

**Solicitation**

**For Participation in Request for Proposal**

**Turbine Generator Maintenance, Repair and Overhaul Services**

**[Use this Link to Access the Bid on Zycus.](#)**

**<https://zsn.zycus.com/guest/genericRegister/JEA074/iSource/93510/>**

**for**



**Jacksonville, FL**

**Solicitation # 1410190446**

**Optional Webex Pre-Proposal Meeting on October 27, 2020, at 9:00 AM**

**[WEBEX LINK](#)**

**Meeting number: 172 733 9201 Password: FQmqXPFD692**

**Tap to join from a mobile device (attendees only)**

**[+1-904-900-2303](tel:+19049002303),[1727339201](tel:+1727339201)## United States Toll (Jacksonville)**

**Join by phone: +1-415-655-0001, Use Meeting Number: 172 733 9201**

**Join from a video system or application**

Dial [1727339201](tel:+1727339201) @ [jeameeting.webex.com](https://jeameeting.webex.com)

You can also dial 173.243.2.68 and enter your meeting number.

**Proposal are due on December 1, 2020 by 12:00 PM EST**

Proposal shall be electronically submitted per instructions in this solicitation. JEA will publicly open all Proposal received from qualified Proposers on the Proposal Due Date, via WebEx. A meeting link will be provided within 48 hours of Proposal opening on jea.com

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## Solicitation

### 1. SOLICITATION

#### 1.1. SCOPE & INVITATION

##### 1.1.1. SCOPE OF WORK

The purpose of this solicitation is to contract for turbine, overhaul, maintenance and repair services. Services include, but are not limited to: steam and combustion turbine repairs and overhaul during outages and during operations. The company will be responsible to provide; tools, equipment, man power, materials and services to support JEA's steam and combustion turbines.

A complete listing of products to be delivered and services to be provided is defined in the Appendix A, Technical Specifications.

##### 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 located in Jacksonville, Florida, where we proudly serve an estimated 470,000 electric, 351,000 water and 274,000 sewer customers. JEA is Florida's largest community owned utility and the eighth largest municipal in the United States.

##### 1.1.3. REQUEST FOR PROPOSALS

You are invited to submit a proposal in response to the Solicitation noted below:

**JEA Solicitation Title:** Turbine Maintenance & Repair Services for JEA

**JEA Solicitation Number:** 1410190446




To obtain more information about this Solicitation:

Download a copy of the Solicitation, PDF quality drawings (if applicable) and any required forms at [jea.com](http://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/](https://www.jea.com/about/procurement/zycus_portal/)

**Closing Date and Time & Proposal Due Date:** Per Zycus Close Date See Solicitation # 1410190446 on Zycus cloud based sourcing platform for more details.

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

 <b>Sign into Zycus</b> For existing suppliers with a username and password. <a href="#">Sign into Zycus</a>	 <b>Create a Zycus Account</b> For potential suppliers seeking access to do business with JEA and gain access to Zycus. <a href="#">Register Today</a>	 <b>Zycus User Guides</b> Please read through our user guide to gain a better understanding of the Zycus Portal and the different ways to retrieve, update, and upload information through the Portal. <a href="#">Start Training</a>
--	--	--

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

**For potential suppliers**  
seeking access to do  
business with JEA and  
gain access to Zycus.

Register Today

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.

Existing User?  
Login in to your  
account

Login

**ZYCUS**

Language English

Register with our Supplier Network

Email Address

rlovgrenjea@gmail.com

Email already registered. Please click [here](#) to login

Password

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

Login to your Supplier Network Account

Email Address

Please enter Email Address

Password

Login

Resend activation link

Forgot Password ?

Once logged in, Proposers will see all events, select the applicable event.

Calendar icon

Camera icon

+

All Customers

CONNECT AS POTENTIAL SUPPLIER

SOURCING EVENTS

Telephony, Network, Internet & DDoS Se... - Open

Customer	Event Id	Event Type	Open Date
JEA	1410190846	RFI	10/12/2020...

1 of 2 records displayed

View More

Once in the Event. The event has prompts for actions required to respond to the solicitation.

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

- 1.) Acceptance of iSourcing usage Terms & Conditions.
- 2.) Acceptance of NDA requirements
- 3.) For Invitations for Bid (Bids where no exceptions are allowed to terms and conditions), Acceptance of Terms

Supplier Checklist

**Confirm Participation**  
To confirm participation accept all Terms and Conditions.

**Prepare Response**

**Submit Response**

RFI Summary  
Event Status: **Open**

RFI : 1410190846 | Telephony, Network, Internet & DDoS Services  
To confirm participation accept all Terms and Conditions.

[Go to eForum \(0 New\)](#)

Terms and Conditions	Status	Action
<a href="#">Source Usage Terms and Conditions.rtf</a>	No Action Taken Yet	<a href="#">Accept</a> <a href="#">Reject</a> <a href="#">Download</a>
<a href="#">RFI Telephony Network Internet and DDoS Services.docx</a>	No Action Taken Yet	<a href="#">Accept</a> <a href="#">Reject</a> <a href="#">Download</a>

Page 1 of 1

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

[Confirm Participation](#) | [Decline Participation](#)

Once the initial conditions are accepted, additional Bid information will be available for viewing and response by selecting “confirm participation”. This tells JEA you intend to respond.

**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
<a href="#">Pricing_Template.xlsx</a>	9 KB	10/06/2020 09:55	<a href="#">Download</a>

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)

(\*) Mandatory Questions Showing: All Questions [Go](#)

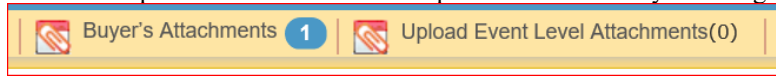
1.1  
For its Telephony, Network, Internet & DDoS Services, JEA requires a service level agreement including but not limited to liquidated damages for failure to perform. Is this requirement a disqualifier for your ability to respond?

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 response section. Proposers can download the required attachments by selecting the “Buyers Attachments” icon



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 Response”.

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

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



Proposals shall be delivered electronically via the Zycus platform. An automated, detailed auditing system provides sealed Proposal integrity. Proposal 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.

**Proposal are due by the time and on the date listed above. Late Proposals will 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.**

#### 1.1.4. QUESTIONS

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.

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 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 Buyer directly by emailing to:

#### **For Procurement Related Questions:**

Buyer: Rodney Lovgren

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

### **1.1.5. OPTIONAL PRE-PROPOSAL MEETING**

There will be a Optional Pre-Proposal meeting associated with this Solicitation. All interested Companies should attend the Pre-Proposal meeting.

Those planning to attend the WebEx or teleconference should email their name and contact information to: [lovgrd@jea.com](mailto:lovgrd@jea.com), at least 24 hours prior to the Pre-Proposal meeting to facilitate documenting participants.

**Pre-Proposal Meeting Date:** October 27, 2020

**Pre-Proposal Meeting Time:** 10:00 AM

See Coversheet for Webex Instructions to attend meeting.

### **1.1.6. OPENING OF PROPOSAL**

All Proposal shall be publicly opened, read aloud and recorded at 2:00 PM on the Proposal Due Date via WebEx. The details for the WebEx will be on [jea.com](http://jea.com) at the following website: [https://www.jea.com/Events/Public\\_Meetings/Proposal\\_Opening](https://www.jea.com/Events/Public_Meetings/Proposal_Opening) no later than 48 hours before the Proposal opening.

At the opening of Proposals, a JEA Representative will publicly open and announce each Proposal that was received on time. Proposal that have been properly withdrawn will not be opened. JEA has the right to waive any irregularities or informalities in the Proposal Document.

## **1.2. SPECIAL INSTRUCTIONS**

### **1.2.1. MINIMUM QUALIFICATIONS FOR SUBMISSION**

Proposer shall have the following Minimum Qualifications to be considered eligible to submit a Proposal in response to this Solicitation. A Minimum Qualification Form, which is required to be submitted with the Proposal Form, is provided in Appendix B of this Solicitation.

It is the responsibility of the Proposer to ensure and certify that it meets the Minimum Qualifications stated below. JEA reserves the right to request back up documentation or additional project references to confirm the Proposer meets the requirements stated herein. A Proposer not meeting all of the following criteria will have their Proposal rejected:

- The Bidder shall have successfully self-performed and completed three (3) similar contracts in the past five (5) years date ending the Bid Due Date. A similar continuous service contract is defined as a Utility Sized Steam turbine/electric generating station and/or Utility Sized Combustion Turbine (CT) major inspection service contract for an Electric Utility generating station with a minimum of 50 MW and/or greater operating capacity.
  - Each of the similar contracts must have been valued at \$1,000,000 with customers located in the United States
  - Each of the similar contracts must have been on a GE and Westinghouse Steam Turbine/Generators, and/or GE Frame 7FA, 7B/E type CT.
- The Bidder shall be an Electric Power Generation, Industrial Turbine/Generator full service company, and include as follows, have a full turbine generator machine shop within continental United States with capabilities to unstack and perform Steam generated or CT turbine/generator rotor's, CT compressor repair and including High speed and Low speed balancing services. Prove, if further identified is required, the ability and ownership of a facility to rewind generator rotors, and both service and repair either on plant site and/or their in-house facility, any additional typical industrial steam/ combustion turbine equipment. The Bidder will have the engineering and technical support under payroll to conduct on plant site and in-house facility, with expertise to conduct all specified general scope and detailed scope as in this solicitation as a minimum. The Bidder shall have the ability and conduct technical inspections and full service repairs of valves and

actuators and also CT fuel nozzles (including dual fuel type), and have expertise in control systems of Utility sized generating stations. The Bidder shall provide the name and contact for all the supplied planned/listed shops. JEA reserves the right to visit the proposed repair shop or shops to validate capabilities to support the work.

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

### **1.3. EVALUATION METHODOLOGY**

#### **1.3.1. 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 RFP.

#### **1.3.2. ALTERNATE PROVISIONS AND CONDITIONS**

To the extent Proposals contain exceptions to or modify the requirements found in this RFP, including, but not limited to, the Contract terms and conditions contained in Section 2 of this RFP, and any requirements found in the Technical Specifications attached as Appendix A to this RFP, such exceptions and modifications are stricken unless JEA affirmatively accepts the exceptions or modifications in the Contract.

#### **1.3.3. BID SECURITY / BID BOND**

All Proposal shall be accompanied by a Bid security in the amount stated on the Proposal Form. The Proposal security must be furnished by the Proposer at or before the opening of Proposal. The Proposal security shall either be issued by a surety company authorized to do business in the State of Florida, or Proposer shall furnish a certified check or cashier's check in the amount of **one percent 1%** of the total Proposal Amount shown on the Proposal Form. The JEA Proposal Bond form can be found at [jea.com](http://jea.com). Failure to furnish the required Proposal security will disqualify the Proposal. If the Proposer is awarded the Work and fails to execute the Contract within ten (10) days of postmarked date on the Contract Documents, JEA shall retain the Proposal Bond or check as liquidated damages.

Electronic pdf scan of the Bid Bond is acceptable

#### **1.3.4. INSURANCE REQUIREMENTS**

Prior to JEA issuing a Purchase Order to the Proposer to begin the Work or Services, the Proposer shall submit a certificate of insurance (COI) that is in compliance with amounts and requirements as indicated in the Section 2 below, titled "Insurance Requirements". **Note that the COI shall specifically indicate JEA as an additional insured on all required insurance except Worker's Compensation. Furthermore, waiver of subrogation shall be provided for all required insurance in favor of JEA, including its board members, officers, employees, agents, successors, and assigns.**

### **1.4. SELECTION CRITERIA**

#### **1.4.1. SELECTION CRITERIA**

JEA will make an Award based on an evaluation of how well each Proposer meets the evaluation criteria listed in this RFP. JEA will use the evaluation criteria listed below to evaluate the information contained in the Proposal submitted by each Proposer. In the event that JEA, in its sole discretion, requests oral presentations or interviews from one or more proposers, the information obtained by JEA during the oral presentations or interviews will be used in determining final selection.

#### **1.4.1.1. PROPOSAL PRICE**

##### **Maximum Score: 50 Points**

##### Application of Criterion:

The application of this criterion shall include an assessment of the unit price and time and materials rates submitted by the Proposer to perform the Work listed in this solicitation.

The prices quoted by Proposer on the Proposal Forms (Quotation of Rates) must be firm-fixed prices, not estimates and shall include all overhead, shipping, SG&A, taxes and any other costs associated with the specific unit price to complete work.

The Proposer may attach a copy of the Bid Workbook to this section and make comments in the provided comments box

#### **1.4.1.2. DEPTH AND BREADTH OF EQUIPMENT AND SERVICES**

##### **Maximum Score: 20 Points**

JEA will evaluate the general capabilities of the Proposer's facilities and service capabilities. Proposer should provide a comprehensive list of services, as well as field and facility services. Companies that demonstrate higher service levels, ability to perform a full compliment of tasks related to combustion turbine and steam turbine equipment will receive more points. Additionally, the company should provide ability to respond to outages, emergency and ad – hoc services. The proposer will provide comments and additional attachment providing the depth and breadth of equipment service for this section.

#### **1.4.1.3. PAST PERFORMANCE AND COMPANY EXPERIENCE**

##### **Maximum Score: 30 Points**

JEA will evaluate Proposer's submitted minimum qualifications. Companies submitte past experience will be graded comparatively and subjectively between suppliers for points for this criterion. Companies that provide higher tier experience and levels of services as well as more complete project experience will receive more points. JEA may contact the references provided by Proposer to determine the reference's satisfaction with the Proposer's performance with similar projects. The Proposer should provide via comment or additional attachment demonstration of work experience identified in the minimum qualifications for JEA's evaluation..

##### Required Information:

**Proposer shall complete the Proposal Form included in Appendix B of this RFP.**

#### **1.4.2. TIE**

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

#### **1.4.3. REQUIRED FORMS TO SUBMIT WITH PROPOSAL**

To submit a Proposal in response to this Solicitation, all of the forms listed below must be completed and submitted as part of the Proposal. The Proposer must obtain the required forms, other than the forms provided in the solicitation, by downloading them from JEA.com. If the Proposer fails to complete or fails to submit one or more of the required forms, the Proposal may be rejected.

The following forms are required to be submitted at the time of Proposal:

- Proposal Form (including acknowledgements of all addenda) - This form can be found in Appendix B
- Proposal Workbook - This form can be found in Appendix B
- Minimum Qualifications Form - This form can be found in Appendix B
- List of JSEB Certified Firms (if any)
- Subcontractor Form (if any).

If the above listed forms are not submitted with the Proposal by the Proposal Due Time on the Proposal Due Date, JEA may reject the Proposal.

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

- Conflict of Interest Certificate Form
- Insurance Certificate
- W-9
- Evidence of active registration with the State of Florida Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org))
- Any technical submittals as required by the Technical Specifications.

#### **1.4.4. SAFETY QUALIFICATION REQUIREMENTS (RFP)**

Proposer shall be approved as JEA Safety Qualified within ten (10) business days of receiving written notice from the JEA Proposal Office that it is the lowest responsive and responsible Proposer. If the Proposer fails to obtain JEA approval as a JEA Safety Qualified company by 4:00 PM Eastern Time on the 10<sup>th</sup> business day, JEA may reject the company's Proposal, and proceed to Award to the next lowest responsive and responsible Proposer.

**JEA Safety Qualification information is available online at [jea.com](http://jea.com). Please note that it may take up to ten (10) business days for a company to be approved as JEA Safety Qualified. It is the Proposer's responsibility to ensure it is JEA Safety Qualified. A list of the JEA's Safety Qualified vendors can be found on [jea.com](http://jea.com). For additional information, contact Jerry Fulop at (904) 665-5810.**

**To finalize Company JEA safety prequalified and work on JEA property companies will need to complete or have already completed the following training:**

- Contractor Supervisors working on site need to take or have taken the Supervisor Leadership Develop class (SLD) – 1 day (8 hour) class offered the North Florida Safety Council on a monthly basis.
- All company employees working on JEA sites will be required to take or have taken:
  - 10 Hour OSHA safety class
  - 2 hour JEA site specificOr
  - CSSO that class covers both the OSHA – 10 and the JEA 2 hour site specific training.
  - Substation Electrical Safety

#### **1.4.5. MATHEMATICAL ERRORS**

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

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

JEA intends to Award one (1) Contract for the Work. 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.

#### **1.4.7. SHIPPING, FREIGHT, AND TRAVEL**

The Proposer shall include the price for travel, shipment of materials and equipment in its pricing shown on the Proposal Form or Proposal Workbook unless otherwise stated herein. The shipment of all materials shall be F.O.B. Destination.

If the Solicitation allows travel expenses to be billed separately, then all Proposer's travel expenses will be reimbursed in accordance with JEA's Contractor Travel Policy.

#### 1.4.8. INSURANCE REQUIREMENTS

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

#### PAYMENT AND PERFORMANCE BOND REQUIREMENTS (APPLICABLE WHEN REQUIRED BY THE SOLICITATION)

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

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

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

- The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Codes.
- The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this agreement.
- If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
  - The Surety Company shall have at least the following minimum ratings in the latest issue of A.M. Best's Key Rating Guide.
  - POLICY HOLDER'S CONTRACT AMOUNT AND REQUIRED FINANCIAL RATING
  - \$500,000 TO 1,000,000: A-CLASS IV
  - \$1,000,000 TO 2,500,000: A-CLASS V
  - \$2,500,000 TO 5,000,000: A-CLASS VI
  - \$5,000,000 TO 10,000,000: A-CLASS VII
  - \$10,000,000 TO 25,000,000: A- CLASS VIII
  - \$25,000,000 TO 50,000,000: A- CLASS IX
  - \$50,000,000 TO 75,000,000: A- CLASS X
  - The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
  - Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance, to conduct business in this state has been met.

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

#### **1.4.9. LISTING OF SUBCONTRACTORS**

JEA shall specify the major Subcontractors that the Company must list is the Company intends to use a Subcontractor to perform a portion of the Work, unless the Work will be self-performed by the Company. The Subcontractors that JEA requires to be listed is stated in the Section titled "Required Forms to Be Submitted with the Proposal". The major Subcontractors shall be listed on the Subcontractors Form, which is available at [jea.com](http://jea.com). Failure of the Company to submit the required Subcontractor information on the form with its Proposal shall result in rejection of the Company's Proposal.

The Company shall not use Subcontractors and subsuppliers/shop fabricators other than those shown on the Subcontractor Form unless it shows good cause and obtains the JEA Representative's prior written consent.

If the Company plans to use Subcontractors or sub supplier/shop fabricators to perform over 50% of the Work, the Company shall obtain JEA's approval at least five (5) days prior to the Proposal/Proposal Due Date. Failure to obtain JEA approval will disqualify the Company and result in rejection of Company's Proposal/Proposal.

#### **1.4.10. TIME**

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

#### **1.4.11. OPTIONAL USE OF JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM**

It is at the Company's option as to whether it chooses to subcontract to a JSEB firm. JEA encourages the use of JSEB qualified firms; however, the Company is not required to utilize JSEB firms to be awarded this Contract. JSEB firms that qualify for this Contract are only those shown on the current City of Jacksonville JSEB directory appearing at [www.COJ.net](http://www.COJ.net). Certification of JSEB firms must come from the City of Jacksonville. No other agency or organization is recognized for purposes of this Contract. In no case shall the Company make changes to the JSEB firms listed in its Proposal, revise the JSEB Scope of Work or amount of Work as stated in its Proposal without prior written notice to the JEA Contract Administrator, and without subsequent receipt of written approval for the JEA Contract Administrator. Any subcontractors of Company shall procure and maintain the insurance required of Company hereunder during the life of the subcontracts. Subcontractors' insurance may either be by separate coverage or by endorsement under insurance provided by Company. Note: Any JSEB firms identified by Proposers for this Solicitation are considered "Subcontractors" under the direct supervision of the Prime or General Contractor (herein referred to as Company in this Solicitation). Companies should show good faith efforts in providing assistance to JSEB firms in the securing of Subcontractors' insurance requirements stated in this section. Company shall submit subcontractors' Certificates of Insurance to JEA prior to allowing subcontractors to perform Work on JEA's job sites. All questions and correspondence concerning the JSEB program shall be addressed to: Rita Scott, JSEB Manager, JEA, [scotrl@jea.com](mailto:scotrl@jea.com).

### **1.5. GENERAL INSTRUCTIONS**

#### **1.5.1. ADDENDA**

JEA may issue Addenda prior to the Proposal opening date to revise, in whole or in part, or clarify the intent or requirements of the Solicitation. The Proposer/Proposer shall be responsible for ensuring it has received all Addenda prior to submitting its Proposal or Proposal and shall acknowledge receipt of all Addenda by indicating where requested on the Proposal Form. JEA will post all Addenda when issued online at [jea.com](http://jea.com). The Proposer/Proposer must obtain Addenda from the JEA website. All Addenda will become part of the Solicitation and any resulting Contract Documents. It is the responsibility of each Proposer/Proposer to ensure it has received and incorporated all Addenda into its Proposal or Proposal. Failure to acknowledge receipt of Addenda may be grounds for rejection of a Proposal or Proposal.

#### **1.5.2. COMPLETING THE PROPOSAL DOCUMENTS**

Proposers shall complete and submit all Proposal Documents with responses typewritten or written in ink.

If a Unit Price is marked "optional" on the Proposal Form, the Proposer may insert the words "No Proposal" in the space provided if the Proposer chooses not to submit a price for that item. Failure to complete each blank with either a price or the words "No Proposal" may disqualify the Proposal. The Proposer may Proposal "\$0" if the Proposer chooses to perform the work at no cost to JEA and the Proposer will be obligated to perform the work at no cost to JEA for the Term of the contract.

The Proposer, or an authorized agent or officer of the company, shall sign the Proposal Documents. Failure to sign the Proposal Documents may disqualify the Proposal. JEA approved erasures, interlineations or other corrections on the Proposal Documents shall be authenticated by affixing in the margin, immediately opposite the correction, the handwritten signature of the person executing the Proposal Documents. Failure to authenticate changes may disqualify the Proposal.

JEA may disqualify any Proposal that deviate from the requirements of this Solicitation, and those Proposal that include unapproved exceptions, amendments, or erasures.

### **1.5.3. SUBMITTING THE PROPOSAL DOCUMENTS**

The Proposer shall submit one original of all the Proposal Documents electronically as described in solicitation.

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

Within thirty (30) days from the date of Award, JEA will present the successful Proposer/Proposer with the Contract Documents. Unless expressly waived by JEA, the successful Proposer/Proposer shall execute a Contract for the Work or Services within ten (10) days after receiving the Contract from JEA. If the Proposer/Proposer 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 Proposer/Proposer, retain the Proposal security or bond (if applicable), and Award to the next-ranked company.

Upon JEA's receipt of the executed Contract, certificate of insurance, and recorded Payment and Performance bonds (if applicable), JEA will issue a PO, in writing and signed by an authorized JEA representative as acceptance of the Proposal or Proposal and authorization for the company to proceed with the Work, unless otherwise stated in the Contract or PO.

For Construction Services: In the event that JEA intends to authorize the successful Proposer/Proposer to proceed with administrative work only, or with only a portion of the Work, then the PO shall state the specific limitations of such authorization and JEA will issue a separate written Notice to Proceed to authorize the Proposer/Proposer to begin Field Work, when applicable, or to perform the remainder of the Work, or any portion thereof. The Proposer/Proposer shall ensure that it is prepared to begin Field Work upon receipt of Notice to Proceed. Any Work performed outside of this partial authorization shall be at the Proposer/Proposer's risk and JEA shall have no obligation to pay for such Work.

### **1.5.5. EX PARTE COMMUNICATION**

Ex Parte Communication is strictly prohibited. Ex Parte Communication is defined as any inappropriate communication concerning a Solicitation between a firm submitting a Proposal or Proposal and a JEA representative during the time in which the Solicitation is being advertised through the time of Award. Examples of inappropriate communications include: private communications concerning the details of Solicitation in which a Proposer becomes privy to information not available to the other Proposers. Social contact between Proposers and JEA representatives should be kept to an absolute minimum during the solicitation process.

Failure to adhere to this policy will disqualify the noncompliant Company's Proposal or Proposal. Any questions or clarifications concerning a Solicitation 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 Proposers.

For more information on Ex Parte communications, see JEA Procurement Code, Article 1-110, which is available at [www.jea.com](http://www.jea.com).



#### **1.5.6. PROHIBITION AGAINST CONTINGENT FEES**

The Company warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Company, or an independent sales representative under contract to the Company, to solicit or secure a contract with JEA, and that it has not paid or agreed to pay any person, company, corporation, individual or Company, other than a bona fide employee working solely for the Company, or an independent sales representative under contract to the Company, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the Award or making of the Contract. For a breach or violation of these provisions occurs, JEA shall have the right to terminate the Contract without liability, and at its discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

#### **1.5.7. RESERVATIONS OF RIGHTS TO JEA**

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

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

JEA reserves the right to reject any or all Proposal or Proposals, or any part thereof, and/or to waive informalities if such action is in its best interest. JEA may reject any Proposal or Proposals that it deems incomplete, obscure or irregular including, but not limited to, Proposal or Proposals that omit a price on any one or more items for which prices are required, Proposal or Proposals that omit Unit Prices if Unit Prices are required, Proposal or Proposals for which JEA determines that the Proposal or Proposal is unbalanced, Proposal or Proposals that offer equal items when the option to do so has not been stated, Proposal or Proposals that fail to include a Proposal Bond, where one is required, and Proposal or Proposals 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 Proposaling additional work.

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

JEA reserves the right to cancel or change the date and time announced for opening of Proposal or Proposals at any time prior to the time announced for the opening of Proposal or Proposals. 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 Solicitations were issued. JEA may award multiple or split Contracts if it is deemed to be in JEA's best interest.

#### **1.5.8. ETHICS (RFP)**

By signing the Proposal Form, the Proposer certifies this 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 this 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 business ethics.

The Proposer shall submit only one Proposal in response 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 subsupplier, 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, with this Proposal by completing and submitting the Conflict of Interest Certificate Form available at [jea.com](http://jea.com). If JEA has reason to believe that collusion exists among the Proposers, JEA shall reject any and all Proposal from the suspected Proposers and will proceed to debar Proposer from future JEA Awards in accordance with the JEA Purchasing Code.

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

In accordance with Florida Statutes Sec. 287.133, JEA shall reject Proposal 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.

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

#### **1.5.9. MODIFICATION OR WITHDRAWAL OF PROPOSAL**

The Proposer may modify or withdraw its Proposal at any time prior to the Proposal Due Date and Time by giving recalling the submitted document from the sourcing website. JEA will not accept modifications submitted by telephone, telegraph, email, or facsimile, or those submitted after the Proposal Due Date and Time. The Proposer shall not modify or withdraw its Proposal from time of Proposal Due Date and for a period of 90 days following the opening of Proposal.

#### **1.5.10. UNABLE TO SUBMIT PROPOSAL FORMS**

If you elect not to submit a Proposal in response to this Solicitation, please complete the Unable to Submit Proposal Form, available for download at [www.jea.com](http://www.jea.com), and email to the buyer processing the solicitation.

#### **1.5.11. PROTEST OF PROPOSAL AND AWARD PROCESS**

Proposers shall file any protests regarding this Solicitation in writing, in accordance with the JEA Procurement Code and Operational Procedures, as amended from time to time. The JEA Procurement Code and Operational Procedures are available online at [jea.com](http://jea.com).

#### **1.5.12. CERTIFICATION AND REPRESENTATIONS OF THE PROPOSER**

By signing and submitting a Proposal, the Proposer certifies and represents as follows:

- A. That it has carefully examined all available records and conditions, including sites if applicable, and the requirements and specifications of this Solicitation prior to submitting its Proposal. Where the Proposer visits sites, no Work or other disturbance is to be performed while at the site without written permission by JEA in advance of the site visit. The Proposer shall comply with all safety requirements described in the Solicitation and shall be prepared to show proof of insurance
- B. That every aspect of its submitted Proposal, including the Proposal Price and the detailed schedule for the execution of the Work, are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation made by any of its representatives during or prior to execution of the Contract unless such understandings or representations are expressly stated in the Contract and the Contract expressly provides that JEA assume the responsibility.
- C. That the individual signing the Proposal Documents is a duly authorized agent or officer of the firm. Proposal submitted by a corporation must be executed in the corporate name by the President or Vice President. If an individual other than the President or Vice President signs the Proposal, satisfactory evidence of authority to sign may be requested by JEA. If the Proposal is submitted by a partnership, the Proposal must be signed by a partner whose title must appear under the signature. If an individual other than a partner signs the Proposal, satisfactory evidence of authority to sign may be requested by JEA. The corporation or partnership must be in active status at the Florida Division of Corporations at the time of contract execution.
- D. That the firm maintains an active status any and all licenses, permits, certifications, insurance, bonds and other credentials including, but not limited to, contractor's license and occupational licenses necessary to perform the Work. The 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 Proposer has read, understands these instructions and will comply with the Section titled Ethics.

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

### **2.1. DEFINITIONS**

#### **2.1.1. DEFINITIONS**

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

#### **2.1.2. ACCEPTANCE – UPON, RECEIPT OF DELIVERY**

JEA will accept the materials when it is delivered. Acceptance does not in any way limit JEA's rights under the Contract or applicable laws, rules and regulations.

#### **2.1.3. ADDENDUM/ADDENDA**

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

#### **2.1.4. AWARD**

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

#### **2.1.5. PROPOSAL DOCUMENTS**

The forms required to be submitted to JEA as the Company's offer to perform the Work or Services described herein. The Proposal Documents can include, but is not limited to, the Proposal Form, Proposal Workbook, Minimum Qualifications Form, certifications and/or other required submittals. The Proposal Documents may also be referred to as the "Proposal Form". For the purposes of these terms and conditions, Proposal, Proposal and Response when referring to Proposal Documents shall be considered synonymous.

#### **2.1.6. PROPOSAL PRICE**

The total dollar amount of the Proposer's offer to successfully perform the Work or Services in accordance with the Contract Documents.

#### **2.1.7. PROPOSER, PROPOSER, RESPONDENT and BIDDER**

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

#### **2.1.8. CONTRACT AMENDMENT**

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

#### **2.1.9. COMPANY**

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

#### **2.1.10. COMPANY REPRESENTATIVE**

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

#### **2.1.11. CONTRACT ADMINISTRATOR**

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

#### **2.1.12. CONTRACT DOCUMENTS**

Contract Documents, also referred to as the "Contract" means the executed Contract, all Solicitation documents and Proposal Documents as further described in the Section of the Solicitation titled "Contract Documents", and any written Change Orders, amendments or Purchase Orders executed by JEA, and insurance and/or bonds as required by the Contract.

#### **2.1.13. CONTRACT PRICE**

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

#### **2.1.14. DEFECT**

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

#### **2.1.15. 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. If any of these Holidays fall on a weekend, JEA may observe a Holiday on the nearest weekday.

#### **2.1.16. INVOICE**

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

#### **2.1.17. JEA**

JEA on its own behalf.

#### **2.1.18. JEA REPRESENTATIVES**

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

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

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

#### **2.1.20. SOLICITATION**

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

#### **2.1.21. SUBCONTRACTOR**

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

#### **2.1.22. 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.

#### **2.1.23. TERM**

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

#### **2.1.24. UNIT PRICES**

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

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

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

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

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

### **2.2. CONTRACT DOCUMENTS**

#### **2.2.1. 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 Proposal 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:

- Executed Contract Amendments
- Exhibits to Contract Documents
- Executed Contract Documents
- Purchase Order(s)
- Addenda to JEA Solicitation
- Drawings associated with this Solicitation
- Exhibits and Attachments to this Solicitation
- Technical Specifications associated with this Solicitation
- This Solicitation
- Proposal Documents
- References

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

## **2.3. PAYMENTS**

### **2.3.1. PAYMENT METHOD - MONTHLY PAYMENTS**

For an individual service issued via a Task Order or work ticket, the Company shall submit an Invoice to JEA upon successful completion and JEA Acceptance of the Work stated on the Task Order or work ticket.

For reoccurring services, the Company shall submit an Invoice to JEA once per month upon successful completion and JEA Acceptance of the reoccurring services that occurred during that month.

JEA may elect to make a partial payment or no payment if JEA determines, at its sole discretion, and after due consideration of relevant factors, that either all, or part of the Work being invoiced is not in accordance with the Contract Documents.

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 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 Company is in violation of any conditions or terms of the Contract Documents.

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

### **2.3.2. INVOICING AND PAYMENTS 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 email address: [ACCTPAYCUSTSRV@JEA.COM](mailto:ACCTPAYCUSTSRV@JEA.COM), or if the Company does not have email capability, it can mail hard copies to: 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 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 Company 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.

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

### **2.3.3. PRICE ADJUSTMENT - ANNUAL**

Contract prices for the Work will remain firm through the first year of the Contract. Company must request a Price Adjustment (CPI) at least thirty (30) days prior to the Anniversary Date of the Contract. If Company fails to request the price adjustment at least thirty (30) days prior to the Anniversary Date, the Company will be denied the increase and Company will have to request the price adjustment again in accordance with this clause. When a timely request is received, JEA will recognize the price adjustment within thirty (30) days after receipt of Company's written request, and it will be applied for the Contract year beginning on the Anniversary Date. No retroactive price adjustments will be allowed.

Unless the Company and JEA make other agreements, the annual price adjustment for the Contract shall be in accordance with the consumer price index Series ID CUUR0300SA0 CPI for All Urban Consumers (CPI-U) published monthly by the U.S. Department of Labor, Bureau of Labor Statistics. The index used will be the preliminary unadjusted percent change during the previous twelve (12) month Contract period. In the event the applicable price index publication ceases, the Company and JEA shall mutually agree on a replacement index. If the Company and JEA fail to agree on a replacement index, the Contract Price will not be adjusted and the Contract shall terminate ninety (90) days following the end of the then current Contract year.

### **2.3.4. DISCOUNT PRICING**

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

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

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

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

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

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

When the Company receives payment from JEA for labor, services or materials furnished by Subcontractors and suppliers that are hired by the Company, the Company shall remit payment due (less proper retainage) to those Subcontractors and suppliers within 10 days after the Company's receipt of payment from JEA. Nothing herein shall prohibit the Company from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due

to its Subcontractors and suppliers. In the event of such dispute, the Company may withhold the disputed portion of any such payment only after the Company has provided written notice to JEA and to the Subcontractor and supplier whose payment is in dispute, stating the amount in dispute and specifically describing the actions required to cure the dispute. The Company shall deliver such notice to JEA and to the said Subcontractor or supplier within 10 days following the Company's receipt of payment from JEA. The Company shall pay all undisputed amounts due within the time frames specified herein.

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

#### **2.3.7. COST SAVINGS PLAN**

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

#### **2.3.8. TAXES**

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

#### **2.3.9. RIGHT TO AUDIT AND FINANCIAL REPORTING**

##### Accounting System

The Company shall establish and maintain a reasonable accounting system that enables JEA to readily identify the Company's assets, expenses, cost of goods, and use of funds.

##### Audited Financial Statements

The Company shall provide to JEA audited financial statements for the most recent fiscal year upon JEA's request, not later than five days after receipt of written request.

##### Content and Retention of Records

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

##### Inspection /Audit of Records

Upon JEA's request, the Company agrees to allow JEA to audit, to examine, and to make copies of or extracts from its financial and operating records (in whatever form they may be kept, whether written, electronic, or other) kept by the Company, its employees, agents, assigns, successors, and subcontractors, for the purpose of determining invoice accuracy, or otherwise assessing compliance with the Contract Documents.



The Company shall at any time requested by JEA, whether during or after completion of this Contract, and at Company's own expense make such records available for inspection and audit (including copies and extracts of records as required) by JEA. Such records shall be made available to JEA during normal business hours at the Company's office or place of business in a workspace suitable for the audit and [subject to a three day written notice/without prior notice]. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for JEA. The Company agrees to have knowledgeable personnel available to answer questions for the auditors during the time they are performing the audit and for a period of two weeks thereafter. Company shall ensure JEA has these rights with Company's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Company and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Company's obligations to JEA.

#### Cost of Audits

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by JEA unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Company to JEA in excess of one-half of one percent (.5%) of the total contract billings, the Company shall reimburse JEA for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or nonperformance, JEA may recoup the costs of the audit work from the Company.

#### Billing Adjustments and Recoveries

Any billing payment recoveries to JEA that must be made as a result of any such audit or inspection of the Company's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of JEA's findings to Company.

#### Failure to Comply

If Company fails to comply with the requirements contained in this clause, the Company may be found to be in breach of the Contract, be subject to debarment or suspension of Proposal privileges with JEA, and/or JEA may exercise any other remedies available by law.

## **2.4. JSEB COMPLIANCE**

### **2.4.1. COMPLIANCE WITH JSEB REQUIREMENTS**

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

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

Use of brokering, as defined in the City of Jacksonville Ordinance, or other techniques that do not provide a commercially useful function are strictly prohibited as means of achieving the JSEB requirements of the Contract. Only the amount paid to the JSEB for providing a bona fide service such as professional, technical, consultant, or managerial services shall be counted towards a JSEB participation requirement.

Payment terms for participating JSEB firms shall be the same or better than the payment terms the Company receives from JEA. The Company shall outline the payment terms with the JSEB firm in a contract agreement for

the services the JSEB is providing. The Company shall obtain written approval from the JEA JSEB Manager prior to withholding any payment from a JSEB firm.

If the Company uses a JSEB qualified firm for the performance of any part of this Work, the Company shall submit to JEA, a monthly report of the amount paid to the JSEB. The report is due by the 30th of the month via email sent to [jsebprogram@jea.com](mailto:jsebprogram@jea.com), for the duration of the project. The report shall be made using the form

"Monthly Report for COJ/JEA JSEB Participation" available at [www.jea.com](http://www.jea.com) or by contacting the JEA JSEB Manager at [jsebprogram@jea.com](mailto:jsebprogram@jea.com).

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

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

- Terminate the Contract for breach.
- Suspend the Company from Responding on any JEA projects as follows:
  - First offense: six months
  - Second offense: one year
  - Third offense: three years
  - Revoke Company's JSEB certification if the Company itself is certified as a JSEB.

## **2.5. WARRANTIES AND REPRESENTATIONS**

### **2.5.1. WARRANTY – SERVICES**

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

- performed in a safe, professional and workman like manner; and
- free from Defects in design, material, and workmanship; and
- fit for the use and purpose specified or referred to in the Contract; and
- suitable for any other use or purpose as represented in writing by the Contractor; and
- in conformance with the Contract Documents; and
- merchantable, new and of first-class quality.

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

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

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

If, within the warranty period, JEA determines that any of the Work is defective or exhibit signs of excessive deterioration, the Company at its own expense, shall repair, adjust, or replace the defective Work to the complete satisfaction of JEA. The Company shall pay all costs of removal, transportation, reinstallation, repair, and all other

associated costs incurred in connection with correcting such Defects in the Work. The Company shall correct any Defects only at times designated by JEA. The Company shall extend the warranty period an additional 12 months for any portion of the Work that has undergone warranty repair or replacement, but in no case shall the maximum warranty period be extended beyond thirty six (36) months.

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

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

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

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

## **2.6. INSURANCE, INDEMNITY AND RISK OF LOSS**

### **2.6.1. INSURANCE**

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 this Contract, certificates evidencing the maintenance of the insurance shall be furnished to JEA for approval. Company's and its subcontractors' Certificates of Insurance shall be mailed to JEA (Attn. Procurement Services), Customer Care Center, 6th Floor, 21 West Church Street, Jacksonville, FL 32202-3139.

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

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

#### **2.6.2. INDEMNIFICATION (JEA STANDARD)**

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

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

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

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

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

#### **2.7. TERM AND TERMINATION**

##### **2.7.1. TERM OF CONTRACT – FIVE YEARS W/ TWO –ONE (1) YEAR RENEWALS**

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

It is at JEA's sole option to renew the Contract for an additional two (2), one (1) year periods.

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

### **2.7.2. 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.

### **2.7.3. TERMINATION FOR DEFAULT (With a Bond)**

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

- 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;
- The Company attempts to willfully impose upon JEA items or workmanship that are, in JEA's sole opinion, defective or of unacceptable quality; The Company assigns or subcontracts the Work without prior written permission;
- Any petition is filed or any proceeding is commenced by or against the Company for relief under any bankruptcy or insolvency laws;
- A receiver is appointed for the Company's properties or the Company commits any act of insolvency (however evidenced);
- The Company makes an assignment for the benefit of creditors;
- The Company suspends the operation of a substantial portion of its business;
- 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;
- The Company breaches any of the representations or warranties;
- The Company is determined, in JEA's sole opinion, to have misrepresented the utilization of funds or misappropriate property belonging to JEA; or
- There is an adverse material change in the financial or business condition of the Company.

If within thirty (30) days after service of such notice to discontinue or notice to cure upon the Company an arrangement satisfactory to JEA has not been made by the Company for continuance of the Work or the material breach has not been remedied, JEA may declare the Company to be in default and terminate the Contract. Once Company is declared in default and the Contract has been terminated, JEA may notify the Surety in writing of the termination. The surety shall, at JEA's sole option take one (1) of the following actions:

- (a) Within a reasonable time, but in no event later than thirty (30) days, from JEA's written notice of termination for default, arrange for Company with JEA's consent, which shall not be unreasonably withheld, to complete the Contract and the Surety shall pay JEA all losses, delay and disruption damages and all other damages, expenses, costs and statutory attorney's fees, including appellate proceedings, that JEA sustains because of a default by the Company under the Contract ;
- (b) Within a reasonable time, but in no event longer than sixty (60) days after JEA's written notice of termination for default, award a contract to a completion contractor and issue notice to proceed or alternatively, JEA may elect, to have the Surety determine jointly with JEA the lowest responsible qualified Proposer, to have the Surety arrange for a contract between such Proposer and JEA, and for the Surety to make available as Work progresses sufficient funds to pay the cost of completion less the balance of the Contract price; or

(c) Within a reasonable time, but in no event later than thirty (30) days from JEA's notice of termination for default, JEA may waive its right to complete or arrange for completion of the Contract and, within twenty-one (21) days thereafter, determine the amount for which the Surety may be liable to JEA and tender payment to JEA of any amount necessary in order for JEA to complete performance of the Contract in accordance with its terms and conditions less the balance of the Contract price.

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

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

The Contract Documents shall in no way limit JEA's right to all remedies for nonperformance provided under law or in equity, except as specifically set forth herein. In the event of termination for nonperformance, the Company shall immediately surrender all Work records to JEA. In such a case, JEA may set off any money owed to the Company against any liabilities resulting from the Company's nonperformance.

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

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

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

## **2.8. CHANGES IN THE WORK, CONTRACT TIME OR PRICE**

### **2.8.1. CHANGE IN THE WORK**

From time to time, JEA may direct changes and modifications in the scope of the Work to be performed under this Contract. The Company is willing and agreeable to accommodate such changes, provided it is compensated for additional Work in accordance with the Unit Prices terms stated in this Contract, or as otherwise agreed to by JEA and the Company.

Such changes shall be in the form of a written amendment to this Contract reflecting, as appropriate, the change to the scope of Work, adjustment to Company's Unit Prices or Contract Price, or extension to the Term of this Contract. The JEA Representative directly responsible for each project will make the final determination as to whether any compensable change or schedule change exists.

### **2.8.2. 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.

### **2.8.3. UNFORESEEN CONDITIONS**

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

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

### **2.8.4. NO DAMAGE FOR DELAY**

Damage, loss, expense or delay incurred or experienced by the Company in the prosecution of the Work by reason of unforeseen circumstances, unanticipated difficulties and obstructions, bad weather, or other mischances that are generally considered to be a part of the usual hazards associated with Work, shall be borne entirely by the Company and shall not be the subject of any claim for additional compensation or change in Approved Schedule.

The Company agrees that its sole remedy for any claims, damages or losses related to any delay, disruption or hindrance alleged to be caused by JEA or any of JEA's agents or other contractors, shall be an extension of the Contract completion date.

Any demand for equitable time adjustment must be served in writing to JEA within five days of the event giving rise to the delay, disruption or hindrance. Any request for an equitable time adjustment shall be accompanied by a logical time impact analysis, demonstrating the nature and magnitude of the event to the critical path. Failure to strictly comply with these requirements shall be deemed a waiver of any right to seek equitable time adjustment.

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

## **2.9. PRELIMINARY MATTERS**

### **2.9.1. LICENSES**

The Company shall comply with all licensing, registration and/or certification requirements pursuant to applicable laws, rules and regulations. The Company shall secure all licenses, registrations and certifications as required for the

performance of the Work and shall pay all fees associated with securing them. The Company shall produce written evidence of licenses and other certifications immediately upon request from JEA

### **2.9.2. JEA ACCESS BADGES**

If the scope of work described in this Contract requires a Company to access JEA facilities and/or properties, the JEA contract manager will determine whether or not each impacted Company employee shall apply for a JEA access badge. This determination will be made based upon the business need and in accordance with the applicable JEA Security policies and procedures. Based upon the type of work being performed, JEA may also require the Company to provide a criminal background check on the employee prior to the issuance of the JEA access badge. JEA Security will provide all applicable standards and requirements for the background check. All costs associated with the criminal background check are the responsibility of the Company. JEA does not allow Company employees to share JEA access badges.

Company employees issued an access badge are required to adhere to all JEA Security badge usage policies and procedures. A Company whose employees are found to be violating these, or any other JEA Security policies, may result in the Contract being terminated immediately for default.

In particular, JEA shall be notified within 24 hours of a lost or stolen JEA access badge or when an employee leaves the Company. 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 their respective JEA contract manager and JEA Security. JEA Security can be contacted at (904) 665-8200 or security@jea.com. Failure to report these items per the requirements may result in significant regulatory fines and penalties against JEA. The Company may be responsible for all costs associated with these charges and the company may receive a security violation which could result in the Contract being terminated for default.

The language in the above paragraphs shall also apply to Company's Subcontractors, and shall be included in Company's contracts with its Subcontractors for Work or Services to be performed at JEA.

### **2.9.3. 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.

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

### **2.10.1. CONFIDENTIALITY & PUBLIC RECORDS LAWS**

Access to Public Records.

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

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

If the Company believes that any portion of any documents, data or other records submitted to JEA are exempt from disclosure under Chapter 119, Florida Statutes, the Florida Constitution and related laws ("Florida's Public Records Laws"), Company must (1) clearly segregate and mark the specific sections of the document, data and records as "Confidential", (2) cite the specific Florida Statute or other legal authority for the asserted exemption, and (3) provide JEA with a separate redacted copy of the documents, data, or records (the "Redacted Copy"). The Redacted Copy shall contain JEA's contract name and number, and shall be clearly titled "Redacted Copy". Company should 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.

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

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

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

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

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

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

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 THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**JE A**

**Attn: Public Records 21 West Church Street**

**Jacksonville, Florida 32202**

**Ph: 904-665-8606**

**publicrecords@jea.com**

**2.10.2. JEA CONFIDENTIAL INFORMATION PROTECTION**

JE A is a publicly owned utility and all official information sharing is governed by the Florida Sunshine Laws. However, certain information that could impact safe and secure operations may be exempt which includes information classified as confidential and protected under federal regulatory standards. Confidential information means any data or information that is propriety to the parties and not generally known to the public, whether in tangible or intangible form, whenever or however disclosed, including but not limited to:

- Critical Infrastructure Information (CII) or Bulk Electric System Information (BCSI) or Security Sensitive Information (SSI) classified by JE A;
- Protected Health Information in both physical and electronic form (PHI and ePHI); Personal Identifiable Information (PII);
- any protected, non-public information concerning the design or operation of present or future critical infrastructure; any information that could be used to compromise or expose the vulnerability of the Parties Cyber systems, processes, programs data, communications, energy and operations systems or structures; any Copyright application code, source code, technical design (not released for open use), trade secret, scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method;
- any computer software, source code, object code, flow charts or databases; and any other information that should reasonably be recognized as sensitive or confidential information of the Recipient or the disclosing party.

All Company employees, and subcontractors, whose scope of work requires access, logical or physical, that may expose them to confidential information may be required to complete a Non-Disclosure Agreement, criminal background check, and periodic reoccurring security training.

The Company shall bear all costs associated with the background check and security training.

**2.10.3. DATA OWNERSHIP, PROTECTION AND LOCATION**

JE A shall own all right, title and interest in all data of JE A and JE A's customer's that is related to the services provided by the Company under this Contract. The Company shall only access JE A's data and JE A's customer's accounts and data if (1.) in the course of providing the services contemplated by this Contract, (2.) in response to service or technical issues, (3.) as required by the express terms of this Contract, or (4.) at JE A's written response. Protection of personal privacy and data shall be an integral part of the services to be provided by the Company under the Contract to ensure that there is no inappropriate or unauthorized use of data of JE A or JE A's customers at any time. The Company shall safeguard the confidentiality, integrity, and availability of all data of JE A and its customers and comply with the following conditions :( 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 under this Contract, 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 services to be provided under this 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 service pursuant to this Contract; 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 this 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 its services to JEA and JEA's customers 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 this Contract. The Company shall notify JEA within six (6) hours if it learns that JEA or JEA's customers has 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: (1.) investigate the incidents and provide a report to JEA with twenty-four (24) hours; (2) conduct a forensic investigation to determine a cause and what data/systems are implicated; (3.) provide daily updates of its investigation to JEA and permit JEA reasonable access to the investigation; (4.) communicate and cooperate with JEA concerning communication with outside parties such as law enforcement and media; and (5.) 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 services, if necessary.

If a Data Breach is a result of the Company's breach of its Contract 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 this Contract, the Company shall bear the costs associated with (1.) the investigation and resolution of the Data Breach; (2.) notifications to individuals, regulators or other required by state law; (3.) a credit monitoring service required by state or federal law; (4) a website or toll-free number and call center for affected individuals required by state law; and (5.) 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 the unencrypted Personal Data, Non-Public Data or JEA's customer information

#### **2.10.4. PROPRIETARY INFORMATION**

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

#### **2.10.5. PUBLICITY AND ADVERTISING**

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

### **2.11. LABOR**

#### **2.11.1. NONDISCRIMINATION**

The Company represents that it has adopted and will maintain a policy of nondiscrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employee relations, throughout the Term of this Contract. The Company agrees that on written request, it will allow JEA reasonable access to the Company's records of employment, employment advertisement, application forms and other pertinent data and records for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Contract; provided however, the Company shall not be required to produce, for inspection, records covering periods of time more than one year from the effective date of this Contract.

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

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

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

#### **2.11.2. 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.

#### **2.11.3. 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, 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 Proposal 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 Proposal 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 years from cessation from JEA employment.

#### **2.11.4. 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.

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

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

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

#### **2.12.1. COMPANY REPRESENTATIVES**

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

#### **2.12.2. CONTINUING THE WORK**

The Company shall carry on the Work and maintain the progress schedules during disputes or disagreements with JEA. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as JEA and Company may otherwise agree in writing. Suspension of the Work or portion thereof by Company shall entitle JEA to terminate the Contract for Default.

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

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

#### **2.12.4. CONDITIONS OF PROVISIONING**

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

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

Any use of JEA furnished items on non-JEA work is a breach of the Contract and a violation of the law. All JEA furnished items are the property of JEA when issued, stored by Company, and used in performance of the Work. The Company agrees that it shall use all JEA furnished items in a manner consistent with industry practice, codes, laws, considering the condition of the JEA furnished item, the skills of the individuals using the JEA furnished item, and all environmental conditions. The Company understands and agrees that where JEA and the Company shall share JEA furnished items, JEA usage shall always have priority over Company usage, and the Contract

Administrator shall have sole authority to resolve any usage dispute and such resolution shall not result in any claim by Company.

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

#### **2.12.5. EMERGENCY EVENTS**

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

#### **2.12.6. SAFETY AND PROTECTION PRECAUTIONS**

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

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

The Company understands and agrees that JEA Representatives may stop Work at any time that JEA, at its sole discretion, considers the Company's Work to be unsafe or a risk to person or 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 also understands and agrees that it is solely responsible for the safety of personnel and property associated with the Work, and that any actions taken by 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 representative responsible for the prevention of accidents.

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

#### **2.12.7. STORM PREPAREDNESS**

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

## **2.13. VENDOR PERFORMANCE EVALUATION**

### **2.13.1. 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, which are available upon request.

Scores for all metrics shown on the evaluation range from a low of 1, meaning significantly deficient performance, to a high of 5, meaning exceptionally good performance. The Company's performance shall be classified as Top Performance, Acceptable Performance, or Unacceptable Performance, as defined herein. The evaluator will be a designated JEA employee. The evaluator's supervisor and the Chief Purchasing Officer will review deficient performance letters and Unacceptable Performance scorecards, as described below, prior to issuance. When evaluating the Company's performance, JEA will consider the performance of the Company's Subcontractors and suppliers, as part of the Company's performance.

#### Frequency of Evaluations

JEA may conduct performance evaluations and prepare scorecards in accordance with the procedures described herein at any time during performance of the Work or soon after the completion of the Work. JEA may conduct one or more evaluations determined solely at the discretion of JEA.

#### Unacceptable Performance

- If at any time, JEA determines, using the criteria described on the scorecard, that the performance of the Company is Unacceptable, the Contract Administrator and Chief Procurement Officer or his designated alternate will notify the Company of such in a letter. The Company shall have 10 days to respond to the Contract Administrator. Such response shall include, and preferably be delivered in-person by an officer of the Company, the specific actions that the Company will take to bring the Company's performance up to at least Acceptable Performance.
- Within 30 days from date of the first Unacceptable Performance letter, the Contract Administrator and Chief Purchasing Officer or his designated alternate will notify the Company by letter as to whether its performance, as determined solely by JEA, is meeting expectations, or is continuing to be Unacceptable. If the Company's performance is described in the letter as meeting expectations, no further remedial action is required by the Company, as long as Company's performance continues to be Acceptable.
- If the Company's performance as described in the letter continues to be Unacceptable, or is inconsistently Acceptable, then the Company shall have 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 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 responding on any JEA related solicitations, and other remedies available in the JEA Purchasing Code and in law. Such action does not relieve the Company of its obligations under the Contract, nor does it preclude an earlier termination.
- In the event that the Contract Term or the remaining Term of the Contract does not allow for the completion of the deficient performance notification cycles described above for those in danger of receiving an Unacceptable Performance scorecard, JEA may choose to accelerate these cycles at its sole discretion.
- If the Company receives five or more letters of deficiency within any 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 10 days following the Company's receipt of the scorecard. If the Chief Procurement Officer decides to change the scorecard, the Company will be notified and a revised scorecard will be prepared, with a copy issued to the Company. If the Chief Procurement Officer decides that no change is warranted, the decision of the Chief Procurement Officer is final. If the Company is to be suspended from consideration for future Award of any contracts, the Company may appeal to the Procurement Appeals Board as per JEA Procurement Code.

### Public Records

There can be no expectation of confidentiality of performance-related data in that all performance-related data is subject to disclosure pursuant to Florida Public Records Laws. All scorecards are the property of JEA.

## **2.14. MISCELLANEOUS PROVISIONS**

### **2.14.1. AMBIGUOUS CONTRACT PROVISIONS**

The parties agree that this Contract has been the subject of meaningful analysis and/or discussions of the specifications, terms and conditions contained in this Contract. Therefore, doubtful or ambiguous provisions, if any, contained in this Contract will not be construed against the party who physically prepared this Contract.

### **2.14.2. AMENDMENTS**

This Contract may not be altered or amended except in writing, signed by JEA Chief Procurement Officer, or designee, and the Company Representative, or each of their duly authorized representatives.

### **2.14.3. APPLICABLE STATE LAW; VENUE; SEVERABILITY**

The rights, obligations and remedies of the parties as specified under the Contract will be interpreted and governed in all respects exclusively by the laws of the State of Florida without giving effect to the principles of conflicts of laws thereof. Should any provision of the Contract be determined by the courts to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions will not be impaired. Litigation involving this Contract or any provision thereof shall take place in the State or Federal Courts located exclusively in Jacksonville, Duval County, Florida.

### **2.14.4. CUMULATIVE REMEDIES**

Except as otherwise expressly provided in this Contract, all remedies provided for in this Contract shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

### **2.14.5. ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between the parties. No statement, representation, writing, understanding, or agreement made by either party, or any representative of either party, which are not expressed herein shall be binding. All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

### **2.14.6. EXPANDED DEFINITIONS**

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including without limitation", and the terms "include", "includes" and "included" have similar meanings. Any reference in this Contract to any other agreement is deemed to include a reference to that other agreement, as amended, supplemented or restated from time to time. Any reference in the Contract to "all applicable laws, rules and regulations" means all federal, state and local laws, rules, regulations, ordinances, statutes, codes and practices.



#### **2.14.7. HEADINGS**

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

#### **2.14.8. LANGUAGE AND MEASUREMENTS**

All communication between the Company and JEA, including all documents, notes on drawings, and submissions required under the Contract, will be in the English language. Unless otherwise specified in the Contract, the US System of Measurements shall be used for quantity measurement. All instrumentation and equipment will be calibrated in US System of Measures.

#### **2.14.9. MEETINGS AND PUBLIC HEARINGS**

The Company will, upon request by JEA, attend all meetings and public hearings as required, in any capacity, as directed by JEA.

#### **2.14.10. NONEXCLUSIVE**

Notwithstanding anything contained herein that may appear to be the contrary, this Contract is "non-exclusive" and

JEA reserves the right, in its sole discretion, to retain other companies to perform the Work, and/or JEA may self-perform the Work itself.

#### **2.14.11. RELATIONSHIP OF THE PARTIES**

The Company agrees that it shall perform the Work as an independent contractor and that it does not (a) have the power or authority to bind JEA or to assume or create any obligation or responsibility, express or implied, on JEA's part or in JEA's name, except as may be authorized by JEA under a separate written document, or (b) represent to any person or entity that it has such power or authority except as may be authorized by JEA under a separate written document.

#### **2.14.12. SUBCONTRACTING OR ASSIGNING OF CONTRACT**

Each party agrees that it shall not subcontract, assign, delegate, or otherwise dispose of the Contract, the duties to be performed under the Contract, or the monies to become due under the Contract without the other party's prior written consent.

The assignment of the Contract will not relieve either of the parties of any of its obligations until such obligations have been assumed in writing by the assignee. If the Contract is assigned by either of the parties, it will be binding upon and will inure to the benefit of the permitted assignee. The Company shall be liable for all acts and omissions of its assignee or its Subcontractor.

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

#### **2.14.13. SURVIVAL**

The obligations of JEA and the Company under this Contract that are not, by the express terms of this Contract, to be performed fully during the Term, shall survive the termination of this Contract.

#### **2.14.14. TIME AND DATE**

Unless otherwise specified, references to time of day or date mean the local time or date in Jacksonville, FL. If under this Contract any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a regular business day for JEA, that payment or calculation is to be made, and that other action is to be taken,

as applicable, on or as of the next day that is a regular business day. Where reference is made to day or days, it means calendar days. Where reference is made to workday, workdays, business day, or business days, it means regular working days for JEA Procurement.

#### **2.14.15. TIME OF ESSENCE**

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

#### **2.14.16. 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.

#### **2.14.17. USE OF JEA CONTRACTS BY THE CITY OF JACKSONVILLE**

Where the City of Jacksonville's or its other independent agencies' or political subdivisions' procurement codes all use of JEA contracts, the Company agrees to extend any pricing and other contractual terms to such entities.

#### **2.14.18. 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, including, but not limited to, individuals 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:

- a) Social Security Number (SSN) Trace;
- b) Criminal Records (County and State Criminal Felony and Misdemeanor, National Criminal Database, Federal Criminal);
- c) Background checks undertaken by JEA for its own employees who have duties similar to the duties of the Company's employee(s); and
- d) Background checks which are required pursuant to applicable background screening policies adopted by JEA from time to time, including, but not limited to, background checks required in connection with obtaining a JEA access badge or logical access to JEA systems.

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 also shall have the right to require that JEA conduct its own background checks on the Company's employees and to screen all such employees. In such event, the Company shall cooperate and provide JEA with all information requested by JEA to enable JEA to complete the background screening. 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. In addition, the Company must review JEA's Personnel Risk Assessment Review Process Contractors – CIP, FACTA and HIPAA. If applicable under such process, the Company must complete the background screening process specified therein and complete JEA's PRA Contractor Evaluation Form – Contractor Background Check Attestation (the "PRA Form") for each applicable employee.

#### **2.14.19. JEA CRITICAL INFRASTRUCTURE PROTECTION (CIP)**

Pursuant to federal regulations, JEA is required to implement Critical Infrastructure Protection (CIP) and comply with NERC/FERC reliability standards for identified assets (collectively the "Assets"). Assets include both physical and cyber Assets that are essential for JEA to maintain the integrity of the bulk electric system. Therefore, the Company must ensure that all individuals that have access to any Assets meet all requirements of JEA, including, but not limited to the background screenings described in Section **"BACKGROUND CHECKS AND OTHER INFORMATION SECURITY POLICIES"** above, prior to the individual performing any services for JEA. The specific Assets an individual will access will determine the specific JEA training and criminal background check that will be required before an employee will be approved to perform services for JEA. The Company will be responsible for all labor costs associated with completion of the training. The provisions of this Section and the immediately preceding section shall apply to all of the Company's Subcontractors and agents, and shall be included in Company's contracts with its Subcontractors for any part of the Work. JEA reserves the right to modify these terms if the applicable regulations change or additional regulations become applicable. JEA will provide sufficient notice in advance for Company to comply with JEA's requirements related to the updated regulations.

1. If applicable for all or any part of the Work, Company must also be able to certify and demonstrate to JEA's satisfaction that Company is able to comply with JEA's supply chain cyber security risk management plan and the requirements of NERC Reliability Standard NERC CIP-013, including, but not limited to CIP-013 R1. Company must demonstrate that Company has, in JEA's sole discretion, appropriate cyber security processes, including, but not limited to, addressing the following:

- Notification by Company to JEA, within 12 hours or sooner, of any Company personnel, who have been terminated, retired or ceased working on JEA projects.
- Notification by the Company of Company-identified incidents related to the products or services provided to JEA that pose cyber security risk to JEA
- Coordination of responses to Company-identified incidents related to the products or services provided to the JEA that pose cyber security risk to JEA
- Notification by Company when remote or onsite access should no longer be granted to Company representatives
- Disclosure by Company of known vulnerabilities related to the products or services provided to the JEA;
- Method for verification of software integrity and authenticity of all software and patches provided by the Company for use in JEA's Bulk Electric System's Cyber System;
- Coordination of controls for (i) Company-initiated Interactive Remote Access, and (ii) system-to-system remote access with Company; and
- Compliance with JEA CIP Cyber Security Policy (MD-202).

#### **2.14.20. 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 must be notified within 12 hours or sooner of a lost or stolen JEA access badge or when an individual leaves the Company or any subcontractor. The Company shall 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](mailto: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.

### **3. TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK**

#### **3.1. TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK (APPENDIX A)**

Technical Specifications, Detailed Scope of Work are located in Appendix A of this document.

- Appendix A - Technical Specifications

### **4. FORMS**

#### **4.1. FORMS (APPENDIX B)**

Forms required to be submitted with this solicitation are provided in Appendix B or can be obtained on the JEA website at [www.jea.com](http://www.jea.com).