in this section, provided the project meets the category requirements.

The Respondent shall submit at least one (1) project for each of the following categories listed below.

1. Water Plants
2. Wastewater Plants
3. Production Water Well Sites
4. Wastewater Pump stations
5. One additional water/wastewater utility project

The Respondent shall provide the following:

Published project documents, including conformed drawings, specs, and final basis of design report from a relevant engagement, with similar scope of work with brief description of how the report framework will be modified for JEA's project.

The Respondent should provide detailed information to describe how the Respondent managed the engagements to realize project budgetary goals, timetables, and quality control objectives.

Respondent should describe any working relationship with subcontractors that will be used for this project.

**The referenced information must be specific to work your company has done in the past and must contain the following:**

- Type of project (Water, Wastewater)
- Name of project
- Owner
- Location
- Contact information (include name, current phone number(s), email, and best times to call)
- Project date (duration, etc.)
- Total project value
- Project value for the work done by your company
- Describe the scope of work completed by your company

**Each submitted project should be limited to no more than ten (10) pages, double - sided, single-spaced, on 8.5" x 11" sized paper. Please use your own form for this Section. Responses that are longer than ten (10) pages will not be evaluated after page ten (10).**

**1.5.6. PROJECT MANAGER PROXIMITY TO JEA (5 POINTS)**

Provide the address of the Company's office that the proposed Project Manager normally works from and its distance from JEA Headquarters located at 21 West Church St. JEA will use Google Maps to verify distance.

In order to receive points for these criteria, the Company's office must be occupied and staffed with at least three (3) employees for a duration of six (6) months prior to the Response Due Date stated in this RFP. **(Project Manager Proximity shall be graded on a scale of 0 to 5 Points)**

**1.5.7. JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) – RFP (5 Points)**

Company shall indicate if the Company is certified as a Jacksonville Small and Emerging Business (JSEB) as defined by Jacksonville Ordinance 2004-602; Chapter 126, Part 6A and 6B.

There is a specific minimum mandatory JSEB participation goal for the Scope of work described in this Solicitation is: **Five Percent (5%)**. See Section 1.3.1.

If the Company is not a certified JSEB, the Company shall list the JSEB certified subcontractors that it intends to utilize in the performance of this Work. The listing should include names of the JSEBs, the type of service they will provide, and the percentage of work being subcontracted. Points will be awarded based on the type and amount of work that will be conducted by JSEB firms. This information shall be entered on the required form "List of JSEB Certified Firms". **(JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) shall be graded on a scale of 0 to 5 Points)**

The points will be awarded as follows:

COJ/JEA certified JSEB = 5 pts;

Amount of work that will be subcontracted:

Non-JSEB companies with JSEB participation that is:

≥10% of work = 4 pts

≥8% and < 10% = 3 pts

≥6% and < 8% = 2 pts

≥5% and < 6% = 1 pt

< 5% = 0 pt

#### **1.5.8. TIE**

In the event of a tie score, the tie shall be resolved in accordance with JEA's Procurement Code and Operational Procedures.

### **1.6. GENERAL INSTRUCTIONS**

#### **1.6.1. SUBMITTING THE RESPONSE**

The Respondent shall submit one (1) original Response, three (3) duplicates (hardcopies) and one (1) CD or flash drive. **For the submitted electronic copy, the Respondent shall provide a tracked changes version of any terms and conditions comments and an excel version of the quotation of rates workbook.** Combed binders are preferred. If there is a discrepancy between the electronic and the hard copy, the hard copy will prevail. JEA will not accept Responses transmitted via email.

**IF RESPONDENT IS INTERESTED IN RECEIVING A RESPONSE FORM IN A WORD FORMAT, PLEASE EMAIL LOVGRD@JEA.COM, WITH THE REQUEST. REQUESTS MUST BE MADE NO LATER THAN FIVE (5) BUSINESS DAYS BEFORE RESPONSE OPENING.**

#### **1.6.2. ADDENDA**

JEA may issue Addenda prior to the opening of Responses to change or clarify the intent of this Invitation to Negotiate (ITN). The Respondent shall be responsible for ensuring it has received all Addenda prior to submitting its Response and shall acknowledge receipt of all Addenda by completing the Confirmation of Receipt of ITN Addenda. JEA will post Addenda when issued online at JEA.com. Companies must obtain Addenda from the JEA.com website. All Addenda will become part of the ITN and any resulting Contract Documents. It is the

responsibility of each Respondent to ensure it has received and incorporated all Addenda into its Response. Failure to acknowledge receipt of Addenda may be grounds for rejection of a Response at JEA's sole discretion.

#### **1.6.3. CONTRACT EXECUTION AND START OF WORK**

Within thirty (30) days from the date of Award, JEA will present the successful Respondent with the Contract Documents. Unless expressly waived by JEA, the successful Respondent shall execute a Contract for the Work or Services within ten (10) days after receiving the Contract from JEA. If the Respondent fails to execute the Contract or associated documents as required, or if it fails to act on a JEA-issued Purchase Order (PO), JEA may cancel the Award with no further liability to the Respondent, retain the bid security or bond (if applicable), and Award to the next-ranked company.

Upon JEA's receipt of the executed Contract and certificate of insurance, JEA will issue a PO, in writing and signed by an authorized JEA representative as acceptance of the Response and authorization for the company to proceed with the Work, unless otherwise stated in the Contract or PO.

#### **1.6.4. DEFINED TERMS**

Words and terms defined in the Section entitled "Definitions" of this document are hereby incorporated by reference into the entire document.

#### **1.6.5. EX PARTE COMMUNICATION**

Ex Parte Communication is defined as any inappropriate communication concerning an ITN between a company submitting a Response and a JEA representative during the time in which the ITN is being advertised through the time of Award. Examples of inappropriate communications include: private communications concerning the details of the ITN in which a company becomes privy to information not available to the other Respondents. Social contact between companies and JEA Representatives should be kept to an absolute minimum during the ITN process.

**Ex Parte Communication is strictly prohibited.** Failure to adhere to this policy will disqualify the noncompliant company's Response. Any questions or clarifications concerning this ITN must be sent in writing via email to the JEA Buyer at least five (5) business days prior to the opening date. If determined by JEA, that a question should be answered or an issue clarified, JEA will issue an addendum to all Respondents.

#### **1.6.6. CERTIFICATION AND REPRESENTATIONS OF THE COMPANY**

By signing and submitting the Response Form, the Respondent certifies and represents as follows:

- A. That the individual signing the Response Form is a duly authorized agent or officer of the Respondent. Responses submitted by a corporation must be executed in the corporate name by the President or Vice President. If an individual other than the President or Vice President signs the Response Form, satisfactory evidence of authority to sign must be submitted upon request by JEA. If the Response is submitted by a partnership, the Response Form must be signed by a partner whose title must be listed under the signature. If an individual other than a partner signs the Response Form, satisfactory evidence of authority to sign must be submitted upon request by JEA.
- B. That every aspect of the Response and the detailed schedule for the execution of the Work, are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation made by any of its representatives during or prior to execution of the Contract

unless such understandings or representations are expressly stated in the Contract and the Contract expressly provides that JEA assumes the responsibility.

- C. The corporation or partnership must be in active status at the Florida Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org)) prior to any subsequent Award of Contract.
- D. That the Respondent maintains in active status any and all licenses, permits, certifications, insurance, bonds and other credentials including, but not limited to, contractor's license and occupational licenses necessary to perform the Work. The Respondent also certifies that, upon the prospect of any change in the status of applicable licenses, permits, certifications, insurances, bonds or other credentials, the Respondent shall immediately notify JEA of status change.
- E. That the Respondent has read, understands and will comply with the Section titled Ethics.

#### **1.6.7. CONFLICT OF INTEREST (CONSTRUCTION)**

This conflict of interest policy applies to all JEA Design, Bid, Build construction projects ("Project"). Any Company ("Company") Proposing the construction phase of a Project cannot at the time of the Response submittal, be affiliated with or have any direct or indirect ownership interest in the architect/engineer ("Designer") of record. The Company will also be prohibited from Proposing if the Designer has any direct or indirect ownership interest in the Company. Should JEA erroneously award a contract in violation of this policy, JEA may terminate the contract at any time with no liability to Company, and Company shall be liable to JEA for all damages, including but not limited to the costs to re-propose the Project. The purpose of this policy is to encourage Proposing and eliminate any actual or perceived advantage that one Company may have over another. In addition to this policy, Design Build projects are governed by the provisions of Fl. Stat. 287.055(9)(b).

#### **1.6.8. CONSTRUCTION AND DEMOLITION DEBRIS**

The Company shall complete and submit the Construction and Demolition Debris Disposal form which is available at [www.jea.com](http://www.jea.com). The Company shall identify, by the Certificate of Necessity number and Public Works number, the sites to which it will remove for disposal debris resulting from the Work. A list of approved sites may be obtained from the JEA Bid Section or [jea.com](http://jea.com).

#### **1.6.9. UNABLE TO SUBMIT A BID FORM**

If you elect not to submit a Bid or Response in response to this Solicitation, please complete the Unable to Submit Bid Form, available for download at [www.jea.com](http://www.jea.com), or by obtaining a hardcopy from the JEA Procurement Department, 21 West Church St., 1<sup>st</sup> Floor Customer Center – Room 002, Jacksonville, FL 32202. The Company may contact the Bid Office by phone at (904) 665-6740.

Send the completed Unable to Submit Bid Form to:

JEA Bid Office  
JEA Procurement Services  
21 West Church St.  
Jacksonville, FL 32202  
or fax the Unable to Submit Bid Form to: (904) 665-7095.

Do not return the entire Solicitation package; simply return the Unable to Submit Bid Form.

#### **1.6.10. ETHICS**

By submitting a Response, the Respondent certifies this Response is made without any previous understanding, agreement or connection with any other person, firm, or corporation submitting a Response for the same Work other than as a Subcontractor or supplier, and that this Response is made without outside control, collusion, fraud, or other illegal or unethical actions. The Respondent shall comply with all JEA and City of Jacksonville ordinances, policies and procedures regarding business ethics.

The Respondent shall submit only one (1) Response in response to this Solicitation. If JEA has reasonable cause to believe the Respondent has submitted more than one (1) Response for the same Work, other than as a Subcontractor or subsupplier, JEA shall disqualify the Bid and may pursue debarment actions.

The Respondent shall disclose the name(s) of any public officials who have any financial position, directly or indirectly, with this Response by completing and submitting the Conflict of Interest Certificate Form found at [jea.com](http://jea.com). Failure to fully complete and submit the Conflict of Interest Certificate may disqualify the Response. If JEA has reason to believe that collusion exists among the Respondents, JEA shall reject any and all Responses from the suspected Respondent s and will proceed to debar Respondent from future JEA Awards in accordance with the JEA Procurement Code.

JEA is prohibited by its Charter from awarding contracts to JEA officers or employees, or in which a JEA officer or employee has a financial interest. JEA shall reject any and all Responses from JEA officers or employees, as well as, any and all Responses in which a JEA officer or employee has a financial interest.

In accordance with Florida Statutes Sec. 287.133, JEA shall reject Responses from any persons or affiliates convicted of a public entity crime as listed on the Convicted Vendor list maintained by the Florida Department of Management Services. JEA shall not make an Award to any officer, director, executive, partner, shareholder, employee, member, or agent active in management of the Respondent listed on the Convicted Vendor list for any transaction exceeding \$35,000.00 for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor list.

If the Respondent violates any requirement of this clause, the Response may be rejected and JEA may debar offending companies and persons.

#### **1.6.11. JEA PUBLICATIONS**

Applicable JEA publications are available at [jea.com](http://jea.com).

#### **1.6.1. FLORIDA TRENCH SAFETY ACT**

If required, the Company shall complete and submit with its Response the Florida Trench Safety Act Acknowledgment form, in accordance with Florida Statutes when the Work includes trench excavations that exceed five feet in depth and as written assurance that the Company shall comply with all applicable trench safety standards, laws, rules and regulations during performance of any Work awarded from this Solicitation.

#### **1.6.2. MATHEMATICAL ERRORS**

In the event of a mathematical error in calculation of the prices entered on the Response, the Unit Prices will prevail. The corrected Response Price utilizing the Unit Prices will be used to determine if the Company is Awarded the Work or the Services. Subsequently, the Unit Prices will be used throughout the term of the Contract.



#### **1.6.1. ESTIMATED QUANTITIES**

On the Response Document, JEA sets forth anticipated quantities, or estimates of anticipated purchase volumes by JEA. JEA anticipates that these quantities are reasonable and will not be exceeded. During the Response process, if the Company finds any discrepancy greater than ten percent (10%) of the estimated quantity, the Company shall notify the JEA Representative in writing of the discrepancy. JEA will check the estimated quantity and if it is found to exceed ten percent (10%) of the estimated quantity, JEA will issue an Addendum to all Companies.

After Award of the Contract, JEA will make payments upon the actual quantities of Work provided and JEA shall not be obligated, in any way, to pay any amounts for quantities other than those actually provided and authorized under this Contract, regardless of amount stated in the Solicitation. In the event that quantities or scope of work change after Award, the changes to price and/or scope shall be made in accordance with the terms and conditions stated in the Contract Document.

Any item not shown on the Response Document, but shown in the drawings or Technical Specifications section, that is required to perform the Work, or that is required as part of a complete and operable system, shall be included in the Response Price.

#### **1.6.1. SUBCONTRACTORS**

The Company shall list the names of all Subcontractors and subsuppliers/shop fabricators that it plans to use on the List of Subcontractors Form which is available at [jea.com](http://jea.com). Failure to submit this form with the Response shall result in rejection of Company's Response. The Company shall not use Subcontractors and subsuppliers/shop fabricators other than those shown on the Subcontractors form unless it shows good cause and obtains the JEA Representative's prior written consent. In cases where the Subcontractor or subsupplier/shop fabricator is a JSEB firm, the City of Jacksonville Ombudsman will review the substitution request, and make a written recommendation prior to the JEA Representative's written consent. The Company may not use as Subcontractors or subsuppliers/shop fabricators any Companies that were rejected in the Response process due to incomplete status or unqualified Responses. **All Subcontractors for the categories listed below must be listed on JEA's independent RBL for that discipline.**

#### **EG-1 Electrical Secondary Service Installation SW-8 Well Drilling**

If the Company plans to use Subcontractors or subsupplier/shop fabricators to perform over **75%** of a Task Authorization, the Company shall obtain the Contract Administrator's approval prior to opening of the Task Authorization Bid. Failure to obtain JEA approval will disqualify the Company and result in rejection of Company's Task Authorization Bid.

#### **1.6.2. MODIFICATION OR WITHDRAWAL OF RESPONSES**

The Respondent may modify or withdraw its Response at any time prior to the Response Due Date and Time by giving written notice to JEA's Chief Procurement Officer. JEA will not accept modifications submitted by telephone, telegraph, email, or facsimile, or those submitted after Response Due Date and Time. The Respondent shall not modify or withdraw its Response from time submitted and for a period of ninety (90) days following the opening of Responses.

#### **1.6.3. PROHIBITION AGAINST CONTINGENT FEES**

The Respondent warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Respondent, or an independent sales representative under contract to the Respondent, to solicit or secure a contract with JEA, and that it has not paid or agreed to pay any person, company, corporation, individual or Respondent, other than a bona fide employee working solely for the Respondent, or an independent

sale representative under contract to the Respondent, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the Award or making of the Contract. For a breach or violation of these provisions occurs, JEA shall have the right to terminate the Contract without liability, and at its discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

#### **1.6.4. PROTEST OF ITN AND AWARD PROCESS**

Respondents shall file any protests regarding this ITN in writing, in accordance with the JEA Purchasing Code, as amended. Copies of the JEA Purchasing Code are available online at [www.jea.com](http://www.jea.com).

#### **1.6.5. RESERVATION OF RIGHTS TO JEA**

This ITN provides potential Companies with information to enable the submission of written offers. This ITN is not a contractual offer or commitment by JEA to purchase products or services.

Responses shall be good for a period of ninety (90) days following the opening of the Responses.

JEA reserves the right to reject any or all Responses, or any part thereof, and/or to waive informalities if such action is in its best interest. JEA may reject any Responses that it deems incomplete, obscure or irregular including, but not limited to, Responses that omit a price on any one or more items for which prices are required, Responses that omit Unit Prices if Unit Prices are required, Responses for which JEA determines that the Response is unbalanced, Responses that offer equal items when the option to do so has not been stated, Responses that fail to include a Bid Bond, where one is required, and Responses from Companies who have previously failed to satisfactorily complete JEA contracts of any nature or who have been scored by JEA as "Unacceptable" and as a result, are temporarily barred from bidding additional work.

JEA reserves the right to cancel, postpone, modify, reissue and amend this ITN at its discretion.

JEA reserves the right to cancel or change the date and time announced for opening of Responses at any time prior to the time announced for the opening of Responses. JEA may Award the Contract in whole or in part. In such cases whenever JEA exercises any of these reservations, JEA will make a commercially reasonable effort to notify, in writing, all parties to whom ITNs were issued. JEA may award multiple or split Contracts if it is deemed to be in JEA's best interest.

#### **1.6.6. SUNSHINE LAW**

##### **General**

Article I, Section 24, Florida Constitution, guarantees every person access to all public records and Chapter 119, Florida Statutes, provides 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 responses to this ITN are public record and available for public inspection unless specifically exempt by law.

##### **Redacted Submissions**

If a Respondent believe that any portion of the documents, data or records submitted in response to this ITN are exempt from Florida's Public Records Law, Respondent 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 ITN and Respondent's name, and shall be clearly labeled "Redacted Copy." Respondent should only redact those portions of records that Respondent claims are specifically exempt from the Florida Public Records Laws. If Respondent 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 Respondent that such an assertion has been made. It is Respondent'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 Respondent's redacted information under legal process, JEA shall give Respondent prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law.) Respondent 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 ITN, Respondent agrees to protect, defend, and indemnify JEA from and against all claims, demands, actions, suits, damages, losses, settlements, costs and expenses (including but not limited to reasonable attorney fees and costs) arising from it relating to Respondent's determination that the redacted portions of its response to this Solicitation are not subject to disclosure.

**IF THE RESPONDENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RESPONDENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS SOLICITATION, CONTACT THE JEA CUSTODIAN OF PUBLIC RECORDS AT: Public Records Request Coordinator, JEA, 21 West Church Street, T-8, Jacksonville, FL 32202, Ph: 904-665-8606, [publicrecords@jea.com](mailto:publicrecords@jea.com)**

#### **1.6.7. SUBCONTRACTORS**

The Respondent shall list the names of the major Subcontractors that it intends to use for this Work, unless the Work will be self-performed by the Respondent. The Subcontractors shall be listed on the Subcontractors Form which is available at [jea.com](http://jea.com). • Failure to submit this form with the Response shall result in rejection of company's Response. The Respondent shall not use Subcontractors other than those shown on the Subcontractor Form unless it shows good cause and obtains the JEA Representative's prior written consent.

If the Respondent plans to use Subcontractors to perform over fifty percent (50%) of the Work, the Respondent shall obtain JEA's approval at least five (5) days prior to the Response Due Date. Failure to obtain JEA approval shall result in rejection of the company's Response.

## **2. CONTRACT TERMS AND CONDITIONS**

### **2.1. CONTRACT TERMS AND CONDITIONS**

### **2.2. DEFINITIONS**

#### **2.2.1. DEFINITIONS**

Words and terms defined in this section shall have the same meaning throughout all parts of this Solicitation and Contract Documents. Where intended to convey the meaning consistent with that set forth in its definition, a defined word or term is marked by initial capitalization. The "Technical Specifications" portion of this Solicitation may define additional words and terms where necessary to clarify the Work. Unless otherwise stated in this Solicitation and/or Contract Documents, definitions set forth in the "Technical Specifications" shall apply only within the "Technical Specifications."

#### **2.2.2. ACCEPTANCE**

JEA's written notice by the JEA Representative to the Company that all Work as specified for an individual Task Authorization has been completed to JEA's satisfaction. Acceptance does not in any way limit JEA's rights under the Contract or applicable laws, rules and regulations.

#### **2.2.3. ADDENDUM/ADDENDA**

A written change or changes to the Solicitation which is issued by JEA Procurement Services and is incorporated into the Solicitation as a modification, revision and/or further clarification of the intent of the Solicitation.

#### **2.2.4. ADMINISTRATIVE WORK**

Actions primarily performed in an office environment and associated with preparing to perform or administer the Work including, but not limited to, preparing Work schedules, obtaining bonds, executing Contracts, securing resources and other actions specified in the Solicitation, or otherwise prudent to ensure a timely, safe and otherwise compliant start and performance of Field Work. Administrative Work is not performed at the Work Location.

#### **2.2.5. APPLICATION FOR PAYMENT**

The form required for payment which shall include all items required pursuant to the contract for the payment to be processed by JEA. Such form shall require the Contractor expressly state that the Contractor has fulfilled all obligations for the previous payments issued to the Contractor, including payment for subcontractors and materials. The Application for Payment includes all forms and supporting documentation as required by the Contract documents.

#### **2.2.6. APPROVED SCHEDULE**

A Critical Path Method Schedule or a Summary Schedule for the Work approved in writing by the Contract Administrator.

#### **2.2.7. ANNIVERSARY DATE**

The date which is twelve (12) months after the effective date of the Contract, and each date which is twelve (12) months after an Anniversary Date that occurs while the Contract is in effect.

#### **2.2.8. AWARD**

The written approval of the JEA Awards Committee that the procurement process for the purchase of the Work was in accordance with the JEA Procurement Code and Florida Statutes. Once an Award is approved, JEA will either issue a Purchase Order or execute a Contract with the successful bidder or proposer.

#### **2.2.9. BIDS**

For purposes of this ITN the term "Did" shall also mean "Response".

#### **2.2.10. BIDDER**

For purposes of this ITN the term "Bidder" shall also mean "Respondent".

#### **2.2.11. CHANGE ORDER**

A written order issued after execution of the Contract to the Company signed by the Contract Administrator, or his designated representative, authorizing an addition, deletion, or revision of the Work, or an adjustment in the Contract Price or the Contract Time. Change Orders do not authorize expenditures greater than the monies encumbered by JEA, which is shown on the associated Purchase Order(s). An executed Change Order resolves all issues related to price and time for the Work included in the Change Order. A Change Order that involves a material change to the Contract may result in a Contract Amendment.

#### **2.2.12. COMPANY OR RESPONDENT**

The legal person, firm, corporation or any other entity or business relationship with whom JEA has executed the Contract. Where the word "Company" is used it shall also include permitted assigns. Prime Contractor, Contractor, Vendor, Supplier, Respondent and Company shall be considered synonymous for the purpose of the Contract.

#### **2.2.13. COMPANY REPRESENTATIVE**

The individual responsible for representing the Company in all activities concerning the fulfillment and administration of the Contract.

#### **2.2.14. COMPANY SUPERVISOR**

The individual, employed or contracted by the Company, to manage the Work on a day-to-day basis and ensure the Work is performed according to the Contract. The Company Supervisor may be authorized by the Company Representative to act on Contract matters. Such authorization shall be in writing and delivered to the Contract Administrator and shall clearly state the limitations of any such authorization. In the event that the Company Supervisor and the Company Representative is the same person, the Company shall notify the Contract Administrator of such situation.

#### **2.2.15. CONTRACT**

An agreement between JEA and the Respondent, signed by both parties, which incorporates all the Contract Documents. The Contract shall not be altered without an Amendment to the Contract and executed by JEA and the Respondent, or a JEA issued Change Order.

#### **2.2.16. CONTRACT ADMINISTRATOR**

The individual assigned by JEA to have authority to administer the Contract, including the authority to negotiate all elements of the Contract with the Company, authorize Change Orders within the maximum amount awarded, terminate the Contract, seek remedies for nonperformance including termination, and otherwise act on behalf of JEA in all matters regarding the Contract. The Contract Administrator may authorize JEA Representative in writing to make minor changes to the Work with the intent of preventing Work disruption.

#### **2.2.17. CONTRACT AMENDMENT**

A written document signed by JEA and the Company issued after the execution of the original Contract which authorizes an addition, deletion or revision of the Scope of Work, or an adjustment in the Contract Price or the Term of the Contract. Contract Amendments do not authorize expenditures greater than the monies encumbered by JEA, which is stated on the associated Purchase Order(s). An executed Contract Amendment resolves all issues related to the Contract Price and the Term of the Contract.

#### **2.2.18. CONTRACT DOCUMENTS**

Contract Documents, also referred to as the "Contract" or "Agreement" means the executed Contract Document and any written Change Orders, amendments or Purchase Orders executed by JEA, and insurance and/or bonds as required by the Contract.

#### **2.2.19. CONTRACT PRICE**

The total amount payable to the Company during the initial Term of the Contract. However, this amount is not a guaranteed amount. Also referred to as the "Maximum Indebtedness" of JEA.

#### **2.2.20. CONTRACT TIME**

The number of calendar days or the period of time from when the written Purchase Order is issued to the Company, to the date Company has agreed to complete the Work, as set forth in the Contract Documents.

#### **2.2.21. CUSTOMER SERVICE PLAN**

The Company's plan to achieve customer satisfaction requirements as determined by JEA and JEA Project Outreach, which shall include, as a minimum, the name and office phone number, cell phone number, email address, Nextel Direct Connect number, and fax number of Company's Customer Service Representative, a detailed flow chart on how the Company will handle customer concerns, preemptive customer satisfaction control measures (such as door hangers provided by JEA, and neighborhood meetings in conjunction with JEA staff) and a plan to reduce the number of customer concerns surrounding construction Work addressing, as a minimum, the construction practices that will eliminate damage to customers' property including, but not limited to, cracked driveways, tire ruts in customers' yards, blocking customers' access to driveways, cutting customers' services during tie-in, excessive noise from construction equipment, and elimination of dust during construction Work.

#### **2.2.22. DEFECT**

Work that fails to reach Acceptance, or Work that fails meet the requirements of any required test, inspection or approval, and any Work that meets the requirements of any test or approval, but nevertheless does not meet the requirements of the Contract Documents.

#### **2.2.23. ENVIRONMENTAL REGULATIONS**

All laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders, and decrees, now or hereafter enacted, promulgated, or amended, of the United States, the states, the counties, the cities, or any other political subdivisions in which the Work Location is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over JEA, the Work Location, or the use of the Work Location, relating to pollution, the protection or regulation of human health, natural resources, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or waste or Hazardous Materials (as defined in this Contract) into the environment (including, without limitation, ambient air, surface water, ground water or land or soil).

#### **2.2.24. EQUAL ITEM**

Item a Company chooses to offer in place of offering the brand name or manufacturer's item specified on the Response Document when the Response Document clearly states that the Company may offer such an item.

#### **2.2.25. FIELD WORK**

Actions associated with meeting the requirements of the Contract other than Administrative Work. Field Work is primarily performed at the Work Location.

#### **2.2.26. FINAL COMPLETION**

The point in time after JEA makes the determination that the Work is completed and there is Acceptance by JEA, and the Company has fulfilled all requirements of the Contract Documents.

#### **2.2.27. FINAL PAYMENT**

The Final Payment for all Work performed. Final Payment shall not be made until the Company has complied with all the Contract requirements, and provided as necessary close-out documents as contained in the Contract.

#### **2.2.28. HAZARDOUS MATERIALS**

Any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. '9601 et seq.) ("CERCLA") or any regulations promulgated under or pursuant to CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. '6901 et. seq.) ("RCRA") or regulations promulgated under or pursuant to RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. '2601 et seq.); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) radon gas; and (viii) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under Environmental Requirements (as hereinafter defined) or the common law, or any other applicable laws relating to the Licensed Property. Hazardous Materials shall include, without limitation, any substance, the presence of which on the Licensed Property, (A) requires reporting, investigation or remediation under Environmental Requirements; (B) causes or threatens to cause a nuisance on the Licensed Property or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Licensed Property or adjacent property; or (C) which, if it emanated or migrated from the Licensed Property, could constitute a trespass.

#### **2.2.29. HOLIDAYS**

The following days: New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, and Christmas Day.

#### **2.2.30. INVITATION TO NEGOTIATE**

The document (which may be electronic) issued by the JEA Procurement Department to solicit Responses from Companies that includes, but not limited to, the Minimum Qualifications Form, samples of contract documents and addenda. Also referred to as "Solicitation".

#### **2.2.31. INVOICE**

A document seeking payment to the Company from JEA for all or a portion of the Work, in accordance with the Contract Documents, and including at a minimum the following items: the Company's name and address, a description of the product(s) or service(s) rendered, a valid JEA PO number, the amount payable, the Unit Price, the

payee name and address, any associated JSEB forms and any other supporting documentation required by the Contract Documents.

#### **2.2.32. JEA**

JEA on its own behalf, and when the Work involves St. Johns River Power Park (SJRPP), as agent for Florida Power and Light Company (FPL). JEA and FPL are co-owners of SJRPP.

#### **2.2.33. JEA ENGINEER**

The individual assigned by JEA (either an employee or a third party) to provide licensing, engineering, design review, and/or construction management including, but not limited to, overseeing and resolving engineering/design issues, conveying JEA's instructions to the Company and enforcing the faithful performance of the Work. The JEA Engineer's authority includes interpreting the technical portion of the Contract Documents, deciding on matters relating to the execution and progress of the Work and evaluating the Company's performance. The JEA Engineer may stop the Work when deemed necessary by JEA. The JEA Engineer will receive and adjudicate any claim of ambiguity or error in the technical portion of the Contract Documents and shall reduce any determination to writing, and the decision shall be final and binding. The JEA Engineer is not a party to the Contract. The JEA Engineer has no authority to approve changes to the Work or Contract, or to commit JEA to any expenditure of money except as expressly designated in writing by the Contract Administrator.

#### **2.2.34. JEA INSPECTOR**

The individual(s) or Company(ies) designated by the Contract Administrator to inspect and test the Company's performance and Contract compliance including materials, workmanship, safety, environmental compliance, JSEB compliance, project controls, administration and accounting, and other aspects of Contract compliance. The JEA Inspector has no authority to approve changes to the Work or Contract, or to commit JEA to any expenditure of money except as expressly designated in writing by the Contract Administrator.

#### **2.2.35. JEA REPRESENTATIVES**

The Contract Administrator, Contract Inspector, Contract Administrator's Representative, JEA Engineer, Field Engineer, Project Manager, and other persons designated by the Contract Administrator as JEA Representatives acting in a capacity related to the Work or Contract under the authority of the Contract Administrator.

#### **2.2.36. LUMP SUM BULK BID PRICE**

The total amount payable to the Company under the Contract Documents for performing the bulk bid Work.

#### **2.2.37. MILESTONE**

A point in time representing a key or important intermediate event in the Work. A Milestone is to be capable of validation by meeting all of the items prescribed in a defining checklist as agreed to in writing by JEA.

#### **2.2.38. NOTICE TO PROCEED**

The written notice, duly authorized and delivered by JEA, that authorizes the Company to begin the Work. The Notice to Proceed is normally issued in the form of a Purchase Order, unless otherwise specified in the Contract Documents.

#### **2.2.39. OVERTIME**

Work approved in writing by the Contract Administrator that is required to be performed beyond an employee's scheduled workday or work week, including Work performed on Holidays.



#### **2.2.40. PAYMENT AND PERFORMANCE BONDS**

The common-law Performance Bond and the statutory Payment Bond contemplated by Section 255.05, Florida Statutes in the form required by JEA.

#### **2.2.41. PERFORMANCE - ACCEPTABLE PERFORMANCE/PERFORMER**

The Respondent averages more than 2.80 and less than 4.0 across all performance scorecard evaluation metrics, and does not receive a score of less than 2.0 on any metric.

#### **2.2.42. PERFORMANCE - TOP PERFORMANCE/PERFORMER**

The Respondent averages 4.0 or more across all scorecard evaluation metrics and does not receive a score of less than 4.0 on any one metric.

#### **2.2.43. PERFORMANCE - UNACCEPTABLE PERFORMANCE/PERFORMER**

The Company averages less than 2.80 across all scorecard evaluation metrics, or scores a 1.0 on any one metric regardless of average, or receives a score of 2.0 on the same metric on two sequential performance evaluations.

#### **2.2.44. PURCHASE ORDER (PO)**

A commercial document issued by JEA, authorizing work, indicating types, quantities, and agreed prices for products or services the Company will provide to JEA. Sending a PO to a Company constitutes a legal offer to buy products or services. The words "Purchase Order" are clearly marked across the top, a PO number is used for reference and invoicing purposes, includes an authorized JEA signature, and states the dollar amount of the lawfully appropriated funds.

#### **2.2.45. PRE-WORK MEETING**

A meeting conducted after Award and prior to the start of any Field Work between JEA and the Company. The purpose of the meeting may include, but is not limited to orientation, schedule, certification and permitting, and other preparatory or Work execution details.

#### **2.2.46. QUALITY ASSURANCE**

Actions that JEA takes to assess the Company's performance under the Contract.

#### **2.2.47. QUALITY CONTROL**

Actions that the Company takes to ensure it successfully completes the Work in full accordance with the Contract Documents.

#### **2.2.48. RESPONDENT**

The respondent to this Solicitation.

#### **2.2.49. RESPONSE, BID OR PROPOSAL**

The document describing the Company's offer submitted in response to this ITN. Response, Bid and Proposal shall be considered synonymous for the purpose of this Contract.

#### **2.2.50. RESPONSE DOCUMENT**

The forms required to be submitted to JEA as the Company's offer to perform the Work or Services described herein. The Response Document can include, but is not limited to, the Response Form, Minimum Qualifications Form, Response form and certifications and/or other required submittals. The Response Document may also be referred to as the "Response Form".

#### **2.2.51. RESPONSE PRICE**

The total dollar amount of the Company's offer including, but not limited to, all labor, materials, overheads, profits, bonding and insurance premiums, other expenses, and any and all other cost items incurred by the Company in successfully performing the Work or Services in accordance with the Contract Documents.

#### **2.2.52. RESPONDENT**

The respondent to this Solicitation.

#### **2.2.53. SCHEDULE**

All documentation related to the planning and scheduling of the Work as described in these Terms and Conditions.

#### **2.2.54. SHOP DRAWINGS (DEFINITION)**

Drawings, electronic and hard copy, that detail the fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, catalogs and brochures; performance and test data; wiring and control diagrams; all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and method of construction as may be required to show the JEA Engineer that the proposed materials, equipment or systems and the position thereof are in compliance with the requirements of the Contract Documents.

#### **2.2.55. SOLICITATION**

The document (which may be electronic) issued by the JEA Procurement Department to solicit Bids or Responses from Companies that includes, but is not limited to, the Response Document, samples of documents and Addenda.

#### **2.2.56. SUBCONTRACTOR**

The legal person, firm, corporation or any other entity or business relationship that provides a portion of the work, or provides supplies and materials, to the Company which has an executed Contract with JEA. JEA is not in privity of contract with the Subcontractor.

#### **2.2.57. SUBSTANTIAL COMPLETION (DEFINITION)**

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

#### **2.2.58. SUMMARY SCHEDULE**

A diagram displaying the Milestones for the Work graphically positioned on a timeline, showing at a minimum the calendar dates on which each Milestone is scheduled to be completed for Acceptance.

#### **2.2.59. SUPPLEMENTAL WORK AUTHORIZATION (SWA)**

A written order, issued at the sole discretion of the JEA representative, which incorporates cost or schedule changes into the Contract. The SWA shall be used for increases or decreases in the Contract Price within the SWA amount set forth on the Response Form, or to make changes in the schedule for performance of the Work, or to authorize the Company to perform changes in the Work.

#### **2.2.60. TASK AUTHORIZATION**

A document that describes the Work or describes a series of tasks that the Company will perform in accordance with the Contract Documents. A Task Authorization (TA) may be issued as an attachment to a Purchase Order, but the TA is neither a Purchase Order, nor a Notice to Proceed.

#### **2.2.61. TERM**

The period of time during which the Contract is in force, from the date of Purchase Order issuance to Final Completion, or termination, or until the Contract's Maximum Indebtedness is reached, whichever occurs first. In some cases, and as expressly stated, some of the Contract requirements may extend beyond the Term of the Contract.

#### **2.2.62. UNIT PRICES**

The charges to JEA for the performance of each respective unit of Work as stated in the Response Workbook, Bid Form, or Response Form, and incorporated into the the Contract Documents.

#### **2.2.63. WORK LOCATION (DEFINITION)**

The place or places where the Work is performed, excluding the properties of the Company and/or the Subcontractor(s).

#### **2.2.64. WORK OR SCOPE OF SERVICES**

Work includes as defined in the Contract Documents all actions, products, documentation, electronic programs, reports, testing, transport, administration, management, services, materials, tools, equipment, and responsibilities to be furnished or performed by the Company under the Contract, together with all other additional necessities that are not specifically recited in the Contract, but can be reasonably inferred as necessary to complete all obligations and fully satisfy the intent of the Contract.

### **2.3. CONTRACT DOCUMENTS**

#### **2.3.1. ORDER OF PRECEDENCE**

The Contract shall consist of JEA's Contract and/or Purchase Order together with the Solicitation including, but not limited to, the executed Bid Documents, 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 Company shall inform JEA in writing of any conflict, error or discrepancy in the Contract Documents upon discovery. Should the Company proceed with the Work prior to written resolution of the error or conflict by JEA, all Work performed is at the sole risk of the Company. JEA will generally consider this precedence of the Contract Documents in resolving any conflict, error, or discrepancy:

- o Executed Contract Documents
- o Contract Amendments
- o Exhibits to Contract Documents
- o Addenda to JEA ITN
- o Drawings associated with this ITN
- o Exhibits and Attachments to this ITN
- o Technical Specifications associated with this ITN
- o Response Documents
- o References

The figure dimensions on drawings shall govern over scale dimensions. Contract and detailed drawings shall govern over general drawings. The Company shall perform any Work that may reasonably be inferred from the Contract as being required whether or not it is specifically called for. Work, materials or equipment described in words that, so applied, have a well-known technical or trade meaning shall be taken as referring to such recognized standards.

## **2.4. PRICE AND PAYMENTS**

### **2.4.1. PAYMENT METHOD- TASK AUTHORIZATION**

When JEA issues a Task Authorization (TA) with an associated Purchase Order, the Company shall invoice JEA in accordance with the instructions set forth on the Purchase Order. JEA may pay the Company for the work described on the Task Authorization either upon the Company's completion of and JEA's Acceptance of the entirety of the Task Authorization work, or at JEA's Acceptance of predetermined Milestones in the Task Authorization work as specified by the Purchase Order.

Pursuant to the type of work authorized by the TA, JEA will either choose to bid the Work among the companies currently under Contract for these General Construction Services, or the Work will be assigned to a specific Company based on time and materials pricing (T&M).

### **2.4.2. LUMP SUM BIDDING METHOD**

For individual tasks, a Lump Sum Price shall be obtained by competitive bidding among the Companies under Contract with JEA. It is JEA's expectation that the Companies shall be able to meet in person for a pre-bid meeting within 48 hours of notice. The Company and the JEA Representative shall mutually agree to the scope and pricing of the Lump Sum Task Authorization (TA). All duties, responsibilities and obligations assigned to or undertaken by the Company in performing the Lump Sum work is described in the TA document. If the Company elects not to submit a Lump Sum bid after being requested to do so, the Company must explain its reason in writing for not bidding to the JEA Representative at the time the bid was due.

The number of "No Bids" for the Company shall not exceed 10% of the Lump Sum Bid offerings over the Term of this Contract.

"No Bid" is defined as the following:

"No Bid" = no bid submitted

"No Bid" = bid submitted late

"No Bid" = bid submitted is greater than 3.0 times the average of the lowest and 2nd lowest bids

**An amount over 10% "No bids" is deemed unacceptable performance and corrective action according to Vendor Performance Evaluation guidelines will be taken.**

Any negotiated increase or decrease in the TA Price shall be based on the Company's costs for labor, materials and supplies directly applicable to the increase or decrease. For any negotiated increase or decrease, the Company will

provide a complete detailed breakdown for all labor, material, and equipment, etc. associated with the change. A lump sum figure submitted with no breakdown will be returned to the Company without review. Whenever the Company and the JEA are unable to agree on costs for an increase in the Work, JEA or JEA Representative shall order the Company to proceed with the Work on a cost reimbursable (time and material) basis.

#### **2.4.3. COST REIMBURSABLE (TIME AND MATERIALS) METHOD**

JEA will pay the Company for Cost Reimbursable TA work in the manner hereinafter described, and the compensation thus provided shall constitute full payment for said work. The Company and JEA Representative shall compare records of the Work performed on a Cost Reimbursable basis at the end of each day. These records containing time sheets, delivery tickets, etc. shall be prepared the next day by the Company and signed by the Company Representative. A copy of these records shall be submitted to JEA the same day, but no later than the next day, for approval and signed by the JEA Representative. A complete copy of these records for the work shall be submitted with the invoice.

It is JEA's expectation that the Company shall be able to meet in person for a pre-bid meeting within forty-eight (48) hours of notice. JEA shall issue the TA for the Company to perform the specific work with payment determined based on the terms in the following sections Material, Labor, Equipment, Equipment owned or Leased, Equipment Rented and Tools.

#### **2.4.4. MATERIALS**

For materials purchased by the Company and used in the work, the Company shall be paid the actual cost of such materials, including sales taxes if required, and freight and delivery charges as shown by original receipted bills. A mark-up amount shall be added to this cost. That mark-up amount shall equal the "Percentage for Material Markup" as stated in the Appendix A Response Form Part 2. JEA reserves the right to select and approve, or to reject the materials to be used and the sources of supply of any materials furnished by the Company.

#### **2.4.5. LABOR**

The Company will be paid the "Billable Hourly Rate", as stated in the Company's Response, for all classifications of labor that are engaged in the Work.

#### **2.4.6. EQUIPMENT**

The types and amounts of equipment and machinery used by the Company in carrying out its work under the TA shall be made in keeping with normal practice for work of similar nature. JEA may, at its discretion, limit by specific instruction the types and amounts of equipment and machinery to be used. In computing the hourly rental of such equipment, less than thirty (30) minutes shall be considered 1/2 hour except when the minimum rental time to be paid is one hour. Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time of equipment to be paid for shall be the time the equipment is in operation on the TA work being performed. The Company shall be reimbursed for the time required to move the equipment to the Work, and return it to its original location, only if the Company is charged this cost by the renting agency.

#### **2.4.7. EQUIPMENT OWNED OR LEASED**

For all equipment and machinery used in the TA work, JEA will pay a percentage of the rental value as set forth in the "*Rental Rate Blue Book For Construction Equipment*" also known as the Blue Book. The Blue Book will be the current dated issue at the time of work. The percent utilized in this calculation will be the "Percentage of Equipment Rental Bluebook"

#### **2.4.8. EQUIPMENT RENTED**

For all equipment and machinery used in the TA work, JEA will pay the actual rental cost of such materials, including sales taxes if required, and freight and delivery charges as shown by original receipted bills. A mark-up amount shall be added to this cost. That mark-up amount shall equal the "Percentage for Equipment Rental Invoice Markup" as stated in Appendix A Response Form Part 2. JEA reserves the right to select and approve, or to reject the equipment to be used and the sources of supply of any equipment furnished by the Company.

#### **2.4.9. TOOLS (SMALL TOOLS, EQUIPMENT AND CONSUMABLES)**

No payment will be allowed for the use of small tools, equipment and consumables. Small tools, equipment and consumables are defined as expendable or non-expendable items required by each craft to perform their job where initial cost of each item does not exceed \$1,000.00. The Company is responsible for furnishing any and all small tools and equipment required to perform the Work. Small tools, equipment and consumables would include such items as hard hats, safety glasses, gloves, hammers, shovels, welders' helmets, etc. (see Appendices D, E and F for a non-exclusive list of expendables and non-expendables). Specialty tools and equipment which are purchased specifically for a particular Cost Reimbursable TA, will be reimbursed for the actual cost of such items plus 5%, including sales tax, if required, as shown by original receipted bills and left with JEA for follow-up maintenance work. Prior approval by the JEA Representative shall be required for the purchase of specialty tools and equipment.

#### **2.4.10. SUBCONTRACTS**

The Company will be allowed a mark-up on the Subcontractor's costs as stated in the contractors Response. A subcontractor participation report will be submitted monthly with the invoice showing all sub-contractor names, categories of work and percent of total invoice. The format of this monthly report will follow the guidelines of section 2.5.1 Reporting.

#### **2.4.11. INVOICING PAYMENT TERMS AND RETAINAGE**

Within 60 days from Acceptance of the Work the Company shall submit all Invoices or Applications for Payment using JEA's prescribed forms and format and in accordance with the payment method agreed upon in these Contract Documents. JEA will pay the Company the amount requested less any holdbacks or retainage within 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 Company the revised amount within ten (10) days.

JEA may withhold payment if the Company is in violation of any conditions or terms of the Contract Documents. As security for the proper performance of the Work, JEA may deduct ten percent (10%) retainage, or such other amount allowable pursuant to Florida law, from the amount stipulated in the Invoice or Application for Payment and accepted by JEA as eligible for payment.

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 10 days of determination or written notice.

#### **2.4.12. PROMPT PAYMENT TO SUBCONTRACTORS AND SUPPLIERS**

When the Company receives payment from JEA for labor, services or materials furnished by Subcontractors and suppliers that are hired by the Company, the Company shall remit payment due (less proper retainage) to those

Subcontractors and suppliers within fifteen (15) days after the Company's receipt of payment from JEA. Nothing herein shall prohibit the Company from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its Subcontractors and suppliers. In the event of such dispute, the Company may withhold the disputed portion of any such payment only after the Company has provided written notice to JEA and to the Subcontractor and supplier whose payment is in dispute, stating the amount in dispute and specifically describing the actions required to cure the dispute. The Company shall deliver such notice to JEA and to the said Subcontractor or supplier within 10 days following the Company's receipt of payment from JEA. The Company shall pay all undisputed amounts due within the time frames specified herein.

The prompt payment requirements herein shall, in no way, create any contractual relationship or obligation between JEA and any Subcontractor, supplier, JSEB, or any third-party, nor create any JEA liability for the Company's failure to make timely payments as required. The Company's failure to comply with the prompt payment requirements, however, shall constitute a material breach of its contractual obligations to JEA. As a result of such breach, JEA, without waiving any other available remedy it may have against the Company, may issue joint checks and charge the

#### **2.4.13. PUNCH LIST: SECTION 218.735, FLORIDA STATUTES**

Within thirty (30) calendar days after reaching Substantial Completion, as defined herein, the parties shall jointly develop a final list of items required to render the Work complete, satisfactory, and acceptable (the "Punchlist"). If the parties cannot agree on the Punchlist, JEA will develop a Punchlist and deliver it to Company within thirty-five (35) days after Substantial Completion. If the Work involves more than one building or structure or involves a multi-phased project, one Punchlist should be developed for each building, structure, or phase. Failure to include corrective work on the Punchlist does not relieve the Company from its responsibility to complete the Work required by the Contract.

Final Completion must be achieved within thirty (30) days after delivery of the Punchlist to Company. Notwithstanding anything in the Contract Documents to the contrary, damages may not be assessed against Company for failing to complete the Work unless Company fails to complete the Work within such thirty (30) day period.

#### **2.4.14. CERTIFICATE OF CONTRACT COMPLETION AND FINAL PAYMENT**

Company shall complete and submit to JEA the Certificate of Contract Completion for, which can be found on [jea.com](http://jea.com), as notice that the Work, including the correction of all deficiencies outlined in the Punchlist, is complete.

By submitting the certificate, the Company certifies the following:

- The Work, including all Punchlist items, has been satisfactorily completed; and
- No liens have attached against the property and improvements of JEA; and
- No notice of intention to claim liens are outstanding; and
- No suits are pending by reason of the Work; and
- All workers' compensation claims known to the Company have been reported to JEA; and
- The surety provides a release; and
- All warranties, equipment manuals and other documentation has been provided; and
- No public liability claims are pending.

The Company shall submit its final Invoice with the completed Certificate of Contract Completion. JEA shall make Final Payment in accordance with the provisions contained herein. This includes payment of any retainage held.

#### **2.4.15. OFFSETS**

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.

#### **2.4.16. COST SAVING PLAN**

During the Term of this Contract, JEA and Company are encouraged to identify ways to reduce the total cost to JEA related to the Work provided by the Company ("Cost Savings Plan"). JEA and Company may negotiate Amendments to this Contract that support and allow such reductions in total costs including, but not limited to, the sharing of savings resulting from implementation of cost-reducing initiatives between JEA and Company. The decision to accept any cost savings plan shall be in the sole discretion of JEA, and JEA shall not be liable to Company for any cost that may be alleged to be related to a refusal to accept a Cost Savings Plan proposed by Company.

#### **2.4.17. PRICE ADJUSTMENT-FIXED THREE YEARS, ANNUAL THEREAFTER**

Contract prices for labor rates will remain fixed through the first three (3) years of the Contract. Thereafter, the Company may request a CPI adjustment annually for its labor rates. **ALL OTHER RATES AND MARK UPS SHALL BE FIXED FOR THE TERM OF THE CONTRACT.**

Each request for a price adjustment, after the three (3) year period must be made within thirty (30) days after the completion of each year from the date (Anniversary Date).

When a timely price adjustment request is received, JEA will recognize the price adjustment within thirty (30) days after the Anniversary Date. No retroactive price adjustments will be allowed.

Unless the Company and JEA make other agreements, the annual price adjustment for the Contract shall be in accordance with the Consumer Price Index for all urban consumers published monthly by the U.S. Department of Labor, Bureau of Labor Statistics. The index used will be the unadjusted percent change for the previous twelve (12) months of the Company's written CPI adjustment request is received by JEA.

In the event the applicable price index publication ceases, the Company and JEA shall mutually agree on a replacement index. If the Company and JEA fail to agree on a replacement index, the Contract shall terminate effective on the next Anniversary Date.

#### **2.4.18. 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:

- o 1% 20, net 30
- o 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.



#### **2.4.19. INVOICING AND PAYMENT TERMS**

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.

#### **2.4.20. PROMPT PAYMENT TO SUBCONTRACTORS, SUB-SUBCONTRACTORS AND SUPPLIERS**

When the Company receives payment from JEA for labor, services or materials furnished by Subcontractors and suppliers that are hired by the Company, the Company shall remit payment due (less proper retainage) to those Subcontractors and suppliers within ten (10) days after the Company's receipt of payment from JEA. Nothing herein shall prohibit the Company from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its Subcontractors and suppliers. In the event of such dispute, the Company may withhold the disputed portion of any such payment only after the Company has provided written notice to JEA and to the Subcontractor and supplier whose payment is in dispute, stating the amount in dispute and specifically describing the actions required to cure the dispute. The Company shall deliver such notice to JEA and to the said Subcontractor or supplier within ten (10) days following the Company's receipt of payment from JEA. The Company shall pay all undisputed amounts due within the time frames specified herein.

The prompt payment requirements herein shall, in no way, create any contractual relationship or obligation between JEA and any Subcontractor, supplier, JSEB, or any third-party, nor create any JEA liability for the Company's failure to make timely payments as required. The Company's failure to comply with the prompt payment requirements, however, shall constitute a material breach of its contractual obligations to JEA. As a result of such breach, JEA, without waiving any other available remedy it may have against the Company, may issue joint checks and charge the Company a 0.2% daily late payment interest charge or charges as specified within the Florida Statutes, whichever is greater.

#### **2.4.21. JSEB - INVOICING AND PAYMENT**

If the Company utilizes JSEB certified firms, regardless of whether these Contract Documents require or encourage the use of such firms, the Company shall Invoice for and report the use of JSEB certified firms according to the format and guidelines established by the City of Jacksonville.

#### **2.4.22. OFFSETS**

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.

#### **2.4.23. TAXES**

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.

### **2.5. JSEB COMPLIANCE**

#### **2.5.1. COMPLIANCE WITH JSEB REQUIREMENTS**

The Company shall achieve the JSEB participation requirements as set forth in the Solicitation, except as allowed under the good faith efforts exception as defined in the City of Jacksonville Ordinance. In no case shall the Company make changes to the JSEB firms listed in its Response, revise the JSEB scope of Work or amount of Work as stated in its Response without prior written notice to the Contract Administrator, and without subsequent receipt of written approval from the Contract Administrator.

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

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

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

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

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

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

Terminate the Contract for breach

Suspend the Company from Proposing any JEA projects as follows:

First offense: Six (6) months

Second offense: One (1) year

Third offense: Three (3) years

Revoke Company's JSEB certification if the Company itself is certified as a JSEB.

#### **2.5.2. JSEB - INVOICING AND PAYMENT**

If the Company utilizes JSEB certified firms, regardless of whether these Contract Documents require or encourage the use of such firms, the Company shall Invoice for and report the use of JSEB certified firms according to the format and guidelines established by the City of Jacksonville.

### **2.6. SCHEDULES, REPORTING REQUIREMENTS AND LIQUIDATED DAMAGES**

#### **2.6.1. CRITICAL PATH METHOD (CPM) SCHEDULING (UNDER \$5 MILLION)**

The Contractor shall use the Critical Path Method (CPM) to schedule and manage the Work. A qualified member of the Contractor's personnel shall do scheduling using CPM. 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 the purpose of supporting this Contract.

All CPM scheduling will be performed using CPM precedence diagramming method (PDM) scheduling software such as, Primavera P3, Primavera SureTrak (a low-cost CPM software for small businesses), Primavera P3e/c for construction, Primavera Contractor, Artemis Artviews, or a CPM scheduling software compatible with Primavera P3e import capabilities, integrated as part of a Contractor-wide ERP. The Contractor shall submit all schedules and associated reports to the Contract Administrator in paper and/or electronic formats as described below in order to allow both complete analysis of the schedules and accurate record keeping.

CPM Schedule Terminology:

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

"Milestone" or "Event" means the instant of time at which a significant task within the project is commencing or completing. A milestone or event is an activity in the scheduling software with an estimated duration of zero.

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

"Schedule" based on the Plan.

"Initial Schedule" means the schedule that is proposed before any work has commenced against the project. The initial schedule differs from a current schedule only such that no activities have begun. Initial Schedules are usually

the first schedules submitted for approval to the JEA representative. An Initial Schedule has no standing and is considered a working document or Response.

"Current Schedule" means the schedule that has progress information (updates) reported against in-progress and completed activities. Update information is used to re-calculate / reforecast the most likely "early start" dates of the remaining incomplete activities as sequenced by the Plan. This calculation establishes to the earliest forecasted completion date of the project which allows project managers to determine if they are ahead, on, or behind schedule to meet the contractual completion date. A current schedule has no standing and is considered a working document to evaluate progress against an Approved Schedule.

"Original Schedule" is the first schedule that is approved by the JEA representative. In some extraordinary cases a Current Schedule may be accepted as the Original Schedule if no Initial Schedule is approved before work commences. The Original Schedule is the first schedule that is 'targeted' as an Approved Schedule.

"Target Schedule" means a copy of the schedule where dates are frozen and those dates are not allowed to be modified by progress reporting, schedule changes, or further recalculations. Target Schedules take current schedule information which is dynamic and establishes static schedule data for comparison purposes. A project can have multiple Target Schedules (i.e. - copies of the schedule made at different times during project execution). The Original Schedule is usually the first Target Schedule to be generated within a project.

"Approved Schedule" is the Target Schedule that is approved by the JEA Representative. An Approved Schedule is the official schedule used to measure schedule performance against the Current Schedule. The first Approved Schedule is the Original Schedule and subsequent Approved Schedules are generated when the JEA representative agrees to revision(s) of the Approved Schedule. The Approved Schedule may be referred to as the Baseline Schedule or current Baseline Schedule.

"CPM Network" means a transferable electronic copy of project software data and files and includes, but is not limited to, activities, milestones, calendar definitions, precedence relationships including any relationship lag periods, date constraints (e.g. start on or before, start on or after, finish on, finish on or before, finish on or after, as late as possible, zero free float, zero total float, etc.), target schedules, project and activity code definitions, resource definitions, resource assignments, project values (e.g. the data date/time now value, settings for project-activity processing options, etc.), and all information that can be generated from such data.

#### Schedule Requirements

General - The Contractor is advised that its schedule and reports as specified herein will be an integral part of JEA's management program. The Contractor's schedules will be used by JEA to monitor project progress, plan the level of effort by its own forces and consultants, and as a critical decision making tool. Accordingly, the Contractor shall ensure that it complies fully with the requirements specified herein and that its schedules are both timely and accurate throughout the duration of the project.

Duration Estimates - The basic time unit for the duration estimate shall be in calendar days, except for plant outage work, which if requested by JEA, shall be measured at JEA's determination by work shifts or clock hours. For the purpose of scheduling, no schedule activity, outside of a plant outage, shall be estimated in duration units other than whole calendar days. The Contractor shall show each estimated duration on each Schedule (Initial or Current), indicating the best estimate of the activity's duration considering the scope of the Work and resources planned for the activity.

Calendars - The Contractor will specify the work pattern (calendar) to be used on the job (default) and the work pattern assigned to each activity - whether it is a 4 day 10 hour/day week, 5 day- 8 hour/day week, a 6 day 10 hour/day week, etc.

Holidays - Holidays are to be observed and shall be identified as non-work days occurring during a regular work week pattern.

Level of Schedule Detail - JEA retains the right to reject an Initial or Current Schedule if insufficient level of detail in the schedule would inhibit meaningful schedule analysis or progress reporting used to evaluate progress of the project. Except for certain non-labor activities such as procurement or delivering of materials, activity durations "should" not exceed 14 days, nor be shown as less than one working day unless otherwise accepted by JEA. The "guideline" for activity durations not in excess of 14 days shall apply to all schedule submittals. JEA shall be the final authority regarding the appropriate level of schedule detail for all schedules submitted for approval.

Activity and Project Codes - The Contractor may use activity and project codes to support organization and displays of the schedule information if such information is transmitted to JEA with the Initial schedules. JEA shall be notified if additional codes are defined and utilized over the course of the project. At times, JEA may request that certain codes are applied to activities to facilitate the interface between the Contractor's schedule software and JEA's schedule software.

PDM Network Quality - Each project shall establish a "Start of Project" and "Project Completion/End of Project" milestone. All other activities within the schedule shall have precedence relationships that logically sequence both the start (predecessor) and finish (successor) of each activity. JEA will review the CPM Plan for excessive front loaded and back loaded work activity periods. Heavy front or back loaded schedules may indicate the lack of a well designed Plan, poor network logic or poor utilization of available resources.

Submittal Process for Establishing an Approved Schedule:

Planning Session - Within 3 days of Purchase Order issuance, and prior to submission of the Initial Schedule, the Contractor shall schedule and conduct a schedule planning session. During this session, the Contractor shall present its planned approach to the project including but not limited to: the planned construction sequence and phasing, planned crew sizes, summary of equipment types/sizes/numbers to be used, estimated durations of major work activities, the anticipated critical path of the project and a summary of the activities on the critical path, and a summary of the most difficult schedule challenges the Contractor is anticipating and how it plans to manage/control these challenges. This will be an interactive session with JEA. The Contractor's Initial Schedule shall incorporate the information discussed at this schedule planning session.

Initial Schedule - Within 14 days of the Planning Session, the Contractor shall submit a proposed CPM schedule consisting of Schedule deliverables as described herein. This schedule shall indicate project completion within the Contract Time. JEA shall contact a representative of the Contractor to review any discrepancies or items requiring clarification of the proposed Work schedule.

The Initial Schedule shall be reviewed and approved, or rejected by JEA within 10 days of submission. Failure to gain approval of the Initial Schedule within 21 calendar days of submittal can result in Contract cancellation. The submitted CPM Network and schedule reports, when approved by JEA, shall constitute the Approved Schedule, until circumstances change and shall warrant the Contractor to request, and JEA to approve, a revised Approved Schedule.

#### **Schedule Deliverables**

The Contractor shall submit the following for the Initial Schedule and for each version of their Current schedule where they seek a revision to the Approved Schedule.

1. A tabular schedule report which includes:

Activity ID, activity description/name, activity calendar, original duration in calendar days, early start date, early finish date, total float, imposed date type, and imposed date (also known as "constrained date"), Approved Schedule Target Start Date, and Approved Schedule Target Finish Date

Sort criteria used on the report

Description of Grouping or sectioning criteria if used

No activities will be filtered, hidden, or removed from these reports.

If any of the above fields are too wide for a single tabular report, then the Contractor shall split some of the fields into a second report that also repeats activity ID and activity name, with the same sectioning, sorting and selection.

2. A second report (a Gantt chart) that includes the following:

Tabular fields: activity ID, activity name, remaining duration, early start date, early finish date, total float.

Graphic bars showing:

- i. Early date set: early start to early finish (including actual start to actual finish if the activity is completed). This bar must highlight activities, preferably in red, with total float values equal to 0 or less.
- ii. Late date set: late start to late finish (a separate, less prominent bar beneath early date set).
- iii. Approved (Target) Schedule date set: a separate, less prominent bar beneath the late date set bar that highlights the original target dates. This bar is static, while the schedule bars for early and late dates will become dynamic during schedule execution.
- iv. Milestone flags and constrained date flags: these are icons that show up as points in time (events). (Normally, they can share the same bar row as early date set).

Sort criteria

- i. Grouping: sectioning appropriate to the scope of the project
- ii. Sorting: sub grouping under each section by early start date (primary sort), by early finish date (secondary sort), total float (third-level sort), and by activity ID (final sort).

Selection: all activities

3. A document explaining the basis and purpose of any relationship lag values between activities in the CPM network.
4. An electronic copy of the Schedule data files from one of the Primavera schedule software systems which will allow JEA to generate the products identified above based on the vendors schedule information/ raw data.

5. The Contractor shall also submit a list of project definitions including: calendar definitions indicating holidays, other non-work periods, normal planned work pattern (e.g. 8 hours per day, 5 days per week; 10 hours per day, 4 days per week), any activity code definitions if any of the items have been altered since the previous submission.

#### **Schedule Acceptance**

The JEA representative shall inform the Contractor when the Initial Schedule or a Current Schedule has been accepted as the Accepted Schedule. No changes reflected in an Approved Schedule will be construed as authorization to override the initial approved schedule substantial completion date. Changes to the initial substantial completion date must be amended outside the schedule review process.

#### **Schedule Revisions**

The Contractor shall modify any portions of the Current Schedule that become infeasible because of "activities or procurement behind schedule" or for any other valid reason. An activity that cannot be completed by its late finish date shall be deemed to be behind schedule. If the Contractor makes logic changes to the CPM network, adds, deletes, or modifies activities and wishes to establish a new Approved Schedule, it will be required to resubmit the same information that was originally submitted for the Approved Schedule. The submittal may be included as part of the update process with the Current Schedule, however none of the additions, deletions, or modifications to the schedule are approved until the JEA Contract Manager formally approves the changes as a revised Approved Schedule. JEA shall approve or reject an Initial or Current schedule submitted for the purpose of establishing an Approved Schedule within ten (10) calendar days of submittal and in any situation before the next periodic update is due. Schedule revisions shall be designed to document how the Contractor intends to accomplish the Work by the date stated for Final Completion.

#### **Change Orders**

Upon issuance of a Change Order, the Contractor shall indicate the approved change in the next submittal of the Current schedule by coding criteria and within the activity description so the JEA Representative may easily identify Change Order activities wherever they appear in the schedule.

#### **Schedule Updates**

The Contractor shall update the Current Schedule monthly or periodically as indicated in the Contract Documents, in order to show Work that is ahead of or behind the Approved Schedule. The Current schedule may indicate that an activity is ahead of or behind the targeted schedule and may show the Contractor's revised plan to meet the original dates by working overtime, weekends, or in drastic cases, revising the Work sequence/logic to recover time. Such reporting does not infer that changes to the schedule are authorized or agreed to by JEA.

The Contractor shall provide monthly schedule updates using a process which includes:

- i. Determining a new data date (time now) value, against which the progress of all activities in the CPM network will be reported. Many activities may not be affected by the update because they remain planned, or were completed during a previous update cycle.
- ii. Based on the selected data date, review each activity for the following criteria:
- iii. If an activity has started and the actual start date has not been previously reported, record an actual start date.

If an activity has finished and the actual finish date has not been previously reported, record an actual finish date.

If the activity has started, but not finished, also report an expected finish date or report a remaining duration in days based on the activity work pattern (calendar).

- a. When this data has been recorded analyze the PDM network to recalculate/ reforecast the Current Schedule dates based on progress reporting, remaining durations, relationships, and date constraints.
- b. The Contractor shall review the schedule analysis results and determine if they are acceptable. If the results are not acceptable, the Contractor shall notify the JEA Representative such that the Contract Administrator may be aware that corrective action is needed by the Contractor to meet the schedule.
- c. The Contractor shall publish and distribute the Current Schedule to show the impact of the progress reporting against the Approved Schedule.

The Contractor, after updating and issuing the Current Schedule, may choose to attempt to recover lost time through improved productivity, additional work hours or logic changes. They may submit their schedule changes to the JEA Contract Manager as a request for a revised Approved Schedule as described in the Schedule Revisions section.

The revised Approved Schedule grants permission to change the Target Schedule as the basis for measuring whether Work is ahead of schedule, on schedule or behind schedule. The documentation required for approval of a revised Approved Schedule will be the same as the documentation required for the initial Approved Schedule.

The current Progress Schedule Submittal should incorporate all proposed Activity, logic and restraint date revisions required to (a) implement changes in the Work, (b) detail all impacts on pre-existing Activities, sequences and restraint dates, (c) recover schedule, (d) reflect the Contractor's current approach for Work remaining, (e) incorporate any Delays that are being negotiated between the JEA and Contractor, and (f) reflect "or equal" or substitution Responses.

#### Schedule Monitoring

The JEA representative has the right to withhold or delay approval of an Application for Payment based on failure to provide schedule updates or to exhibit project progress as shown on the Current Schedule when compared to the Approved Schedule. This section in no way limits or restricts Application for Payment standards set elsewhere in the contract. The Contractor agrees to and guarantees that they will not: misrepresent its scheduling or execution of the work; utilize schedules substantially different from those submitted to JEA for performance or coordination of the work; or submit schedules that do not accurately reflect the intent or reasonable expectations of the Contractor or its subcontractors.

#### Use of Float

Contract Float is not for the exclusive use or benefit of either JEA or the Contractor, but must be used in the best interest of completing the project within the Contract Time. If the Early Dates in any Progress Schedule Submittal forecast any slippage or overrun of the Contract Times, the Contractor shall indicate such slippage or overrun by reporting negative Contract Float.

The Contractor shall explain the rationale for use of any: (1) float suppression techniques in the Construction Schedule including but not limited to interim dates imposed by the Contractor other than Contract Time(s) and Contract Milestone(s), or (2) the inclusion of activities or constraints in a path or chain leading to a Contract Milestone which are unrelated to the Work as stated and specified in the Contract Documents, or (3) activity durations or sequences deemed by JEA to be unreasonable in whole or in part.

All Contract Time(s) and Milestones shall be imposed, coded and separately identified in all Progress Schedule Submittals in conformance with the Milestone(s) and Contract Times(s) set forth in the Contract Documents. The



Contractor shall impose no other date restraints in the Construction Schedule, unless an explanation of their bases is provided and is acceptable to JEA. Contract Completion and Milestones incorporated in the Contractor's Construction Schedule shall be assigned duration of zero (0) days.

Extensions of time for performance of the Work required under the General Conditions pertaining to equitable time adjustment will be granted only to the extent that the equitable time adjustment for activities affected by any condition or event which entitles the Contractor to a time extension exceed the Contract Float along the path of the activities affected at the time of Notice to Proceed of a Contract Modification or commencement of any delay or condition for which an adjustment is warranted under the Contract Documents.

If the Contractor is delayed in performing the Work, the Contractor shall absorb any related delay, disruption, interference, hindrance, extension or acceleration costs, however caused until all Contract Float, if any, is consumed and performance or completion of the Work or specified part, necessarily extends beyond the corresponding Contract Times. The Contractor shall work cooperatively with JEA, adjacent Contractors, and third parties, to identify and implement to the maximum extent possible, no-cost measures to recover all schedule delays, regardless of the cause of the delays. One example of such measures is no-cost re-sequencing of Work Activities.

#### Delay Provisions

Review with JEA progress of work at the Construction Progress Meetings. Unless otherwise directed in writing by the JEA, whenever this review as determined by JEA indicates a late completion of the work or should activities shown on the Progress Schedule submittal slip by ten (10) or more days beyond any Contract Time or Milestones, a recovery schedule shall be prepared and submitted. The Contractor shall work cooperatively with JEA's adjacent Contractors, and third parties, to identify and implement to the maximum extent possible, no-cost measures to recover all schedule delays, regardless of the cause of the delays. One example of such measures is no-cost re-sequencing of Work activities. The Contractor shall be required to, at no extra cost to JEA, prepare and submit a recovery schedule which displays how the Contractor intends to reschedule those activities, in order to regain compliance with the Contract Time or Milestones. The Contractor will also submit a narrative, which shall describe the cause of schedule slippage and actions taken to recover schedule within the shortest reasonable time (e.g., re-sequencing of Work activities, hiring of additional labor, use of additional construction equipment, expediting of deliveries, etc.).

Schedule recovery will be excused if the Contractor requests and demonstrates entitlement to an extension in Contract Time, in writing, due to delay(s) not within the control of the Contractor, and JEA concurs schedule recovery is not required at that time. Any Contractor request for adjustment in Contract Time and Contract Price will not be evaluated unless (a) the Contractor, using the procedures in this Section and the Contract, shows that conditions justifying adjustments in Contract Time and/or Contract Price have arisen, (b) the Contractor's analysis is verifiable through an independent review by JEA of the electronic disk files for the Progress Schedule Submittal provided by the Contractor, and (c) the Contractor provides adequate documentation (in the form of daily field reports, field records, correspondence, photos, videos, invoices, certified payrolls, narratives, U.S. Weather Bureau reports, etc.) to substantiate its position, to the satisfaction of JEA.

The Contractor shall include in the schedule a subnet demonstrating how the Contractor proposes to incorporate each Change Order into the most recently accepted Schedule. A subnet is defined as a sequence of new or revised activities that are proposed to be added to the Schedule.

The extension of Contract Time shall be considered only if the Contractor demonstrates via the timely submittal of a detailed schedule analysis that they are entitled to the time by using a methodology acceptable to JEA. The analysis shall include: a) a detailed narrative which clearly describes the events causing the delay and the resulting impacts to the critical path of the project schedule, b) documentation substantiating and supporting the delay, c) detailed CPM schedules (both electronic and hard copies) clearly delineating the delay, d) a matrix showing delays caused by JEA,

delays caused by the Contractor, delays caused by any third party and any force majeure delays; e) any additional information reasonably requested by JEA, in order to enable JEA to perform a timely and informed analysis of the request for extension of Contract Time.

### **2.5.2 LIQUIDATED DAMAGES**

If the Company fails to obtain JEA Acceptance on or before the initial approved scheduled date of substantial completion, and no revisions has been submitted or approved as described in the Schedule Revisions section the Company shall pay JEA the sum of **(0.0005%)** of the total Task Authorization value per day for each and every calendar day, including Sundays and Holidays, starting on this day until the date the Work is substantially completed and Accepted by JEA.

Liquidated Damages are capped at a maximum of ten percent **(10%)** of the Task Authorization value.

The Company 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 Company.

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

### **2.5.3 REPORTING (CONSTRUCTION)**

The Company shall provide all reports as defined in the Contract Documents.

Where the reporting frequency is daily, reports shall be submitted by noon of the following workday. Where the reporting frequency is weekly, reports are due by Monday at noon, covering the prior workweek. Where Monday is a Holiday, the reports are due at noon on the next workday. Where reports are due monthly, reports are due by noon on the first business day of each month. Sample forms for reports may be included in the Contract Documents. Where they are included, they are to be used. Where they are not included, the Company shall provide a sample of its proposed report format for each report to the Contract Administrator at least one-week prior to its initial due date. The Contract Administrator will review and either approve or reject use of the report. Where proposed report is rejected, Company shall resubmit revised report formats, until Contract Administrator approves format. Reporting cycle shall begin upon the Purchase Order date, or, if used, the issuance date of the Notice to Proceed.

Where the Contract calls for reports to be submitted by Company, such reports shall be in both paper and electronic format, with the electronic version submitted electronically via email to the Contract Administrator.

### **WORK SCHEDULES**

The Approved Schedule is established on the basis of working 7:00 A.M. to 4:00 P.M on Monday through Friday. If no schedule is provided, then the established schedule is based on working five days per week, single shift, eight hours per day or four days per week, single shift, 10 hours per day. JEA may require the Company to base its schedule on an accelerated Work schedule or multiple shifts. The Company shall not schedule work on Holidays without obtaining prior written approval from JEA.

The Company shall, at no additional cost to JEA, increase or supplement its working force and equipment and perform the Work on Overtime or multiple shift basis when directed by JEA and upon notification that the Company is behind schedule. The Company shall submit a revised schedule in writing demonstrating the Company's schedule recovery plans.

The Company understands and agrees that the rate of progress set forth in the Approved Schedule already allows for ordinary delays incident to the Work. No extension of the Contract Time will be made for ordinary delays, inclement weather, or accidents and the occurrence of such events will not relieve the Company from requirement of meeting the Approved Schedule.

## **2.7. WARRANTIES AND REPRESENTATIONS**

### **2.7.1. WARRANTY**

Unless otherwise stated herein, the Company unconditionally warrants to JEA for a period of not less than **1 year(s)** from the date of issuance of JEA's Acceptance, that all Work furnished under the Contract, including but not limited to, materials, equipment, workmanship, and intellectual property, including derivative works will be:

- Performed in a safe, professional and workman like manner; and
- Free from Defects in design, material, and workmanship; and
- Fit for the use and purpose specified or referred to in the Contract; and
- Suitable for any other use or purpose as represented in writing by the Contractor; and
- In conformance with the Contract Documents; and
- Merchantable, new and of first-class quality.

The Company warrants that the Work shall conform to all applicable standards and regulations promulgated by federal, state, local laws and regulations, standards boards, organizations of the Department of State, and adopted industry association standards. If the Work fails to conform to such laws, rules, standards and regulations, JEA may return the Work for correction or replacement at the Company's expense, or return the Work at the Company's expense and terminate the Contract.

If the Company performs services that fail to conform to such standards and regulations or to the warranties set forth in the first paragraph of this Section, the Company shall make the necessary corrections at Company's expense. JEA may correct any services to comply with standards and regulations at the Company's expense if the Company fails to make the appropriate corrections within a reasonable time after notice of the Defect from JEA.

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

If, within the warranty period, JEA determines that any of the Work is defective or exhibit signs of excessive deterioration, the Company at its own expense, shall repair, adjust, or replace the defective Work to the complete satisfaction of JEA. The Company shall pay all costs of removal, transportation, reinstallation, repair, and all other associated costs incurred in connection with correcting such Defects in the Work. The Company shall correct any Defects only at times designated by JEA. The Company shall extend the warranty period an additional twelve (12) months for any portion of the Work that has undergone warranty repair or replacement, but in no case shall the maximum warranty period be extended beyond thirty-six (36) months.

JEA may repair or replace any defective Work at the Company's expense when the Company fails to correct the Defect within a reasonable time of receiving written notification of the Defect by JEA, when the Company is unable to respond in an emergency situation or when necessary to prevent JEA from substantial financial loss. Where JEA makes repairs or replaces defective Work, JEA will issue the Company a written accounting and invoice of all repair work required to correct the Defects.

Where spare parts may be needed, Company warrants that spare parts will be available to JEA for purchase for at least seventy-five percent (75%) of the stated useful life of the product.

The Company's warranty excludes any remedy for damage or Defect caused by abuse, improper or insufficient maintenance, improper operation, or wear and tear under normal usage.

Note that JEA intends to perform a warranty inspection prior to the expiration of the warranty period. JEA will notify the Company and the Company Representative shall attend the inspection. All discrepancies identified at said inspection shall be corrected by the Company within a reasonable timeframe.

#### **Materials, Supplies or Goods:**

At JEA's option, if the Company provides materials, supplies, or goods that fail to conform to the above mentioned warranties, JEA may correct the Defect at the Company's expense if the Company fails to make the appropriate corrections within a reasonable time upon notice by JEA, or JEA may return the Work for correction or replacement at the Company's expense, or JEA may return the Work at the Company's expense and terminate the Contract.

If, within the warranty period, JEA determines that any of the materials, supplies or goods are defective or exhibit signs of excess deterioration, the Company, at its own expense, shall repair, adjust, or replace the defective Work to the complete satisfaction of JEA. The Company shall pay all costs of removal, transportation, reinstallation, repair, and all other associated costs incurred in connection with correcting such Defects in the Work. The Company shall correct any Defects only at times designated by JEA. The Company shall extend the warranty period an additional 12 months for any portion of the Work that has undergone warranty repair or replacement, but in no case shall the maximum warranty be extended beyond thirty six (36) months.

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

JEA may repair or replace any defective Work at the Company's expense when the Company fails to correct the Defect within a reasonable time of receiving written notification of the Defect by JEA, when the Company is unable to respond in an emergency situation, or when necessary to prevent JEA from substantial financial loss. Where JEA makes repairs or replaces defective Work, JEA will issue the Company a written accounting and invoice of all such work to correct Defects.

Where spare parts may be needed, Company warrants that spare parts will be available to JEA for purchase for at least seventy-five percent (75%) of the stated useful life of the product.

The Company's warranty excludes remedy for damage or Defect caused by abuse, improper or insufficient maintenance, improper operation, or wear and tear under normal usage.

## **2.8. INSURANCE, INDEMNITY, RISK OF LOSS & BONDING**

### **2.8.1. INSURANCE**

#### **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; Insurance Limits: \$1,000,000 each occurrence, \$2,000,000 annual aggregate for bodily injury and property damage, combined single limit.

##### Automobile Liability

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

##### Excess or Umbrella Liability

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

Company's Commercial General Liability and Excess or Umbrella Liability policies shall be effective for two (2) years after Work is complete. 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. 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, 6<sup>th</sup> 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 thirty (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.

#### **MEDICAL FACILITIES AT WORK LOCATION**

In the event that JEA shall, at its sole discretion, establish or allow use of established emergency medical treatment facilities at the Work Location, and in consideration of any such establishment or right of use and the rendition of any such treatment to the Company, any of its Subcontractors or any of their respective employees or invitees, the Company shall indemnify and hold harmless JEA, its agents and their respective employees from and against any and all liabilities, claims, losses, damages or expenses, including reasonable legal fees and disbursements, that may be incurred or sustained by JEA, its agents or any of their respective employees, by reason of the assertion of any liability or claim for injury, loss or damage of any kind or nature whatsoever, direct or indirect, including any liability or claim based on alleged negligence or malpractice, arising out of the rendition of, or in any way connected with, the furnishing of such treatment.

##### **2.8.2. INDEMNIFICATION (SJRPP)**

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 and Florida Power and Light Company (hereinafter referred to as FPL), 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 Company and any person or entity used by the 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. For purposes of this Indemnification, FPL has been included with JEA, as co-owner for their St. Johns River Power Park facility (hereinafter referred to as SJRPP). The term "FPL" 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.

##### **2.8.3. ENVIRONMENTAL INDEMNIFICATION**

The Company shall hold harmless and indemnify JEA and Florida Power and Light (FPL), including without limitation, its officers, directors, members, representatives, affiliates, agents and employees, successors and assigns (the "Indemnified Parties") and will reimburse the Indemnified Parties from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or in connection with (a) the Company's, including, but not limited to, its agents, affiliates or assigns ("Parties"), actions or activities that result in a violation of any environmental law, ordinance, rule, or regulation or that leads to an environmental claim or citation or to damages due to the Company's or other Parties' activities, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with this Contract by the Company or

any Party at any time on or after the effective date of the Contract, or (c) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by the Company or any Party. JEA and FPL will be entitled to control any remedial action, any proceeding relating to an environmental claim. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Contract or otherwise. This section relating to indemnification shall survive the Term of this Contract, and any holdover and/or Contract extensions thereto, whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Contract.

#### **2.8.4. TITLE AND RISK OF LOSS**

Ownership, risks of damage to or loss of the Work shall pass to JEA upon Acceptance. The Company shall assume all risk of loss or damage to the Work while items are in transit and/or in the Company's custody until such time that JEA issues written notice of Acceptance.

JEA's receipt or delivery of any equipment or other materials will not constitute JEA's Acceptance of the Work and will not constitute a waiver by JEA of any right, claim or remedy. In the event of loss or damage to the Work, the Company shall bear all costs associated with any loss or damage until Acceptance by JEA.

For equipment and materials removed from JEA sites or the Work locations for repairs, service or duplication, JEA will retain the title to equipment and materials removed.

#### **2.8.5. BOND AMOUNT**

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

#### **2.8.6. NOTIFICATION OF SURETY**

The Company shall notify its surety of any changes affecting the general scope of the Work or altering the Contract Price. The amount of the applicable bonds shall be adjusted accordingly and the Company shall furnish proof of such adjustment to JEA within ten (10) days of date of Purchase Order.

### **2.9. ACCEPTANCE**

#### **2.9.1. DELAY IN ACCEPTANCE OR DELIVERY**

JEA may delay delivery or acceptance of goods in the event of any unforeseen event. The Company shall hold the goods pending JEA's direction, and JEA will be liable only for direct increased costs incurred by the Company by reason of JEA's instructions.

### **2.9.2. ACCEPTANCE OF WORK - RECEIPT, INSPECTION, USAGE AND TESTING**

The JEA Representative will make the determination when Work is completed and there is Acceptance by JEA. Acceptance will be made by JEA only in writing, and after adequate time to ensure Work is performed in accordance with Contract Documents. JEA will reject any items delivered by Company that are not in accordance with the Contract, and shall not be deemed to have accepted any items until JEA has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the items has become apparent. JEA may partially accept the Work items. If JEA elects to accept nonconforming items, it may in addition to other remedies, be entitled to deduct a reasonable amount from the price as compensation for the nonconformity. Any Acceptance by JEA, even if nonconditional, shall not be deemed a waiver, or settlement or acceptance of any Defect.

Items specifically required prior to Acceptance are: Based on Tasks

## **2.10. TERM AND TERMINATION**

### **2.10.1. TERM OF CONTRACT – DEFINED DATES**

This Contract shall commence on the effective date of the Contract, and continue and remain in full force and effect as to all its terms, conditions and provisions as set forth herein for five (5) years, or until the Contract's Maximum Indebtedness is reached, whichever occurs first. It is at JEA's sole option to renew the Contract.

It is at JEA's sole option to renew the Contract for an additional one (1) year period.

This Contract, after the initial year shall be contingent upon the existence of lawfully appropriated funds for each subsequent year of the Contract.

### **2.10.2. TERMINATION FOR CONVENIENCE**

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

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

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

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

### **2.10.3. SUSPENSION OF WORK**

JEA may suspend the performance of the Work by providing the Company with five (5) days' written notice of such suspension. Schedules and compensation for performance of the Work shall be amended by mutual agreement to reflect such suspension. In the event of suspension of Work, the Company shall resume full performance of the Work when JEA gives written direction to do so. Suspension of Work for reasons other than the Company's negligence or failure to perform, shall not affect the Company's compensation as outlined in the Contract Documents.



#### **2.10.4. TERMINATION FOR DEFAULT (WITH A BOND)**

JEA may give the Company written notice to discontinue all or part of the Work under the Contract or a Notice to Cure a material breach in the event that:

- o The Company assigns or subcontracts the Work without prior written permission;
- o Any petition is filed or any proceeding is commenced by or against the Company for relief under any bankruptcy or insolvency laws;
- o A receiver is appointed for the Company's properties or the Company commits any act of insolvency (however evidenced);
- o The Company makes an assignment for the benefit of creditors;
- o The Company suspends the operation of a substantial portion of its business;
- o The Company suspends the whole or any part of the Work to the extent that it impacts the Company's ability to meet the Work schedule, or the Company abandons the whole or any part of the Work;
- o The Company, at any time, violates any of the conditions or provisions of the Contract Documents, or the Company fails to perform as specified in the Contract Documents, or the Company is not complying with the Contract Documents;
- o The Company attempts to willfully impose upon JEA items or workmanship that are, in JEA's sole opinion, defective or of unacceptable quality;
- o The Company breaches any of the representations or warranties;
- o The Company is determined, in JEA's sole opinion, to have misrepresented the utilization of funds or misappropriate property belonging to JEA; or
- o There is an adverse material change in the financial or business condition of the Company.

If within five (5) days after service of such notice to discontinue or notice to cure upon the Company an arrangement satisfactory to JEA has not been made by the Company for continuance of the Work or the material breach has not been remedied, JEA may declare the Company to be in default and terminate the Contract.

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

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

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

The Contract Documents shall in no way limit JEA'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 Company shall immediately surrender all Work records to JEA. In such a case, JEA may set off any money owed to the Company against any liabilities resulting from the Company's nonperformance.

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

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

Immediately upon termination or expiration of this Agreement, Company must return to JEA all materials, documents and things used by Company and belonging to JEA, including Responses, 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 JEA's request, Company 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 JEA, deleted from any computer system, or otherwise destroyed.

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.

#### **2.10.5. SHIPPING TO AND STORAGE AT WORK LOCATION**

Shipping Materials and equipment to be installed by the Company shall be delivered by the Company to the Work Location or such other place as may be designated by the Contract Administrator. Insofar as transportation conditions will allow, items shall be shipped complete and ready for installation.

Where applicable, the Company shall be responsible for obtaining any permits required for transportation to the Work Location. The Company shall provide an Advance Ship Notice to the Contract Administrator or designated Work Location manager.

Storage: Under arrangement with the JEA Engineer, and upon his approval, a limited amount of temporary indoor storage space may be made available, but only for the equipment that must be protected from the weather. Equipment, for which arrangements have been made for indoor storage, shall be packed separately and the container clearly marked "For Indoor Storage." For equipment that will be stored indoors and that will require special storage precautions, the storage instructions shall be shown on the outside of each container, or in a durable envelope identified as containing storage instructions and attached to the container.

## **2.11. PRELIMINARY MATTERS**

### **2.11.1. WORK LOCATION**

Work shall be performed at the following location(s): Main St – Sara Drive to Noah Road, Jacksonville FL.

### **2.11.2. UNFORESEEN CONDITIONS**

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

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

### **2.11.3. UNAUTHORIZED WORK**

JEA will consider any Work done without lines and grades given, Work done beyond the lines and grades shown on the Contract or as given, or any extra Work done without written authority, as unauthorized Work and will not pay the Company for such Work. If so ordered by the Contract Administrator, the Company shall remove such Work and properly replace it at the Company's own expense.

### **2.11.1. MAINTENANCE OF TRAFFIC**

The Company, when required by the governing agency such as the City of Jacksonville or the Florida Department of Transportation (FDOT), shall maintain traffic in accordance with an approved Maintenance of Traffic (MOT) plan ("MOT Plan") submitted by the Company, on streets, roads, private ways, and walks. The Company shall assume full responsibility for the adequacy and safety of provisions made. The Company shall be solely responsible for the placement, maintenance and removal of the minimum number of devices required by the MOT Plan, or specified by the FDOT, for the control of traffic at the Work Location including, but not limited to signs, cones, lights, barricades, concrete barrier walls, police officers, flaggers, etc. ("MOT Items").

Company shall be responsible for all costs associated with MOT. There will not be a separate line item for MOT on the Response Form.

### **2.11.2. LIMITATION OF ACCURACY OF INFORMATIONAL MATERIALS**

For all drawings, test results, inspections, and other informational materials included as part of the Contract Documents, the Company understands and agrees that any existing facilities shown, including underground, overhead, and surface structures, and other delineations, and any other informational items provided as part of the Contract Documents are for reference only and are not to be used by the Company as the only indication of Work conditions. The Company understands and agrees that it is its sole responsibility to verify all Work conditions, measurements, dimensions, obstructions and other causes for existing or potential changes to the Work prior to

initiating Work. In the event the Work must be changed due to the Company not fulfilling the above requirements, the Company understands and agrees that it will be responsible for all costs associated with the changed condition. Changes associated with conditions that are clearly unforeseen and that could not have been discovered by a reasonable verification of the above listed items, shall be covered as stated in Changes to Work.

#### **2.11.3. PERMITS TO BE OBTAINED BY THE COMPANY**

Unless otherwise specified in the Contract Documents, the Company shall secure, maintain, post as required, and pay for all building, plumbing, electrical, water, sewer, right-of-way, parking, roadway, railroad, shipping, freight, hazardous materials, and any other permits which may be required for performance of the Work in full compliance with all applicable laws, rules and regulations. The Company shall perform all actions necessary to identify where permits are to be obtained and properly file for the permits, except those specifically listed in the Contract Documents as being provided by JEA.

The Company shall comply with all conditions of permits issued for the Work, either directly or indirectly, issued by federal, state, or local governmental agencies, which are hereby incorporated as part of these Contract Documents. The Company shall be solely responsible for resolving any issues and bearing all expenses including any damages suffered by JEA that result from a finding of noncompliance during performance of the Work by any of the respective regulatory agencies including, but not limited to, all costs for delays, litigation, fines, fees of any kind, and other costs.

#### **2.11.4. PRE-WORK MEETING AND PROGRESS MEETINGS (CONSTRUCTION)**

Before starting the Field Work, a Pre-Work or Pre-Construction meeting may be held to review procedures for the Work, review the Work schedule, establish procedures for invoicing, approving Invoices and making payments, and establish a working relationship between JEA and the Company.

The Contract Administrator may, at his or her discretion, request Pre-Work Meetings to be held prior to start of any Field Work. Such meeting(s) shall be attended by, but not limited to, the Company Representative and Company Supervisor. The Contract Administrator will notify the Company in writing of the meeting time and location at least two (2) days prior to the meeting date. In addition, construction progress meetings will be held at a frequency as determined by JEA. Such meeting(s) shall be attended by, but not limited to, the Company's Representative and Company's Supervisor.

#### **2.11.5. TEMPORARY CLOSURE OF ROADWAYS**

The Company shall not close or obstruct any portion of a street, road, or private way without first obtaining permits. If any street or private way is rendered unsafe by the Company's operations, the Company shall make such repairs or provide such temporary ways and guards necessary for the protection and safety of persons on the Work and the public and for the orderly maintenance of traffic. All costs associated with temporary closure of roadways shall be included in Response Form Document.

The Company shall notify the police and fire departments in writing if it will be necessary to close a street. The Company shall copy JEA on all correspondence relating to street closure. The Company shall notify the police and fire departments prior to closure of the street. The Company shall be responsible for maintaining proper coordination with the proper authorities.

Temporary closure of business entrances must be approved in writing by and coordinated with JEA.

#### **2.11.6. TEMPORARY UTILITIES**

The Company shall furnish and install all temporary water, electricity and other utilities required to accomplish the Work. The Company shall obtain the water required for carrying out the Work from fire hydrants, existing water main connections, or new connections approved by JEA. The Company shall install a back flow preventer and water meter assembly if construction water is necessary. Upon Substantial Completion of Work, the Company shall remove all evidence of temporary connections and lines.

Prior to initiating any construction Work, the Company shall coordinate and schedule the provision of temporary utility service required during construction and arrange for the permanent installation and connection of utilities for the completed Work.

#### **2.11.7. WORK LOCATION**

Work shall be performed at the following location(s): MULTIPLE

#### **2.11.8. UNFORESEEN CONDITIONS**

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

In the event, however, that the Company exercises the requisite due diligence and a change to the Work becomes necessary resulting from conditions that are clearly unforeseen and that could not have been discovered, the costs for adjusting the Work in response to such unforeseen conditions shall be addressed as stated herein in "Change in the Work". Any Work the Company performs prior to receipt of approved Change Order will be at the Company's sole risk.

#### **2.11.9. COMMERCIAL ACTIVITIES ON THE WORK LOCATION**

The Company shall not establish any commercial activities, or issue concessions or permits of any kind to third parties to establish commercial activities on lands owned or controlled by JEA, or within the boundaries of the Work Location. The Company shall not allow its employees to engage in any commercial activities on the Work Location.

#### **2.11.10. COMMUNICATIONS - SITE WORK**

The Company shall supply and maintain at the Work Location a two-way communication system of such quality as to enable communications between the Work Location, the Company office(s), and the Contract Administrator while Work is in progress. This system may consist of a two-way radio system or any combination of pagers and telephones, either cellular or conventional. All communication equipment required to accomplish this is to be provided by the Company.

In some cases, JEA may provide the Company with radio(s) on specified frequencies. Where provided, the Company shall be solely responsible for the security of the radio(s), and the Company shall monitor the radio(s) at all time while performing Work.

In the event the Company will be requesting hold tags from JEA, the Company shall provide cell phones to its Company Representative and all Company Supervisors for the full Term of this Contract.

#### **2.11.11. COMPANY'S EQUIPMENT**

The Company's equipment including, but not limited to, trucks, drill rigs, backhoes, excavators, bucket trucks and derricks shall not be older than 5 years in age, unless the Company can demonstrate to JEA's satisfaction that equipment being used has been completely refurbished and that it is in good working order. JEA may, at its sole discretion, make exceptions for equipment that is rarely used such as sag winches.

#### **2.11.12. SECONDARY CONVERSION**

Zoning Department and National Electric Code.

All wiring installations must be inspected and approved by an authorized electrical inspector as required by law.

JEA requires 10 days between an approved "rough" inspection and an approved "final" inspection in order to schedule new meter installations.

The Company shall clearly mark each conductor of the service entrance as to phase, neutral and ground. The conductors shall be marked at the point of service and the location of the JEA metering transformers. Each conductor within JEA transformers and service boxes shall be "spiral" marked their entire length, beginning at the conduit entering the equipment. The following color coding shall be used:

- o For 240V: Neutral-White, Ground - Green, High Leg (3 phase 4 wire delta service) - Orange
- o Phase markings for 208V: Black, Red, Blue
- o Phase markings for 480V: Brown, Orange, Yellow

All color coding shall be consistent when parallel runs of conductors are used.

Overhead to Underground Customer Conversion Agreement: The above work will be done by a Company who is a licensed electrician, the work will be permitted and inspected through the City of Jacksonville, and who will perform work in accordance with the JEA Rules and Regulations. The owner/customer understands that, after completion of the underground conversion, and subject to a one-year warranty period.

Regulations for Electric Service for Meter Socket Specification.

#### **2.11.13. SWITCHING AND HOLD TAGS**

The Company shall be required to attend a JEA class concerning hold tag procedures (i.e., Lock Out/Tag Out) and be adjudged to be qualified prior to the issuance of the Notice to Proceed.

The Company shall not, in any case, make connections or taps to energized lines, cut any lines in or out of service, or attempt any outages without due notice to and approval from the authorized JEA/SJRPP Tagging Authority.

#### **2.11.14. COMPANY LAYDOWN AREA**

In the event the Company decides to utilize public or private property as a laydown area, the Company shall enter into a written agreement with the entity who owns the property. JEA shall have access to all laydown areas. Upon submission of Company's first Invoice or application for payment to JEA, the Company shall provide to JEA a copy of such signed written agreement. The Company shall submit to JEA a letter of release from the entity in connection with Company's final Invoice or application for payment to JEA.

#### **2.11.15. COMPANY'S DOCUMENTS AT THE WORK LOCATION**

The Company shall maintain at the Work Location for JEA one record copy of all Contract Documents in good order and marked currently to record all Addenda and changes made during Contract Term. These shall be available to JEA Representatives and shall be delivered to the Contract Administrator upon completion of the Work and at the request of the Contract Administrator.

The Company shall also maintain detailed records of the Work for its own files. The Company shall make these records available to JEA for inspection upon request. The Company shall maintain such records for three years after date of Final Completion.

#### **2.11.16. COMPANY'S OPTIONAL FIELD OFFICE**

The Company shall provide, at its option, its own field office facilities. Should the Company choose to setup a field office, JEA can provide, at no cost, a site location for a field office, limited material storage area as well as electric and water utilities. The field office site will be located at 11380 Island Drive Jacksonville, FL 32226. If the Company establishes a field-based office, the Company shall provide and maintain an operational cellular phone or telephone service at this office during the full Term of the Contract. If the Company has a local or out of town business office, this office may serve as a Work Location office for this Contract, but the Company must maintain an operational cellular phone at the Work Location while performing Work.

### **2.12. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTATION**

#### **2.12.1. PUBLIC RECORDS LAWS**

##### **Access to Public Records**

All Documents, data and other records received by JEA in connection with the Contract are public records and available for public inspection unless specifically exempt by law. The Company shall allow public access to all documents, data and other records made or received by the Company in connection with the Contract unless the records are exempt from Section 249(a) of Article I of the Florida Constitution or subsection 119.07(1), Florida Statutes. JEA may unilaterally terminate the Contract if the Company refuses to allow public access as required under the Contract.

##### **Redacted copies of Confidential Information**

If the Company believes that any portion of any documents, data or other records submitted to JEA are exempt from disclosure under Chapter 119, Florida Statutes, the Florida Constitution and related laws ("Florida's Public Records Laws"), Company must (1) clearly segregate and mark the specific sections of the document, data and 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 the documents, data, or records (the "Redacted Copy"). The Redacted Copy shall contain JEA's contract name and number, and shall be clearly titled "Redacted Copy". Bidder should only redact those portions of records that Bidder claims are specifically exempt from disclosure under Florida's Public Records Laws. If the Company fails to submit a redacted copy of documents, data, or other records 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 these records.

##### **Request for Redacted Information**

In the event of a public records or other disclosure request under Florida's Public Records Laws or other authority to which the Company's documents, data or records are responsive, JEA will provide the Redacted Copy to the requestor. If a Requestor asserts a right to any redacted information, JEA will notify the Company that such an assertion has been made. It is the Company's responsibility to respond to the requestor to assert that the information in questions is exempt from disclosure under applicable law. If JEA becomes subject to a demand for discovery or

disclosure of the redacted information under legal process, JEA shall give the Company prompt notice of the demand prior to releasing the redacted information (unless otherwise prohibited by applicable law). The Company shall be responsible for defending its determination that the redacted portions of the information are not subject to disclosure.

#### **Indemnification for Redacted Information**

The Company shall protect, defend, and indemnify JEA from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, and expenses (including but not limited to reasonable attorney's fees and costs) arising from or relating to the Company's assertion that all or any portion of its information is not subject to disclosure.

#### **Public Records Clause for Service Contracts**

If, under the Contract, the Company is providing services and is acting on behalf of JEA as contemplated by subsection 119.011(2), Florida Statutes, the Company shall:

- Keep and maintain public records that ordinarily and necessarily would be required by JEA in order to perform service;
- Provide the public with access to public records on the same terms and conditions that JEA would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or otherwise prohibited by law;
- Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- Meet all requirements for retaining public records and transfer, at no cost, to JEA all public records in possession of the Company upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically shall be provided to JEA in a format that is compatible with the information technology systems of JEA.

**IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**JE A**

**Attn: Public Records**

**21 West Church Street**

**Jacksonville, Florida 32202**

**Ph: 904-665-8606**

**[publicrecords@jea.com](mailto:publicrecords@jea.com)**

#### **2.12.2. INTELLECTUAL PROPERTY**

The Company grants to JEA an irrevocable, perpetual, royalty free and fully paid-up right to use (and such right includes, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right to sublicense all, or any portion of, the foregoing rights to an affiliate or a third party service provider) the Company's intellectual property (including, without limitation, all trade secrets, patents, copyright and know-



how) that is contained or embedded in, required for the use of, that was used in the production of or is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of any applicable unit of Work.

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

Should JEA, or any third party obtaining such work product through JEA, use the Work or any part thereof for any purpose other than that which is specified herein, it shall be at JEA's sole risk.

The Company will, at its expense, defend all claims, actions or proceedings against JEA based on any allegation that the Work, or any part of the Work, constitutes an infringement of any patent or any other intellectual property right, and will pay to JEA all costs, damages, charges, and expenses occasioned to JEA by reason thereof. JEA will give the Company written notice of any such claim, action or proceeding and, at the request and expense of the Company, JEA will provide the Company with available information, assistance and authority for the defense.

If, in any action or proceeding, the Work, or any part thereof, is held to constitute an infringement, the Company will forthwith either secure for JEA the right to continue using the Work or will, at the Company's expense, replace the infringing items with noninfringing Work or make modifications as necessary so that the Work no longer infringes.

The Company will obtain and pay for all patent and other intellectual property royalties and license fees required in respect of the Work.

#### **2.12.3. PROPRIETARY INFORMATION**

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

#### **2.12.4. PUBLICITY AND ADVERTISING**

The Company shall not take any photographs, make any announcements or release any information concerning the Contract or the Work to any member of the public, press or official body unless prior written consent is obtained from JEA.

### **2.13. LABOR**

#### **2.13.1. NONDISCRIMINATION**

The Company represents that it has adopted and will maintain a policy of nondiscrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employee relations, throughout the Term of this Contract. The Company agrees that on written request, it will allow JEA reasonable access to the Company's records of employment, employment advertisement, application forms and

other pertinent data and records for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Contract; provided however, the Company shall not be required to produce, for inspection, records covering periods of time more than one (1) year from the effective date of this Contract.

The Company shall comply with the following executive orders, acts, and all rules and regulations implementing said orders or acts, which are by this reference incorporated herein as if set out in their entirety:

- The provisions of Presidential Order 11246, as amended, and the portions of Executive Orders 11701 and 11758 as applicable to Equal Employment Opportunity;
- The provisions of section 503 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA); and
- The provisions of the Employment and Training of Veterans Act, 38 U.S.C. 4212 (formerly 2012).

The Company agrees that if any of the Work of this Contract will be performed by a Subcontractor, then the provisions of this subsection shall be incorporated into and become a part of the subcontract.

#### **2.13.2. LEGAL WORKFORCE**

All persons performing work on the Work Location must be United States Citizens or legally authorized to reside and work in the United States. Owner may request at any time during the Contract period the following, which shall be furnished to Owner within twenty-four (24) hours of request: Proof of U.S. citizenship or other legal authorization to reside in U.S. for all persons performing work at the Work Location; and Proof that the salaries for all persons performing work on the Work Location are at or above state and federal minimum wage requirements; and Proof of eligibility of all persons performing work on the Work Location to legally work in the United States. Additionally, to ensure all Company employees assigned to the Work are eligible to be legally employed in the United States, Company should register as a Federal Contractor on the E-Verify website, and within 30 days of the Effective Date of this Contract, verify the eligibility of all new employees. Failure of Company to perform this verification may be considered a breach of contract and Company will be liable for any fines or penalties assessed for the employment of illegal aliens. Owner shall consider the employment, by Contractor, of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of the contract upon thirty (30) days' prior written notice of such cancellation, notwithstanding any other provisions to the contrary in the Specifications and other Contract Documents. JEA may require all Contractor and sub-contractor personnel to be issued a Site Access Card Badge that contains a picture ID. If so, JEA will have a badging facility set up to facilitate this activity. As part of the procedure there will be several steps for the employer/employee to perform prior to being issued a badge.

#### **2.13.1. JEA WORKPLACE TOBACCO USE POLICY**

It is JEA's policy to maintain a healthy work environment and JEA's goal is to become a tobacco-free workplace. Therefore, JEA prohibits Company employees from using tobacco products while on JEA property or during the performance of JEA Work. JEA reserves the right to require Company to remove an employee who violates this policy from JEA property or JEA Work site upon notice from the JEA Representative

#### **2.13.2. 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 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 \$250,000.00, 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 Responses; and (iii) approving and/or issuing award recommendations for JEA Awards Committee approval. The contract of any person or business entity that 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 years from cessation from JEA employment.

#### **2.13.3. 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.

#### **2.13.4. COMPANY'S LABOR RELATIONS**

The Company shall negotiate and resolve any disputes between the Company and its employees, or anyone representing its employees. The Company shall immediately notify JEA of any actual or potential labor dispute that may affect the Work and shall inform JEA of all actions it is taking to resolve the dispute.

#### **2.13.5. MINIMUM QUALIFICATIONS OF COMPANY PERSONNEL**

At a minimum, all Company personnel shall be qualified for the tasks they are assigned. All Company personnel shall be able to read, write, speak and understand English. All Company personnel shall act in a professional manner, with due sensitivity to other persons at the Work Location. If JEA, at its sole discretion, determines that a Company person is unqualified, unfit, or otherwise unsuitable for the tasks assigned, the Company shall immediately stop the person from performing the tasks, and replace the person with a qualified individual. The Company shall pay all costs associated with replacing the unqualified person including, but not limited to, termination, recruiting, training, and certification costs.

The Company personnel assigned supervisory roles, and those with increased authority shall be held to strict scrutiny of their qualifications and suitability for their positions. In addition to the other provisions of this clause, the Company shall provide written documentation as to experience, education, licenses, certifications, professional affiliations, and other qualifications of the individual, within one day of request from the Contract Administrator. Any changes to such personnel after approval shall require the written permission of the Contract Administrator.

#### **2.13.6. PAYMENT OF OVERTIME**

Any Overtime required for Company to complete the Work within the Contract Time shall be at the sole cost and expense of Company. However, if JEA requires the Company to perform Overtime Work in order to complete the Work prior to the Contract Time, the Company shall bill JEA for the Overtime such that only the actual costs incurred by the Company 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 Company agrees that it will not charge for personnel paid a salary, or other form of compensation such that the Company incurs no direct costs as a result of the Overtime.

The Company shall total the direct Overtime charges, and add the agreed upon overhead rate, but in no case, shall such overhead rate exceed ten percent (10%) of the total overtime costs.

Overtime may only be charged to JEA if the Company was directed in writing by the Contract Administrator to incur the Overtime. Such authorization for Overtime shall be accompanied by a Change Order.

#### **2.13.7. SCHEDULING OF OVERTIME**

Whenever the Company schedules Work beyond eight (8) hours per day for a five (5) day week, beyond ten (10) hours per day for a four (4) day week, beyond forty (40) hours per week, or on Saturdays, Sundays, or Holidays, then the Company shall arrange, in advance, for the JEA Representative to inspect the Work performed during Overtime. The Company shall not perform Overtime Work or after-hours Work without a JEA Representative at the Work Location or available to perform the inspections, as directed by the Contract Administrator. Except where JEA has requested the Company schedule Overtime to perform additional Work, the Company shall reimburse JEA for any additional costs associated with JEA Representatives' Overtime pay.

#### **2.13.8. SHOW-UP PAY**

In the event that inclement weather prevents the Company from performing Work, the Company may be obligated to pay its crew a show-up pay. The Company shall be solely responsible for providing this pay.

### **2.14. COMPANY'S RESPONSIBILITIES AND PERFORMANCE OF THE CONTRACT**

#### **2.14.1. JEA ACCESS BADGES**

If the scope of work described in this Contract requires a Company to access JEA facilities, each Company employee shall apply for a JEA access badge through JEA's Security Department. An appointment to obtain a JEA access badge can be made by contacting JEA Security at [securitybadge@jea.com](mailto:securitybadge@jea.com). Finally, JEA does not allow Company employees to share JEA access badges. A Company, whose employees are found to be sharing JEA access badges, will result in the Contract being terminated immediately for default. Additionally, JEA shall be notified within six (6) hours of a lost or stolen JEA security badge or when an employee leaves the Company. Report badge termination notifications to JEA Security at (904) 665-8200.

#### **2.14.2. CHANGE IN SCOPE OF SERVICES**

From time to time, JEA may direct changes and modifications to the scope of the services to be performed under this Contract. The Company is willing and agreeable to accommodate such changes. Such changes shall be in the form of a written amendment. The JEA Representative directly responsible for this Contract will make the final determination as to whether any compensable change to the Company exists.

#### **2.14.3. CHANGE IN THE WORK**

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

In the event of an emergency endangering life or property where it is appropriate for the Company to take action, the Company shall undertake such actions to preserve life and property. JEA and the Company will determine after emergency is concluded, the extent of out-of-scope work performed by Company, and the Contract Administrator will issue a Change Order or amend the Contract for such work, if any and as necessary.

All requests for changes filed by the Company shall be in writing delivered to the Contract Administrator within ten (10) working days of when the event that prompted the claim was discovered or should have been discovered. Upon

receipt of the Company's claim notification, Contract Administrator will provide written direction as to the procedures that will be used to address the request. The Company's request shall be sufficiently detailed including itemized costs, condition and work descriptions and other information necessary to evaluate the merits of the claim. The Contract Administrator may reject requests providing insufficient supporting information. Any change in the Contract resulting from the request will be incorporated into the Contract via a Change Order or Purchase Order. Where JEA and the Company are unable to reach a mutually acceptable resolution of request, JEA's determination will be final.

Where necessary, JEA will determine the value of work covered by a Change Order using one (1) of the following methods:

- Where the work is covered by established Unit Prices contained in the Contract, the Unit Price will be applied to the quantity of work;
- By mutual acceptance of lump sum price;
- By actual cost and a mutually acceptable fixed amount for overhead and profit, or
- Where Bid Price was based on estimates quantities, prior to making final payment, JEA will determine actual quantities using sampling, surveying and other industry recognized means and prepare a Change Order adjusting the price to reflect actual volumes.

The Company shall immediately notify the Contract Administrator in writing of any unauthorized change in the scope of the Work or significant change in the quantities of the Work that may increase the Contract Price, require an extension of Work schedule, or negatively impact permitting or other regulatory requirements.

The Work schedule may be changed only by a Change Order or Purchase Order. The Company's request or claim for a Work schedule adjustment shall be in writing delivered to the Contract Administrator within five (5) working days following the discovery of the event that prompted the claim or when the event should have been discovered. Where accepted by JEA, changes to Work schedule will only adjust for critical path impacts. Failure to include the necessary critical path analysis with request shall be grounds for rejecting the claim. The path of critical events mentioned herein means the series of interdependent Work events that must be sequentially performed and that require a longer total time to perform than any other such series. Upon receipt of the Company's request for a change in the Work schedule, the Contract Administrator will provide any additional directions in writing detailing the procedures that will be used to resolve the request, including provision of time impact or manpower and equipment loading schedules. Where JEA and the Company are unable to reach a mutually acceptable resolution of request, JEA will make a commercially reasonable determination, made in accordance with JEA's Procurement Code, which shall be final.

All Work defined on Change Orders shall be subject to the conditions of the Contract, unless specifically noted on the Change Order.

#### **2.14.4. CONFLICT OF INTEREST (CONSTRUCTION)**

This conflict of interest policy applies to all JEA construction projects ("Project"). Any company bidding the construction phase of a Project cannot at the time of Bid submittal, be affiliated with or have any direct or indirect ownership interest in the architect/engineer ("Designer") of record. The company will also be prohibited from bidding if the Designer has any direct or indirect ownership interest in the Contractor. Should JEA erroneously award a contract in violation of this policy, JEA may terminate the contract at any time with no liability to company, and company shall be liable to JEA for all damages, including but not limited to the costs to rebid the Project. The purpose of this policy is to encourage bidding and eliminate any actual or perceived advantage that one Bidder may have over another.

#### **2.14.5. CONSTRUCTION AND DEMOLITION DEBRIS**

The Bidder shall complete and submit the Construction and Demolition Debris Disposal form which is available at [www.jea.com](http://www.jea.com). The Bidder shall identify, by the Certificate of Necessity number and Public Works number, the sites to which it will remove for disposal debris resulting from the Work. A list of approved sites may be obtained from the JEA Office Section or [jea.com](http://jea.com).

#### **2.14.6. UNABLE TO SUBMIT BID FORMS**

If you elect not to submit a Bid in response to this Solicitation, please complete the Unable to Submit Bid Form, available for download at [www.jea.com](http://www.jea.com), or by obtaining a hardcopy from the JEA Bid Office, 21 West Church St., Customer Center 1<sup>st</sup> Floor, Room 002, Jacksonville, FL 32202. The Bidder may contact the Bid Office by phone at (904) 665-6740.

Send the completed Unable to Submit Bid Form to:

JEA Bid Office  
21 West Church St., CC-1, Room 002  
Jacksonville, FL 32202

or fax the Unable to Submit Bid Form to: (904) 665-7095.

Do not return the entire Solicitation package; simply return the Unable to Submit Bid Form.

#### **2.14.7. MINIMUM QUALIFICATION OF COMPANY PERSONNEL**

At a minimum, all Company personnel shall be qualified for the tasks they are assigned. All Company personnel assigned to work at a JEA facility or job site shall be able to read, write, speak and understand English. All Company personnel shall act in a professional manner, with due sensitivity to other persons at the Work Location. If JEA, at its sole discretion, determines that a Company person is unqualified, unfit, or otherwise unsuitable for the tasks assigned, the Company shall immediately stop the person from performing the tasks, and replace the person with a qualified individual. The Company shall pay all costs associated with replacing the unqualified person including, but not limited to, termination, recruiting, training, and certification costs.

The Company personnel assigned supervisory roles, and those with increased authority shall be held to strict scrutiny of their qualifications and suitability for their positions. In addition to the other provisions of this Section, the Company shall provide written documentation as to experience, education, licenses, certifications, professional affiliations, and other qualifications of the individual, within one day of request from the Contract Administrator. Any changes to such personnel after approval shall require the written permission of the Contract Administrator.

#### **2.14.8. SHOW-UP PAY**

In the event that inclement weather prevents the Company from performing Work, the Company may be obligated to pay its crew a show-up pay. The Company shall be solely responsible for providing this pay.

#### **2.14.9. COMPANY'S LABOR RELATIONS**

The Company shall negotiate and resolve any disputes between the Company and its employees, or anyone representing its employees. The Company shall immediately notify JEA of any actual or potential labor dispute that may affect the Work and shall inform JEA of all actions it is taking to resolve the dispute.

#### **2.14.10. COMPANY REPRESENTATIVES**

The Company shall provide JEA with the name and responsibilities of the Company Representative, in writing after Award of the Contract and before starting the Work under the Contract. Should the Company need to change the Company Representative, the Company shall promptly notify JEA in writing of the change.

#### **2.14.11. COMPANY REVIEW OF PROJECT REQUIREMENTS**

The Company shall review the Work requirements and specifications prior to commencing Work. The Company shall immediately notify the Contract Administrator in writing of any conflict with applicable law, or any error, inconsistency or omission it may discover. JEA will promptly review the alleged conflicts, errors, inconsistencies or omissions, and issue a Change Order or Purchase Order as appropriate if JEA is in agreement with the alleged conflict, and issue revised specifications. Any Work the Company performs prior to receipt of approved Change Order will be at the Company's sole risk.

#### **2.14.1. CONDITIONS OF PROVISIONING**

The Company understands and agrees that it shall be solely responsible for providing everything necessary to perform the Work and to be in full compliance with the Contract Documents, except for those items specifically listed herein as being provided by JEA.

If Company's Scope of Work is to supply JEA with inventory items, the Company shall identify inventory items that are in high demand and take appropriate steps to minimize delivery lead time in the event of demand spikes or emergency requirements.

Any use of JEA furnished items on non-JEA work is a breach of the Contract and a violation of the law. All JEA furnished items are the property of JEA when issued, stored by Company, and used in performance of the Work. The Company agrees that it shall use all JEA furnished items in a manner consistent with industry practice, codes, laws, considering the condition of the JEA furnished item, the skills of the individuals using the JEA furnished item, and all environmental conditions. The Company understands and agrees that where JEA and the Company shall share JEA furnished items, JEA usage shall always have priority over Company usage, and the Contract Administrator shall have sole authority to resolve any usage dispute and such resolution shall not result in any claim by Company.

The Company agrees to return to JEA, and to the location as established by a JEA Representative, any unused or salvageable items prior to final payment. The Company agrees that JEA has the right to audit and investigate the Company at any time how the Company is using JEA furnished items. JEA will bill the Company for unaccountable JEA furnished material at the current JEA cost.

#### **2.14.2. PERFORMANCE OF THE WORK**

The Company represents and warrants that it has the full corporate right, power and authority to enter into the Contract and to perform the acts required of it hereunder, 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 warrants that all items provided under the Contract shall be free from Defect and services shall be performed in a professional manner and with professional diligence and skill, consistent with the prevailing standards of the industry. The Company warrants that the Work will meet the functional and performance requirements defined in the Contract.

#### **2.14.3. DAMAGED MATERIALS OR EQUIPMENT**

The Company shall report to the Contract Administrator any materials issued by JEA or delivered by the JEA material supplier and received by the Company that are later found to be faulty, damaged or discrepant in some

manner. The Contract Administrator will obtain appropriate replacement materials upon written notification from the Contract Administrator. The Company shall not, under any circumstances, make a material replacement without written approval of the Contract Administrator.

The Company understands and agrees that damage to material and discrepancy of material is an expected part of performing the Work, and as such, the Company agrees it shall be solely responsible for any additional costs incurred as a result of damaged or discrepant materials, including, but not limited to, the costs to keep or get the Work on the Approved Schedule.

JEA will bill the Company for materials or equipment that are damaged while in the Company's custody. In such a case, the Company shall be charged the current JEA cost plus an inventory handling fee.

#### **2.14.4. DELIVERY LOCATION**

The delivery address for items provided under this Contract is: MULTIPLE.

#### **2.14.5. DELIVERY TIME**

Advance ship notices must be used for all deliveries. The Company shall coordinate with JEA on the proper transmission of all procurement and shipping documents.

The Company shall take all reasonable actions including, but not limited to, use of overtime and shipment by expedited means, all at Company's expense, to meet promised delivery.

#### **2.14.6. DISPOSITION OF SALVABLE MATERIAL**

All material to be removed from the Work Location, relocated or salvaged, shall be inspected by the JEA Engineer immediately prior to removal, and the JEA Engineer's decision as to the salvageability shall be final. Such material that is salvable, in the opinion of the JEA Engineer, shall be stored at the Work Location on-site by the Company, as and where directed by the JEA Engineer, or delivered to a location as directed. Under no circumstances may existing structures, plant or facilities be removed or demolished without obtaining prior written approval from the JEA Engineer.

#### **2.14.7. EMERGENCY EVENTS**

In the event that a system-wide emergency arises during the Term of this Contract for which JEA requires assistance from the Company including, but not limited to, severe storms, large-scale fires, floods, and terrorist attacks, the Company acknowledges the importance of JEA infrastructure and agrees to support, with all its resources, skills and capabilities, and the maximum extent possible, all restoration efforts of JEA. The Contract Administrator shall notify the Company when an emergency event occurs and the Company agrees to mobilize its full resources immediately. In the event conditions are such that an emergency event is likely in progress, but the Company has not been notified by the Contract Administrator, the Company shall make all efforts to contact a JEA Representative to determine if and how it should respond. JEA agrees to reimburse the Company for its actual costs incurred, plus overhead and profit, the total not exceeding 12%, and any one-time expended cost incurred as a result of supporting JEA during the emergency event.

#### **2.14.8. EMERGENCY PROCEDURES**

In emergencies affecting the safety of persons, the Work or property at the Work Location or any other area adjacent thereto, the Company, without special instructions or authorization from JEA Representatives, is obligated to act to its best ability, to prevent threatened damage, injury or loss to the Work, any persons, or property. The Company shall give the Contract Administrator prompt written notice describing the emergency, its cause, actions taken, injuries and casualties, property damage, other damages, and impact on continued performance under this Contract.



#### **2.14.9. COMPETENT PERFORMANCE OF THE WORK**

The Company represents 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 through Final Completion. If, in the sole opinion of JEA, the Company fails to perform the Work as represented, JEA may, at its sole discretion, take charge of the Work and furnish and provide the labor, materials, and equipment necessary to complete the Work as planned within the required time if JEA deems the organization of the Company or its management, or the manner in which Company is performing the Work, to be manifestly incompetent or inadequate to complete the Work as specified. The Company shall pay JEA for the cost of all such Work completed by JEA.

#### **2.14.10. ENCROACHMENTS ON RIGHTS OR PROPERTY**

The Company shall be solely responsible for any encroachments on public property or on the rights or property of adjoining property owners to the Work Location, and shall hold JEA harmless because of any encroachments that may result because of the Company's improper layout. In this regard, the Company shall, without extra cost to JEA, remove any Work or portion of any Work that encroaches on the property other than that of the Work Location, or that is built beyond legal building or setback limits. The Company shall rebuild the affected Work or portion of Work at the proper location and in full compliance with the Contract Documents.

#### **2.14.11. REMOVAL OF WORK**

The Company shall not sell, assign, mortgage, hypothecate or remove Work that has been delivered to or installed at the Work Location.

#### **2.14.12. APPLICABLE STANDARDS AND CODES**

The latest rules and regulations of the following organizations shall be considered a part of these Contract Documents. The Company shall perform all Work in strict accordance with applicable provisions thereof:

Institute of Electronic and Electrical Engineers (IEEE), Edison Electric Institute (EEI), National Electrical Manufacturer's Assoc. (NEMA), American Concrete Institute (ACI), American National Standards Institute (ANSI), National Electric Safety Code (NESC). (ASME) American Society of Mechanical Engineers, (AWS) American Welding Society, and any additional standards and codes referenced in the Technical Specifications of each Task Authorization or as required by local, state, or federal law or agencies.

#### **2.14.13. FREE AND CLEAR TITLE**

The Company warrants that it has title to all equipment and materials furnished under the Contract where title will pass to JEA, and that the equipment and materials passed to JEA are free and clear of all liens, claims, security interests and encumbrances.

#### **2.14.14. INSPECTIONS AND TESTING**

JEA, or its designated representatives, will perform inspections at the Company facilities during normal business hours and in a manner that minimizes disruption to the normal day-to-day work activities of the Company. Company shall provide safe and proper facilities for inspection access and observation of the Work and also for any inspection or testing by others.

If the Company has covered or concealed any Work from inspection in any way that the JEA Representative has not specifically requested prior to the JEA Representative's inspection, or if the JEA Representative considers it necessary or advisable that covered Work be inspected or tested by others, the Company, at the JEA Representative's request, shall uncover, expose or otherwise make available the portion of the Work in question for

observation, inspection or testing as the JEA Representative may require. The Company shall furnish all necessary labor, material and equipment to make such Work available.

If such Work is defective, the Company shall bear all expenses of uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including, but not limited to, compensation for additional professional services required by JEA, and no change in Contract Time will be considered as a result of the foregoing.

If such Work is not defective, JEA will reimburse the Company for actual time, material, and equipment costs for uncovering and reconstruction of the portion of the Work in question. JEA may also, at its sole discretion, grant the Company an extension of the Contract Time directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

All materials and equipment used in the construction of the Contract shall be subject to adequate inspection and testing in accordance with accepted standards. The Company shall select the laboratory or inspection agency for making all tests required by the specifications, and shall pay for this laboratory service direct, as a part of this Contract.

The Company shall pay for all required testing of materials and equipment. Two copies of each test showing certification of each test shall be furnished to the JEA Engineer immediately after such test has been made and with the exception of concrete, prior to delivery of the materials or equipment tested to the Work Location. JEA will not accept the materials or equipment until tests have been approved.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended. Test requirements for all materials are set out in the detailed specifications for that particular material. All materials and equipment prior to being incorporated in the Work, and required by the JEA Engineer to be tested, shall be tested for conformance with contractual requirements. Standard items of a uniform nature may be accepted on the manufacturer's certification. Where specific performance and/or quality is referred to, it is the Company's responsibility to have the necessary tests performed by qualified persons to show that the contractual requirements are being met except those tests named in the Contract Documents to be performed by JEA. Certified test results shall be submitted promptly in quadruplicate to the JEA Engineer for review. All tests shall be performed in accordance with referenced standards. Where no reference is made, tests shall be performed in accordance with the methods prescribed by the American Society for Testing and Materials or such other organization as would be applicable.

The Company shall pay for any retests resulting from its failure to provide Work that passes required tests.

The JEA Engineer may appoint JEA Inspectors to inspect any and all materials and Work. Such inspection may extend to any or all parts of the Work and to the preparation and manufacture of the materials to be used. The JEA Inspectors shall not be authorized to alter, revoke, enlarge or relax the provisions of the Contract, nor will they be authorized to approve or accept any portion of the completed Work, nor to issue instructions contrary to the Contract. The JEA Inspector shall inform the JEA Engineer of the progress of the Work and the manner in which it is being done, and notify the Company of any infringement upon the Contract Documents. The JEA Inspector will have the authority to reject defective materials or to suspend any Work that is being improperly done subject to the final decision of the JEA Engineer.

#### **2.14.15. INTERFERENCE WITH EXISTING UTILITIES**

The Company acknowledges and agrees that there is a possibility that existing JEA or other utility facilities may cross and/or lie parallel to excavations in the area where Work will occur. Although JEA may indicate recorded

obstacles on the drawings, it does not warrant that other subsurface obstacles do not exist. The Company shall be responsible for verifying the data furnished by JEA and for fully investigating and locating additional obstructions including every type below, on or above the ground. The Company should regard these impediments as normal to construction. All costs for performing such work shall not be paid for separately, but shall be included in the Company's costs on the Response Document.

The Company shall comply with all requirements of the Sunshine State One-Call program.

In the event the Company encounters an unidentified utility during performance of the Work, the Company shall promptly cease Work in the affected area and shall immediately notify the JEA Representative in writing. JEA will investigate the area and propose remedial actions in accordance with the provisions stated herein in "Changes to the Work".

The Company shall work in cooperation with JEA and representatives of existing utilities to plan and coordinate putting new Work into service so as not to interfere with the operation of the existing utilities. Such plans shall be adhered to unless deviations therefrom are expressly permitted in writing by the Contract Administrator.

The Company shall at all times conduct the Work in a manner that interferes as little as possible with the existing utilities. Any cables exposed during construction, whether energized or not, must be handled and protected as if they are energized. The Company shall so conduct its operations and maintain the Work in such condition that adequate drainage shall be in effect at all times. The Company shall not obstruct existing gutters, ditches and other runoff facilities. When working in the vicinity of overhead lines, the Company shall request line rubber protection from JEA at least 10 days in advance of performing the work.

The Company shall be solely responsible for any damages, interferences, and interruptions of service caused to any utility's assets and services including water, sewer, electric, telephone, gas, cable, and other utility services, that result from the Company's failure to fulfill the above stated requirements.

In the event the Company damages an existing utility, the Company shall immediately notify the property owner, the owner of the damaged utility and the JEA Representative. Should the damage cause an interruption of service, the Company shall be responsible for restoring service as soon as possible; however, the Company shall not make repairs, other than any required to restore safe conditions, without the approval of the property owner, or the owner of the damaged utility. The Company shall be responsible for coordinating any repair effort, and any associated costs should the utility owner or a licensed repair Company be required to make the repair. JEA reserves the right to deduct any unsettled claim amount from Company's invoices until such time as the claim is satisfactorily resolved.

#### **2.14.16. INTERFERENCE WITH OTHER JEA WORK OR OTHER COMPANIES**

The Company shall perform the Work in a manner that minimizes the interference with other JEA work, City of Jacksonville work, or with work performed by other companies. The Company shall coordinate the Work with other persons and companies employed by JEA. If a difference of opinion regarding scheduling or coordination of the Work arises between the Company and another JEA Company(s) performing work at the Work Location, JEA may arbitrate the matter. In such cases where JEA makes a decision regarding the scheduling or coordination of the work, the Company agrees to fully abide by JEA's decision. Unless otherwise agreed in writing by JEA, JEA will not be responsible for additional costs.

Any claims arising against the Company from damages to other companies' work, equipment, machinery, tools or other property shall be settled directly between the Company and the other companies involved. JEA will not, in any way, be a party to arbitrating or mediating any such disputes, nor shall JEA be responsible for any costs associated with such disputes.

#### **2.14.17. INTERFERENCE WITH RAILROADS**

The Company shall not build across, into, over or under, either temporarily or permanently, any portion of a railway or railway right-of-way without first obtaining all required permits. If the Company's operations render any railroad unsafe, the Company shall immediately notify the Contract Administrator and the railroad owner and take appropriate actions and such temporary safeguards as required to protect life, limb, and property, and to maintain orderly traffic.

The Company shall procure all railroad permits required for the Work beyond those procured by JEA and the costs for such permits shall be included in the Response Documents. All costs associated with railroad fees for railroad flagmen, watchouts, inspectors, supervisors, any additional training of Company's employees that is required by applicable laws, rules and regulations when performing Work in association with railways, any certifications required for successful completion of the Work and all other associated costs shall be included in the Response Document.

#### **2.14.18. MATERIAL DELIVERED TO COMPANY SITES**

The Company shall be responsible for all unloading, handling and storage of Work-related materials at the Work Location. Where the Company is to use a JEA-designated supplier to deliver materials to the Work Location, JEA will provide the Company, upon request, with contact names and information, along with required material lead-times. The Company is solely responsible for taking into account required material lead-times when planning its performance of the Work, and for communication and coordination of materials delivered to the Work Location by JEA suppliers. The Company shall be responsible for any additional delivery costs charged by the JEA material supplier for any Company delays.

If, for any reason, the Company is unable to receive, unload, handle or store materials it has ordered or caused to be ordered, the Company shall be responsible for any and all additional costs incurred by JEA for unloading, handling, storing, or additional shipping costs. In such cases where JEA is receiving items when the Company is unable to, such receipt does not indicate JEA's Acceptance of items.

#### **2.14.19. MATERIAL DELIVERY LOCATIONS**

The Company shall notify, in writing, the Contract Administrator of all planned material delivery/receiving locations. Such notification shall be prior to initiation of shipment. The Contract Administrator will provide the Company with specific written approval for each delivery/receipt location, which will not be unreasonably withheld. Where the Contract Administrator disapproves a proposed location, the Company shall propose alternate locations and obtain the Contract Administrator's written approval for any proposed alternate location. The Company understands and agrees that it shall not seek additional monies to compensate for any costs associated with changes or denials of proposed delivery/receipt locations regardless of circumstances.

#### **2.14.20. OBLIGATIONS OF THE COMPANY**

The Company shall provide everything necessary to successfully complete the Work except the materials and services specifically stated in the Contract to be provided by JEA. No payments, other than those shown in the Response Documents, will be made to the Company for performance of any requirements of the Contract Documents. The Company shall perform all Work in accordance with the Contract Documents and the applicable JEA standards manuals, safety manuals, policies, accepted commercial work practices, local, state, and federal, rules regulations and laws which may be amended from time to time. The Company shall provide all permits, certifications, insurances, and bonds necessary or required by good practice, except where specifically stated in the Contract to be provided by JEA.

The Company personnel shall perform all Work in a professional, efficient, and competent manner. The Company is obligated to provide personnel possessing the skills, certifications, licenses, training, tools, demeanor, motivation, and attitude to successfully complete the Work. The Company is obligated to remove individuals from performing Work under this Contract when the Company recognizes an individual to not be working in a manner consistent with the requirements of this Contract, or when JEA notifies the Company that JEA has determined an individual or group of individuals to not be working in a manner consistent with the requirements of this Contract. The Company is obligated to ensure that their officers and executives interact with JEA, JEA customers, whether direct or indirect customers of JEA, with the utmost level of professionalism and integrity.

In the event the Company chooses to use Subcontractors, the Company is obligated to provide Subcontractors possessing the skills, certifications, licenses, training, tools, demeanor, motivation and attitude to successfully perform the work for which they are subcontracted. The Company is obligated to remove Subcontractors from performing Work under this Contract when the Company recognizes that a Subcontractor is failing to work in a manner consistent with the requirements of this Contract, or when JEA notifies the Company that JEA has determined a Subcontractor is failing to work in a manner consistent with the requirements of this Contract.

The Company is obligated to ensure that sufficient supervision of the Work is provided. This includes ensuring that the Company Supervisor is at the Work Location when Work is being performed.

The Company shall bear sole responsibility for the efficiency, adequacy and safety of the performance of the Work, including temporary Work and facilities, until Acceptance. The Company shall be solely responsible for any loss or damage to materials, tools, labor, and equipment used during the performance of, or in connection with, the Work. Any JEA comments or approval regarding the Company's performance, materials, working force, or equipment will not relieve the Company of any responsibility.

#### **2.14.21. PROTECTION OF EXISTING FACILITIES AND GROUNDS**

The Company shall be responsible for protecting all the existing facilities including, but not limited to, buildings, lawns, landscaping, sprinkler systems, and pavements, both public and private, that are encountered during the performance of the Work. At all times, the Company shall cooperate with the owners of such facilities by arranging and performing the Work in and around such facilities in a manner that facilitates their preservation, relocation, and/or reconstruction. The Company shall be responsible for the full restoration or replacement if the Company damages such facilities during or resulting from performance of the Work.

The Company shall verify the existing dimensions and clearances before laying out the Work. When the Work involves the laying of utility lines across landscaped areas and grassed areas, which may include, but is not limited to, irrigation systems, streets, sidewalks, and other paved areas, the Company shall protect and preserve all trees, shrubs, palms, landscaping, etc., and restore such areas and all paved areas to their original sound conditions using construction techniques and materials that are the same as existing including replacing plants and trees with those of similar size and age. In the case of planted areas, the Company shall maintain the restoration Work until positive growth has been acknowledged in writing by the Contract Administrator.

All costs for such restoration and replacement work shall be included in the associated lines on the Response Document.

The Company shall not (except upon written consent from the property owner and Contract Administrator) enter or occupy with workers, tools, equipment or vehicles any land outside the easements, right-of-ways, JEA property or the City of Jacksonville property.

#### **2.14.22. QUALITY CONTROL AND QUALITY ASSURANCE**

The Company shall provide Quality Control to ensure the Work is performed in accordance with the Contract. Quality Control shall be appropriate for the nature of the Work, and shall be conducted in a manner consistent with sound quality management and industrial engineering principles. The Company shall have only personnel trained in Quality Control techniques and experienced with the nature of the Work perform the Quality Control function.

JEA may perform Quality Assurance activities. Such activities, whether performed or not, do not in any way limit or reduce the Company's requirements. JEA may become aware of quality related problems during its performance of Quality Assurance, but has no obligation to notify the Company of its findings. The Company shall provide access to all areas of Work, including the Company's facilities, for JEA Quality Assurance personnel and JEA Representatives. JEA will conduct Quality Assurance activities so as not to excessively interfere with the Work, however, where JEA Quality Assurance personnel request specific actions of the Company, the Company shall comply with the request and agrees that such compliance is included as part of its Contract Price.

#### **2.14.23. SAFETY AND PROTECTION PRECAUTIONS (CONSTRUCTION)**

The Company shall comply with all applicable federal, state and local laws, ordinances, all JEA procedures and policies including, but not limited to, JEA's Company Safety Management Process (available at JEA.com), and orders of any public body having jurisdiction for the safety of persons or protection of property. The Company understands and agrees that violation of any provision of this clause is grounds for immediate termination of the Contract and the Company is responsible for all JEA damages associated with such termination.

The Company shall only use those Subcontractors who have met JEA Safety Prequalification requirements per the JEA Company Safety Management Process. The Company shall ensure that Subcontractors and their personnel have all the necessary personal protective equipment and training needed to perform Work safely.

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

The Company Representative, or alternatively, the Company Supervisor, shall be designated as the Company's individual responsible for the prevention of accidents.

The Company shall notify the police and fire departments as to its Work Location in order to ensure prompt response in an emergency.

#### **2.14.24. SAFETY REPRESENTATION**

The Company represents and warrants to JEA that it has the 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 shall be responsible for executing the necessary safety training and supervision of its employees and Subcontractors, and acknowledges that JEA is not responsible for training or supervising the Company's employees, except when noted for the purpose of enforcing compliance with these safety requirements.

#### **2.14.25. SHIPPING - FOB DESTINATION**

Items are purchased F.O.B. destination. The Company shall ensure the following:

- o Pack and mark the shipment to comply with the Contract specifications; or in the absence of specifications in the Contract Documents, prepare the shipment in conformance with carrier requirements;
- o Prepare and distribute commercial bills of lading;
- o Deliver the shipment in good order and condition to the point of delivery specified in the Contract;
- o Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by JEA Representative at the delivery point specified in the Contract;
- o Be responsible for obtaining any permits required for transportation to the installation site;
- o Furnish a delivery schedule and designate the mode of delivering carrier; and
- o Pay and bear all charges to the specified point of delivery.

#### **2.14.26. SHOP DRAWINGS**

The Company shall promptly submit all required Shop Drawings in accordance with the provisions provided herein. JEA will not grant an extension of Contract Time due to the Company's failure to submit Shop Drawings in ample time to allow for checking, revisions, reviews, and approval.

A letter of transmittal and four copies of each shop drawing shall accompany each submittal. Shop drawings shall be forwarded to the JEA Engineer. Each drawing shall be listed separately on the letter. The Company shall also note distinctively on the transmittal letter any deviations that the Shop Drawings may have from the requirements of the Contract Documents.

The JEA Engineer's approval of Shop Drawings shall not be construed as a complete check, nor shall it relieve the Company from responsibility for any deficiency that may exist, or from any departures or deviations from the requirements of the Contract unless the Company has, in writing, called the JEA Engineer's attention to such deviations at the time of submission and obtained written approval for the deviation. The JEA Engineer's approval shall not relieve the Company from the responsibility for errors of any sort in Shop Drawings or schedules, nor from responsibility for proper fitting of the Work, nor from the necessity of furnishing any Work, materials, equipment or tools, required by the Contract Documents that may not be indicated on Shop Drawings when approved. The Company shall be solely responsible for all quantities and dimensions shown on the Shop Drawings. The Company shall not execute any Work until the JEA Engineer approves the Shop Drawings and a copy stamped "Approved" is at the Work Location. The Company shall, at no extra cost to JEA, make all changes and alterations whatsoever in Work performed or in subcontracts or orders placed prior to the approval of any and all Shop Drawings.

The Company shall allow a minimum of fourteen (14) days for the review of Shop Drawings. This shall be the period for new Shop Drawings and Shop Drawings that are revised and resubmitted.

As used herein, the term "manufactured" applies to standard units usually mass produced, and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall establish the actual details of all manufactured or fabricated items; indicate proper relation to adjoining Work; amplify design details of mechanical and electrical equipment in proper relation to physical spaces in the structure; and incorporate minor changes of design or construction to suit actual conditions.

Shop drawings shall be complete in every detail, properly identified with the Contract name, Contract and subsection number for identification of each item, and state the qualifications, departures or deviations from the Contract, if any. Shop drawings for each section of the Work shall be numbered consecutively and the numbering

system shall be retained throughout all revisions. Each drawing shall have a clear space above the title block in the lower right-hand corner for the approval stamps of the Company and the JEA Engineer.

If the materials are not listed in JEA's Approved Materials Manual, then prior to purchase of material or fabrication, the Company shall forward to the JEA Engineer for review, five sets of each shop drawing plus the number of prints it desires returned.

In checking the Shop Drawings, the Company shall verify all dimensions and field conditions and shall check and coordinate the Shop Drawings of any section or trade with the requirements of all other sections or trades whose Work is related thereto, as required for proper and complete installation of the Work. All rough-in and connections for utilities shall conform to approved equipment Shop Drawings.

The JEA Engineer will review the Shop Drawings and will return them to the Company stamped to indicate the action taken. The stamp will indicate that the shop drawing is "Approved", "Approved as Noted", "Returned for Correction", or "Disapproved". Only those Shop Drawings stamped "Returned for Correction" or "Disapproved" shall be resubmitted for subsequent review. Resubmittals shall be in the same form and number of copies as original submittals, with notation indicating a revised submittal. The Shop Drawings stamped "Approved" or "Approved as Noted" will be returned to the Company, who will be responsible for obtaining prints thereof and distributing them to the field and Subcontractors.

At the same time the JEA Engineer returns a reviewed submittal to the Company, it will forward two copies of each item stamped "Approved" or "Approved as Noted" together with any conditions of approval, to JEA for field and office use. The JEA Engineer may revoke approval of Shop Drawings, should field conditions so dictate.

#### **2.14.27. STORAGE OF EQUIPMENT**

The Company shall be responsible for all storage of materials, equipment, vehicles, tools, and all other items associated with the Work. Such storage shall comply with applicable regulations appropriate for the items being stored to ensure suitable care for items and protection from theft, vandalism, or inappropriate use. The Company is solely responsible for the costs for such storage, unless otherwise indicated in the Contract Documents, and any costs associated with noncompliant storage including, but not limited to, loss and damage to items. In the event that JEA directs the Company to stop the Work, costs associated with storing equipment or materials will be compensated in accordance with the provisions stated herein. The Company shall ensure that JEA Representatives have access to Work-related storage on an as needed basis during regular work hours and Overtime.

#### **2.14.28. STORM PREPAREDNESS**

In the event of a Hurricane Warning, Tropical Storm Warning, or other large storm affecting the Work Location, the Company shall secure, or shall remove and store all equipment and materials at the Work Location including, but not limited to, cones, barricades, lights and signs. The Company shall begin taking such precautions as necessary to secure the Work Location upon official issuance of mandatory evacuation of the area of the Work Location and no later than twenty-four (24) hours prior to predicted arrival of tropical storm or hurricane force winds, or when notified by a JEA Representative to do so. These activities are considered a regular part of the Work, regardless of the frequency they are required.

#### **2.14.29. SUBSTITUTIONS**

Whenever materials or equipment are specified or described in the Contract by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required.



Materials or equipment of other suppliers may be accepted by the JEA Engineer if sufficient information is submitted by the Company to allow the JEA Engineer to determine that the material or equipment proposed is equivalent or equal to that named.

The Company shall make written application to the JEA Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified.

The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice the Company's completion of the Work within the Contract Time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other Contract directly with JEA for Work on the Contract) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fees, royalties, permits or any other costs.

All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service shall be indicated.

The application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other Companies affected by the resulting change, all of which shall be considered by the JEA Engineer in evaluating the proposed substitute.

Requests for review of substitute items of material and equipment will not be accepted by the JEA Engineer from anyone other than the Company.

The JEA Engineer may require the Company to furnish, at the Company's expense, additional data about the proposed substitute.

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract, the Company may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the JEA Engineer, if the Company submits sufficient information to allow the JEA Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract.

The JEA Engineer will be allowed a reasonable time within which to evaluate each proposed substitute; such time shall not be deemed justification for an extension of the Company's time for completion of the Contract.

The JEA Engineer will be the sole judge of acceptability, and no substitute shall be ordered, installed or utilized without the JEA Engineer's prior written notice, which shall be evidenced by either a Change Order or an approved Shop Drawing.

JEA may require reimbursement for the cost associated with JEA's evaluation of substitutions.

JEA may require the Company to furnish, at the Company's expense, a special performance guarantee bonds or other surety with respect to any substitution.

#### **2.14.30. TOOLS AND EQUIPMENT**

All tools and equipment used in the performance of the Work shall be used as intended by the manufacturer and in accordance with manufacturer operating manuals and industry practices, whichever is more stringent. The Company shall ensure that all tools and equipment used in the performance of the Work shall be of the size and quality

suitable for safe and efficient performance of the Work. If the Company-provided tools and equipment do not meet these requirements, or if in the sole opinion of JEA formed after considering relevant factors, the tools or equipment are inappropriate for performance of the Work, the Company agrees to remove the unacceptable tools and equipment and obtain tools and equipment JEA considers suitable. Such replacement shall be entirely at the Company's expense, and no change to Contract time will be allowed.

The Company is responsible for furnishing and security of any and all tools and equipment required to perform the Work.

#### **2.14.31. WEATHER PROTECTION**

The Company shall provide proper facilities, take all necessary precautions and assume the entire cost for protecting the Work against weather conditions and for handling all storm, flood and ground water, sewage, or other seepage, that may be encountered during the performance of the Contract. The Company shall provide for such contingencies and for carrying on the Work in freezing weather by methods that meet with the approval of the JEA Engineer. If the Company fails to provide such protection, or in the event of an emergency, JEA may provide such protection at the Company's expense.

#### **2.14.32. WORK INFORMATION**

In the event the Company requires additional information regarding the scope, technical specifications, Work Locations, personnel requirements, or other information pertinent to the Work or Contract, the Company shall request such information or clarifications from the Contract Administrator in writing. Within the bounds of JEA Representative's authority, JEA Representatives may provide requested information to the Company.

#### **2.14.33. WORK LOCATION CLEANLINESS**

The Company shall, at all times, keep the Work Location free from an accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, the Company shall remove all waste materials and any rubbish from and about the project, as well as any tools, construction equipment, machinery and surplus materials. If the Company fails to clean up at the completion of the Work, JEA may do so as provided elsewhere in the Contract and charge the cost thereof to the Company.

#### **2.14.34. WORKMANSHIP**

The Company shall perform all Work in a safe and professional manner, so as to render a neat and uniform appearance. The Company shall handle all material in such a way as to preserve its finish and protective coatings from damage. General arrangement shall be in accordance with JEA Construction Standards and shall be satisfactory to the Contract Administrator.

#### **2.14.35. COMPLIANCE WITH REFERENCED SPECIFICATIONS**

All Work, materials, systems or operations specified by reference to standard trade specifications or to manufacturer's published specifications shall comply with the requirements of the referenced specifications, except as modified by the requirements of this Contract. The referenced specification used shall be the latest published edition that is in effect on the effective date of this Contract unless a particular edition is specified. In case of a conflict, the specifications that contain the more stringent requirements will govern.

#### **2.14.36. COMPANY'S KNOWLEDGE OF THE WORK**

The Company represents that the Contract Price and the detailed schedule for the execution of the Work are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation made by any of its representatives

during or prior to execution of the Contract unless such understandings or representations are expressly stated in the Contract and the Contract expressly provides that JEA assumes the responsibility.

#### **2.14.37. COMPANY'S PLANS AND SPECIFICATIONS**

All plans and specifications that the Company provides for any building, structure, system or equipment where required by federal, state, local laws and regulation as part of the Work shall bear the seal of a professional engineer duly registered in the State of Florida at no cost to JEA.

### **2.15. STANDARD REQUIREMENTS FOR CONSTRUCTION**

#### **2.15.1. PROTECTION OF THE ENVIRONMENT**

The Company and its Subcontractors shall comply with all applicable laws, rules and regulations including, but not limited to, all Environmental Requirements.

Asbestos, Lead, or Toxic Mold Notification:

Asbestos, Lead, or Toxic Mold may be present at the Work Location. The Company shall notify the Contract Administrator immediately upon discovery of asbestos, lead, toxic mold. The Company shall not disturb or remove known or discovered asbestos, lead, or toxic mold unless directed by Contract Administrator.

Hazardous Materials:

The Company shall bear full responsibility including, but not limited to, payment and liability for the transportation, use and disposal of any Hazardous Materials under the Company's control during the performance of the Work. Disposal of Hazardous Materials should only be disposed of at JEA approved facilities. The Company shall provide JEA with appropriate documentation showing proper disposal of its Hazardous Materials.

JEA has identified and labeled equipment known to contain PCBs. JEA will remove and transport any equipment so identified. The Company shall not remove or transport any equipment containing PCBs. The Company shall immediately notify the JEA Representative of any questionable or unmarked equipment and the JEA Representative will arrange for testing and identification.

Toxic Substances Introduced by the Company:

The Company shall notify the Contract Administrator in writing of the type, quantity and disposal method of any toxic substance used during the performance of the Work. The Company shall be solely responsible for the use and disposal of any such toxic substances. The Company shall submit cleanup procedures to the JEA Representative for review and written approval prior to the use of the toxic substance. In the event that a toxic substance escapes into the environment, the Company shall immediately notify the Contract Administrator in writing of the occurrence and the actions taken. In the event that the Company encounters toxic substances in the course of construction, the Company shall immediately notify the Contract Administrator verbally, with a written notification to follow. The Contract Administrator shall arrange for disposal by JEA.

The Company will be solely responsible for all waste material including paints, lubricants, fuels, solvents, and other chemicals used in connection with the Work. The Company will provide proper containers for waste materials and comply with all applicable laws, rules and regulations in their disposal. The Company will dispose of all empty containers off-site as soon as possible. The Company will designate one area for transferring paints and solvents from large containers (55-gallon drums) into smaller containers for daily use.

Wetlands:

The Company understands and agrees that the Work Location may include wetlands or other environmentally sensitive areas. The Company shall not enter these areas during the performance of its Work, unless specifically authorized by the Contract Administrator and appropriate state and federal permits have been obtained.

Wildlife:

The Company and/or Subcontractor's employees shall not endanger wildlife species or domestic animals of any kind.

Violation of Environmental Laws and Permits:

The Company shall immediately cease any activity that causes or results in a violation of JEA's or Company's environmental permits or federal, state and local laws and regulations. Such violation shall immediately be reported to the Contract Administrator verbally, with written notification to follow. All additional costs due to the Company's noncompliance with the applicable environmental permits or Environmental Requirements shall be paid by the Company.

#### **2.15.2. NPDES PERMIT CONFORMANCE**

The Company shall obtain all other applicable local, state, and federal permits. It is unlawful to have any discharges that are not composed entirely of stormwater (except discharges pursuant to a NPDES permit) to the municipal separate stormwater system (MS4). Only non-contaminated water/non-turbid water shall be transported through the MS4. Groundwater discharge (approved by JEA) from dewatering activities may be routed into the stormwater system providing that erosion, and transportation of suspended solids to the system is prevented. If contaminated soil or contaminated groundwater is encountered, the dewatering activity shall cease immediately, and the Company shall contact the Florida Department of Environmental Protection and notify the appropriate department of the incident immediately.

#### **2.15.3. NPDES PERMIT CONFORMANCE - DEWATERING**

If Company encounters groundwater, the Company shall be responsible for obtaining; a *Generic Permit for Discharge of Produced Ground Water From any Non-Contaminated Site Activity* from the Florida Department of Environmental Protection (FDEP), and a *Noticed General Permit for Short-term Construction Dewatering* from the St. Johns River Water Management District (SJRWMD) before any dewatering activities can begin.

Company shall also be responsible for developing and utilizing a dewatering system(s) to remove water from the excavations. Prior to beginning any dewatering, the Company shall submit a dewatering plan to JEA for review. The Company shall comply with all sampling requirements listed in FDEP regulation (62-621.300(2) F.A.C.) before any dewatering can begin. The Company shall submit to JEA the sampling analysis results. In the event the sample analysis fails to meet FDEP water quality standards as established in applicable rule, the Company shall not proceed with further permitting or dewatering activities, shall notify JEA of any failure to meet applicable standards, requirements, or rules, and shall await instruction from JEA.

The dewatering plan developed by the Company shall further consider the dewatering volume as estimated using traditional and customary methods. The dewatering plan shall comply with the requirements of 40C-2 and 40C-22, F.A.C., and additional requirements as may be mandated or amended by SJRWMD. In the event the dewatering plan does not comply with those requirements applicable to the *Noticed General Permit for Short-term Construction Dewatering* the Company shall not proceed with further permitting or dewatering activities, shall notify JEA of any failure to meet applicable standards, requirements, or rules, and shall await instruction from JEA.

If the above requirements are not followed, the Company shall be held liable for any fines and/or violations incurred by JEA.

#### **2.15.4. NPDES PERMIT CONFORMANCE - STORMWATER POLLUTION PREVENTION**

The Company shall obtain as necessary a *Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP)*, and shall develop a Stormwater Pollution Prevention Plan (SWPPP) compliant with local, state, and federal rules, laws, and ordinances. Company shall be responsible for implementing the SWPPP, installing and maintaining in a functional manner structural and nonstructural best management practices as described therein, evaluating the effectiveness of the best management practices, and employing additional performance based best management practices as may be deemed necessary by JEA. The Company, at its own expense, shall revise, or include as addendum to the SWPPP measures as maybe required by a local, state, or federal authority to remain compliant with local, state, and federal rules, laws, and ordinances. **No additional payments shall be made to Company for revisions or addendums to the SWPPP, or for the actual implementation of those revisions on the Work site, including those made so as to achieve functional performance based best management practices.**

The Company shall obtain all other applicable local, state, and federal permits subsequent to notification of JEA of the need for such authorization(s). It is unlawful to have any discharges that are not composed entirely of stormwater (except discharges pursuant to a NPDES permit) to the Municipal Separate Stormwater System (MS4). Only non-contaminated water/non-turbid water shall be transported through the MS4. Groundwater discharge (approved by the FDEP pursuant to 62-621.300(2)) from dewatering activities may be routed into the stormwater system, drainage ditch, creek, river or wetland providing that erosion, and transportation of suspended solids to the system is prevented. If contaminated soil or contaminated groundwater is encountered, the dewatering activity shall cease immediately, and the Company shall contact the Contract Administrator's Environmental Coordinator, Andrew Sears at (904) 665-7719.

Upon approval to proceed to do so by the Owner, the Company shall complete a *Notice of Termination (NOT)* (DEP Doc. No. 62-621.300(6), F.A.C.), to terminate the CGP coverage within one (1) week of final site stabilization.

If the above requirements are not followed, the Company shall be held liable for any fines and/or violations incurred by JEA.

#### **2.15.5. PREVENTION, CONTROL AND ABATEMENT OF EROSION AND SILTATION**

The Company shall take steps and make suitable provisions to minimize siltation and erosion of waterways that may result from its operation during the course of construction.

The Company shall make suitable arrangements, which may require the temporary construction of flumes, boxes, or some other device(s), at the Work Location for the drainage and disposal of water. The Company shall be responsible for protecting adjacent property to the Work Location from damage by water resulting from its operations. The Work Location shall be returned to its original condition to the satisfaction of JEA.

The Company is cautioned that execution or maintenance that creates turbidity and that directly or indirectly affects the water quality of any waterway into which storm water is discharged in such a manner as to exceed the limitations prescribed in the Florida Administrative Code, is a violation of the water quality standards of the State of Florida.

Turbidity shall not exceed 29 NTU's, above background level within 100' of the construction activity. Costs incurred by the Company for compliance to the restrictions outlined above shall be included in the cost of the items for which

the turbidity control is required, unless a separate line item is included in the Response Document for turbidity control. Silt barriers shall be used at all waterway crossings or at any time during construction that siltation or erosion may occur. The Company shall submit to the JEA Engineer, for written approval prior to construction, the method to be used to control the turbidity. The JEA Engineer's approval of the method to be used in no way relieves the Company of the liability in case of a citation against JEA.

#### **2.15.6. SILT FENCE ASSEMBLY**

The Company shall furnish and install silt fence assembly (including fabric, stakes, etc.) in accordance with the details shown on the Erosion Control Drawings and as required by the Storm Water Pollution Prevention Plan (SWPPP). Company will be responsible for all costs associated with silt fence assembly. There will not be a separate line item for silt fence assembly on the Response Form.

#### **2.15.7. EARTHWORK**

##### **2.15.8. SUITABLE MATERIAL**

The Company shall stockpile all material encountered during regular excavation that the JEA Engineer determines is suitable for use as backfill material. Excess suitable material shall not be stored/stockpiled along the right-of-way. JEA will not make separate payment for the use of backfill material obtained on the Work from regular excavation. Excess material shall become the property of the Company and shall be disposed of appropriately outside the right-of-way.

##### **2.15.9. UNSUITABLE MATERIAL**

All material encountered during regular excavation that the Geotechnical Engineer determines is unsuitable for use as backfill shall become the property of the Company and the Company shall remove and dispose of it properly. Unsuitable material shall not be stored/stockpiled along the right-of-way. Where unsuitable material is to be replaced, suitable material obtained elsewhere on the Work area shall be used as backfill at no additional cost. In the event there are not sufficient quantities of stockpile suitable material available, Class A-3 sand shall be used as specified below for A-3 Soil Backfill. Except as specified below for A-3 Soil Backfill, JEA will not make separate payment for replacement material used to construct the stabilized sub-base.

##### **2.15.10. OVEREXCAVATION**

If the Company encounters material below the bearing elevation of the proposed utility pipe or structure that the Geotechnical Engineer determines to be unsuitable, the Company shall remove this material, after notifying JEA or the City of Jacksonville, and properly dispose of the material. JEA shall pay the Company at the Contract Unit Price for Special Bedding (Contingency) and such payment shall be full compensation including, but not limited to, excavation, material disposal, dewatering, sheeting and shoring and A-3 Soil backfill replacement. Method of measurement for removal and replacement for over excavation material shall be per cubic yard of unsuitable material removed and replaced below the bearing elevation and disposed based on actual trench section dimensions in accordance with the JEA Water and Sewer Standards, Details and Materials Manual as amended from time to time, unless otherwise specified in the Contract Documents.

##### **2.15.11. A-3 SOIL BACKFILL**

If there is not enough suitable material obtained from regular excavation to use as backfill, then the Company shall import A-3 soil to the Work area to meet the need for fill and backfill as directed by JEA or the City of Jacksonville. The Company shall provide JEA test results for both stockpiled material and imported material to indicate that the materials meet the minimum standards established by the Geotechnical Engineer for this project.

JEA will pay the Company at the Contract Unit Price for A-3 soil for the importation and placement of the soil and sand. JEA will not pay the Company for A-3 soil backfill when suitable material from regular excavation will become available, but at the time required, is not available, due to the Company's sequence of work. Measurement of A-3 soil backfill shall be based on actual trench section dimensions and in accordance with Section 801, Item 4.5 of the JEA August 2008 edition of JEA Water and Sewer Standards, Details and Materials Manual, as amended, unless otherwise specified in the Contract Documents. A-3 replacement soil shall not be stored/stockpiled along the right-of-way.

#### **2.15.12. LICENSES**

The Company shall comply with all licensing, registration and/or certification requirements pursuant to applicable laws, rules and regulations. The Company shall secure all licenses, registrations and certifications as required for the performance of the Work and shall pay all fees associated with securing them. The Company shall produce written evidence of licenses and other certifications immediately upon request from JEA.

#### **2.15.13. SAFETY AND PROTECTION PRECAUTIONS**

The Company shall comply with all applicable federal, state and local laws, ordinances, all JEA procedures and policies including any orders of any public body having jurisdiction for the safety of persons or protection of property. **The Company understands and agrees that a violation of any provision of this clause is grounds for a Termination for Default, with no requirement to provide Company with a notice to cure.** Additionally, the Company shall be responsible for all JEA damages associated with such termination.

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

The Company Representative, or alternatively, the Company Supervisor, shall be designated as the Company's individual responsible for the prevention of accidents.

### **2.16. VENDOR PERFORMANCE EVALUATION**

#### **2.16.1. VENDOR PERFORMANCE EVALUATION**

##### **Use of Vendor Performance Evaluation Scorecards**

JEA may evaluate the Company's performance using the evaluation criteria shown on the vendor scorecard available online at JEA.com.

Scores for all metrics shown on the evaluation range from a low of 1, meaning significantly deficient performance, to a high of 5, meaning exceptionally good performance. The Company's performance shall be classified as Top Performance, Acceptable Performance, or Unacceptable Performance, as defined herein. The evaluator will be a designated JEA employee. The evaluator's supervisor and the Chief Purchasing Officer will review deficient performance letters and Unacceptable Performance scorecards, as described below, prior to issuance. When evaluating the Company's performance, JEA will consider the performance of the Company's Subcontractors and suppliers, as part of the Company's performance.

### **Frequency of Evaluations**

JEA may conduct performance evaluations and prepare scorecards in accordance with the procedures described herein at any time during performance of the Work or soon after the completion of the Work. JEA may conduct one or more evaluations determined solely at the discretion of JEA.

### **Unacceptable Performance**

- If at any time, JEA determines, using the criteria described on the scorecard, that the performance of the Company is Unacceptable, the Contract Administrator and Chief Procurement Officer or his designated alternate will notify the Company of such in a letter. The Company shall have ten (10) days to respond to the Contract Administrator. Such response shall include, and preferably be delivered in-person by an officer of the Company, the specific actions that the Company will take to bring the Company's performance up to at least Acceptable Performance.
- Within thirty (30) days from date of the first Unacceptable Performance letter, the Contract Administrator and Chief Purchasing Officer or his designated alternate will notify the Company by letter as to whether its performance, as determined solely by JEA, is meeting expectations, or is continuing to be Unacceptable. If the Company's performance is described in the letter as meeting expectations, no further remedial action is required by the Company, as long as Company's performance continues to be Acceptable.
- If the Company's performance as described in the letter continues to be Unacceptable, or is inconsistently Acceptable, then the Company shall have fifteen (15) days from date of second letter to demonstrate solely through its performance of the Work, that it has achieved Acceptable Performance. At the end of the fifteen (15) day period, JEA will prepare a scorecard documenting the Company's performance from the start of Work, or date of most recent scorecard, whichever is latest, and giving due consideration to improvements the Company has made in its performance, or has failed to make. If the scorecard shows Company's performance is Acceptable, then no further remedial action is required by Company as long as Company's performance remains Acceptable. If the scorecard shows the Company's performance is Unacceptable, JEA will take such actions as it deems appropriate including, but not limited to, terminating the Contract for breach, suspending the Company from bidding on any JEA related solicitations, and other remedies available in the JEA Purchasing Code and in law. Such action does not relieve the Company of its obligations under the Contract, nor does it preclude an earlier termination.
- In the event that the Contract Term or the remaining Term of the Contract does not allow for the completion of the deficient performance notification cycles described above for those in danger of receiving an Unacceptable Performance scorecard, JEA may choose to accelerate these cycles at its sole discretion.
- If the Company receives five (5) or more letters of deficiency within any twelve (12) month period, then JEA will prepare a scorecard describing the deficiencies and the Company's performance will be scored as Unacceptable.

### **Acceptable Performance**

JEA expects the Company's performance to be at a minimum Acceptable.

### **Disputes**

In the event that the Company wants to dispute the results of its scorecard performance evaluation, the Company must submit a letter to the Chief Procurement Officer supplying supplemental information that it believes JEA failed to take into account when preparing the scorecard. Such letter, along with supplemental information, must be submitted no later than ten (10) days following the Company's receipt of the scorecard. If the Chief Procurement Officer decides to change the scorecard, the Company will be notified and a revised scorecard will be prepared, with a copy issued to the Company. If the Chief Procurement Officer decides that no change is warranted, the decision of



the Chief Procurement Officer is final. If the Company is to be suspended from consideration for future Award of any contracts, the Company may appeal to the Procurement Appeals Board as per JEA Procurement Code.

### **Public Records**

There can be no expectation of confidentiality of performance-related data in that all performance-related data is subject to disclosure pursuant to Florida Public Records Laws. All scorecards are the property of JEA.

#### **2.16.2. RIGHT TO AUDIT AND FINANCIAL REPORTING**

Upon JEA's requests, the Company agrees to allow JEA to audit its financial and operating records for the purpose of determining Invoice accuracy, or otherwise assessing compliance with the Contract Documents. The Company agrees to let JEA personnel, or their qualified representative access the records at Company's office, with three days written notice, for a reasonable period, not less than five days, in a workspace suitable for the audit provided by Company. All audit work will be done on Company premises, and no Company documentation will be removed from Company offices. The Company agrees to have knowledgeable personnel available to answer questions for the auditors during the time they are at the Company's offices and for a period of two weeks thereafter. The Company shall provide to JEA audited financial statements for the most recent fiscal year upon JEA's request, not later than five days after receipt of written request.

### **2.17. JEA RESPONSIBILITIES**

#### **2.17.1. ACCESS TO THE WORK LOCATIONS**

JEA will provide, as indicated in the Contract Documents, and no later than the date when needed by the Company, access to the Work Location, including rights-of-way or access thereto, and such other lands that are designated for the Company's use. JEA will secure easements for permanent structures or permanent changes in existing facilities, unless otherwise specified in the Contract Documents.

#### **2.17.2. ASSIGNING OF CONTRACT**

Each party agrees that it shall not assign, delegate, or otherwise dispose of the Contract, the duties to be performed under the Contract, or the monies to become due under the Contract without the other party's prior written consent.

The assignment of the Contract will not relieve either of the parties of any of its obligations until such obligations have been assumed in writing by the assignee. If the Contract is assigned by either of the parties, it will be binding upon and will inure to the benefit of the permitted assignee. The Company shall be liable for all acts and omissions of its assignee or its Subcontractor.

#### **2.17.3. COORDINATION OF SERVICES PROVIDED BY JEA**

The JEA Representative for the Work will, on behalf of JEA, coordinate with the Company and administer this Contract. It shall be the responsibility of the Company to coordinate all assignment related activities with the designated JEA Representative. The JEA Representative will be assigned to perform day-to-day administration and liaison functions, and to make available to the Company appropriate personnel, to the extent practical, and to furnish records and available data necessary to conduct the Work. The JEA Representative will also authorize the Company to perform work under this Contract.

### **2.18. COMPANY RESPONSIBILITIES**

#### **2.18.1. STORAGE OF EQUIPMENT**

The Company shall be responsible for all storage of materials, equipment, vehicles, tools, and all other items associated with the Work. Such storage shall comply with applicable regulations appropriate for the items being

stored to ensure suitable care for items and protection from theft, vandalism, or inappropriate use. The Company is solely responsible for the costs for such storage, unless otherwise indicated in the Contract Documents, and any costs associated with noncompliant storage including, but not limited to, loss and damage to items. In the event that JEA directs the Company to stop the Work, costs associated with storing equipment or materials will be compensated in accordance with the Contract Documents. The Company shall ensure that JEA Representatives have access to Work-related storage on an as needed basis during regular work hours and Overtime.

#### **2.18.2. STORM PREPAREDNESS**

In the event of a Hurricane Warning, Tropical Storm Warning, or other large storm affecting the Work Location, the Company shall secure, or shall remove and store all equipment and materials at the Work Location including, but not limited to, cones, barricades, lights and signs. The Company shall begin taking such precautions necessary to secure the Work Location upon official issuance of mandatory evacuation of the area of the Work Location and no later than twenty-four (24) hours prior to predicted arrival of tropical storm or hurricane force winds, or when notified by a JEA Representative to do so. These activities are considered a regular part of the Work; regardless of the frequency they are required.

#### **2.19. MISCELLANEOUS PROVISIONS**

##### **2.19.1. AMBIGUOUS CONTRACT PROVISIONS**

The parties agree that this Contract has been the subject of meaningful analysis and/or discussions of the specifications, terms and conditions contained in this Contract. Therefore, doubtful or ambiguous provisions, if any, contained in this Contract will not be construed against the party who physically prepared this Contract.

##### **2.19.2. AMENDMENTS**

This Contract may not be altered or amended except in writing, signed by JEA Chief Procurement Officer, or designee, and the Company Representative, or each of their duly authorized representatives.

##### **2.19.3. APPLICABLE STATE LAW; VENUE; SEVERABILITY**

The rights, obligations and remedies of the parties as specified under the Contract will be interpreted and governed in all respects exclusively by the laws of the State of Florida without giving effect to the principles of conflicts of laws thereof. Should any provision of the Contract be determined by the courts to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions will not be impaired. Litigation involving this Contract or any provision thereof shall take place in the State or Federal Courts located exclusively in Jacksonville, Duval County, Florida.

##### **2.19.4. CUMULATIVE REMEDIES**

Except as otherwise expressly provided in this Contract, all remedies provided for in this Contract shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

##### **2.19.5. CHANGE IN OWNERSHIP OF COMPANY**

The Company agrees to cause any entity that shall acquire ownership of Company to assume this Contract and all of Company's obligations hereunder.

#### **2.19.6. CHANGE IN THE WORK**

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

In the event of an emergency endangering life or property where it is appropriate for the Company to take action, the Company shall undertake such actions to preserve life and property. JEA and the Company will determine after emergency is concluded, the extent of out-of-scope work performed by Company, and the Contract Administrator will issue a Change Order or amend the Contract for such work, if any and as necessary.

All requests for changes filed by the Company shall be in writing delivered to the Contract Administrator within 10 working days of when the event that prompted the claim was discovered or should have been discovered. Upon receipt of the Company's claim notification, Contract Administrator will provide written direction as to the procedures that will be used to address the request. The Company's request shall be sufficiently detailed including itemized costs, condition and work descriptions and other information necessary to evaluate the merits of the claim. The Contract Administrator may reject requests providing insufficient supporting information. Any change in the Contract resulting from the request will be incorporated into the Contract via a Change Order or Purchase Order. Where JEA and the Company are unable to reach a mutually acceptable resolution of request, JEA's determination will be final.

Where necessary, JEA will determine the value of work covered by a Change Order using one of the following methods:

- o Where the work is covered by established Unit Prices contained in the Contract, the Unit Price will be applied to the quantity of work;
- o By mutual acceptance of lump sum price;
- o By actual cost and a mutually acceptable fixed amount for overhead and profit, or

Where Response Price was based on estimates quantities, prior to making final payment, JEA will determine actual quantities using sampling, surveying and other industry recognized means and prepare a Change Order adjusting the price to reflect actual volumes.

The Company shall immediately notify the Contract Administrator in writing of any unauthorized change in the scope of the Work or significant change in the quantities of the Work that may increase the Contract Price, require an extension of Work schedule, or negatively impact permitting or other regulatory requirements.

The Work schedule may be changed only by a Change Order or Purchase Order. The Company's request or claim for a Work schedule adjustment shall be in writing delivered to the Contract Administrator within five working days following the discovery of the event that prompted the claim or when the event should have been discovered. Where accepted by JEA, changes to Work schedule will only adjust for critical path impacts. Failure to include the necessary critical path analysis with request shall be grounds for rejecting the claim. The path of critical events mentioned herein means the series of interdependent Work events that must be sequentially performed and that require a longer total time to perform than any other such series. Upon receipt of the Company's request for a change in the Work schedule, the Contract Administrator will provide any additional directions in writing detailing the procedures that will be used to resolve the request, including provision of time impact or manpower and equipment loading schedules. Where JEA and the Company are unable to reach a mutually acceptable resolution of request,

JEA will make a commercially reasonable determination, made in accordance with JEA's Purchasing Code, which shall be final.

All Work defined on Change Orders shall be subject to the conditions of the Contract, unless specifically noted on the Change Order.

#### **2.19.7. DELAYS**

Neither party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such obligation is prevented or delayed by any cause beyond the reasonable control of the affected party, and the time for performance of either party hereunder shall be extended for a period of equal to any time lost due to such prevention or delay.

#### **2.19.8. ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between the parties. No statement, representation, writing, understanding, or agreement made by either party, or any representative of either party, which are not expressed herein shall be binding. All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

#### **2.19.9. EXPANDED DEFINITIONS**

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including without limitation", and the terms "include", "includes" and "included" have similar meanings. Any reference in this Contract to any other agreement is deemed to include a reference to that other agreement, as amended, supplemented or restated from time to time. Any reference in the Contract to "all applicable laws, rules and regulations" means all federal, state and local laws, rules, regulations, ordinances, statutes, codes and practices.

#### **2.19.1. 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 JEA to secure approval, validation or sale of bonds; inability of JEA or the Company 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 within seven (7) calendar days.

#### **2.19.2. HEADINGS**

Headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

#### **2.19.3. INDEPENDENT CONTRACTOR**

Company is performing this Contract as an independent contractor and nothing in this Contract will be deemed to constitute a partnership, joint venture, agency, or fiduciary relationship between JEA and Company. Neither Company nor JEA will be or become liable or bound by any representation, act, or omission of the other.

#### **2.19.4. JEA PROJECT SECURITY PROGRAM**

The JEA Project Security Program establishes a coordinated security program and assigns specific security responsibilities for which the Company and/or its Subcontractors shall be responsible at while performing construction services at existing JEA facilities and upon the substantial completion of new facilities. The programs objectives are 1) to direct all project security activities toward a single goal--no breaches, thefts or vandalism, and 2) to ensure effective coordination and communication of all project security activities with JEA Security.

In general, the Company shall provide on-site JEA security personnel at any time the facility's perimeter is unsecured, including but not limited to, alarms disabled, fences or gates down, traffic flows that require gates to be opened repeatedly and/or for more than one hour of the work day. The Company shall schedule security personnel through JEA Security. Where existing lighting is disabled or otherwise impacted by the Work, the Company shall provide temporary lighting equal to or exceeding that which exists.

Further, the Company shall be responsible for complying with all applicable provisions of Chapter 12 "Security Program" of the JEA Contractor Safety Management Process Safety Requirements, a copy of which may be obtained upon request.

#### **2.19.5. LANGUAGE AND MEASUREMENTS**

All communication between the Company and JEA, including all documents, notes on drawings, and submissions required under the Contract, will be in the English language. Unless otherwise specified in the Contract, the US System of Measurements shall be used for quantity measurement. All instrumentation and equipment will be calibrated in US System of Measures.

#### **2.19.6. MEETINGS AND PUBLIC HEARINGS**

The Company will, upon request by JEA, attend all meetings and public hearings as required, in any capacity, as directed by JEA.

#### **2.19.7. NEGOTIATED CONTRACT**

Except as otherwise expressly provided, all provisions of this Contract shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns. The parties agree that they have had meaningful discussion and negotiation of the provisions, terms and conditions contained in this Contract. Therefore, doubtful or ambiguous provisions, if any, contained in the Contract shall not be construed against the party who physically prepared this Contract.

#### **2.19.8. NONEXCLUSIVE**

Notwithstanding anything contained herein that may appear to be the contrary, this Contract is "non-exclusive" and JEA reserves the right, in its sole discretion, to retain other companies to perform the Work, and/or JEA may self-perform the Work itself.

#### **2.19.9. 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.

#### **2.19.10. NO DAMAGE FOR DELAY**

Damage, loss, expense or delay incurred or experienced by the Company in the prosecution of the Work by reason of unforeseen circumstances, unanticipated difficulties and obstructions, bad weather, or other mischances that are generally considered to be a part of the usual hazards associated with Work, shall be borne entirely by the Company and shall not be the subject of any claim for additional compensation or change in Approved Schedule.

The Company agrees that its sole remedy for any claims, damages or losses related to any delay, disruption or hindrance alleged to be caused by JEA or any of JEA's agents or other companies, shall be an extension of the Contract completion date.

Any demand for equitable time adjustment must be served in writing to JEA within five days of the event giving rise to the delay, disruption or hindrance. 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 time adjustment.

In the event the "no damage for delay" clause is inapplicable, 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.

#### **2.19.11. REFERENCES**

Unless otherwise specified, each reference to a statute, ordinance, law, policy, procedure, process, document, drawing, or other informational material is deemed to be a reference to that item, as amended or supplemented from time to time. All referenced items shall have the enforcement ability as if they are fully incorporated herein.

#### **2.19.12. RELATIONSHIP OF THE PARTIES**

The Company agrees that it shall perform the Work as an independent Company and that it does not (a) have the power or authority to bind JEA or to assume or create any obligation or responsibility, express or implied, on JEA's part or in JEA's name, except as may be authorized by JEA under a separate written document, or (b) represent to any person or entity that it has such power or authority except as may be authorized by JEA under a separate written document.

#### **2.19.13. RIGHT TO AUDIT AND FINANCIAL REPORTING**

##### Accounting System

The Company shall establish and maintain a reasonable accounting system that enables JEA to readily identify the Company's assets, expenses, cost of goods, and use of funds.

##### Audited Financial Statements

The Company shall provide to JEA audited financial statements for the most recent fiscal year upon JEA's request, not later than five (5) days after receipt of written request.

##### Content and Retention of Records

Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including Responses of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out of pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Company shall, at all times during the term of this Contract and for a period of five years after the completion of this Contract, maintain such records, together with such supporting or underlying documents and materials.

#### Inspection /Audit of Records

Upon JEA's request, the Company agrees to allow JEA to audit, to examine, and to make copies of or extracts from its financial and operating records (in whatever form they may be kept, whether written, electronic, or other) kept by the Company, its employees, agents, assigns, successors, and subcontractors, for the purpose of determining invoice accuracy, or otherwise assessing compliance with the Contract Documents.

The Company shall at any time requested by JEA, whether during or after completion of this Contract, and at Company's own expense make such records available for inspection and audit (including copies and extracts of records as required) by JEA. Such records shall be made available to JEA during normal business hours at the Company's office or place of business in a workspace suitable for the audit and [subject to a three day written notice/without prior notice]. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for JEA. The Company agrees to have knowledgeable personnel available to answer questions for the auditors during the time they are performing the audit and for a period of two weeks thereafter. Company shall ensure JEA has these rights with Company's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Company and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Company's obligations to JEA.

#### Cost of Audits

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by JEA unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Company to JEA in excess of one-half of one percent (.5%) of the total contract billings, the Company shall reimburse JEA for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or nonperformance, JEA may recoup the costs of the audit work from the Company.

#### Billing Adjustments and Recoveries

Any billing payment recoveries to JEA that must be made as a result of any such audit or inspection of the Company's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of JEA's findings to Company.

#### Failure to Comply

If Company fails to comply with the requirements contained in this clause, the Company may be found to be in breach of the Contract, be subject to debarment or suspension of bidding privileges with JEA, and/or JEA may exercise any other remedies available by law.

### **2.19.14. SEVERABILITY**

In the event that any provision of this Contract is found to be unenforceable under applicable law, the parties agree to replace such provision with a substitute provision that most nearly reflects the original intentions of the parties and is enforceable under applicable law, and the remainder of this Contract shall continue in full force and effect.

With regard to any provision in this agreement pertaining to damages, equitable or otherwise, it is the intent of the Parties that under no circumstances shall there be recovery for home office overhead. 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.

#### **2.19.15. SUBCONTRACTING OR ASSIGNING OF CONTRACT**

Each party agrees that it shall not subcontract, assign, delegate, or otherwise dispose of the Contract, the duties to be performed under the Contract, or the monies to become due under the Contract without the other party's prior written consent.

The assignment of the Contract will not relieve either of the parties of any of its obligations until such obligations have been assumed in writing by the assignee. If the Contract is assigned by either of the parties, it will be binding upon and will inure to the benefit of the permitted assignee. The Company shall be liable for all acts and omissions of its assignee or its Subcontractor.

In the event the Company obtains JEA approval to use Subcontractors, the Company is obligated to provide Subcontractors possessing the skills, certifications, registrations, licenses, training, tools, demeanor, motivation and attitude to successfully perform the work for which they are subcontracted. The Company is obligated to remove Subcontractors from performing Work under this Contract when the Company recognizes that a Subcontractor is failing to work in a manner consistent with the requirements of this Contract, or when JEA notifies the Company that JEA has determined a Subcontractor is failing to work in a manner consistent with the requirements of this Contract.

#### **2.19.16. SURVIVAL**

The obligations of JEA and the Company under this Contract that are not, by the express terms of this Contract, to be performed fully during the Term, shall survive the termination of this Contract.

#### **2.19.17. TIME AND DATE**

Unless otherwise specified, references to time of day or date mean the local time or date in Jacksonville, FL. If under this Contract any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a regular business day for JEA, that payment or calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a regular business day. Where reference is made to day or days, it means calendar days. Where reference is made to workday, workdays, business day, or business days, it means regular working days for JEA Procurement.

#### **2.19.18. TIME OF ESSENCE**

For every material requirement of this Contract, time is of the essence.

#### **2.19.1. TITLE TO MATERIALS FOUND**

JEA shall retain the title to water, mineral matter, timber and any other materials that the Company, or its Subcontractors, encounters during the excavation or other operations of the Work. The Company shall use or dispose of this material in accordance with the Contract or written instructions from the Contract Administrator. Any materials found in the excavation, or other operations of the Company, that are of archaeological or historical value shall be left in place. The Company shall immediately notify JEA of the find and shall take no further action until directed by JEA.



#### **2.19.1. USE OF JEA CONTRACTS BY THE CITY OF JACKSONVILLE**

Where City of Jacksonville agencies' procurement codes allow use of JEA contracts, the Company agrees to extend any pricing and other contractual terms to such agencies.

#### **2.19.2. WAIVER OF CLAIMS**

A delay or omission by JEA to exercise any right or power under this Contract shall not be construed to be a waiver thereof. A waiver by JEA 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 Company'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 JEA's rights under the Contract: approval of payments, including final payment; Certificate of Contract Completion; any use of the Work by JEA; nor any correction of faulty or defective work by JEA.

### **3. TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK**

The Technical Specifications and a Detailed Scope of Work are located in Appendix A of this document.

104-17 Appendix A Technical Specifications  
104-17 Appendix C – T & M Billing Rate Sample  
104-17 Appendix D – Consumable Supplies  
104-17 Appendix E Expendable Tools and Supplies  
104-17 Appendix F Non-expendable Tools and Supplies list

### **4. FORMS**

Forms required to be submitted with this solicitation are provided in **Appendix B** or can be obtained on the JEA website at [www.jea.com](http://www.jea.com).