

Solicitation

For Participation in an Invitation to Negotiate (ITN)

JEA Heavy Duty Vehicle Procurement Acquisition



Jacksonville, FL

Solicitation Number: 1410462846-22

Mandatory Pre-Response Meeting Via WebEx on October 25, 2021 at 10:00am EST

Meeting Number (Access Code): 2309 817 0422

Meeting Password: HeavyDuty

Join by Website

<https://jeameeting.webex.com/jeameeting/j.php?MTID=m3833d09462042634162987afe30caa22>

Join by Phone

[+1-415-655-0001](tel:+14156550001)..23098170422## US Toll

First Round Responses due no later than 12:00 P.M. EST of November 23, 2021

If required - BAFO Responses due no later than 3:00 P.M. EST of December 7, 2021

Bids/Responses are to only be delivered electronically via the JEA Zycus Platform. An automated, detailed auditing system provides sealed bid integrity.

USE THIS LINK TO ACCESS THE SOLICITATION ON ZYCUS:

<https://zsn.zycus.com/guest/genericRegister/JEA074/iSource/198910/>

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Solicitation

1. INTENT TO NEGOTIATE (ITN)

1.1. INVITATION

1.1.1. SCOPE OF WORK

The purpose of this Invitation to Negotiate (the "ITN") is to solicit pricing for the purchase of Heavy Duty Vehicles for JEA's Fiscal Year 22 (Oct 2021 to September 2022) and FY23 (October 2023 to September 2023) requirements as described in Appendix A to this ITN. All units must be tested and delivered to JEA Fleet Facility (5717 New Kings Road Jacksonville, Florida 32209) in complete operational condition. JEA has grouped these vehicles into three (3) vehicle grouping identified below.

Description	Class Code	Bid Group	FY22 Arrival	FY23 Arrival	Total Count
TRUCK 3 T UTILITY 11'	125	1		1	1
TRUCK 3 T CARGO REEL	133	1		5	5
TRUCK 5 T CARGO REEL	133+	2		2	2
TRUCK 5 T DUMP 19 CYD	135T	2	2		2
TRUCK 8 T CRANE/50 T 120'	312	3		1	1

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.

1.1.3. INVITATION TO NEGOTIATE

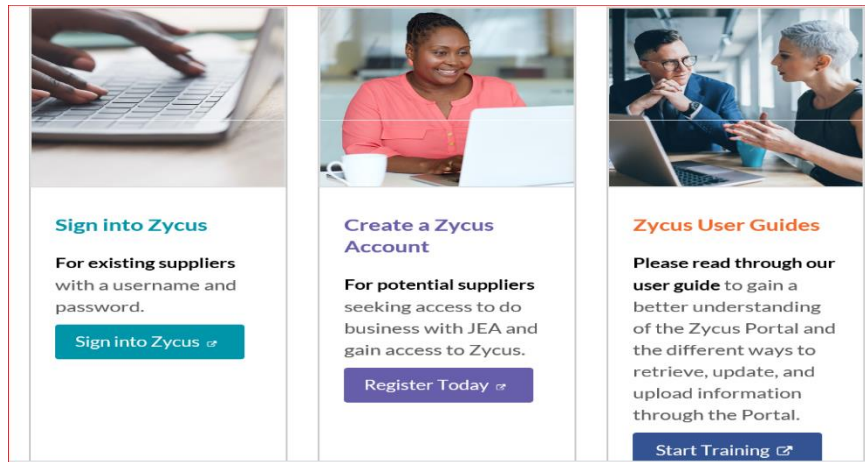
To obtain more information about this Solicitation:

Download a copy of the Solicitation, Appendices, and any required forms at jea.com, search key word "Zycus" to connect to the online sourcing platform. Or click the following link:

https://www.jea.com/about/procurement/zycus_portal/

Closing Date and Time & Proposal Due Date: Per Zycus Close Date See the Solicitation # on Zycus cloud based sourcing platform for more details.

All Proposal documentation must reference the Solicitation Title and Number noted above. All Proposals must be made on the appropriate forms as specified within the Solicitation and uploaded to a JEA's Zycus sourcing platform (example below).



New Users will need to register to login. Registration will require Company name, Contact and Email Address.



When users select new registration, the user will enter their email address and may find the company or email address may already be registered if the current email address and company is already registered to do business with JEA.

The image shows a screenshot of the Zycus portal. On the left is a blue sidebar with 'Existing User? Login in to your account' and a green 'Login' button. The main area has the ZYCUS logo, a language dropdown set to 'English', and a 'Register with our Supplier Network' section. Under 'Email Address', the email 'rlovgrenjea@gmail.com' is entered, and a red error message states 'Email already registered. Please click [here](#) to login'. A 'Password' field is visible below.

If you find your email address is already registered follow the prompts for a new activation code, or a password reset as appropriate.

Existing Users or New Users with ID (email registered) and password.

Once the user has a login on the sourcing platform select “Sign into Zycus”, the Proposer may navigate to the solicitation by selecting the icon for the applicable solicitation.

[Sign into Zycus](#)

[illegible]

Initial Actions that may be require Acceptance of the Proposer may include but are not limited to:

- Supplier Checklist**
 - Confirm Participation**
To confirm participation accept all Terms and Conditions.
 - Prepare Response**
 - Submit Response**

RFI : 1410190846 | Telephony, Network, Internet & DDoS Services

Go to eForum (0 New)

To confirm participation accept all Terms and Conditions.

Terms and Conditions	Status	Action
Source Usage Terms and Conditions.rtf	No Action Taken Yet	Accept Reject Download
RFI Telephony Network Internet and DDoS Services.docx	No Action Taken Yet	Accept Reject Download

Page **1** of 1

Preview (Other Attachments and RFX Preview will be available after all Terms and Conditions are accepted)

Confirm Participation

Decline Participation

Page 7 of 48

Submit Response

RFI Summary

Event Status: **Open**

Open Date: 10/12/2020 14:21

Close Date: 10/26/2020 17:00

Owner: Nickolas Dambrose

Contact: -

RFI Telephony Network Internet and DDoS Services.docx

Accepted

Accept Reject Download

Page 1 of 1

Other Attachments	Size	Uploaded On	Action
Pricing Template.xlsx	9 KB	10/06/2020 09:55	Download

Page 1 of 1

RFI Details (Sections:3 | Questions:6 | Items:0) [Expand All Sections](#)

1.0 Service Level Agreement (Question:1 | Items:0)

2.0 Invoicing Practices (Question:1 | Items:0)

3.0 Budgetary Cost Estimates (Questions:4 | Items:0)

Respond to each section of the Solicitation, once completed with each section, select “Save”, you’ll note each section has a red, yellow, green light code. Items will turn green once completed. Yellow and red lights mean there is additional action required. Users may also note under each tab, there are multiple questions to respond to, scroll down the list to ensure all questions are answered.

Important: Kindly export the draft again in case the event has been paused and republished to fill the responses via excel import.

1 of 3 Service ...

2 of 3 Invoicin ...

3 of 3 Budgetar ...

Mandatory (0/0) Optional (1/1)

Mandatory (0/0) Optional (0/1)

Mandatory (0/1) Optional (0/3)

Showing: All Questions Go

1.1

For its Telephony, Network, Internet & DDoS Services, JEA requires a service level agreement including but not limited to liquidated damages for failure to perform. Is this requirement a disqualifier for your ability to respond?

Test Response

2000 Character Limit - You have used 13 Characters

Add Comments

Back to Prepare Response Go

Back to Top Save Go to Submit Response

In most solicitations, JEA will provide technical specifications, pricing tables in excel which the Bidder will need to download. Additionally excel pricing tables may need to be uploaded once completed to complete a Proposal section. Proposers can download the required attachments by selecting the “Buyers Attachments” icon

Buyer's Attachments 1

Upload Event Level Attachments(0)

Once the required forms are uploaded and saved, the section light will turn green. Once all sections are completed and green lighted, the User may select “Submit Proposal”.

Question ID	Question Title	Status	Completion Status	Action
1.0	Service Level Agreement	OPEN	0/0 (Mandatory), 1/1 (Optional)	Prepare Response
2.0	Invoicing Practices	OPEN	0/0 (Mandatory), 1/1 (Optional)	Prepare Response
3.0	Budgetary Cost Estimates	OPEN	1/1 (Mandatory), 3/3 (Optional)	Prepare Response

Once the user selects “Submit Proposal”, the user will receive a “Success” pop-up when submitted.

Once submitted users may recall and modify submitted documentation and submit Proposals until the Close Date and Time (Bid Due Date & Time).

The screenshot displays the Zycus platform interface. On the left, a sidebar contains navigation links: 'Confirm Participation', 'View Responses', and 'Submit Response' (highlighted in yellow). Below these is an 'RFI Summary' section with the following details: Event Status: Open, Open Date: 10/12/2020 14:21, Close Date: 10/26/2020 17:00, Owner: Nickolas Dambrose, and Contact: -. The main content area is titled 'Submit responses of all sections in the event.' and shows a table of questions. The table has columns for question ID, question title, status, type, completion status, and a 'View Response' button. The questions listed are: 1.0 Service Level Agreement (Status: OPEN, Type: Question, Completion Status: (0/0 (Mandatory), 1/1 (Optional)), Submitted 10/16/2020 10:18), 2.0 Invoicing Practices (Status: OPEN, Type: Question, Completion Status: (0/0 (Mandatory), 1/1 (Optional)), Submitted 10/16/2020 10:18), and 3.0 Budgetary Cost Estimates (Status: OPEN, Type: Question, Completion Status: (1/1 (Mandatory), 3/3 (Optional)), Submitted 10/16/2020 10:18). A 'Recall Response' button is located at the bottom right of the table.

Proposals shall be delivered electronically via the Zycus platform. An automated, detailed auditing system provides sealed Proposal integrity. Proposals remain sealed on the platform until the Close Date & Time (Due Date & Time).

The Proposer shall be solely responsible for delivery of its Proposal to the electronic Zycus platform.

Proposals are due by the time and on the date listed above. Late Proposals may not be accepted.

Proposers are strongly encourages to acquire log in credentials early as possible. Additionally, Proposers are encouraged to submit bids early to ensure uploading process goes smoothly.

2.1.1. QUESTIONS (ITN)

All questions must be submitted in writing or electronically on the eForum 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. Bidder Questions may be submitted via the Zycus Chat function in the associated bid under eForum or by emailing the purchasing agent listed below. Responses shall be issued by addendum and attached to the online procurement on the Zycus platform.

The screenshot shows the Zycus eForum interface. At the top, the event name is 'Telephony, Network, Internet & DDoS Services'. Below this is a table with columns: eForum Name, Description, Type, Message, and Action. A 'New eForum' form is open, showing fields for 'eForum Name' (with a red asterisk), 'Description', and 'Signature/Remarks'. The 'eForum Name' field contains 'Questions for Telephony RFI.' and has a character count of 226 characters left. The 'Description' field contains 'Test question for Telephony' and has a character count of 228 characters left. The 'Signature/Remarks' field contains 'Test Signature.' and has a character count of 1985 characters left. The form is titled 'New eForum' and has a close button (X).

Submitting an inquiry to the eForum section will sent a communication to the buyer. Any comments or queries are not Addendums to the Solicitation. Only Addendum(s) issued and attached to the Solicitation under "Buyers Attachments" will be considered to be a formally approved change or clarification.

Participants may also submit questions to the contact directly by emailing to:

Contact: Kenny Pearson
E-mail: pearkr@jea.com

2.1.2. MANDATORY PRE-RESPONSE MEETING

There will be an Mandatory Pre-Proposal meeting associated with this Solicitation. All interested Proposers must attend the Pre-Proposal meeting.

Those planning to attend the WebEx or teleconference are highly encouraged to email their name and contact information to: pearkr@jea.com at least 24 hours prior to the Pre-Proposal meeting to facilitate roll call. A Proposer must only sign in representing one company, unless otherwise agreed to by JEA in writing. A company may have multiple attendees. An attendee may also not represent any potential bidders, but their presence will not be credited for the purposes of mandatory attendance of all bidders.

Any company not in attendance to the mandatory pre-bid may not be permitted to bid.

Mandatory Pre-Response Meeting Via WebEx on October 25, 2021 at 10:00am EST

Meeting Number (Access Code): 2309 817 0422

Meeting Password: HeavyDuty

Join by Website

<https://jeameeting.webex.com/jeameeting/j.php?MTID=m3833d09462042634162987afe30caa22>

Join by Phone

[+1-415-655-0001](tel:+1-415-655-0001).,23098170422## US Toll

2.1.3. MINIMUM QUALIFICATIONS

Respondent must meet the following Minimum Qualifications to be considered eligible to have its Response evaluated. JEA will reject Responses from Respondents not meeting all of the following Minimum Qualifications:

- The Respondent must notate all exceptions to the Technical Specifications as listed and described within the corresponding Appendix A – Technical Specification documents. Objections to these requirements must be specifically called out in Attachment A – Specification Reconciliation Form.
- The Bidder must have successfully completed two (2) similar type service contracts in the United States in the last three (3) years, with an aggregate one (1) year contract total of \$100,000 or greater. If a supplier has successfully performed work with JEA, this is an acceptable reference and encouraged. A similar contract is defined as Heavy Duty Truck Sale.
- The Respondent shall be a manufacturer or manufacturer authorized dealer of equipment being provided. JEA will verify this with the manufacturer if necessary.
- Attendance to the Mandatory Pre-Bid meeting.
- The Proposer must be able to supply 24/7 warranty service support of the grouping being awarded, if awarded any of the vehicle asset groupings. The service provider of these warranty services must be trained and certified to complete warranty, repair and service

on the units proposed. In addition, the service provider of these warranty services must have performed warranty, repair and service on the units being proposed; or a comparable model from the same manufacturer as the unit proposed.

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

2.1.4. NUMBER OF CONTRACTS TO BE AWARDED

JEA intends to Award One (1) Contract(s) for the Work for each Vehicle Group identified. There are no requirements to the number of Vehicle Groupings that need to be bid, as each grouping will be treated as a standalone scope. JEA reserves the right to Award more than one 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.

2.1.5. INSURANCE REQUIREMENTS

Prior to JEA issuing a Purchase Order to the Company to begin the Work, the Company shall submit a certificate of insurance (COI) that is in compliance with amounts and requirements as indicated in this Solicitation. Note that the COI shall specifically indicate JEA as additional insured on all required insurance except Worker's Compensation and Professional Liability (if applicable). Furthermore, waiver of subrogation must be provided for all required insurance in favor of JEA, including its board members, officers, employees, agents, successors, and assigns.

2.1.6. REQUIRED FORMS TO BE SUBMITTED WITH RESPONSE

JEA Forms required to be submitted with this Solicitation are included in Appendix B or may be obtained on JEA's website at https://www.jea.com/about/procurement/bid_forms/ or https://www.jea.com/about/procurement/zycus_portal/.

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

- o Response Form & Minimum Qualification Form - This can be found in Appendix B of this ITN
 - Submitted as attachment
- o Response Workbook - This can be found in Appendix B of this ITN
 - Submitted both online by grouping and as attachment completed by line
- o Specification Reconciliation Form – This can be found in Attachment A of this ITN
 - Submitted as attachment

If the above listed forms are not submitted with the Response by the Response Due Time and Date, JEA may 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 Conflict of Interest Certificate Form - This form can be found at JEA.com
- o Subcontractor 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 required by JEA representatives

2.1.7. INTENTIONALLY LEFT BLANK

2.2. EVALUATION METHODOLOGY

2.2.1. BASIS OF AWARD – HIGHEST EVALUATED

JEA intends to Award a Contract to the responsive and responsible Proposer whose Proposal meets or exceeds the Minimum Qualifications in this Solicitation, and whose Proposal receives the highest number of points based upon JEA's evaluation of the Selection Criteria stated in this ITN.

2.2.2. EVALUATION AND NEGOTIATION PROCESS

JEA intends to select 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 Total Bid Price 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, handouts, 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 that may be required.

As a part of the negotiation process, JEA may contact the references provided by the Respondent for 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.

2.2.3. 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.

2.3. SELECTION CRITERIA

The following criteria will be used by JEA to evaluate and rank the qualified Respondents to determine which Respondents are selected for the Short-list who will then move on to the contract negotiation phase of this ITN. Details concerning how each Selection Criteria is calculated can be found in the Selection Criteria below.

2.3.1. QUOTATION OF RATES

Maximum score for criterion is: 60 POINTS

Respondent shall provide a firm-fixed price quote for each Vehicle Grouping in this ITN by completing the enclosed Appendix B Response Workbook and Appendix B Response Form. The prices shall include all profit, delivery, taxes, benefits, travel, surcharges for material, and all other overhead items. Each vehicle grouping will be treated as a standalone scope so Respondents are encouraged to bid multiple groupings for efficiency purposes.

The prices quoted by Proposer on the Proposal Form must be firm-fixed prices, not estimates. All bids shall be made to the nearest cent and shall not include a fraction of a cent. \$123,456.78 format.

All proposed pricing submitted in this solicitation should take into account section 3.4.8 of this Agreement regarding price adjustment language.

2.3.2. WORK APPROACH TO PROVIDING SERVICE

Maximum score for criterion is: 40 POINTS

JEA will evaluate the Respondents free form (proposal) work plan & approach to providing the services requested outlined in the Appendix A Technical Specification. The evaluation will be comparative and scaled between the suppliers, based on the quality of submission regarding the following:

- Supplier's Ease of Doing Business – 6 Pts
- Safety Features – 5 Pts
- Form, Fit, and Functionality to JEA's requirements – 10 Pts
- Warranty Support Maintenance – 4 Pts
- Ability to Meet Delivery Schedule and Objections – 5 Pts
- Historical Quality of Work (References) - 10 pts
 - JEA will evaluate the two minimum qualification projects submitted. The summary of two similar projects should be able to demonstrate the Respondent's experience and knowledge qualify them to complete the necessary work in a successful manner.
 - Respondent should clearly identify what type of material was provided in the projects.
 - Proposed should describe any working relationship with suppliers to facilitate a smooth manufacturing and delivery process.

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

2.3.3. TIE

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

2.4. GENERAL INSTRUCTIONS

2.4.1. SUBMITTING THE RESPONSE

The Respondent shall submit one (1) electronic Response as described in this document section 1.1.3. 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. JEA will not accept Responses transmitted via email. **IF RESPONDENT IS INTERESTED IN RECEIVING A RESPONSE FORM IN A WORD FORMAT, PLEASE EMAIL PEARKR@JEA.COM WITH THE REQUEST. REQUESTS MUST BE MADE NO LATER THAN FIVE (5) BUSINESS DAYS BEFORE RESPONSE OPENING.**

2.4.2. 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.

2.4.3. 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 either a Notice to Proceed or a PO, in writing and signed by an authorized JEA representative as acceptance of the Proposal and authorization for the company to proceed with the Work, unless otherwise stated in the Contract or PO.

2.4.4. DEFINED TERMS

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

2.4.5. 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.

2.4.6. CERTIFICATION AND REPRESENTATIONS OF THE COMPANY

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

A A. That the individual signing the Proposal is duly authorized to contractually bind the Proposer to the terms and conditions of this Solicitation and the Contract. Proposer shall provide satisfactory evidence of such authority within three days of JEA's request.

B. That every aspect of the Proposal 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. That, if successful, the Proposer will be registered to conduct business in the State of Florida and in active status with the Florida Division of Corporations at the time of execution of a Contract.

D. That the Proposer maintains in active status any and all licenses, permits, certifications, insurance, bonds and other credentials including, but not limited to, all licenses necessary to perform the Work. The Proposer also certifies that, upon the prospect of any change in the status of applicable licenses, permits, certifications, insurances, bonds or other credentials, the Proposer shall immediately notify JEA of status change.

E. That the Respondent has read, understands and will comply with the Section titled Ethics.

2.4.7. ETHICS

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

The Proposer shall submit only one Proposal to this Solicitation. If JEA has reasonable cause to believe the Proposer has submitted more than one Proposal for the same Work, other than as a Subcontractor or sub-supplier, JEA shall disqualify the Proposal and may pursue debarment actions.

The Proposer shall disclose the name(s) of any public officials who have any financial position, directly or indirectly, in Proposer or its Proposal by completing and submitting the Conflict of Interest Certificate Form available at jea.com. Failure to fully complete and submit the Conflict of Interest Certificate will disqualify the Proposal. If JEA has reason to believe that collusion exists among the Proposers, JEA shall reject any and all Proposals from such Proposers and will proceed to debar the Proposers from future JEA Awards in accordance with the JEA Procurement Code.

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

In accordance with Florida Statutes Sec. 287.133, JEA shall reject Proposals 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 Proposer listed on the Convicted Vendor list for any transaction exceeding \$35,000 for a period of 36 months from the date of being placed on the Convicted Vendor list.

2.4.8. JEA PUBLICATIONS

Applicable JEA publications are available at jea.com.

2.4.9. 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.

2.4.10. 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.

2.4.11. 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.

2.4.12. 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.

2.4.13. 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 (1) 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.

2.4.14. SUNSHINE LAW

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 subject to these laws and related statutes ("Florida's Public Records Laws"). All Proposals to this Solicitation are public record and available for public inspection unless specifically exempt by law.

If a Proposer believes that any portion of the documents, data or records submitted in Proposal to this Solicitation are exempt from Florida's Public Records Law, Proposer 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 Proposal (the "Redacted Copy"). The cover of the Redacted Copy shall contain JEA's title and number for this Solicitation and Proposer's name, and shall be clearly labeled "Redacted Copy." Proposer should only redact those portions of records that Proposer claims are specifically exempt from the Florida Public Records Laws. If Proposer 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 Proposer that such an assertion has been made. It is Proposer'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 Proposer's redacted information under legal process, JEA shall give Proposer prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law.) Proposer shall be responsible for defending its determination that the redacted portions of its Proposal are not subject to disclosure.

By submitting a Proposal to this Solicitation, Proposer 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 Proposer's determination that the redacted portions of its Proposal to this Solicitation are not subject to disclosure.

IF THE PROPOSER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROPOSER'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**

2.4.15. 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. 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.

2.4.16. OPTIONAL USE OF JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM

It is at the Proposer's option as to whether it chooses to subcontract with a JSEB firm. JEA encourages the use of JSEB firms; however, the Proposer is not required to utilize a JSEB to be Awarded a Contract under this Solicitation.

For more information regarding the JSEB program, please contact Rita Smith, JEA, JSEB Manager, sctotrl@jea.com.

3. CONTRACT TERMS AND CONDITIONS

3.1. CONTRACT TERMS AND CONDITIONS

3.2. DEFINITIONS

3.2.1. 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."

3.2.2. ACCEPTANCE

JEA's written notice by the Contract Administrator to the Company that all Work as specified in the Contract, or a portion of the Work as specified in a Task or Work Order, has been completed to JEA's satisfaction. Approval or recognition of the Company meeting a Milestone or interim step does not constitute Acceptance of that portion of Work. Acceptance does not in any way limit JEA's rights under the Contract or applicable laws, rules and regulations.

3.2.3. 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.

3.2.4. 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.

3.2.5. 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, Notice to Proceed, or execute a Contract with the successful Respondent or proposer.

3.2.6. BIDDER OR PROPOSER

The respondent to this Solicitation. Bidder and Proposer shall be considered synonymous for the purpose of this Solicitation.

3.2.7. CHANGE ORDER

A written order issued by JEA after execution of the Contract, 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 maximum indebtedness shown in the Contract. A Change Order that involves a material change to the Contract may require a Contract Amendment.

3.2.8. COMPANY

The legal person, firm, corporation or any other entity with whom JEA executes the Contract.

3.2.9. COMPANY REPRESENTATIVE

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

3.2.10. 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 Project Manager and shall clearly state the limitations of any such authorization. In the event that the Company Supervisor and the Company Representative are the same person, the Company shall notify the Project Manager.

3.2.11. 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.

3.2.12. 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.

3.2.13. 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.

3.2.14. 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.

3.2.15. CONTRACT TIME

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

3.2.16. 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.

3.2.17. 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.

3.2.18. INVITATION TO NEGOTIATE

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

3.2.19. 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.

3.2.20. JEA

JEA, a body politic and corporate, which is authorized to own, manage and operate for the benefit of the City of Jacksonville a utilities system within and without the City of Jacksonville.

3.2.21. 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.

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.

3.2.22. JSEB

The City of Jacksonville Small and Emerging Business Enterprises as defined in Chapter 126, Part 6 of the City of Jacksonville, Ordinance Code, as may be amended from time to time.

3.2.23. NOTICE TO PROCEED

The written approval given by JEA to the Company of the date and time for work to start.

3.2.24. ACCEPTABLE PERFORMANCE OR ACCEPTABLE PERFORMER

The Company 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.

3.2.25. TOP PERFORMANCE OR TOP PERFORMER

The Company 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.

3.2.26. UNACCEPTABLE PERFORMANCE OR UNACCEPTABLE 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.

3.2.27. PROJECT MANAGER

The individual assigned by JEA to have authority to administer the Contract, including the authority to issue Change Orders.

3.2.28. PROPOSAL

The document describing the Company's offer submitted in Proposal to this Solicitation.

3.2.29. PROPOSER

The Proposer to this Solicitation.

3.2.30. PURCHASE ORDER

A document issued by JEA, authorizing work, indicating types, quantities, and agreed prices for products or services the Company will provide to JEA.

3.2.31. RESPONSE

The document describing the Company's offer submitted in response to this ITN.

3.2.32. RESPONDENT

The respondent to this Solicitation.

3.2.33. 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.

3.2.34. SOLICITATION

The documents (which may be electronic) issued by JEA's Procurement Department to solicit Bids from Respondents that includes, but is not limited to, the Bid Documents, Bid Workbook, samples of documents, contractual terms and conditions, the Technical Specifications, and associated Addenda.

3.2.35. TASK ORDER

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 Order may be issued as an attachment to a Purchase Order, but the Task Order is neither a Purchase Order, nor a Notice to Proceed.

3.2.36. TERM

The period of time during which the Contract is in force or until the Contract's Maximum Indebtedness is reached, whichever occurs first.

3.2.37. UNIT PRICES

The charges to JEA for the performance of each respective unit of Work as stated in the Response Workbook, Bid Form, or Proposal Form, and incorporated into the Contract Documents. These shall be to the nearest whole cent.

3.2.38. 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.

3.2.39. SELF HELP

Within three (3) business days after being notified by JEA in writing of defective work, unacceptable work or failure to perform any portion of the services required by this Agreement, if the Company fails to correct such work or perform such services, JEA may cause the unacceptable or defective work to be corrected or perform the services. If JEA undertakes to correct the work or perform the services, JEA shall be entitled to set off against and deduct from any monies due, or which may become due to the Company, the reasonable cost incurred by JEA. If the corrective work or services cannot reasonably be completed within such three (3) business day period, and the Company immediately begins corrective work or services, and JEA reasonably determines that the Construction Manager is diligently pursuing completion of such corrective work or Services, JEA agrees to allow the Company to complete correction of the defective or unacceptable work or perform services within a reasonable period of time.

All costs and expenses incurred by JEA pursuant to this Paragraph shall be deducted by JEA from monies due, or which may become due, to the Company for performance of the Services and its obligations herein.

The provision of this Paragraph are cumulative to all other provisions of the Agreement and it is not intended that any deductions in payment taken pursuant to this Paragraph shall diminish or waive JEA's right to declare the Company in default in accordance with applicable provisions of the Agreement or to exercise any other right or remedy available to JEA.

3.3. CONTRACT DOCUMENTS

3.3.1. 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 Contract Amendments
- o Executed Contract Documents
- o Exhibits to Contract Documents
- o Addenda to JEA ITN
- o This Solicitation, including all Appendices, Exhibits and Attachments to this Solicitation
- o Company's Proposal
- 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.

3.4. PRICE AND PAYMENTS

3.4.1. PAYMENT METHOD- UPON DELIVERY AND INVOICE

Company shall invoice JEA upon delivery and Acceptance of the Work. Invoices may be submitted for each delivery, or on a monthly basis for deliveries that occurred during the month.

3.4.2. LIQUIDATED DAMAGES – (Intentionally Blank**)**

3.4.3. 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.

3.4.4. 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.

3.4.5. 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.

3.4.6. 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.

3.4.7. 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.

3.4.8. COST ADJUSTMENT FORMULA FOR PPI ADJUSTMENTS

The quoted bid prices that the Respondent(s) provide during the bid process shall be updated for an "Initial Adjustment" at which time the below methodology of updating pricing shall apply. For the purposes of this adjustment, the adjustment shall reference the change during the time of bid to the time in which the Company and JEA have completed a Delivery and Acceptance of the Work.

All requested price adjustments for the Contract shall be in accordance with the Producer Price Index: PCU336120336120 - Producer Price Index by Industry: Heavy Duty Truck Manufacturing, Index Dec 2003=100, Monthly, Not Seasonally Adjusted

Price Increase/Decrease Formula = ((Latest BLS Index Figure – Base BLS Index Figure)/ Base BLS Index Average)) X 100 = Percent Change (%) (Truncated at the nearest hundredth of a percent)

Base BLS Index is September 2021 (updated October 14, 2021) – 153.5

Example:

Bid Date: October 20, 2019

Contract Effective date of December 20, 2019

Company and JEA accepted delivery of Asset 1 December 20, 2020

Company and JEA accepted delivery of Asset 2 January 20, 2021

Company and JEA accepted delivery of Asset 3 February 8, 2021

Price Adjustment Calculation Methodology: Using the PPI table below, the figures used to calculate the price adjustment would be the Base BLS Index, which would then be compared to the latest BLS Index Figure available at the time of delivery (there is a trailing one month for reporting and is published commonly during the mid-month) to determine the applicable percent price adjustment. The percent price adjustment will then be applied to each Unit Price delivered individually.

Price Increase/Decrease Formula = ((Latest BLS Index Figure – Base BLS Index Figure)/ Base BLS Index Average)) X 100 = Percent Change (%) (Truncated at the nearest hundredth of a percent)

Applying above formula to this example:

Base BLS at bid date: October 20, 2019 - (September 2019 151.2)

Latest BLS:

Company and JEA accepted delivery of Asset 1 December 20, 2020 – (November 2020 – 152.8)

Company and JEA accepted delivery of Asset 2 January 20, 2021 – (December 2020 – 152.9)

Company and JEA accepted delivery of Asset 3 February 8, 2021 – (December 2020 – 152.9)(*new index not published till approximately February 15th)

Asset 1 Percent Change = $((152.8 - 151.2) / 151.2) \times 100 = 1.058\%$ (Truncated at the thousandth)

Asset 2 & 3 Percent Change = $((152.9 - 151.2) / 151.2) \times 100 = 1.124\%$ (Truncated at the thousandth)

Original Asset 1 price: \$100,000.00

New Unit Price Adjustment: $\$100,000 \times 1.058\% (0.01058) = \$1,058.00$ (Truncated to nearest cent)

New Unit Price: $\$100,000.00 + \$1,058.00 = \$101,058.00$

Original Asset 2 price: \$100,000.00

New Unit Price Adjustment: $\$100,000 \times 1.124\% (0.01124) = \$1,124.00$ (Truncated to nearest cent)

New Unit Price: $\$100,000.00 + \$1,124.00 = \$101,124.00$

Original Asset 3 price: \$200,000.00

New Unit Price Adjustment: $\$200,000 \times 1.124\% (0.01124) = \$2,248.00$ (Truncated to nearest cent)

New Unit Price: $\$200,000.00 + \$2,248.00 = \$202,248.00$

Producer Price Index by Industry: Heavy Duty Truck Manufacturing, Index Dec 2003=100, Monthly, Not Seasonally Adjusted	
PCU336120336120	
Frequency: Monthly	
observation_date	PCU336120336120
2019-09-01	151.2
2019-10-01	151.1
2019-11-01	151.1
2019-12-01	151.1
2020-01-01	151.8
2020-02-01	151.8
2020-03-01	151.8
2020-04-01	151.8
2020-05-01	151.8
2020-06-01	151.8
2020-07-01	152.7
2020-08-01	152.7
2020-09-01	152.7
2020-10-01	152.8
2020-11-01	152.8
2020-12-01	152.9
2021-01-01	152.9
2021-02-01	152.9
2021-03-01	153.0
2021-04-01	153.2
2021-05-01	153.2
2021-06-01	154.1
2021-07-01	154.1
2021-08-01	154.1
2021-09-01	153.5

3.4.9. 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.

3.5. WARRANTIES AND REPRESENTATIONS

3.5.1. WARRANTY

The Company unconditionally warrants to a minimum period of 2 years, 50,000 miles or 2,000 engine hours (whichever occurs first from the date of JEA Acceptance) that must include parts, travel, and labor. The warranty is all inclusive to include the cab/chassis, all attachments and vehicle components. It Must include all standard manufacturer warranties from the date of JEA Acceptance, that all Work furnished under the Task Order, including

but not limited to, materials, equipment, goods, workmanship, labor, services, and intellectual property, including derivative works shall 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 Company; and
- In conformance with the Contract Documents; and
- Merchantable, new and of first-class quality.
- 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.

Labor/Services:

At JEA's option, if the Company performs labor/services that fails 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 at the Company's expense and terminate the Contract.

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 twelve (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 Seventy-Two (72) 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.

3.6. INSURANCE, INDEMNITY AND RISK OF LOSS

3.6.1. 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 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 the Contract, certificates evidencing the maintenance of the insurance shall be uploaded to JEA's ISupplier Portal which can be found at https://isupplier.jea.com/OA_HTML/AppsLocalLogin.jsp.

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

It shall be the sole responsibility of Company to ensure that any Subcontractors performing work for Company are properly insured against any claim, action, loss, damage, injury, liability, cost and expense (including, but not by way of limitation, reasonable attorney's fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Subcontractors.

3.6.2. INDEMNIFICATION (JEA STANDARD)

The Company shall hold harmless and indemnify JEA against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, reasonable attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, arising out of or incidental to the negligence, recklessness or intentional wrongful misconduct of the Company and any person or entity used by Company in the performance of the Contract or Work performed thereunder. For purposes of this Indemnification, the term "JEA" shall mean JEA as a body politic and corporate and shall include its governing board, officers, employees, agents, successors and assigns. This indemnification shall survive the term of a Contract entered into pursuant to this solicitation, for events that occurred during the Contract term. This indemnification shall be separate and apart from, and in addition to, any other indemnification provisions set forth elsewhere in the Contract.

3.6.3. INDEMNIFICATION-RELEASE OF JEA CUSTOMER INFORMATION

The Company shall hold harmless and indemnify JEA against any and all claims actions, losses, damages, injuries, liability, costs and expenses of whatsoever kind or nature (including, but not by way of limitation, reasonable attorney's fees and court costs) arising out of the unwarranted disclosure of any JEA customer information that is in the possession of Company or any of its employees, agents or Subcontractors either in paper or electronic format, including disclosure caused by theft, electronic system malfunction, negligence, or any other cause for the information to become public or otherwise used for any purpose whatsoever.

3.6.4. RISKS AND PROPERTY

Ownership, risks of damage to or loss of the items shall pass to JEA upon Acceptance. The Company shall retain the sole risk of loss to the Work up to and including the time of Acceptance. In the event of loss or damage to the Work, the Company shall bear all costs associated with any loss or damage.

3.7. TERM AND TERMINATION

3.7.1. TERM OF CONTRACT – THROUGH COMPLETION OF THE WORK

The Contract shall be in force through completion of all Work, Acceptance and final payment, including resolution of all disputes, claims, or suits, if any. Certain provisions of this Contract may extend past termination including, but not limited to, Warranty and Indemnification provisions.

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

3.7.2. 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.

3.7.3. TERMINATION FOR DEFAULT

JEA may give the Company written notice to discontinue all Work under the Contract 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 Any material change in the financial or business condition of the Company.

If within fifteen (15) days after service of such notice upon the Company an arrangement satisfactory to JEA has not been made by the Company for continuance of the Work, then JEA may declare Company to be in default of the Contract.

Once the Company is declared to be in default, JEA will charge the expenses 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 shall pay the amount of such excess to JEA upon receipt of 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.

In addition, upon the occurrence of any of the above instances of default, the Company shall pay to JEA, in addition to any other amounts otherwise owed to JEA, the cost of obtaining, at current market rates, a third-party replacement of any warranty to be provided by the Company under the Contract. JEA shall be entitled to obtain one or more estimates from reputable warranty issuers suitable, in JEA's discretion, for JEA's particular purpose. JEA shall be entitled to retain the amount of such purchase price from any monies owed to the Company and JEA shall have no

obligation to actually purchase such replacement warranty. Such payment shall be deemed a refund of amounts paid for services not rendered and shall not be deemed a penalty.

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.

3.8. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTATION

3.8.1. PUBLIC RECORDS LAWS

Article 1, Section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of 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.

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 as "Confidential" the specific sections of the document, data and records that the Company claims are 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". Company shall only redact those portions of records that Company 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.

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.

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.

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:

1. Keep and maintain public records that ordinarily and necessarily would be required by JEA in order to perform service;
2. 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;
3. 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
4. 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 THE CONTRACT, CONTACT JEA'S CUSTODIAN OF PUBLIC RECORDS AT:

JE A

Attn: Public Records

21 West Church Street

Jacksonville, Florida 32202

Ph: 904-665-8606

publicrecords@jea.com

3.8.2. 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 ("Intellectual Property"), 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 for JEA at the Company's expense and prior to incorporating any third party Intellectual Property 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.

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, within 30 days of notice, either secure for JEA the right to continue using the Work or will, at the Company's expense, replace the infringing items with non-infringing 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.

3.8.3. 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.

3.8.4. 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.

3.8.5. PATENTS AND COPYRIGHTS

Company shall hold harmless and indemnify JEA from and against liability or loss, including but not limited to any claims, judgments, court costs and attorneys' fees incurred in any claims, or any pretrial, trial or appellate proceedings on account of infringements of patents, copyrighted or uncopyrighted works, secret processes, trade secrets, trademarks, patented or unpatented inventions, articles or appliances, or allegations thereof, pertaining to the Work, or any part thereof, combinations thereof, processes therein or the use of any tools or implements used by Company.

Company will, at its own expense, procure for JEA the right to continue use of the Services, parts or combinations thereof, or processes used therein resulting from a suit or judgment on account of patent, trademark or copyright infringement.

If, in any such suit or proceeding, a temporary restraining order or preliminary injunction is granted, Company will make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of such restraining order or temporary injunction.

If, in any such suit or proceeding, any part of the Services is held to constitute an infringement and its use is permanently enjoined, Company will, at once, make every reasonable effort to secure for JEA a license, authorizing the continued use of the Work. If Company fails to secure such license for JEA, Company will replace the Work with non-infringing Work, or modify the Work in a way satisfactory to JEA, so that the Work are non-infringing.

3.8.6. WORK MADE FOR HIRE

With the exception of Company's pre-existing intellectual capital and third-party Intellectual Property, JEA shall own all right, title and interest, including ownership of copyright (limited to the extent permitted by the terms of any governing licenses), in and to any product generated by the Work including, but not limited to, software, source code, reports, deliverables, or work product developed by the Company for JEA in connection with the Work, and derivative works relating to the foregoing. Such Work shall include, but shall not be limited to, those reports and deliverables specified in the Contract Documents. The Company understands and agrees that the Work, or any portion of the Work, shall be a "work made for hire" for JEA pursuant to federal copyright laws. Any software, report, deliverable, or work product as used in connection with the Work, but, previously developed by the Company specifically for other customers of the Company or for the purpose of providing substantially similar services to other Company customers, generally shall not be considered "work made for hire", so long as the foregoing are not first conceived or reduced to practice as part of the Work. To the extent any of JEA deliverables are not deemed works made for hire by operation of law, the Company hereby irrevocably assigns, transfers, and conveys to JEA, or its designee, without further consideration all of its right, title and interest in such Work, including all rights of patent, copyright, trade secret, trademark or other proprietary rights in such materials. Except as provided in the foregoing sentences, the Company acknowledges that JEA shall have the right to obtain and hold in its own name any intellectual property right in and to the Work. The Company agrees to execute any documents or take any other actions as may reasonably be necessary, or as JEA may reasonably request, to perfect or evidence JEA's ownership of the Work.

3.9. LABOR

3.9.1. QUALIFICATION OF EMPLOYEES, SUBCONTRACTORS AND AGENTS

All employees, subcontractors and agents of the Company performing work under the Contract shall be properly trained and qualified. Upon request, Company shall furnish a copy of a technical certification or other proof of qualification. All employees, subcontractors and agents performing work under the Contract must comply with all reasonable administrative requirements of JEA and with all controlling laws and regulations relevant to the services they are providing under the Contract.

The Company shall take all actions necessary to ensure that the Company's employees, subcontractors and agents are not considered employees of JEA. Such actions include, but are not limited to, ensuring that Company's employees, subcontractors and agents receive payment and any legally mandated insurance (e.g., workers' compensation and unemployment compensation) from an employer other than JEA.

3.9.2. 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 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.

3.9.3. LEGAL WORKFORCE

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

3.9.4. 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 proposals; and (iii) approving and/or issuing award recommendations for JEA Awards Committee approval. The contract of any person or business entity who hires or contracts for services with any officer or employee prohibited from entering into said relationship shall be voidable at the pleasure of JEA. This prohibition shall not apply to any former officer or employee after two (2) years from cessation from JEA employment.

3.9.5. 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 Agreement. It shall not be considered a breach of this Section for either party to make employment solicitations to the general public or groups that may include employees of the other party. Nor shall it be considered a breach of this Section for either party's employees to respond to, act upon, or accept inquiries and applications resulting from, or make offers of employment resulting from, (i) such solicitations to the general public or groups or (ii) unsolicited employment inquiries or applications.

3.9.6. 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. The Company is required to conduct all employee disciplinary actions, including terminations, off JEA property unless specifically approved by the JEA contract manager.

3.10. COMPANY'S RESPONSIBILITIES AND PERFORMANCE OF THE CONTRACT

3.10.1. JEA ACCESS BADGES

If the Work requires an individual to access JEA's facilities or properties, the Project Manager or other JEA Representative will determine whether or not such individual must have a JEA access badge prior to accessing JEA facilities or properties. This determination will be made based upon the business need and in accordance with JEA's applicable security policies and procedures. In no event shall individuals share JEA access badges.

Individuals issued an access badge must adhere to all of JEA's security badge usage policies and procedures. Violation of the provisions of this Section or any of JEA's security policies may result in immediate termination of the Contract.

In particular, JEA shall be notified within 24 hours of a lost or stolen JEA access badge or when an individual leaves the Company or any subcontractor. The Company will bear any costs associated with issuance, and production, of any lost or stolen JEA access badge. The Company is required to report all badge loss, or termination, notifications to the JEA Representative and JEA Security. JEA Security can be contacted at (904) 665-8200 and security@jea.com. Failure to make the reports required in this paragraph may result in significant regulatory fines and penalties. The Company shall be responsible for all such costs and JEA shall have the right to immediately terminate the Contract.

The provisions in this Section shall apply to Company's Subcontractors and agents performing any of the Work and shall be included in Company's contracts with its Subcontractors for any part of the Work.

3.10.2. BACKGROUND CHECKS AND OTHER INFORMATION SECURITY POLICIES

The Company, at its expense, shall conduct appropriate background checks and screen each individual who will provide services to JEA as a part of the Work or who will have access to JEA's computer systems, either through on-site or remote access. The minimum background screening process shall include, but not be limited to, the following checks:

1. Social Security Number (SSN) Trace;
2. Criminal Records (County and State Criminal Felony and Misdemeanor, National Criminal Database, Federal Criminal);
3. Background checks undertaken by JEA for its own employees who have duties similar to the duties of the Company's employee(s); and
4. Background checks which may be required pursuant to applicable background screening policies adopted by JEA from time to time.

The background screening must be conducted prior to the employee providing any services or performing any Work for JEA. JEA has the right to require more regular background checks and has the right to require that the Company provide background check results to JEA. JEA shall have the right to audit the Company's background check process to ensure compliance with JEA standards. If, at any time, the Company discovers that an individual providing services to JEA as a part of the Work has a criminal record that includes a felony or misdemeanor, the Company shall immediately inform JEA and JEA will assess the circumstances surrounding the conviction, time frame, nature, gravity and relevancy of the conviction to the job duties. JEA, in its sole discretion, shall determine whether the individual will be placed on, or terminated from, a JEA assignment. Additionally, all individuals providing services to JEA shall have the responsibility to self-disclose any misdemeanor or felony conviction that

occurs while assigned to JEA within three business days of the conviction. If the Company learns of any such conviction, the Company shall notify JEA immediately. The Company shall comply with all applicable laws and regulations governing the conduct of background checks, including but not limited to the Fair Credit Reporting Act (FCRA). Failure of the Company to comply with the terms of this paragraph may result in immediate termination of its contract with JEA.

3.10.3. DATA OWNERSHIP, PROTECTION AND LOCATION

JEA shall own all right, title and interest in all data of JEA and JEA's customers that is related to the Work. The Company shall only access JEA's data and JEA's customers' accounts and data if (i) required to provide the Work, (ii) required in Proposal to service or technical issues, (iii) required by the express terms of the Contract, or (iv) at JEA's written request. Protection of personal privacy and data shall be an integral part of the Work to ensure that there is no inappropriate or unauthorized use of data of JEA or JEA's customers at any time.

The Company shall safeguard the confidentiality, integrity, and availability of all data of JEA and its customers and comply with the following:

- (a) The Company shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against the unauthorized access, disclosure or theft of Personal Data or Non-Public Data. For the purposes of the Contract, "Personal Data" shall mean data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information: government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information including account number, credit or debit card numbers; or protected health information relating to a person. Non-Public Data shall mean data, other than Personal Data, that is not subject to distribution to the public as public information and is deemed to be sensitive and confidential because it is exempt by statute, ordinance or administrative rule from access by the general public as public information;
- (b) All data obtained by Company under the Contract shall become and remain the property of JEA;
- (c) All Personal Data and Non-Public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise agreed in writing by JEA and the Company, the Company shall be responsible for encryption of the Personal Data and non-Public Data;
- (d) At no time shall any Personal Data or Non-Public Data of JEA or its customers be copied, disclosed or retained by the Company or any party related to the Company for subsequent use in any transaction that is not a part of the Work to be provided under the Contract;
- (e) The Company shall not use any Personal Data, Non-Public Data or any other information collected in connection with the Contract for any purpose other than providing the Work; The Company will prevent its employees, other than employees with a need to know, from gaining access to JEA's data and information. The Company will direct and take all reasonable steps to insure that any Company employee who encounters any such information during the course of performing the Company's responsibilities of the Contract shall maintain the confidentiality of such information, which shall not be passed onto other Company employees or any other person. The Company shall also enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of JEA data to that which is absolutely necessary to perform job duties. The Company shall provide the Work solely from data centers in the United States. Storage of JEA data at rest shall be located solely in data centers in the United States. The Company shall not allow its personnel or its

subcontractors to store JEA and JEA customer data on portable devices, including personal computers, except for devices that are used and kept only at its data centers in the United States. The Company shall permit its personnel and subcontractors to access JEA and JEA customer's data remotely only as required to provide technical support. The Company shall deploy reasonable steps and safeguards as part of a network security program in accordance with accepted industry practices, including but not limited to, Purchasing Card Industry-Data Security Standards (PCI-DSS), to prevent unlawful hacking to gain surreptitious access into JEA's and JEA's customer's data.

The Company shall promptly notify JEA of any breaches or issues regarding the security of systems that maintain JEA or JEA's customer data. However, any such notification by the Company shall not affect the Company's obligations to secure JEA's data as provided under the Contract. The Company shall notify JEA within six hours if it learns that JEA or any of JEA's customers has been, have been, or may have been, the subject of a Security Incident (which is defined below) of any kind which may compromise data of JEA or its customers. In any such event, the Company shall: (i) investigate the incident(s) and provide a report to JEA with 24 hours; (ii) conduct a forensic investigation to determine a cause and what data/systems are implicated; (iii) provide daily updates of its investigation to JEA and permit JEA reasonable access to the investigation; (iv) communicate and cooperate with JEA concerning communication with outside parties such as law enforcement and media; and (v) cooperate with JEA in determining whether and how notice, if any, will be provided to JEA's customers with all applicable laws and regulations.

The term "Security Incident" means the potentially unauthorized access by non-authorized persons to Personal Data or Non-Public Data that the Company believes could reasonably result in the use, disclosure, or theft of unencrypted Personal Data or Non-Public Data of JEA or its customers within the possession or control of the Company. If a Data Breach (defined below) with respect to Personal Data or Non-Public data has occurred, the Company shall promptly implement necessary remedial measures and document responsive actions taken related to the Data Breach, including any post-incident review and actions taken to make changes in business practices in providing the Work, if necessary.

If a Data Breach is a result of the Company's breach of its obligation to encrypt Personal Data or Non-Public Data or otherwise prevent the release of Personal or Non-Public Data or the Company's failure to comply with any of the security requirements comply with the Contract, the Company shall bear the costs associated with (i) the investigation and resolution of the Data Breach; (ii) notifications to individuals, regulators or others required by state law; (iii) a credit monitoring service required by state or federal law; (iv) a website or toll-free number and call center for affected individuals required by state law; and (v) completing all corrective actions as reasonably determined by the Company based on root cause.

The term "Data Breach" means the unauthorized access by a non-authorized person or persons that results in the use, disclosure or theft of unencrypted Personal Data, Non-Public Data or JEA's customer information.

3.10.4. 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.

3.10.5. TRANSITION SERVICES

At any time prior to the date the Contract expires or terminates for any reason (the "Termination Date"), JEA may request Company to provide reasonable transition assistance services ("Transition Assistance"). Company will

provide such Transition Assistance until such time as JEA notifies the Company that JEA no longer requires such Transition Assistance, but in no event for more than 180 days following the Termination Date.

Transition Assistance shall mean any services, functions or responsibilities that are ordinarily or customarily provided to a purchaser to ensure that the services provided to that purchaser by a contractor are fully transitioned in a smooth and efficient manner to a new service contractor (either JEA itself or a third party contractor). Transition Assistance includes the development and implementation of a detailed transition plan. To the extent that Transition Assistance will involve third parties hired by JEA, those third parties shall cooperate with Company in its provision of Transition Assistance and sign any reasonable non-disclosure agreements required by Company.

Transition Assistance rendered before the Termination Date shall be provided at no additional cost to JEA. Transition Assistance rendered after the Termination Date shall be provided at the rates negotiated by the parties prior to the rendering of such service, which rates shall not exceed the standard market rates that Company charges to government entities for comparable services; provided however, that if JEA terminates the Contract because of a breach by Company, then (i) the Transition Assistance shall be provided at no cost to JEA, and (ii) JEA will be entitled to any other remedies available to it under law. Company may withhold Transition Assistance after the Termination Date if JEA does not provide reasonable assurance that the charges for such Transition Assistance will be paid to Company in accordance with the invoicing and payment provisions of the Contract.

3.10.6. 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.

3.10.7. 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.

3.10.8. 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.

3.10.9. 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.

3.10.10. TELEPHONE CONSUMER PROTECTION ACT ("TCPA")

Company indemnifies, defends and holds JEA harmless from any and all claims associated with a violation of the Telephone Consumer Protection Act (CFR Title 47 Part 64).

3.11. VENDOR PERFORMANCE EVALUATION

3.11.1. 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

- o 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.
- o 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.

- o 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.
- o 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.
- o 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.

3.12. JEA RESPONSIBILITIES

3.12.1. SUSPENSION OF SERVICES

JEA may suspend the performance of the Services by providing Company with five (5) days' written notice of such suspension. Schedules for performance of the Services shall be amended by mutual agreement to reflect such suspension. In the event of suspension of Services, the Company shall resume the full performance of the Services when directed in writing to do so by JEA. Suspension of Services 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.

3.12.2. 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.

3.12.3. 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.

3.13. MISCELLANEOUS PROVISIONS

3.13.1. 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.

3.13.2. 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.

3.13.3. 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.

3.13.4. 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.

3.13.5. 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.

3.13.6. 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.

3.13.7. 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.

3.13.8. HEADINGS

Headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

3.13.9. 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.

3.13.10. 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.

3.13.11. 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.

3.13.12. 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.

3.13.13. 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.

3.13.14. 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.

3.13.15. 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 its most recent fiscal year not later than five days after receipt of written request from JEA.

Content and Retention of Records

The Company's records shall include, but not be limited to, accounting records; written policies and procedures; subcontract files (including proposals of successful and unsuccessful Proposers, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; invoices as support for other reimbursement; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Company shall, at all times during the term of the Contract and for a period of five years after the completion of the Contract, maintain such records, together with such supporting or underlying documents and materials.

Inspection /Audit of Records

Upon JEA's request, the Company shall 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 the 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 on three days' prior written 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 shall 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

If the audit identifies (i) overpricing or overcharges of any nature by the Company to JEA in excess of one-half of one percent (.5%) of the total billings under the Contract at the time of the audit or (ii) fraud, misrepresentation or non-performance, the Company shall reimburse JEA for the total costs of the audit.

Billing Adjustments and Recoveries

The Company shall pay JEA all amounts identified as owing to JEA as a result of any such audit or inspection of the Company's invoices and records no later than 90 days after the Company's receipt of JEA's findings.

3.13.16. 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.

3.13.17. 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.

3.13.18. 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.

3.13.19. 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.

3.13.20. TIME OF ESSENCE

For every material requirement of this Contract, time is of the essence.

3.13.21. 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.

4. TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK

A more detailed description and overview of the various JEA Technical Specifications are included as Appendix A to this ITN. These Appendix A - Technical Specifications shall be used when preparing your bid estimates that shall be notated within the Appendix B - Response Workbook.

5. FORMS

- o Appendix B - Response Form & Minimum Qualification Form
- o Appendix B - Response Workbook
- o Appendix B - Subcontractors Form
- o Attachment A - Specification Reconciliation Form