**SOLICITATION**

**FOR PARTICIPATION IN AN INVITATION TO BID FOR THE SUPPLY OF ASCO ITEMS FOR JEA INVENTORY STOCK**

**SOLICITATION NUMBER 96565**

**RESPONSES DUE NO LATER THAN 12:00 P.M. EST OF MARCH 21, 2019**
**EMAIL RESPONSES TO LINDA RICHARDSON @ RICHLS@JEA.COM**

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**Solicitation**

## 1. SOLICITATION

### 1.1. INVITATION

#### 1.1.1. SCOPE OF WORK

The purpose of this Invitation to Bid (IFB) is to evaluate and select a vendor(s) that can supply ASCO Items for JEA's Inventory Stock (the "Work").

JEA intends to award a Contract to the vendor with the lowest Unit Price, but reserves the right to award to multiple vendors if it is in the best interest of JEA to do so. All the technical requirements (manufacturers, materials and ratings) are provided in Appendix A – Technical Specifications and Appendix B – Response Workbook and Form, attached hereto.

The vendor(s) awarded a Contract will be required to comply with the reporting requirements stated below. The reports are expected to be provided in an Excel format and emailed to the JEA Representative. The reports will be utilized to determine compliance with delivery and lead times. Failure to comply with the delivery and lead times could result in JEA terminating the Contract for Default.

The required reports are as follows:

All Orders Status – This report must be provided weekly and include the Purchase Order (PO) and Blanket Release number, item ID, order quantity, date order received, expected delivery date, actual delivery date, name of JEA employee who signed for delivery, and any additional comments regarding the orders.

#### 1.1.2. QUESTIONS

All questions must be submitted in writing to the JEA Buyer listed below by MARCH 14TH 2019 JEA will do it best to answer all these questions within three (3) business days.

For Questions:

Buyer: **LINDA RICHARDSON**
E-mail: RICHLS@JEA.COM

#### 1.1.3. INVITATION-TO BID

You are invited to bid on the Solicitation noted below:

JEA Solicitation Title: ASCO ITEMS for JEA Inventory Stock

JEA Solicitation Number: 96565

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.

Bid Due Time: 12:00 P.M. - ALL LATE BIDS WILL NOT BE ACCEPTED. We will use the email date sent.

Bid Due Date: MARCH 21, 2019

All Bids must reference the JEA Solicitation title and number noted above. All Bids must be made on the appropriate Bid forms as specified within this Solicitation, and emailed to LINDA RICHARDSON RICHLS@JEA.COM

Bids are due by the time and on the date listed above. ALL LATE BIDS FOR WHATEVER REASON WILL BE REJECTED.

## 1.2. SPECIAL INSTRUCTIONS

### 1.2.1. MINIMUM QUALIFICATIONS FOR SUBMISSION OF A BID

The Bidder shall have the following Minimum Qualifications to be considered eligible to submit a Bid in response to this IFB. A Bidder not meeting all of the following criteria stated below will have their Bid rejected:

- The Bidder must be the manufacturer or authorized distributor of the items listed in the Appendix B - Bid Workbook.

### 1.2.2. 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 shall be rejected.

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

- Bid Form (including acknowledgements of all addenda) - This form can be found in Appendix B
- Bid Workbook - This form can be found in Appendix B (Include Excel format on the electronic submittal). Any item that is bid must include what manufacturer and manufacturer part number that will be supplied to JEA.

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

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.

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

## 1.3. GENERAL INSTRUCTIONS

### 1.3.1. 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 Unit Prices represents the lowest cost to. JEA reserves the right to award multiple Contracts if there are more than one vendor who meets or exceeds the Minimum Qualifications set forth in this Solicitation, and it would be in the best interest of JEA to do so. JEA will use the Bidder's Unit Prices stated on the Bid Form when making price comparisons for Award purposes. **Additionally, the Bidder shall include the price for travel, shipment of materials and equipment in its pricing shown on the Bid Form or Bid Workbook unless otherwise stated herein. The shipment of all materials shall be F.O.B. Destination.**

### 1.3.2. SUBMITTING THE BID FORM

The Bidder shall submit one original of all the Bid Documents and email the documents to LINDA RICHARDSON RICHLS@JEA.COM
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### 1.3.3. COMPLETING THE BID DOCUMENTS (UNIT PRICE)

Bidders shall complete and submit the all the Bid Documents with responses typewritten or written in ink. ALL BIDS SUBMITTED LATE TO THE JEA BID OFFICE WILL BE REJECTED.

Any blanks left on the Bid Documents and/or associated Bid Workbook, which are not populated with a Bid Price will be considered to a be a "No Bid" for that specific item. The Bidder, or its authorized agent or officer of the company, shall sign the Bid Form. Failure to sign the Bid Documents may disqualify the Bid.

Erasures, interlineations or other corrections on the Bid Documents shall be authenticated by affixing in the margin, immediately opposite the correction, the handwritten signature of the person executing the Bid Documents. Failure to authenticate changes may disqualify the Bid.

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

### 1.3.4. CALCULATION OF THE BID PRICE

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

### 1.3.5. 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 any and all licenses, permits, certifications, insurance, bonds and other credentials including, but not limited to, contractor's license and occupational licenses necessary to perform the Work. The 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.

### 1.3.6. ETHICS (IFB)

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 sub supplier, 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. 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.

### 1.3.7. MATHEMATICAL ERRORS

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

### 1.3.8. MODIFICATION OR WITHDRAWAL OF BIDS

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

### 1.3.1. PROTEST OF BIDDING AND AWARD PROCESS

Companies shall file any protests regarding this Solicitation in writing, in accordance with the JEA Purchasing Code, as amended from time to time. The JEA Purchasing Code is available online at jea.com.

### 1.3.2. 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. JEA will post a summary of the Bid results immediately after the Bid opening.

## 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.

### 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. 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.

### 2.2.3. ANNIVERSARY DATE

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

### 2.2.4. AWARD

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

### 2.2.5. 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".

### 2.2.6. 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.

### 2.2.7. BID PRICE

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

### 2.2.8. BIDDER OR PROPOSER

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

### 2.2.9. 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.

### 2.2.10. 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.

### 2.2.11. COMPANY REPRESENTATIVE

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

### 2.2.12. 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.

### 2.2.13. 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.

### 2.2.14. 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.

### 2.2.15. 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.

### 2.2.16. 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.

### 2.2.17. 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.

### 2.2.18. DELIVERY

The time at which JEA receives the Work on site and gives written Acceptance. If Company does not receive written Acceptance within 90 days after JEA's receipt of the work at JEA's site, then the Work will automatically be considered Accepted.

### 2.2.19. 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.

### 2.2.20. 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, and any other supporting documentation required by the Contract Documents.

### 2.2.21. JEA

JEA on its own behalf.

### 2.2.22. JEA REPRESENTATIVES

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

### 2.2.23. PURCHASE ORDER (PO)

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

### 2.2.24. QUALITY ASSURANCE

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

### 2.2.25. QUALITY CONTROL

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

### 2.2.26. 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.

### 2.2.27. 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.

### 2.2.28. TERM

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

### 2.2.29. 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.

### 2.2.30. 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
- Executed Contract Documents
- Exhibits to 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 - UPON DELIVERY AND INVOICE

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

### 2.4.2. 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.

### 2.4.3. 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. 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.

### 2.4.5. 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. PRICE ADJUSTMENT - ANNUAL

Contract prices (also referred to as “Unit Prices”) for the Work will remain firm fixed for the first twelve (12) months. For the purposes of this clause the Anniversary date is, the date in which is twelve (12) months after the effective date of the Contract, and each date which is twelve (12) months after an Anniversary Date that occurs while the Contract is in effect.

Thirty (30) days prior to the Anniversary Date, the Company or JEA may request an increase or decrease of the Unit Prices by a percentage equal to the then applicable annual percentage change in the Consumer Price Index (CPI).

If Company fails to request a price adjustment within thirty (30) days in advance of the Anniversary Date, the Company will be denied the increase or decrease, and Company will have to request the adjustment again the following year in accordance with this clause.

When a timely adjustment request is received, JEA will adjust the Unit Prices based on the applicable annual percentage change in the CPI. Each annual price adjustment will be recognized thirty (30) days after the Anniversary Date. No retroactive price adjustments will be allowed.

All requested price adjustments for the Contract shall be in accordance with the Consumer Price Index for all urban consumers for all US City Average published monthly by the U.S. Department of Labor, Bureau of Labor Statistics. The index used will be the unadjusted average mean percent change for the previous twelve (12) months beginning with the last published index month closest to the Anniversary Date compared to the previous 12-month mean average using the published index.

JEA requests the Company to supply JEA with updated Unit Prices for its review and approval based upon the price adjustment methodology described herein.

In the event the applicable price index publication ceases, the Company and JEA shall mutually agree on replacement indexes. If the Company and JEA fail to agree on replacement indexes, the Contract may be mutually terminated if in the best interest of JEA.

Price Increase/Decrease Formula = ((Latest 12 month BLS Index Average – Base 12 month BLS Index Average)/ Base 12 month BLS Index Average)) X 100 = Percent Change (%) (Truncated at the nearest hundredth of a percent)

Example:
Contract Effective date of 3/22/2015; Contract Expiration Date 3/21/2018
Term: Three year (3) initial Term, with two (2) additional one (1) year renewal options.

Company would submit their price adjustment request to JEA by 2/21/2016.

Price Adjustment Calculation Methodology: Using the CPI table below, the figures used to calculate the year two (2) price adjustment would be the Base 12 month BLS Index Average (i.e., the Mean Average of February 2014 through February 2015 CPI reported figures), which would then be compared to the latest 12 month BLS Index Average (i.e., the Mean Average of February 2015 through February 2016 CPI figures) to determine the applicable percent price adjustment. The percent price adjustment will then be applied to each Unit Price.

Price Increase/Decrease Formula = ((Latest 12 month BLS Index Mean Average – Base 12 month BLS Index Mean Average)/ Base 12 month BLS Index Mean Average)) X 100 = Percent Change (%) (Truncated at the thousandth of a percent)

Applying above formula to this example:
Latest 12 month BLS Index Average (February 2015-January 2016) = (234.722 + 236.119 + 236.599 + 237.805 + 238.638 + 238.654+ 238.316 + 237.945 + 237.838 + 237.336 + 236.525 + 236.916) / 12 = 237.284 (Truncated at the thousandth)

Base 12 month BLS Index Average (February 2014-January 2015) = (234.781 + 236.293 + 237.072 + 237.900 + 238.343 + 238.250 + 237.852 + 238.031 + 237.433 + 236.151 + 234.812 + 233.707)) / 12 = 236.719 (Truncated at the thousandth)

Percent Change = ((237.284 – 236.719) /236.719)) x 100 = .239% (Truncated at the thousandth)

Original Item price: $4.89
New Unit Price Adjustment: $4.89*.239% = $0.01 (Truncated to nearest cent)
New Unit Price: $4.89 + $0.01 = $4.90

All Contract Pricing would increase by .239% effective on 4/21/2018.

**CPI-All Urban Consumers (Current Series)**

**Series Id:** CUUR0000SA0
Not Seasonally Adjusted
**Series Title:** All items in U.S. city average, all urban consumers, not seasonally adjusted
**Area:** U.S. city average
**Item:** All items
**Base Period:** 1982-84=100

Top of Form
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| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | HALF1 | HALF2 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **2008** | 211.080 | 211.693 | 213.528 | 214.823 | 216.632 | 218.815 | 219.964 | 219.086 | 218.783 | 216.573 | 212.425 | 210.228 | 214.429 | 216.177 |
| **2009** | 211.143 | 212.193 | 212.709 | 213.240 | 213.856 | 215.693 | 215.351 | 215.834 | 215.969 | 216.177 | 216.330 | 215.949 | 213.139 | 215.935 |
| **2010** | 216.687 | 216.741 | 217.631 | 218.009 | 218.178 | 217.965 | 218.011 | 218.312 | 218.439 | 218.711 | 218.803 | 219.179 | 217.535 | 218.576 |
| **2011** | 220.223 | 221.309 | 223.467 | 224.906 | 225.964 | 225.722 | 225.922 | 226.545 | 226.889 | 226.421 | 226.230 | 225.672 | 223.598 | 226.280 |
| **2012** | 226.665 | 227.663 | 229.392 | 230.085 | 229.815 | 229.478 | 229.104 | 230.379 | 231.407 | 231.317 | 230.221 | 229.601 | 228.850 | 230.338 |
| **2013** | 230.280 | 232.166 | 232.773 | 232.531 | 232.945 | 233.504 | 233.596 | 233.877 | 234.149 | 233.546 | 233.069 | 233.049 | 232.366 | 233.548 |
| **2014** | 233.916 | 234.781 | 236.293 | 237.072 | 237.900 | 238.343 | 238.250 | 237.852 | 238.031 | 237.433 | 236.151 | 234.812 | 236.384 | 237.088 |
| **2015** | 233.707 | 234.722 | 236.119 | 236.599 | 237.805 | 238.638 | 238.654 | 238.316 | 237.945 | 237.838 | 237.336 | 236.525 | 236.265 | 237.769 |
| **2016** | 236.916 | 237.111 | 238.132 | 239.261 | 240.229 | 241.018 | 240.628 | 240.849 | 241.428 | 241.729 | 241.353 | 241.432 | 238.778 | 241.237 |
| **2017** | 242.839 | 243.603 | 243.801 | 244.524 | 244.733 | 244.955 | 244.786 | 245.519 | 246.819 | 246.663 | 246.669 | 246.524 | 244.076 | 246.163 |
| **2018** | 247.867 | 248.991 | | | | | | | | | | | | |

## 2.5. ACCEPTANCE

### 2.5.1. 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.

## 2.6. REPORTING REQUIREMENTS

### 2.6.1. REPORTING

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

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

Where the Contract calls for reports to be submitted by Company, such reports shall be electronic format submitted via email to the Contract Administrator.

## 2.7. WARRANTIES AND REPRESENTATIONS

### 2.7.1. QUALITY CONTROL (GOODS)

All products provided to JEA hereunder shall be manufactured and supplied in accordance with the Company's formulations, raw materials, manufacturing processes, and quality control standards that are in effect at the date of this Contract. Company shall provide JEA with sixty (60) days prior written notice in the event of any change in said formulations, raw materials, manufacturing processes, or quality control standards. In the event JEA in its sole judgment deems any change to be material JEA at may: (a.) cause Company to requalify the product; or (b.) terminate this Contract.

### 2.7.2. WARRANTY (GOODS)

The Company warrants that the goods furnished by the Company shall be free from defects in material and fabrication for a period of not less than three (3) years from the date of Delivery at the JEA site.

THE FOREGOING EXPRESSED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES. COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. JEA'S REMEDY FOR BREACH OF ANY WARRANTY MADE BY COMPANY IN CONNECTION WITH THE PURCHASE OF ANY GOODS HEREUNDER, shall be the right to require Company to repair or, at JEA's option, to replace, any defective goods. Company shall not be responsible for labor associated with disassembly, installation or replacement of goods unless the Company performed the original disassembly, installation or replacement of those goods.

JEA'S REMEDY FOR THE BREACH OF ANY WARRANTY MADE BY COMPANY IN CONNECTION WITH THE PURCHASE OF ANY SERVICES HEREUNDER, shall be to require the Company to correct such Defect at Company's sole expense.

In the event that JEA determines the repair or replacement of the defective goods or the correction of the defective services is an ineffective remedy, JEA'S remedy is the right to recover the amount paid to Company for the defective goods or services. JEA must return the defective goods to Company, if so requested by Company. Written notice specifying the particular defect in the goods or services must be given promptly by JEA to the Company.

If the 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.

### 2.7.3. PRODUCTION CAPACITY

During the Term of this Contract, the Company shall ensure that it maintains adequate production capacity and inventory to satisfy JEA's requirements. Additionally, the Company shall identify inventory items that are in high demand and take appropriate steps to minimize delivery lead time in the event of demand spikes or emergency requirements.

## 2.8. INSURANCE, INDEMNITY AND RISK OF LOSS

### 2.8.1. INSURANCE

**INSURANCE REQUIREMENTS**

Before starting and until acceptance of the Work by JEA, and without further limiting its liability under the Contract, Company shall procure and maintain at its sole expense, insurance of the types and in the minimum amounts stated below:

Workers' Compensation

Florida Statutory coverage and Employer's Liability (including appropriate Federal Acts); Insurance Limits: Statutory Limits (Workers' Compensation) $500,000 each accident (Employer's Liability).

Commercial General Liability

Premises-Operations, Products-Completed Operations, Contractual Liability, Independent Contractors, Broad Form Property Damage, Explosion, Collapse and Underground, Hazards (XCU Coverage) as appropriate; Insurance Limits: $1,000,000 each occurrence, $2,000,000 annual aggregate for bodily injury and property damage, combined single limit.

Automobile Liability

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

Excess or Umbrella Liability

**(This is additional coverage and limits above the following primary insurance: Employer's Liability, Commercial General Liability, and Automobile Liability);** Insurance Limits: $2,000,000 each occurrence and annual aggregate.

Company's Commercial General Liability and Excess or Umbrella Liability policies shall be effective for two years after Work is complete. The Indemnification provision provided herein is separate and is not limited by the type of insurance or insurance amounts stated above.

Company shall specify JEA as an additional insured for all coverage except Workers' Compensation and Employer's Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by JEA. Company shall include a Waiver of Subrogation on all required insurance in favor of JEA, its board members, officers, employees, agents, successors and assigns.

Such insurance shall be written by a company or companies licensed to do business in the State of Florida and satisfactory to JEA. Prior to commencing any Work under this Contract, certificates evidencing the maintenance of the insurance shall be furnished to JEA for approval. Company's and its subcontractors' Certificates of Insurance shall be mailed to JEA (Attn. Procurement Services), Customer Care Center, 6th Floor, 21 West Church Street, Jacksonville, FL 32202-3139.

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

Any subcontractors of Company shall procure and maintain the insurance required of Company hereunder during the life of the subcontracts. Subcontractors' insurance may be either by separate coverage or by endorsement under insurance provided by Company. Company shall submit subcontractors' certificates of insurance to JEA prior to allowing Subcontractors to perform Work on JEA's job sites.

### 2.8.2. INDEMNIFICATION

### 2.8.3. TITLE AND RISK OF LOSS

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

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

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

### 2.8.4. 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.

## 2.9. TERM AND TERMINATION

### 2.9.1. TERM

#### 2.9.1.1. TERM OF CONTRACT-DEFINED DATES

The Contract shall commence on the effective date, and continue and remain in full force and effect as to all its terms, conditions and provisions as set forth herein for three (3) years, (the "Initial Term"), or until the Contract's Maximum Indebtedness is reached, whichever occurs first.

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

### 2.9.2. 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.

### 2.9.3. TERMINATION FOR DEFAULT

JEA may give the Company written notice to discontinue all Work under the Contract in the event that:

- The Company assigns or subcontracts the Work without prior written permission;
- Any petition is filed or any proceeding is commenced by or against the Company for relief under any bankruptcy or insolvency laws;
- A receiver is appointed for the Company's properties or the Company commits any act of insolvency (however evidenced);
- The Company makes an assignment for the benefit of creditors;
- The Company suspends the operation of a substantial portion of its business;
- The Company suspends the whole or any part of the Work to the extent that it impacts the Company's ability to meet the Work schedule, or the Company abandons the whole or any part of the Work;

- The Company, at any time, violates any of the conditions or provisions of the Contract Documents, or the Company fails to perform as specified in the Contract Documents, or the Company is not complying with the Contract Documents;
- The Company attempts to willfully impose upon JEA items or workmanship that are, in JEA's sole opinion, defective or of unacceptable quality;
- The Company breaches any of the representations or warranties;
- The Company is determined, in JEA's sole opinion, to have misrepresented the utilization of funds or misappropriate property belonging to JEA; or
- Any material change in the financial or business condition of the Company.

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

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

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

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

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

## 2.10. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTATION

### 2.10.1. 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.

### 2.10.2. PUBLICITY AND ADVERTISING

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

## 2.11. LABOR

### 2.11.1. NONDISCRIMINATION

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

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

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

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

### 2.11.2. 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 of 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 it determination that the redacted portions of the information are not subject to disclosure.

**Indemnification for Redacted Information.**

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

**Public Records Clause for Service Contracts.**

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

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

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

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

**2.11.3. LEGAL WORKFORCE**

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

### 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 January 1, 2008, or to contracts that have been competitively procured. With respect to this subsection a contract is competitively procured if it has been obtained through a sealed low bid award. A "substantial and decision-making role" shall include duties and/or responsibilities that are collectively associated with: (i) approving solicitation or payment documents; (ii) evaluating formal bids and proposals; and (iii) approving and/or issuing award recommendations for JEA Awards Committee approval. The contract of any person or business entity who hires or contracts for services with any officer or employee prohibited from entering into said relationship shall be voidable at the pleasure of JEA. This prohibition shall not apply to any former officer or employee after two years from cessation from JEA employment.

## 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. 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.

### 2.12.3. SAFETY DATA SHEETS

Safety Data Sheets must accompany shipments of any items containing toxic substances listed in Chapter 442, Florida Statutes.

### 2.12.4. RETURNED OR UNUSED MATERIALS

To the extent that items can be resold by the Company, the Company agrees to take back for full credit or monetary refund to JEA all excess items purchased pursuant to this Contract or items that may be added to this Contract in the future.

### 2.12.5. SAFETY AND PROTECTION PRECAUTIONS

The Company shall comply with all applicable federal, state and local laws, ordinances, all JEA procedures and policies including any orders of any public body having jurisdiction for the safety of persons or protection of property. The Company understands and agrees that a violation of any provision of this clause is grounds for a Termination for Default, with no requirement to provide Company with a notice to cure. Additionally, the Company shall be responsible for all JEA damages associated with such termination.

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

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

### 2.12.6. SHIPPING - FOB DESTINATION

Items are purchased F.O.B. destination. Freight to be included in unit pricing. The Company shall ensure the following:

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

- Furnish a delivery schedule and designate the mode of delivering carrier; and
- Pay and bear all charges to the specified point of delivery.

### 2.12.7. SHIPPING AND PACKING INSTRUCTIONS

Insofar as transportation conditions will allow, the Company shall ship items complete and ready for installation or storage as appropriate for the items being supplied.

As applicable, should the size of the items prevent shipment fully assembled, the Company will separate the items into components to allow safe and convenient transportation.

The Contract Administrator's receipt or taking delivery of any items, in whole or in part, will not be deemed a waiver of any right, claim or remedy or Acceptance of JEA under the Contract or otherwise.

The Company shall pack, brace and load all items in such a manner as to prevent physical damage and damage from marine and climatic conditions. The Company shall identify any item that requires special precautions during shipping and storage by clearly marking necessary precautions on the outside of the shipping container and including specific instructions in a durable envelope attached to the container and suitably labeled.

The Company shall ship welding rods in sealed metal containers that are properly identified.

The Company shall clearly and indelibly mark all packages, boxes, crates, bundles, and unpackaged components with the necessary shipping information. The Company shall apply the markings using a method suitable to the type of product and packaging involved. The Company's markings shall indicate: the destination address, the JEA Purchase Order (PO)number or JEA Blanket Purchase Agreement (BPA) number and the Company's name; the material code numbers and other identification as specified by the PO or BPA; the Company's shipment identification number, numbering of packages, boxes, crates, components, or assemblies of the shipment; and the mass and sizes of each major component or assembly (if the lifting points are critical, they shall be clearly marked and identified). Where JEA marks or serial numbers are included as tags on the items being shipped, the Company shall also print the JEA marks or serial numbers on the shipping documents. A copy of the packing slip shall be mailed to the delivery address prior to shipping the items.

The Company shall enclose a detailed packing slip, listing each separate item, in a waterproof envelope, which shall be firmly attached to each shipping container. When conformance to an ISO Quality Program Standard is required, each packing slip shall include the following certification: "The equipment listed herein has been inspected by the Company and is in conformance with the Contract requirements and approved for shipment." Such certification shall be endorsed with the signature and the title of an authorized representative of the Company's Quality Control. For instruments, the Company shall also enclose a list showing JEA's mark numbers.

The Company shall be responsible for identifying opportunities and implementing practices to reduce or eliminate packaging and shall properly dispose of all packaging.

The Company shall seal all openings in equipment such as vessels, valves and pumps. Where necessary, the Company shall provide skids, hauling eyes, jacking plates, and sling hooks for unloading and field assembly. The Company shall notify JEA prior to shipping where pallets are required; JEA will provide pallets to the Company for shipping purposes. The Company will be liable for any pallets lost or damaged by the Company.

### 2.12.8. WORKMANSHIP

The Company shall perform all Work in a safe and professional manner, so as to render a neat and uniform appearance. The Company shall handle all material in such a way as to preserve its finish and protective coatings

from damage. General arrangement shall be in accordance with JEA Distribution Construction Standards and shall be satisfactory to the Contract Administrator.

### 2.12.9. DELIVERY TIMES AND LOCATION

Delivery Location: JEA Storeroom, 6674 Commonwealth Avenue, Jacksonville, FL 32254.
Delivery Times: Normal material receiving hours for CSC are 7:30 AM - 3:00 PM Monday through Thursday with the exception of JEA observed holidays. Vendor is to make freight carrier aware that delivery vehicles will not be allowed to park outside a JEA facility prior to the established delivery time. No Friday deliveries.

For accurate delivery and payment, all invoices and packing slips MUST contain the Purchase Order (PO) number, Release number (if applicable), Line number, Item ID, and Shipment Location.
Shipments with an incomplete packing slip may be rejected.

### 2.12.10. EXPEDITING SHIPMENT OR PRODUCTION OF GOODS

The Company shall allow the JEA Representative access to the Company's plants and to plants of the Company's suppliers to expedite production and shipment of goods. The Company shall, upon receipt of timely request, furnish schedules and progress reports for JEA use in expediting.

### 2.12.11. JEA CHANGES TO ORDER

JEA shall have the right to make changes to the Work at any time and the Company agrees to accept such changes. In the event such changes result in decreased or additional costs, JEA shall make an equitable adjustment in the purchase price provided the Company itemizes for JEA any additional costs.

### 2.12.12. MATERIAL SAFETY DATA SHEETS (MSDS)

Material Safety Data Sheets (MSDS) must accompany shipments of any items containing toxic substances listed in Chapter 442, Florida Statutes.

### 2.12.13. OVERSHIPMENTS

JEA will reject any items that are attempted to be delivered but that JEA did not order, including excess quantities. The Company shall pay the cost of handling, packaging and transporting such equipment for return.

## 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. MISCELLANEOUS PROVISIONS

### 2.14.1. AMBIGUOUS CONTRACT PROVISIONS

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

### 2.14.2. AMENDMENTS

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

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

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

### 2.14.4. CUMULATIVE REMEDIES

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

### 2.14.5. DISPUTES

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

### 2.14.6. 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.

### 2.14.7. 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.

### 2.14.8. HEADINGS

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

### 2.14.9. LANGUAGE AND MEASUREMENTS

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

### 2.14.10. MEETINGS AND PUBLIC HEARINGS

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

### 2.14.11. NONEXCLUSIVE

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

### 2.14.12. 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.

### 2.14.13. 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.

### 2.14.14. RELATIONSHIP OF THE PARTIES

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

### 2.14.15. SUBCONTRACTING OR ASSIGNING OF CONTRACT

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

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

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

### 2.14.16. SURVIVAL

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

### 2.14.17. TIME AND DATE

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

### 2.14.18. TIME OF ESSENCE

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

### 2.14.19. USE OF JEA CONTRACTS BY THE CITY OF JACKSONVILLE

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

### 2.14.20. WAIVER OF CLAIMS

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

The Company's obligations to perform and complete the Work in accordance with the Contract shall be absolute. None of the following will constitute a waiver of any of JEA's rights under the Contract: approval of payments,

including final payment; Certificate of Contract Completion; any use of the Work by JEA; nor any correction of faulty or defective work by JEA.

### 2.14.21. UNIFORM COMMERCIAL CODE

This is a Contract for the sale of goods and shall be construed and enforced in accordance with Chapter 672, Florida Statutes, as the same may be amended from time to time.

### 2.14.22. MERGER

During the term of this Contract and any extension thereof any invoice that may be issued by the Company to JEA shall be issued in accordance with and subject solely to the terms and conditions contained herein, notwithstanding any language to the contrary contained in such invoices. Any invoice issued during the Term and any extension thereof shall not modify or amend this Contract, unless such invoice is intended to modify or amend this Contract and does so in accordance with the terms of this Contract.

### 2.14.23. 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; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Company shall, at all times during the term of this Contract and for a period of five years after the completion of this Contract, maintain such records, together with such supporting or underlying documents and materials.

Inspection /Audit of Records

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

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

ensure JEA has these rights with Company's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Company and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Company's obligations to JEA.

Cost of Audits

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

Billing Adjustments and Recoveries

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

Failure to Comply

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

### 2.15. CONTINUING 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.

## 3. TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK

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

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

## 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.

# Appendix A

TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF WORK

**NONE**