

**Request for Quote (RFQ)**  
**For Participation in**  
**JEA 3CC-9M Battery Banks and Racks**  
**for**



**Jacksonville, FL**  
**Solicitation Number 101724**

**Quotes are due on July 30, 2021 by 11:59PM EST**

**E-Mail quotes to Jason Behr at [behrjv@jea.com](mailto:behrjv@jea.com)**

**JEA Procurement Services**

## Table of Contents

1.	SOLICITATION .....	6
1.1.	INVITATION .....	6
1.1.1.	SCOPE OF WORK.....	6
1.1.2.	QUESTIONS .....	6
1.1.3.	INVITATION (RFQ).....	6
1.1.4.	NO PRE-BID MEETING .....	6
1.2.	SPECIAL INSTRUCTIONS.....	7
1.2.1.	MINIMUM QUALIFICATIONS FOR SUBMISSION .....	7
1.2.2.	EVALUATION METHODOLOGY .....	7
1.2.3.	NUMBER OF CONTRACTS TO BE AWARDED .....	7
1.3.	OPTIONAL USE OF JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM ..	7
1.3.1.	REQUIRED FORMS TO SUBMIT WITH BID .....	8
1.4.	GENERAL INSTRUCTIONS .....	8
1.4.1.	COMPLETING THE BID DOCUMENTS .....	8
1.4.2.	CALCULATION OF THE BID PRICE .....	8
1.4.3.	ADDENDA .....	8
1.4.4.	DEFINED TERMS .....	8
1.4.5.	EX PARTE COMMUNICATION.....	8
1.4.6.	JEA PUBLICATIONS.....	9
1.4.7.	PROHIBITION AGAINST CONTINGENT FEES.....	9
1.4.8.	RESERVATIONS OF RIGHTS TO JEA.....	9
1.4.9.	SUNSHINE LAW .....	9
1.4.10.	CERTIFICATION AND REPRESENTATIONS OF THE BIDDER .....	10
1.4.11.	CONFLICT OF INTEREST (CONSTRUCTION) .....	11
1.4.12.	AVAILABILITY OF BIDS AFTER BID OPENING.....	11
1.4.13.	ETHICS (RFQ).....	11
2.	CONTRACT TERMS AND CONDITIONS.....	12
2.1.	CONTRACT DOCUMENT AND TERMS AND CONDITIONS .....	12
2.2.	DEFINITIONS.....	12
2.2.1.	DEFINITIONS .....	12
2.2.2.	ACCEPTANCE .....	12
2.2.3.	ADDENDUM/ADDENDA .....	12
2.2.4.	BID DOCUMENTS.....	12
2.2.5.	BID OR PROPOSAL .....	12
2.2.6.	BID PRICE .....	13
2.2.7.	BIDDER OR PROPOSER.....	13
2.2.8.	CHANGE ORDER .....	13
2.2.9.	COMPANY .....	13
2.2.10.	COMPANY REPRESENTATIVE.....	13
2.2.11.	COMPANY SUPERVISOR.....	13
2.2.12.	CONTRACT .....	13
2.2.13.	CONTRACT ADMINISTRATOR.....	13
2.2.14.	CONTRACT DOCUMENTS.....	13
2.2.15.	CONTRACT PRICE .....	14
2.2.16.	CONTRACT TIME (CONSTRUCTION) .....	14
2.2.17.	CONTRACTOR.....	14
2.2.18.	DEFECT.....	14
2.2.19.	ENVIRONMENTAL REGULATIONS.....	14
2.2.20.	EQUAL ITEM.....	14
2.2.21.	FIELD WORK .....	14
2.2.22.	FINAL COMPLETION .....	14
2.2.23.	FINAL PAYMENT .....	14
2.2.24.	HAZARDOUS MATERIALS.....	14
2.2.25.	HOLIDAYS .....	15
2.2.26.	INVOICE .....	15

2.2.27.	SOLICITATION .....	15
2.2.28.	SUBCONTRACTOR .....	15
2.2.29.	SUMMARY SCHEDULE.....	15
2.2.30.	SUPPLEMENTAL WORK AUTHORIZATION (SWA).....	15
2.2.31.	TASK ORDER .....	15
2.2.32.	TERM.....	15
2.2.33.	UNIT PRICES .....	15
2.2.34.	WORK LOCATION (DEFINITION) .....	16
2.2.35.	WORK OR SCOPE OF SERVICES .....	16
2.3.	CONTRACT DOCUMENTS .....	16
2.3.1.	ORDER OF PRECEDENCE .....	16
2.4.	PRICE AND PAYMENTS .....	16
2.4.1.	PAYMENTS .....	16
2.4.2.	OFFSETS.....	16
2.4.3.	DISCOUNT PRICING .....	17
2.4.4.	COST SAVINGS PLAN .....	17
2.4.5.	TAXES .....	17
2.4.6.	GENERAL CONDITIONS/SPECIAL CONDITIONS .....	17
2.4.7.	RIGHT TO AUDIT AND FINANCIAL REPORTING .....	17
2.4.8.	SUBSTANTIAL COMPLETION .....	18
2.4.9.	INVOICING AND PAYMENT TERMS AND RETAINAGE.....	19
2.5.	WARRANTIES AND REPRESENTATIONS .....	19
2.5.1.	WARRANTY (CONSTRUCTION).....	19
2.6.	INSURANCE, INDEMNITY AND RISK OF LOSS .....	20
2.6.1.	TITLE AND RISK OF LOSS .....	20
2.6.2.	INDEMNIFICATION (JEA STANDARD) .....	21
2.6.3.	SELF HELP .....	21
2.6.4.	NOTIFICATION OF SURETY .....	21
2.6.5.	ENVIRONMENTAL INDEMNIFICATION .....	21
2.7.	ACCEPTANCE .....	22
2.7.1.	DELAY IN ACCEPTANCE OR DELIVERY .....	22
2.7.2.	ACCEPTANCE OF WORK - RECEIPT, INSPECTION, USAGE AND TESTING .....	22
2.8.	TERM AND TERMINATION .....	22
2.8.1.	TERM .....	22
2.8.2.	TERMINATION FOR CONVENIENCE.....	22
2.8.3.	SUSPENSION OF WORK .....	22
2.8.4.	UNAUTHORIZED WORK.....	23
2.9.	PRELIMINARY MATTERS .....	23
2.9.1.	UNFORESEEN CONDITIONS .....	23
2.9.2.	COMPLETION OF WORK .....	23
2.9.3.	COMPANY REPRESENTATIVE .....	23
2.9.4.	LIMITATION OF ACCURACY OF INFORMATIONAL MATERIALS .....	23
2.9.5.	PERMITS TO BE OBTAINED BY THE CONTRACTOR.....	24
2.10.	CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTATION .....	24
2.10.1.	PUBLIC RECORDS LAWS .....	24
2.10.2.	INTELLECTUAL PROPERTY .....	25
2.10.3.	PROPRIETARY INFORMATION.....	26
2.10.4.	PUBLICITY AND ADVERTISING.....	26
2.11.	LABOR .....	26
2.11.1.	NONDISCRIMINATION .....	26
2.11.2.	LEGAL WORKFORCE.....	26
2.11.3.	JEA WORKPLACE TOBACCO USE POLICY .....	27
2.11.4.	PROHIBITED FUTURE EMPLOYMENT .....	27
2.11.5.	HIRING OF OTHER PARTY'S EMPLOYEES .....	27
2.11.6.	COMPANY'S LABOR RELATIONS.....	27
2.11.7.	MINIMUM QUALIFICATION OF COMPANY PERSONNEL .....	27

2.12.	COMPANY'S RESPONSIBILITIES AND PERFORMANCE OF THE CONTRACT .....	28
2.12.1.	COMPANY REPRESENTATIVES .....	28
2.12.2.	COMPANY REVIEW OF PROJECT REQUIREMENTS .....	28
2.12.3.	LICENSES .....	28
2.12.4.	PERFORMANCE OF THE WORK .....	28
2.12.5.	PROTECTION OF COMPANY PROPERTY .....	28
2.12.6.	QUALITY CONTROL AND QUALITY ASSURANCE .....	28
2.12.7.	SUBSTITUTIONS .....	29
2.12.8.	TOOLS AND EQUIPMENT .....	29
2.12.9.	COMPETENT PERFORMANCE OF THE WORK .....	30
2.12.10.	COMPLIANCE WITH REFERENCED SPECIFICATIONS .....	30
2.12.11.	COMPANY'S KNOWLEDGE OF THE WORK .....	30
2.12.12.	CONTRACTOR'S PLANS AND SPECIFICATIONS .....	30
2.12.13.	DAMAGED MATERIALS OR EQUIPMENT .....	30
2.12.14.	FREE AND CLEAR TITLE .....	31
2.12.15.	INSPECTIONS AND TESTING .....	31
2.12.16.	OBLIGATIONS OF THE COMPANY .....	32
2.13.	VENDOR PERFORMANCE EVALUATION .....	32
2.13.1.	VENDOR PERFORMANCE EVALUATION .....	32
2.14.	JEA RESPONSIBILITIES .....	34
2.15.	CHANGES IN THE WORK, CONTRACT TIME OR PRICE .....	34
2.15.1.	AMENDMENTS .....	34
2.15.2.	FORCE MAJEURE .....	34
2.15.3.	CHANGES IN THE WORK .....	34
2.15.4.	CHANGES TO WORK SCHEDULE OR TIME .....	34
2.15.5.	INITIATION OF A CHANGE BY COMPANY .....	34
2.15.6.	INITIATION OF A CHANGE BY JEA .....	35
2.15.7.	NO DAMAGE FOR DELAY .....	35
2.15.8.	EFFECTIVENESS OF CHANGE ORDER .....	35
2.16.	MISCELLANEOUS PROVISIONS .....	35
2.16.1.	AMBIGUOUS CONTRACT PROVISIONS .....	35
2.16.2.	APPLICABLE STATE LAW; VENUE; SEVERABILITY .....	36
2.16.3.	CONTINUING OF THE WORK .....	36
2.16.4.	CUMULATIVE REMEDIES .....	36
2.16.5.	DISPUTES .....	36
2.16.6.	ENTIRE AGREEMENT .....	36
2.16.7.	EXPANDED DEFINITIONS .....	36
2.16.8.	HEADINGS .....	36
2.16.9.	INDEPENDENT CONTRACTOR .....	36
2.16.10.	LANGUAGE AND MEASUREMENTS .....	36
2.16.11.	MEETINGS AND PUBLIC HEARINGS .....	37
2.16.12.	NEGOTIATED CONTRACT .....	37
2.16.13.	NONEXCLUSIVE .....	37
2.16.14.	NON-WAIVER .....	37
2.16.15.	REFERENCES .....	37
2.16.16.	SEVERABILITY .....	37
2.16.17.	SUBCONTRACTING OR ASSIGNING OF CONTRACT .....	37
2.16.18.	SURVIVAL .....	38
2.16.19.	TIME AND DATE .....	38
2.16.20.	TIME OF ESSENCE .....	38
2.16.21.	TITLE TO MATERIALS FOUND .....	38
2.16.22.	WAIVER OF CLAIMS .....	38
3.	TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK/DRAWINGS .....	38
3.1.	TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK/DRAWINGS (APPENDIX A).....	38
4.	FORMS .....	38
4.1.	FORMS (APPENDIX B) .....	38

4.2. SUPPLEMENTAL DOCUMENTS (APPENDIX C) .....38

## Solicitation

### 1. SOLICITATION

#### 1.1. INVITATION

##### 1.1.1. SCOPE OF WORK

JEA is in need of 6 new 200AH 3CC-9M battery banks and racks over the course of the next few months.

The quote must include the following:

- 6x 60 Cell 3CC-9M Batteries – Must be Enersys batteries. No substitutions at this time.
- 6x 2 tier battery rack of appropriate size for 20 jars.
- Removal, recycling, and harvesting of existing batteries and rack(s).
- Installation of replacement battery string(s) and rack(s), including inter-rack cables and lugs if needed.
- Testing of completed installation shall include battery internal resistance values, individual cell voltages, overall bank voltage, battery charging current, and test for unintentional grounds.
- Test report e-mailed to JEA substation engineer within 15 days after final installation.
- Total cost to reflect recycling credit per battery bank if applicable.

##### 1.1.2. QUESTIONS

All questions must be submitted in writing to the JEA Buyer listed below at least three (3) business days prior to the opening date. Questions received within three (3) business days prior to the opening date may not be answered.

##### **For All Questions:**

Buyer: Jason Behr

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

##### 1.1.3. INVITATION (RFQ)

You are invited to bid on the Solicitation noted below:

**JEA Solicitation Title:** JEA 3CC-9M Battery Banks and Racks

**JEA Solicitation Number:** 101724

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).

**Bid Due Date:** July 30, 2021

**Bid Due Time:** 11:59 PM EST

All bids shall be submitted on the appropriate Bid forms that are included in this RFQ and are also available at [jea.com](http://jea.com). All bids submitted electronically shall reference the RFQ Title in the subject line of the email.

Please submit the Bid Form and other related documentation to:

Buyer Name: Jason Behr

Buyer Email: [behrjv@jea.com](mailto:behrjv@jea.com)

The Bidder shall be solely responsible for delivery of its bid to the JEA Buyer.

##### 1.1.4. NO PRE-BID MEETING

## **1.2. SPECIAL INSTRUCTIONS**

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

Bidder shall have the following Minimum Qualifications to be considered eligible to submit a Bid in response to this Solicitation. It is the responsibility of the Bidder to ensure and certify that it meets the Minimum Qualifications stated below. A Bidder not meeting all of the following criteria will have their Bids rejected:

- The Bidder shall comply with the technical and commercial specifications for this solicitation. JEA may request and the Bidder shall provide within 48 hours additional information regarding the company's ability to provide the scope of services in this solicitation. Failure to provide additional information may result in Bid rejection.

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

### **1.2.2. EVALUATION METHODOLOGY**

#### **1.2.2.1. BASIS OF AWARD - LOWEST BID**

JEA will Award this Contract to the responsive and responsible Bidder whose Bid meets or exceeds the Minimum Qualifications set forth in this Solicitation, and the Bidder's price represents the lowest cost to JEA.

JEA will use the Bidder's Total Bid Price stated on the Bid Form when making price comparisons for Award purposes.

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

JEA intends to Award one (1) Contract(s) 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.

## **1.3. 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 Bid, revise the JSEB Scope of Work or amount of Work as stated in its Bid 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 Bidders 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).

### **1.3.1. REQUIRED FORMS TO SUBMIT WITH BID**

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

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

- 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. GENERAL INSTRUCTIONS**

### **1.4.1. COMPLETING THE BID DOCUMENTS**

Bidders shall complete and submit all Bid Documents with responses typewritten or written in ink.

When a blank is marked "optional" on the bid form, the Bidder shall insert the words "No Bid" in the space provided if the Bidder does not choose to submit a price for that item. Failure to complete each blank with either a price or the words "No Bid" may disqualify the Bid. The Bidder, or its authorized agent or officer, shall sign the Bid Documents. Failure to sign the Bid Documents may disqualify the Bid. JEA approved erasures, interlineations or other corrections shall be authenticated by affixing in the margin, immediately opposite the correction, the handwritten signature of each person executing the Bid. Failure to authenticate changes may disqualify the Bid. JEA may disqualify any Bids that deviate from the requirements of this Solicitation, and those that include unapproved exceptions, amendments, or erasures.

### **1.4.2. CALCULATION OF THE BID PRICE**

JEA will use the Bidder's Total Bid Price stated on the Bid Form when making price comparisons for Award purposes.

### **1.4.3. ADDENDA**

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

### **1.4.4. DEFINED TERMS**

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

### **1.4.5. 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 Bid 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 Bidder becomes privy to information not available to the other Bidders. Social contact between Bidders 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 Bid 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 Bidders.

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).

#### **1.4.6. JEA PUBLICATIONS**

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

#### **1.4.7. 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 sale 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.

#### **1.4.8. 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.

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

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

#### **1.4.9. SUNSHINE LAW**

##### **General.**

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

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

**JEA**

**Attn: Public Records**

**21 West Church Street**

**Jacksonville, Florida 32202**

**Ph: 904-665-8606**

**publicrecords@jea.com**

**Redacted Submissions.**

If a Bidder/Proposer believes that any portion of the documents, data or records submitted in response to this Solicitation are exempt from Florida's Public Records Law, Bidder/Proposer must (1) clearly segregate and mark the specific sections of the document, data or records as "Confidential," (2) cite the specific Florida Statute or other legal authority for the asserted exemption, and (3) provide JEA with a separate redacted copy of its response (the "Redacted Copy"). The cover of the Redacted Copy shall contain JEA's title and number for this Solicitation and Bidder's name, and shall be clearly titled "Redacted Copy." Bidder/Proposer should only redact those portions of records that Bidder/Proposer claims are specifically exempt from disclosure under Florida's Public Records Laws. If Bidder/Proposer fails to submit a redacted copy of information it claims is confidential, JEA is authorized to produce all documents, data and other records submitted to JEA in answer to a public records request for such information.

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

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

**1.4.10. CERTIFICATION AND REPRESENTATIONS OF THE BIDDER**

By signing and submitting a Bid, the Bidder 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 Bid. Where the Bidder 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 Bidder 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 Bid, including the Bid Price and the detailed schedule for the execution of the Work, are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation

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

- C. That the individual signing the Bid Documents is a duly authorized agent or officer of the firm. Bids 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 bid, satisfactory evidence of authority to sign may be requested by JEA. If the Bid is submitted by a partnership, the bid must be signed by a partner whose title must appear under the signature. If an individual other than a partner signs the bid, 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 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 Bidder also certifies that, upon the prospect of any change in the status of applicable licenses, permits, certifications, insurances, bonds or other credentials, the Bidder shall immediately notify JEA of status change.
- E. That Bidder has read, understands these instructions and will comply with the Section titled Ethics.

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

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

#### **1.4.12. AVAILABILITY OF BIDS AFTER BID OPENING**

In accordance with the Florida Public Records Law, Florida Statutes, Chapter 119, copies of all Bids are available for public inspection thirty (30) days after the opening of Bids or on the date of Award announcement, whichever is earlier. Bidders may review opened Bids once they are available for public inspection by contacting the designated Buyer or JEA's Public Records custodian whose contact information can be found at [jea.com](http://jea.com). JEA will post a summary of the Bid results immediately after the Bid opening.

#### **1.4.13. ETHICS (RFQ)**

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

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

The Bidder shall disclose the name(s) of any public officials who have any financial position, directly or indirectly, with this Bid 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 Bidders, JEA shall reject any and all Bids from the suspected Bidders and will proceed to debar Bidder 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 Bids from JEA officers or employees, as well as, any and all Bids in which a JEA officer or employee has a financial interest.

In accordance with Florida Statutes Sec. 287.133, JEA shall reject Bids 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 Bidder 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 Bidder violates any requirement of this clause, the Bid may be rejected and JEA may debar offending companies and persons.

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

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

Provided below are the Contract terms and conditions that will be incorporated by reference in the Contract Document executed by the Company and JEA. The Contract Document will incorporate by reference the terms contained in the Solicitation portion of this document provided in Section 1, the Contract Terms provided in Section 2; and the Technical Specifications provided in Section 3. An example of the Contract that the Company will be required to execute is available for review at [jea.com](http://jea.com).

### **2.2. DEFINITIONS**

#### **2.2.1. DEFINITIONS**

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

#### **2.2.2. ACCEPTANCE**

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

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

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

#### **2.2.4. BID DOCUMENTS**

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

#### **2.2.5. BID OR PROPOSAL**

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

#### **2.2.6. BID PRICE**

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

#### **2.2.7. BIDDER OR PROPOSER**

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

#### **2.2.8. CHANGE ORDER**

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

#### **2.2.9. 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.

#### **2.2.10. COMPANY REPRESENTATIVE**

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

#### **2.2.11. COMPANY SUPERVISOR**

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

#### **2.2.12. CONTRACT**

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

#### **2.2.13. CONTRACT ADMINISTRATOR**

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

#### **2.2.14. CONTRACT DOCUMENTS**

Contract Documents, also referred to as the "Contract" means the executed Contract, all Solicitation documents and Bid 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.

#### **2.2.15. CONTRACT PRICE**

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

#### **2.2.16. CONTRACT TIME (CONSTRUCTION)**

The number of calendar days or the period of time from when the written Purchase Order is issued to the Company to Substantial Completion and Acceptance of the Work.

#### **2.2.17. CONTRACTOR**

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

#### **2.2.18. DEFECT**

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

#### **2.2.19. ENVIRONMENTAL REGULATIONS**

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

#### **2.2.20. EQUAL ITEM**

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

#### **2.2.21. FIELD WORK**

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

#### **2.2.22. FINAL COMPLETION**

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

#### **2.2.23. FINAL PAYMENT**

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

#### **2.2.24. HAZARDOUS MATERIALS**

Any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. '9601 et seq.) ("CERCLA") or any regulations promulgated under or pursuant to CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. '6901 et. seq.) ("RCRA") or regulations promulgated under or pursuant to RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. '2601 et seq.); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) radon gas; and (viii) any additional substances or materials which are now or hereafter classified or considered to be hazardous or

toxic under Environmental Requirements (as hereinafter defined) or the common law, or any other applicable laws relating to the Licensed Property. Hazardous Materials shall include, without limitation, any substance, the presence of which on the Licensed Property, (A) requires reporting, investigation or remediation under Environmental Requirements; (B) causes or threatens to cause a nuisance on the Licensed Property or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Licensed Property or adjacent property; or (C) which, if it emanated or migrated from the Licensed Property, could constitute a trespass.

#### **2.2.25. 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.

#### **2.2.26. 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.

#### **2.2.27. SOLICITATION**

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

#### **2.2.28. SUBCONTRACTOR**

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

#### **2.2.29. SUMMARY SCHEDULE**

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

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

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

#### **2.2.31. 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.

#### **2.2.32. TERM**

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

#### **2.2.33. UNIT PRICES**

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

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

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

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

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

### **2.3. CONTRACT DOCUMENTS**

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

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

- 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
- Bid 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.

### **2.4. PRICE AND PAYMENTS**

#### **2.4.1. PAYMENTS**

##### **2.4.1.1. PAYMENT METHOD – PROGRESS PAYMENTS**

JEA will be paying an invoice for pre-determined amounts at specific points (milestones) during the work. The actual amount of the invoice may be from multiple Bid Form lines, summed together to make the total invoice.

##### **2.4.2. OFFSETS**

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



#### **2.4.3. 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.

#### **2.4.4. 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.

#### **2.4.5. 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.

#### **2.4.6. GENERAL CONDITIONS/SPECIAL CONDITIONS**

The line item shown on the Bid Form titled "General/Special Conditions Lump Sum Price" shall be used for general and special expenses which do not appear as separate line items on the Bid Form, including, but not limited to, costs and expenses related to the following:

- the execution and recording of the Payment and Performance Bonds
- safety requirements
- Quality Control
- preparation of daily reports
- maintenance of traffic
- attendance of meetings, project scheduling
- testing (if not included elsewhere)

Except as provided below for expenses related to Bonds and Surveying, JEA's payment for the General/Special Conditions line item shall be based upon the percentage of Work completed.

Bonds- Company will be permitted to invoice JEA, in its first payment application, for the costs associated with the execution and recording of the Payment and Performance Bonds. The amount paid by JEA for the Payment and Performance Bonds will be deducted from the General/Special Conditions line item total.

Surveying- Prior to construction, the Company will be permitted to invoice JEA for the costs associated with the survey of the existing roadway horizontal alignment. The amount paid by JEA for these costs will be deducted from the General/Special Conditions line item total.

SWA- In the event that JEA authorizes changes to the Work under a Supplemental Work Authorization (SWA), the amount of the Bid Form line item for SWA Allowance will not be increased unless the total value of all SWA Work exceeds the Original SWA Allowance provided on the Bid Form.

#### **2.4.7. 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 bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; 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 bidding privileges with JEA, and/or JEA may exercise any other remedies available by law.

### **2.4.8. SUBSTANTIAL COMPLETION**

The Company shall notify JEA in writing when a portion of the Work is Substantially Complete. The Company shall identify any deficiencies in the Work. JEA will inspect the Work and will give the Company written notice of either

acceptance or rejection of the Work as Substantially Complete and provide a list of additional deficiencies. The Company shall correct all deficiencies prior to Final Completion of the Work by JEA.

Whenever any portion of the Work is Substantially Complete, JEA may use it. Such use shall not be held in any way as an Acceptance of the Work or as a waiver of any provisions of the Contract.

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

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, 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.

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

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

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.

#### **2.5. WARRANTIES AND REPRESENTATIONS**

##### **2.5.1. WARRANTY (CONSTRUCTION)**

Unless otherwise stated herein or in Appendix A - Technical Specifications, the Company unconditionally warrants to JEA for a period of not less than two (2) years, from the date of issuance of the Certificate of Substantial Completion, that all Work furnished under the Contract, including but not limited to, materials, equipment, workmanship, and intellectual property, including derivative works will be:

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

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

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

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

If, within the warranty period, JEA determines that any of the Work is defective or exhibit signs of excessive deterioration, the Company at its own expense, shall repair, adjust, or replace the defective Work to the complete satisfaction of JEA. The Company shall pay all costs of removal, transportation, reinstallation, repair, and all other associated costs incurred in connection with correcting such Defects in the Work. The Company shall correct any Defects only at times designated by JEA. The Company shall extend the warranty period an additional 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. 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.

#### **2.6.2. 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. SELF HELP**

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

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

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

#### **2.6.4. NOTIFICATION OF SURETY**

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

#### **2.6.5. ENVIRONMENTAL INDEMNIFICATION**

The Company shall hold harmless and indemnify JEA and Florida Power and Light (FPL), including without limitation, its officers, directors, members, representatives, affiliates, agents and employees, successors and assigns (the "Indemnified Parties") and will reimburse the Indemnified Parties from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or in connection with (a) the Company's, including, but not limited to, its agents, affiliates or assigns ("Parties"), actions or activities that result in a violation of any environmental law, ordinance, rule, or regulation or that leads to an environmental claim or citation or to damages due to the Company's or other Parties' activities, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with this Contract by the Company or any Party at any time on or after the effective date of the Contract, or (c) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by the Company or any Party. JEA and FPL will be entitled to control any remedial action, any proceeding relating to an environmental claim. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Contract or otherwise. This section relating to indemnification shall survive the Term of this Contract, and any holdover and/or Contract extensions thereto,

whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Contract.

## **2.7. ACCEPTANCE**

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

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

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

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

## **2.8. TERM AND TERMINATION**

### **2.8.1. TERM**

#### **2.8.1.1. TERM OF CONTRACT - THROUGH COMPLETION OF WORK**

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

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

#### **2.8.2. 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.

#### **2.8.3. SUSPENSION OF WORK**

JEA may suspend the performance of the Work by providing the Company with a five day written notice of such suspension. Schedules and compensation for performance of the Work shall be amended by mutual agreement to

reflect such suspension. In the event of a suspension of the Work, the Company shall resume full performance of the Work when JEA gives written direction to do so.

Suspension of Work due to the Company's negligence or failure to perform may affect the Company's compensation as outlined in the Contract and/or may result in a termination of the Contract.

#### **2.8.4. UNAUTHORIZED WORK**

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

### **2.9. PRELIMINARY MATTERS**

#### **2.9.1. 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.

#### **2.9.2. COMPLETION OF WORK**

The Company shall begin Work within ten (10) days after the date of written Notice to Proceed from JEA to begin Work, and shall complete the Work by the date set forth in the Contract Documents. The Company further understands and agrees that time is of essence and should the Company fail to complete the Work on or before the date established for Substantial Completion and Final Acceptance, the Company shall be solely responsible for additional costs as defined in the Contract.

#### **2.9.3. COMPANY REPRESENTATIVE**

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.

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

For all drawings, test results, inspections, and other informational materials included as part of the Contract Documents, the Company understands and agrees that any existing facilities shown, including underground, overhead, and surface structures, and other delineations, and any other informational items provided as part of the Contract Documents are for reference only and are not to be used by the Company as the only indication of Work conditions. The Company understands and agrees that it is its sole responsibility to verify all Work conditions, measurements, dimensions, obstructions and other causes for existing or potential changes to the Work prior to initiating Work. In the event the Work must be changed due to the Company not fulfilling the above requirements, the Company understands and agrees that it will be responsible for all costs associated with the changed condition. Changes associated with conditions that are clearly unforeseen and that could not have been discovered by a reasonable verification of the above listed items, shall be covered as stated in Changes to Work.

### **2.9.5. PERMITS TO BE OBTAINED BY THE CONTRACTOR**

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

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

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

#### **2.10.1. PUBLIC RECORDS LAWS**

Access to Public Records.

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

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

If the Company believes that any portion of any documents, data or other records submitted to JEA are exempt from disclosure under Chapter 119, Florida Statutes, the Florida Constitution and related laws ("Florida's Public Records Laws"), Company must (1) clearly segregate and mark the specific sections of the document, data and records as "Confidential", (2) cite the specific Florida Statute or other legal authority for the asserted exemption, and (3) provide JEA with a separate redacted copy of the documents, data, or records (the "Redacted Copy"). The Redacted Copy shall contain JEA's contract name and number, and shall be clearly titled "Redacted Copy". Bidder should only redact those portions of records that Bidder claims are specifically exempt from disclosure under Florida's Public Records Laws. If the Company fails to submit a redacted copy of documents, data, or other records it claims is confidential, JEA is authorized to produce all documents, data, and other records submitted to JEA in answer to a public records request for these records.

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

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

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

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



**Public Records Clause for Service Contracts.**

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

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:**

**JEA**

**Attn: Public Records**

**21 West Church Street**

**Jacksonville, Florida 32202**

**Ph: 904-665-8606**

**publicrecords@jea.com**

**2.10.2. INTELLECTUAL PROPERTY**

The Company grants to JEA an irrevocable, perpetual, royalty free and fully paid-up right to use (and such right includes, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right to sublicense all, or any portion of, the foregoing rights to an affiliate or a third party service provider) the Company's intellectual property (including, without limitation, all trade secrets, patents, copyright and know-how) that is contained or embedded in, required for the use of, that was used in the production of or is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of any applicable unit of Work.

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

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

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

If, in any action or proceeding, the Work, or any part thereof, is held to constitute an infringement, the Company will, within 30 days of notice, either secure for JEA the right to continue using the Work or will, at the Company's expense, replace the infringing items with noninfringing Work or make modifications as necessary so that the Work no longer infringes.

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

### **2.10.3. PROPRIETARY INFORMATION**

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

### **2.10.4. PUBLICITY AND ADVERTISING**

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

## **2.11. LABOR**

### **2.11.1. NONDISCRIMINATION**

For the Term of the Contract, 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, handicap, disability, creed, political affiliation, gender, pregnancy condition, citizenship, marital status, genetic information, sexual orientation, gender identity, or any other protected characteristics established by law. The Company agrees that on written request, it will allow JEA reasonable access to the Company's records of employment, employment advertisement, application forms and other pertinent data and records for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Contract; provided however, the Company shall not be required to produce, for inspection, records covering periods of time more than one (1) year before the Effective Date or expiration date of this Contract.

Additionally, 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. JEA WORKPLACE TOBACCO USE POLICY**

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

#### **2.11.4. PROHIBITED FUTURE EMPLOYMENT**

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

#### **2.11.5. HIRING OF OTHER PARTY'S EMPLOYEES**

Each party recognizes that the other party has incurred or will incur significant expenses in training its own employees and agrees that it will not pursue or hire, without the other party's consent, the other party's employees or the employees of its subsidiaries for a period of two (2) years from the termination date of this Agreement. It shall not be considered a breach of this Section for either party to make employment solicitations to the general public or groups that may include employees of the other party. Nor shall it be considered a breach of this Section for either party's employees to respond to, act upon, or accept inquiries and applications resulting from, or make offers of employment resulting from, (i) such solicitations to the general public or groups or (ii) unsolicited employment inquiries or applications.

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

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

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

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

The Company personnel assigned supervisory roles, and those with increased authority shall be held to strict scrutiny of their qualifications and suitability for their positions. In addition to the other provisions of this Section, the Company shall provide written documentation as to experience, education, licenses, certifications, professional

affiliations, and other qualifications of the individual, within one day of request from the Contract Administrator. Any changes to such personnel after approval shall require the written permission of the Contract Administrator.

## **2.12. 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. 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.

### **2.12.3. 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.

### **2.12.4. PERFORMANCE OF THE WORK**

The Company represents and warrants that it has the full corporate right, power and authority to enter into the Contract and to perform the acts required of it hereunder, and that the performance of its obligations and duties hereunder does not and will not violate any Contract to which the Company is a party or by which it is otherwise bound. The Company warrants that all items provided under the Contract shall be free from Defect and services shall be performed in a professional manner and with professional diligence and skill, consistent with the prevailing standards of the industry. The Company warrants that the Work will meet the functional and performance requirements defined in the Contract.

### **2.12.5. PROTECTION OF COMPANY PROPERTY**

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

### **2.12.6. QUALITY CONTROL AND QUALITY ASSURANCE**

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

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

### **2.12.7. SUBSTITUTIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **2.12.8. TOOLS AND EQUIPMENT**

All tools and equipment used in the performance of the Work shall be used as intended by the manufacturer and in accordance with manufacturer operating manuals and industry practices, whichever is more stringent. The Company shall ensure that all tools and equipment used in the performance of the Work shall be of the size and quality suitable for safe and efficient performance of the Work. If the Company-provided tools and equipment do not meet

these requirements, or if in the sole opinion of JEA formed after considering relevant factors, the tools or equipment are inappropriate for performance of the Work, the Company agrees to remove the unacceptable tools and equipment and obtain tools and equipment JEA considers suitable. Such replacement shall be entirely at the Company's expense, and no change to time prescribed by the Contract will be allowed.

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

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

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

#### **2.12.10. COMPLIANCE WITH REFERENCED SPECIFICATIONS**

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

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

The Company represents that its total Bid Price and the detailed schedule for the execution of the Work are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation made by any of its representatives during or prior to execution of the Contract unless such understandings or representations are expressly stated in the Contract and the Contract expressly provides that JEA assumes the responsibility.

#### **2.12.12. CONTRACTOR'S PLANS AND SPECIFICATIONS**

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

#### **2.12.13. DAMAGED MATERIALS OR EQUIPMENT**

The Company shall report to the Contract Administrator any materials issued by JEA or delivered by the JEA material supplier and received by the Company that are later found to be faulty, damaged or discrepant in some manner. The Contract Administrator will obtain appropriate replacement materials upon written notification from the Contract Administrator. The Company shall not, under any circumstances, make a material replacement without written approval of the Contract Administrator.

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

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

#### **2.12.14. FREE AND CLEAR TITLE**

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

#### **2.12.15. INSPECTIONS AND TESTING**

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

If the Company has covered or concealed any Work from inspection in any way that the JEA Representative has not specifically requested prior to the JEA Representative's inspection, or if the JEA Representative considers it necessary or advisable that covered Work be inspected or tested by others, the Company, at the JEA Representative's request, shall uncover, expose or otherwise make available the portion of the Work in question for observation, inspection or testing as the JEA Representative may require. The Company shall furnish all necessary labor, material and equipment to make such Work available.

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

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

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

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

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

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

The JEA Engineer may appoint JEA Inspectors to inspect any and all materials and Work. Such inspection may extend to any or all parts of the Work and to the preparation and manufacture of the materials to be used. The JEA Inspectors shall not be authorized to alter, revoke, enlarge or relax the provisions of the Contract, nor will they be

authorized to approve or accept any portion of the completed Work, nor to issue instructions contrary to the Contract. The JEA Inspector shall inform the JEA Engineer of the progress of the Work and the manner in which it is being done, and notify the Company of any infringement upon the Contract Documents. The JEA Inspector will have the authority to reject defective materials or to suspend any Work that is being improperly done subject to the final decision of the JEA Engineer.

## **2.12.16. OBLIGATIONS OF THE COMPANY**

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

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

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

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

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

## **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 bidding on any JEA related solicitations, and other remedies available in the JEA Purchasing Code and in law. Such action does not relieve the Company of its obligations under the Contract, nor does it preclude an earlier termination.
- In the event that the Contract Term or the remaining Term of the Contract does not allow for the completion of the deficient performance notification cycles described above for those in danger of receiving an Unacceptable Performance scorecard, JEA may choose to accelerate these cycles at its sole discretion.
- If the Company receives five 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. JEA RESPONSIBILITIES**

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

### **2.15.1. 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.

### **2.15.2. 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.

### **2.15.3. CHANGES IN THE WORK**

Changes in the Work, including changes to scope, quantities, price, schedule or completion date, may be authorized through Supplemental Work Authorizations or through a Change Order.

### **2.15.4. CHANGES TO WORK SCHEDULE OR TIME**

The Work schedule and/or contract time may be changed by a Change Order, Purchase Order or SWA. The Company's request or claim for a Work schedule and/or contract time adjustment shall be in writing delivered to the Contract Administrator within ten (10) working days following the discovery of the event that prompted the claim or the date when the event should have been discovered. Where accepted by JEA, changes to Work schedule will only adjust for critical path impacts. Failure to include the necessary critical path analysis with the request shall be grounds for rejecting the claim. The critical path as used in this Section means the series of interdependent Work events that must be sequentially performed and that require a longer total time to perform than any other such series. Upon receipt of the Company's request for a change in the Work schedule, the Contract Administrator will provide any additional directions in writing detailing the procedures that will be used to resolve the request, including provision of time impact or manpower and equipment loading schedules. Where JEA and the Company are unable to reach a mutually acceptable resolution of request, JEA will make a commercially reasonable determination, made in accordance with JEA's Procurement Code, which shall be final.

### **2.15.5. INITIATION OF A CHANGE BY COMPANY**

To request any change in the Work including, but not limited to, changes in scope, quantities, price, or schedule, the Company shall submit a written request in the form of a Request for Information ("RFI") to the JEA Representative within ten (10) working days of the date that the event that prompted the change was discovered or should have been

discovered. The RFI shall contain sufficient information regarding the nature of the requested change, including an itemized estimate of cost, either positive or negative, in relation to the change, and any effect on contract time which is related to the changed condition, and work descriptions and other information necessary to evaluate the merits of the change. The JEA Representative may reject RFI's which do not provide sufficient supporting information. Upon receipt of the Company's RFI, the JEA Representative will provide written direction as to the procedures that will be used to address the request. JEA shall have the right to approve or disapprove any RFI, request or claim for change as it deems necessary and in its best interests consistent with the other Contract requirements. Where JEA and the Company are unable to reach a mutually acceptable resolution for the RFI, JEA will make a commercially reasonable determination, made in accordance with JEA's Procurement Code, which shall be final.

#### **2.15.6. INITIATION OF A CHANGE BY JEA**

When it is in JEA's best interest, the JEA Representative may request that the Company provide pricing information to accommodate a requested change in the Work, including a change to the scope of Work, quantity, schedule or completion date. Upon the written request by JEA, the Company shall submit a cost estimate, including all pricing elements requested by JEA. The Company shall not proceed with any changes to the Work until such change is authorized in writing.

#### **2.15.7. 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.

#### **2.15.8. EFFECTIVENESS OF CHANGE ORDER**

Any change in the Contract resulting from the RFI will be incorporated into the Contract through the use of a Change Order, Supplemental Work Authorization or Purchase Order. Whether requested by the Company, claimed by the Company, or contemplated by JEA, no change shall be authorized and effective unless made through an approved Supplemental Work Authorization (SWA) or on a JEA Change Order signed by the Contract Administrator or through a formal written amendment to this Contract. All Work defined on Change Orders shall be subject to the conditions of the Contract, unless specifically noted on the Change Order.

### **2.16. MISCELLANEOUS PROVISIONS**

#### **2.16.1. 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.

#### **2.16.2. 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.

#### **2.16.3. CONTINUING OF THE WORK**

The Company shall carry on the Work and maintain the progress schedule 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.

#### **2.16.4. 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.

#### **2.16.5. DISPUTES**

If a dispute occurs between JEA and the Company over a contractual issue that cannot be mediated by the JEA Representative, the dispute shall be handled in accordance with Article 5 of the JEA Procurement Code.

#### **2.16.6. ENTIRE AGREEMENT**

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

#### **2.16.7. EXPANDED DEFINITIONS**

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

#### **2.16.8. HEADINGS**

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

#### **2.16.9. INDEPENDENT CONTRACTOR**

Company is performing this Contract as an independent contractor and nothing in this Contract will be deemed to constitute a partnership, joint venture, agency, or fiduciary relationship between JEA and Company. Neither Company nor JEA will be or become liable or bound by any representation, act, or omission of the other.

#### **2.16.10. LANGUAGE AND MEASUREMENTS**

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

#### **2.16.11. MEETINGS AND PUBLIC HEARINGS**

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

#### **2.16.12. NEGOTIATED CONTRACT**

Except as otherwise expressly provided, all provisions of this Contract shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns. The parties agree that they have had meaningful discussion and negotiation of the provisions, terms and conditions contained in this Contract. Therefore, doubtful or ambiguous provisions, if any, contained in the Contract shall not be construed against the party who physically prepared this Contract.

#### **2.16.13. NONEXCLUSIVE**

Notwithstanding anything contained herein that may appear to be the contrary, this Contract is "non-exclusive" and JEA reserves the right, in its sole discretion, to retain other companies to perform the Work, and/or JEA may self-perform the Work itself.

#### **2.16.14. NON-WAIVER**

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

#### **2.16.15. REFERENCES**

Unless otherwise specified, each reference to a statute, ordinance, law, policy, procedure, process, document, drawing, or other informational material is deemed to be a reference to that item, as amended or supplemented from time to time. All referenced items shall have the enforcement ability as if they are fully incorporated herein.

#### **2.16.16. SEVERABILITY**

In the event that any provision of this Contract is found to be unenforceable under applicable law, the parties agree to replace such provision with a substitute provision that most nearly reflects the original intentions of the parties and is enforceable under applicable law, and the remainder of this Contract shall continue in full force and effect. With regard to any provision in this agreement pertaining to damages, equitable or otherwise, it is the intent of the Parties that under no circumstances shall there be recovery for home office overhead. Any damages claimed shall be proven by discreet accounting of direct project costs and no theoretical formula or industry estimating reference manuals shall be permissible.

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

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

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

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

#### **2.16.18. SURVIVAL**

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

#### **2.16.19. TIME AND DATE**

Unless otherwise specified, references to time of day or date mean the local time or date in Jacksonville, FL. If under this Contract any payment or calculation is to be made, or any other action is to be taken, on or as of a day that is not a regular business day for JEA, that payment or calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a regular business day. Where reference is made to day or days, it means calendar days. Where reference is made to workday, workdays, business day, or business days, it means regular working days for JEA Procurement.

#### **2.16.20. TIME OF ESSENCE**

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

#### **2.16.21. TITLE TO MATERIALS FOUND**

JEA shall retain the title to water, mineral matter, timber and any other materials that the Company, or its Subcontractors, encounters during the excavation or other operations of the Work. The Company shall use or dispose of this material in accordance with the Contract or written instructions from the Contract Administrator. Any materials found in the excavation, or other operations of the Company, that are of archaeological or historical value shall be left in place. The Company shall immediately notify JEA of the find and shall take no further action until directed by JEA.

#### **2.16.22. WAIVER OF CLAIMS**

A delay or omission by JEA to exercise any right or power under this Contract shall not be construed to be a waiver thereof. A waiver by JEA under this Contract shall not be effective unless it is in writing and signed by the party granting the waiver. A waiver by a party of a right under or breach of, this Contract shall not be construed to operate as a waiver of any other or successive rights under, or breaches of, this Contract.

The Company's obligations to perform and complete the Work in accordance with the Contract shall be absolute. None of the following will constitute a waiver of any of JEA's rights under the Contract: approval of payments, including final payment; Certificate of Contract Completion; any use of the Work by JEA; nor any correction of faulty or defective work by JEA.

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

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

### **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).

#### **4.2. SUPPLEMENTAL DOCUMENTS (APPENDIX C)**