

**INVITATION TO NEGOTIATE (ITN)
FOR PARTICIPATION IN
EMPLOYEE ASSISTANCE PROGRAM
FOR**



JACKSONVILLE, FL

JEA SOLICITATION NUMBER 96869

**RESPONSE DUE DATE: APRIL 5, 2019
RESPONSE DUE TIME: 12:00 PM EST**

**RESPONSE EMAILED TO:
SHEREA HARPER AT
HARPSB@JEA.COM**

JEA PROCUREMENT SERVICES

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Solicitation

1. INTENT TO NEGOTIATE

1.1. INVITATION

1.1.1. SCOPE OF WORK/SERVICES (ITN)

The purpose of this Invitation to Negotiate (the "ITN") is to evaluate and select a vendor that can provide comprehensive Employee Assistance Program (EAP) services at the best value to JEA (the "Work" or "Services"). "Best Value" means the highest overall value to JEA with regards to pricing, quality, design, and performance.

JEA is seeking a provider for comprehensive internal and external Employee Assistance Program (EAP) services providing up to 10 sessions per year to JEA employees and family members. The program shall be designed to offer free assessment and crisis counseling for a wide variety of problems which may be affecting an employee's job performance. These services will include counseling in areas of alcoholism/substance abuse, tobacco cessation, family difficulties, stress and stress related problems, gambling, monetary concerns, financial problems, family violence and other personal difficulties that affect our employees. Additional information can be found in Appendix A – Technical Specifications.

- Internal EAP services to include but not limited to the following:
 - Individual employee, family assessments.
 - Individual employee, family counseling up to 10 sessions per life event.
 - On-site workplace assistance to any employee group or department requiring counseling or intervention services due to a workplace traumatic event. EAP vendor to coordinate with JEA security.
 - Supervisor consultations for proactive/positive employee productivity outcomes.
 - Job coaching for supervisors and managers.
 - Mediation services.
 - Provide counseling for the mandatory supervisor referral process for attendance issues.
 - Provide counseling for performance, safety, personal, and relationship issues.
 - High-risk client case management.
 - Employee and family crisis interventions.
 - Critical incident stress debriefing and counseling on site.
 - Threat of workplace violence assessments.
 - Provide unlimited help with issues including but not limited to:
 - Stress/Depression/Anxiety
 - Relationship issues/Divorce
 - Job stress, work conflicts
 - Family and Parenting issues
 - Anger, Grief and Loss
 - Addiction, eating disorders, mental illness

- External EAP services to include but not limited to the following:
 - A crisis hotline phone service with the ability to provide 24 hour/7 day a week telephone access and live response to that access line. Emergency calls shall be responded to within two hours of submission; and calls other than emergency will be responded to the next day.
 - JEA employee and family counseling up to 10 sessions per life event. At many locations within Duval County and the surrounding areas including Baker, Clay, St. Johns and Nassau counties.
- Provide Work/Life Balance services including but not limited to:
 - Childcare Service references
 - Legal Services
 - Eldercare Services
 - Financial Services
- Provide the following trainings:
 - Drug and alcohol awareness training (on job site) to meet DOT and safety-sensitive employee training requirements including federal mandated DOT Substance Abuse Professional (SAP) services.
 - DOT drug and alcohol training for drivers and supervisors.
 - As requested, provide onsite training including – EAP overview, team building, conflict resolution, effective communications, and supervisory skills.
 - Provide wellness training and events onsite to include tobacco cessation 4-week program (minimum class size of two), stress and healthy weight management, depression, and health fair participation.
 - Provide training and wellness topics to include time management, work and family balancing, anger management, assertive skills, self-esteem and financial fitness.
- Provide quarterly utilization reports including trend analysis, present issues and demographic data.
- Upon request, the company shall provide documentation of staff having a Master's degree in counseling with a professional license as a mental health counselor, social worker, marriage and family therapist, or psychologist. The company shall also be able to provide documentation that they have trained and experienced personnel in violence and treat assessment on staff for this contract.
- Periodically solicit feedback from customers via a survey which scores Vendor services. The results of the survey must be made available bi-annually to JEA for review.
- Provide printed brochures for services provided upon request that includes, but not limited to, the bullets listed in the Technical Specifications – Appendix A.

1.1.2. BACKGROUND

JEA owns, operates and manages the electric system established by the City of Jacksonville, Florida in 1895. In June 1997, JEA also assumed operation of the water and sewer system previously managed by the City. JEA is Florida's largest municipally owned utility and the seventh largest municipal in the United States.

1.1.3. INVITATION TO NEGOTIATE (ITN)

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

JEA ITN Title: EMPLOYEE ASSISTANCE PROGRAM (EAP)

JEA ITN Number: 96869

Response Due Time: 12:00 P.M. EST

Response Due Date: April 5, 2019

All Responses must reference the ITN Title and Number noted above. All Responses must be made on the appropriate forms as specified within the ITN and emailed to Sherea Harper at HARPSB@JEA.COM.

Responses are due by the time and on the date listed above. **ALL LATE RESPONSES FOR WHATEVER REASON WILL BE RETURNED UNOPENED.**

To obtain more information about this ITN:

Download a copy of the Solicitation, PDF quality drawings (if applicable), and any required forms at jea.com.

1.1.4. 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 will not be answered.

For Procurement Related Questions:

Buyer: SHEREA HARPER

E-mail: HARPSB@JEA.COM

For Technical Questions:

Contact: CARL BECKER
E-mail: BECKCR@JEA.COM

1.2. SPECIAL INSTRUCTIONS

1.2.1. MINIMUM QUALIFICATIONS FOR SUBMISSION (ITN)

Respondent shall have the following Minimum Qualifications to be considered eligible to submit a Response to this ITN. **A Minimum Qualification Form which is required to be submitted with the Response Form is provided in Appendix B of this ITN.**

It is the responsibility of the Respondent to ensure and certify that it meets the Minimum Qualifications stated below. A Respondent not meeting all of the following criteria will have their Response rejected:

- The Respondent shall provide three (3) successful contracts where the Company provided similar contracts within the last five (5) years ending February 28, 2019. At least one of these contracts must be in the state of Florida.
 - A similar contract is defined as providing comprehensive Employee Assistance Program (EAP) services for a company of at least 2,000 employees, as described in the scope of services. The contract references shall include the reference company name, contact person, phone number, email address, contract amount and a summary of the scope of work provided. JEA will contact and verify the contract references.
- The Respondent must have at least three (3) professionals on staff with a minimum of a Master's degree in counseling with a professional license in one of the following areas: mental health counselor, social worker, marriage and family therapist, or psychologist. (Provide details on the resumes).
- Respondent must have at least one (1) professional located in a local office within the Duval County area. (Provide local office address).
- Respondent must provide the name of the dedicated local team member for the EAP services contract. The dedicated local team member must be available and can get to JEA within two (2) hours in the event of an Emergency.

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

1.2.2. REQUIRED FORMS TO SUBMIT WITH RESPONSE

To submit a Response to this ITN, all of the following forms must be completed and submitted as part of the Response. The Respondent must obtain the required forms, other than the Response Form

and Minimum Qualification Form, by downloading them from JEA.com. If the Respondent fails to complete or fails to submit one or more of the following forms, the Response may be rejected.

The following forms are required to be submitted:

- Company's Response
- Minimum Qualifications Form - This form can be found in Appendix B of this Solicitation
- Response Form - This form can be found in Appendix B of this Solicitation

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

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

- Conflict of Interest Certificate Form - This form can be found on JEA.com
- List of Jacksonville Small and Emerging Businesses (JSEB) Certified Firms (if any) - This form can be found on JEA.com
- List of Subcontractors (if any) - This form can be found on JEA.com
- 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
- Non-Disclosure Agreement (NDA)

1.2.3. BASIS OF AWARD – HIGHEST EVALUATED RESPONSE

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

1.2.4. 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 execute Work items, if JEA determines that it is in its best interest to do so.

1.3. EVALUATION METHODOLOGY

1.3.1. EVALUATION AND NEGOTIATION PROCESS

A selection committee of one (1) or more individuals (hereinafter referred to as the "Selection Committee"), will be appointed by the Chief Procurement Officer (the "CPO"), or his designee, to review and evaluate each Response submitted. The CPO's office will distribute a copy of each

Response to each member of the Selection Committee, and the members of the Selection Committee will separately and independently evaluate and rank the Responses using the "Selection Criteria" as stated below in this ITN. JEA will use this ranking to develop the shortlist of companies in which to proceed with contract negotiations.

JE A reserves the right to Award a Contract based on the Selection Committee's initial evaluation of the Responses if JE A deems the Responses demonstrate adequate competition, compliance, and responsiveness to this ITN. If JE A determines the previously stated criteria have not been met, JE A intends to select up to four (4) Respondents (the "shortlist") with which to commence negotiations. JE A will finalize the shortlist and proceed with contract negotiations.

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

Respondents are cautioned to present the best possible pricing offer in their initial Responses. Failing to do so may result in a Respondent not making the shortlist, and not being allowed to proceed with contract negotiations. Additionally, the prices submitted with the initial Response cannot be increased during the ITN process.

Once a shortlist is developed, the CPO, or his designee, will appoint a negotiating team of one (1) or more individuals (the "Negotiating Team"). The Negotiation Team may be comprised of the same individuals as were members of the Selection Committee. JE A reserves the right to negotiate concurrently or separately with the shortlist Respondents. JE A reserves the right to seek clarifications, to request Response revisions, and to request any additional information deemed necessary for proper evaluation of the Responses. JE A reserves the right to incorporate value added services or industry standard innovations recommended by a Respondent into the Contract's scope of work.

A Respondent that is included on the shortlist may be required, at the sole option of JE A, to make an oral presentation or provide additional written clarifications to its Response. Oral presentations, hand-outs, and written clarifications will be attached to the Respondent's Response and will become a part of the Response as if originally submitted. The CPO or his designee will initiate and schedule a time and location for any presentations which may be required. As a part of the negotiation process, JE A may contact the references provided by the Respondent for the purpose of independently verifying the information provided in the Response, and to

assess the extent of success of the services associated with those references. JEA also reserves the right to contact references not provided by Respondents. Respondents may be requested to provide additional references. The results of the reference checking may influence the final negotiation, ranking, and Award recommendation.

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

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

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

The Award recommendation of the Negotiating Team will be based upon the scoring of the BAFOs and the Selection Criteria described below in this ITN. The Respondent with the highest score will be submitted to the CPO for approval.

In its sole discretion, JEA reserves the right to withdraw this ITN either before or after receiving Responses, to reject any and all Responses either in whole or in part, with or without cause, or to waive any ITN requirement informalities, minor irregularities, and deficiencies in any Response, and to determine such action is in the best interest of JEA. Issuance of this ITN in no way constitutes a commitment by JEA to make an Award or enter into a Contract.

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

JEA will use the "Selection Criteria" listed below to evaluate the Responses. JEA may make its Award decision based solely upon the information submitted in the Response. JEA may also choose to have one or more Respondent make presentations to representatives of JEA. It is always in the best interest of the Respondent to provide informative, concise, well-organized

technical and business information relative to the Work, in both the initial submittal of its Response and in any subsequent submittals. **Please note, JEA may reject Responses that request material changes or take exceptions to JEA commercial terms and conditions.** Material changes to the commercial terms and conditions can only be made by JEA prior to opening of the Response.

Responses will be scored and ranked by a committee of one (1) to Five (5) evaluators consisting of JEA's staff. Each evaluator will individually score the Responses using the evaluation matrix attached to this Solicitation. Using these scores, each evaluator will rank the Responses using "1" for the Response receiving the highest number of points from the matrix. Responses with an equal number of points will receive the same numerical ranking. JEA will total the numerical rankings for each Respondent and consider the Response with the lowest total to be the most highly qualified Response. Any tie will be broken using the total of the matrix scores of all evaluators.

1.4. SELECTION CRITERIA

1.4.1. QUOTATION OF RATES (30 Points)

The Respondent shall provide a schedule of rates for the Contract by completing the enclosed Proposal Form. **Respondent shall provide a monthly sum that meets the technical specifications for approximately 2,000 employees. All premiums, costs, fees or remuneration for the placement of this plan should be Net of Commissions.** These rates shall include all profit, travel, taxes, benefits, and all other overhead items. ANY MODIFICATIONS, EXCEPTIONS, OR OBJECTIONS CONTAINED WITHIN THE RESPONSE FORM SHALL SUBJECT THE RESPONSE TO DISQUALIFICATION.

Implementation Fee:

\$ _____

Per Employee Per Month (PEPM) EAP Service Fee:

\$ _____

Other EAP Fees:

\$ _____

Monthly Total for EAP Services

\$ _____

Annual Total for EAP Services

\$ _____

1.4.2. FINANCIAL RESPONSIBILITY (5 POINTS)

At minimum, Respondent shall provide the following information:

- Form of business (i.e., proprietorship, partnership, corporation);
- Years in business.

1.4.3. PROFESSIONAL EXPERIENCE (20 POINTS)

Respondent shall provide three (3) resumes of the professionals on staff with a minimum of a Master's degree in counseling with a professional license as a mental health counselor, social worker, marriage and family therapist, or psychologist that will be assigned to the JEA engagement. Each resume shall identify the member's role as stated above. At a minimum, the resumes shall present the employee's name, title, location, and years of service with the Company, applicable professional registrations, education, and work experience.

The resumes shall be no more than two (2) pages in length. If a multiple page resume is submitted, only the information contained on the first two (2) pages will be evaluated by JEA. The total score for this section will be an average of all resumes submitted. Additionally, no more than one (1) resume per team member will be evaluated.

1.4.4. PAST PERFORMANCE/COMPANY EXPERIENCE (15 POINTS)

The three (3) customer references provided in the Minimum Qualifications section of this ITN will be scored for points in this section.

1.4.5. ABILITY TO DESIGN AN APPROACH AND WORK PLAN TO MEET THE PROJECT REQUIREMENTS (30 POINTS)

Describe in your own format your firm's approach in providing the services described in the Scope of Services. Describe the approach of how your firm will manage the project, ensure timely completion of the scope of services and accomplish required objectives within the project schedule.

In addition provide the following information:

- The Respondent shall provide a comprehensive resource plan and schedule, including an overview of resources that will be assigned, including their qualifications and experience. This plan shall provide details about staffing levels, location of offices and response times.
- The Respondent shall provide a description of the employee assistance program approach for this project and include how it plans to satisfy the functional and technical requirements of this contract.
- Describe the company's experience and expertise in addressing domestic, family and interpersonal violence.
- Summarize the experience and education of the violence and threat assessment experts that will be assigned to JEA.

- Describe the process of collaborating with other agencies for incidents of domestic and interpersonal violence.
- Explain the company's EAP policies and protocols including staff training and the referral process mechanisms.
- Describe a detailed description of service and training programs offered as specified in Appendix A – Technical Specifications.

Please limit submittals for these criteria to a maximum of five (5) pages. Information provided on pages from submittals exceeding five (5) pages will not be considered.

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

It is at the Respondent's option as to whether it chooses to subcontract to a JSEB firm. JEA encourages the use of JSEB qualified firms; however, the Respondent 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. 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 Respondent 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 the Respondent shall procure and maintain the insurance required of the Respondent hereunder during the life of the subcontracts. Subcontractors' insurance may either be by separate coverage or by endorsement under insurance provided by the Respondent. 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. The Respondent shall submit subcontractors' Certificates of Insurance to JEA prior to allowing subcontractors to perform Work on JEA's job sites.

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

Rita Scott
JSEB Manager
JEA
scotrl@jea.com

1.6. TIE

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

1.7. GENERAL INSTRUCTIONS TO RESPONDENTS

1.7.1. SUBMITTING THE RESPONSE

The Respondent shall submit their Response via email to Sherea Harper at HARPSB@JEA.COM. **IF RESPONDENT IS INTERESTED IN RECEIVING A RESPONSE FORM IN A WORD FORMAT, PLEASE EMAIL HARPSB@JEA.COM WITH THE REQUEST. REQUESTS MUST BE MADE NO LATER THAN THREE (3) BUSINESS DAYS BEFORE RESPONSE OPENING.**

1.7.2. ALTERNATE PROVISIONS AND CONDITIONS

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

1.7.3. FORMAT/CONTENT of RESPONSES

Formatting of Responses: All companies submitting a response to the EAP Plan ITN should submit their Responses in the following format with specific sections as follows:

- Section 1: Cover Letter
- Section 2: Required Forms
- Section 3: Proof of Minimum Requirements
- Section 4: ITN Selection Criteria
- Section 5: EAP Plan Models
- Section 6: Listing of All Plan Deviations
- Section 7: Proposed Premium and Fee Exhibits
- Section 8: Insurance Certificates

1.7.4. START OF WORK

Upon Award JEA will present the successful Respondent with the Purchase Order which shall serve as the Contract. If the Company fails to act on a JEA-issued Purchase Order (PO), JEA may cancel the Award with no further liability to the Company, retain the bid security or bond (if applicable), and Award to the next-ranked company.

1.7.5. ADDENDA

JEA may issue Addenda prior to the Response Due date to revise, in whole or in part, or clarify the intent or requirements of the ITN. The Respondent shall be responsible for ensuring it has received all Addenda prior to submitting its Response and shall acknowledge receipt of all Addenda by indicating where

requested on the Response Form. JEA will post Addenda online at jea.com. Respondent will receive an email from the JEA Buyer with any Addenda or a Respondent may obtain Addenda from the JEA website.

All Addenda will become part of the ITN and any resulting Contract Documents. It is the responsibility of each Company to ensure it has received and incorporated all Addenda into its Response. **Failure to acknowledge receipt of Addenda may be grounds for rejection of a Response.**

1.7.6. EX PARTE COMMUNICATION

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

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

1.7.7. AVAILABILITY OF RESPONSES AFTER BID OPENING

In accordance with the Florida Public Records Law, Florida Statutes, Chapter 119, copies of all Responses are available for public inspection thirty (30) days after the opening of Responses or on the date of Award announcement, whichever is earlier. Respondents may review opened Responses 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.

1.7.8. CERTIFICATION AND REPRESENTATIONS OF THE COMPANY – ITN

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

- A. That the individual signing the Response Form is a duly authorized agent or officer of the Respondent. Responses submitted by a corporation must be executed in the corporate name by the President or Vice President signs the Response Form, satisfactory evidence of authority to sign must be submitted upon request by JEA. If the Response is submitted by a partnership, the Response Form must be signed by a partner whose title must be listed under the signature. If an individual other than a partner signs the Response Form, satisfactory evidence of authority to sign must be submitted upon request by JEA.

- B. That every aspect of the Response, is based on the Respondent's own knowledge and judgment of the conditions and hazards involved, and not upon any representation of JEA. JEA assumes no responsibility for any understanding or representation made by any of its representatives during or prior to execution of the Contract unless such understandings or representations are expressly stated in the Contract and the Contract expressly provides that JEA assumes the responsibility.
- C. The corporation or partnership must be in active status at the Florida Division of Corporations (www.sunbiz.org) prior to any subsequent Award of Contract.
- D. That the Respondent maintains in active status any and all licenses, permits, certifications, insurance, bonds and other credentials including, but not limited to, occupational licenses necessary to perform the Work. The Respondent also certifies that, upon the prospect of any change in the status of applicable licenses, permits, certifications, insurances, bonds or other credentials, the Respondent shall immediately notify JEA of status change.
- E. That the Respondent has read, understands and will comply with the Section titled Ethics.

1.7.9. CONFLICT OF INTEREST

A person or company who receives a Contract which was not procured pursuant to public bidding procedures to perform a feasibility study, or who participated in the drafting of an invitation to bid or invitation to negotiate, or who developed a program for future implementation shall not be eligible to contract with JEA for any other contracts dealing with that specific subject matter.

Should JEA erroneously Award a Contract in violation of this policy, JEA may terminate the Contract at any time with no liability to Respondent/Bidder, and Respondent/Bidder shall be liable to JEA for all damages, including but not limited to the costs to rebid the Work. The purpose of this policy is to encourage bidding and eliminate any actual or perceived advantage that one Respondent/Bidder may have over another.

1.7.10. ETHICS

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

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

The Respondent shall disclose the name(s) of any public officials who have any financial position, directly or indirectly, with this Response by completing and submitting the Conflict of Interest Certificate Form found at jea.com. Failure to fully complete and submit the Conflict of Interest Certificate may

disqualify the Response. If JEA has reason to believe that collusion exists among the Respondents, JEA shall reject any and all Responses from the suspected Respondent and will proceed to debar Respondent from future JEA Awards in accordance with the JEA Procurement Code.

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

In accordance with Florida Statutes Sec. 287.133, JEA shall reject Responses from any persons or affiliates convicted of a public entity crime as listed on the Convicted Vendor list maintained by the Florida Department of Management Services. JEA shall not make an Award to any officer, director, executive, partner, shareholder, employee, member, or agent active in management of the Respondent listed on the Convicted Vendor list for any transaction exceeding \$35,000 for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor list.

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

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

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

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

2. CONTRACT TERMS AND CONDITIONS

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."

2.1.1. ACCEPTANCE

JEA's written notice to the Company that all Work as specified for an individual service has been completed to JEA's satisfaction. If Company does not receive a written notice from JEA within three (3) days from completion of the service, the service will be deemed to have reached Acceptance. Acceptance does not in any way limit JEA's rights under the Contract or applicable laws, rules and regulations.

2.1.2. ADDENDUM/ADDENDA

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

2.1.3. AWARD

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

2.1.4. ANNIVERSARY DATE

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

2.1.5. COMPANY

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

2.1.6. 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 Respondent, or a JEA issued Change Order.

2.1.7. CONTRACT ADMINISTRATOR

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

2.1.8. CONTRACT PRICE

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

2.1.9. CONTRACT TIME

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

2.1.10. HOLIDAYS

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

2.1.11. INVITATION TO NEGOTIATE

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

2.1.12. INVOICE

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

2.1.13. JEA REPRESENTATIVES

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

2.1.14. PERFORMANCE – ACCEPTABLE PERFORMANCE/PERFORMER

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

2.1.15. PERFORMANCE – TOP PERFORMANCE/PERFORMER

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

2.1.16. PERFORMANCE – UNACCEPTABLE PERFORMANCE/PERFORMER

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

2.1.17. PURCHASE ORDER (PO)

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

2.1.18. RESPONSE

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

2.1.19. RESPONDENT

The respondent to this Solicitation.

2.1.20. SUBCONTRACTOR

A provider of services performing Work under contract for the Company.

2.1.21. SOLICITATION

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

2.1.22. TASK ORDER

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

2.1.23. TERM

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

2.1.24. UNIT PRICES

The Company's charges to JEA for the performance of each respective unit of Work as defined in the Contract Documents.

2.1.25. WORK OR SCOPE OF SERVICES

Work includes as defined in the Contract Documents all actions, products, documentation, electronic programs, reports, administration, management, services, materials, 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. See 2.11.1 (CHANGES IN SCOPE OF SERVICES)

2.2. CONTRACT DOCUMENTS

2.2.1. ORDER OF PRECEDENCE

The Contract shall consist of JEA's Contract and/or Purchase Order together with the Solicitation including, but not limited to, the executed 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:

- Change Order to Purchase Order
- Executed Purchase Order
- Addenda to JEA ITN
- Exhibits and Attachments to this ITN
- Technical Specifications associated with this ITN
- Response Documents
- References

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

2.3. PRICE AND PAYMENTS

2.3.1. PAYMENT METHOD

The Company shall submit to JEA an Invoice for the monthly fee in accordance with Company's Quotation of Rates.

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

2.3.2. DISCOUNT PRICING

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

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

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

2.3.3. LABOR, EQUIPMENT, AND MATERIAL (L.E.M.) UNIT PRICE

During the Term of the Contract, JEA may assign additional Work for which Unit Prices were not included in the original Bid Documents. If such an instance arises, the Company will submit a Unit Price L.E.M. quote to JEA for approval. Upon JEA approval, the agreed upon Unit Price(s) will become a L.E.M. Unit Price which will be utilized for the remaining Term of the Contract. L.E.M. Unit Prices shall only be considered for Work that is similar in scope to the original Contract.

2.3.4. INVOICING AND PAYMENT TERMS

Within sixty (60) days from completion of the Work, the Respondent shall submit all Invoices or Applications for Payment in accordance with the payment method agreed upon in these Contract Documents. Invoices shall be submitted to one of the following addresses:

JEA Accounts Payable
P.O. Box 4910
Jacksonville, FL 32201-4910

or

acctpaycustsrv@jea.com

JEA will pay the Respondent the amount requested within thirty (30) calendar days after receipt of an Invoice from the Respondent subject to the provisions stated below.

JEA may reject any Invoice or Application for Payment within twenty (20) calendar days after receipt. JEA will return the Invoice or Application for Payment to the Respondent stating the reasons for rejection. Upon receipt of an acceptable revised Invoice or Application for Payment, JEA will pay the Respondent the revised amount within ten (10) days.

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

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

2.3.5. OFFSETS

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

2.3.6. 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. INSURANCE & INDEMNIFICATION REQUIREMENTS

2.4.1. INSURANCE REQUIREMENTS

Before starting and until acceptance of the Work by JEA, and without further limiting its liability under the Contract, Respondent 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.

Professional Liability

Insurance Limits: \$3,000,000 each claim and \$6,000,000 annual aggregate.

Respondent's Commercial General Liability, Excess or Umbrella Liability, and Professional Liability policies shall remain in force throughout the duration of the project and until the Work is completed to JEA's satisfaction. The Indemnification provision provided herein is separate and is not limited by the type of insurance or insurance amounts stated above.

Respondent shall specify JEA as additional insured for all coverage except Workers' Compensation, Employer's Liability and Professional Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by JEA. Respondent 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. Respondent'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 thirty (30) days after receipt of written notice by JEA.

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

2.4.2. INDEMNIFICATION (JEA STANDARD)

Respondent shall hold harmless, indemnify, and defend JEA against any claim, action, loss, damage, injury, liability, cost and expense of whatever 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 Respondent and any person or entity used by the Respondent 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.

2.4.3. INDEMNIFICATION-RELEASE OF JEA CUSTOMER INFORMATION

Respondent indemnifies, defends and holds JEA harmless from any and all claims associated with the unwarranted disclosure of any JEA customer information that is in its possession either in paper or electronic format, including disclosure caused by theft, electronic system malfunction, negligence, or any other cause for the information to become public or otherwise used for malicious intents.

2.5. DATA PROTECTIONS

2.5.1. DATA OWNERSHIP, PROTECTION AND LOCATION

JEA shall own all right, title and interest in all data of JEA and JEA's customers that is related to the services provided by the Respondent under the Contract. The Respondent shall only access JEA's data and JEA's customer's accounts and data (I) in the course of providing the services contemplated by the Contract, (2) in response to service or technical issues, (3) as required by the express terms of the Contract or (4) at JEA's written request.

Protection of personal privacy and data shall be an integral part of the services to be provided by the Respondent under the Contract to ensure that there is no inappropriate or unauthorized use of data of JEA or JEA's customers at any time. The Respondent shall safeguard the confidentiality, integrity and availability of all data of JEA and its customers and comply with the following conditions:

- a. The Respondent shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non- Public Data. For purposes of the Contract, "Personal Data" shall mean data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information: government-issued identification numbers {e.g., Social Security, Driver's license, passport}; financial account information, including account number, credit or debit card numbers; or protected health information relating to a person. Non-Public Data means data, other than Personal Data, that is not subject to distribution to the public as public information and is deemed to be sensitive and confidential because it is exempt by statute, ordinance or administrative rule from access by the general public as public information.
- b. All data obtained by the Company under the Contract shall become and remain the property of JEA.
- c. All Personal Data and Non-Public Data shall be encrypted at rest and in transit with controlled access.
Unless otherwise agreed in writing between JEA and Company, Company shall be responsible for encryption of the Personal Data and Non-Public Data.
- d. At no time shall any Personal Data or Non-Public Data of JEA or its customers be copied, disclosed or retained by the Company or any party related to the Company for subsequent use in any transaction that is not a part of the services to be provided under the Contract

- e. The Company shall not use any Personal Data, Non-Public Data or any other information collected in connection with the Contract or this Solicitation for any purpose other than providing the services to be provided under the Contract.

The Respondent will prevent employees of the Respondent other than employees with a need to know from gaining access to JEA's data and information. The Respondent will direct and take all reasonable steps to insure that any Respondent employee who encounters any such information during the course of performing the Respondent's responsibilities under the Contract Documents shall maintain the confidentiality of such information, which shall not be passed onto other Company employees or any other person. The Respondent shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of JEA data to that which is absolutely necessary to perform job duties.

The Respondent shall provide its services to JEA and JEA's customers solely from data centers in the United States. Storage of JEA data at rest shall be located solely in data centers in the United States. The Respondent shall not allow its personnel or its subcontractors to store JEA and JEA's customer data on portable devices, including personal computers, except for devices that are used and kept only at its data centers in the United States. The Respondent shall permit its personnel and subcontractors to access JEA's and JEA's customer data remotely only as required to provide technical support.

The Respondent shall deploy reasonable steps and safeguards as part of a network security program in accordance with accepted industry practices including but not limited to Purchasing Card Industry - Data Security Standards (PCI-DSS), to prevent unlawful hacking to gain surreptitious access into JEA's and JEA's customer data. The Company shall promptly notify JEA of any breaches or issues regarding the security of Systems that maintain JEA data or JEA's data, provided. However, that any such notification by the Respondent shall not affect Company's obligations to secure JEA's data as provided under the Contract Documents.

The Respondent shall notify JEA within six (6) hours if it learns that data of JEA or JEA's customers has been, or may have been, the subject of a Security Incident of any kind which may compromise data of JEA or its customers. In any such event, the Respondent shall (1) investigate the incident and provide a report to JEA within twenty-four (24) hours; (2) conduct a forensic investigation to determine a cause and what data/systems are implicated; (3) provide daily updates of its investigation to JEA and permit JEA reasonable access to the investigation; (4) communicate and cooperate with JEA concerning communications with outside parties such as law enforcement and media; (5) cooperate with JEA in determining whether and how notices, if any, will be provided to JEA's customers, and the content of any such notices, and (6) take commercially reasonable measures to address the possible Security Incident in a timely manner in accordance with all applicable laws and regulations. The term "Security Incident" means the potentially unauthorized access by non-authorized persons to Personal Data or Non-Public Data that the Respondent believes could reasonably result in the use, disclosure or theft of unencrypted Personal Data or Non-Public Data of JEA or its customers within the possession or control of the Respondent.

If a Data Breach with respect to Personal Data has occurred, the Respondent shall promptly implement necessary remedial measures and document responsive actions taken related to the Data Breach,

including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary. If a Data Breach is a result of the Respondent's breach of its contract obligation to encrypt Personal Data or otherwise prevent the release of Personal Data or the Company's failure to comply with any of the security requirements contained in the Contract, the Company shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state or federal law; (4) a website or toll-free number and call center for affected individuals required by state law and (5) Completing all corrective actions as reasonably determined by the Respondent based on the root cause. The term "Data Breach" means the unauthorized access by a non-authorized person or persons that results in the use, disclosure or theft of the unencrypted Personal Data of JEA or JEA's customers.

2.5.2. DATA OBLIGATIONS ON TERMINATION OR SUSPENSION OF SERVICE

In the event of a termination of the Contract, the Company shall implement an orderly return of JEA's data in a mutually agreeable format at a time agreed to by JEA and the Company and the subsequent secure disposal of all JEA data. During any period of service suspension, the Company shall not take any action to intentionally erase any data of JEA or its customers. In the event of termination of any services or the Contract in its entirety, the Company shall not take any action to intentionally erase any data of JEA or its customers except as mutually agreed upon in writing by the Company and JEA. The Company shall securely dispose of all requested data in all its forms.

2.5.3. WARRANTY (PROFESSIONAL SERVICES)

The Company represents and warrants that it has the full corporate right, power and authority to enter into the Contract and to perform the Work, 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 represents and warrants that it will conduct the Work in a manner and with sufficient labor, materials and equipment necessary to affect a diligent pursuance of the Services.

The Company represents and warrants that it has the responsibility and capacity to train and supervise its employees, Subcontractors and suppliers to ensure the Work complies with all safety requirements of the Contract Documents.

The Company represents and warrants that its employees and Subcontractors shall exercise the degree of skill and care required by customarily accepted good practices and procedures.

The Company warrants that all items provided under the Contract shall be in accordance with the requirements of this Contract 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.

The Company warrants all Work for a period of one year following Acceptance of the Work. If any failure to meet the foregoing warranty appears within one year after Work is Accepted, the Company shall again perform the Work directly affected by such failure at the Company's sole expense.

2.6. TERM AND TERMINATION

2.6.1. TERM OF CONTRACT – DEFINED DATES

This Contract shall commence on the effective date of the Contract, and continue and remain in full force and effect as to all its terms, conditions and provisions as set forth herein for two (2) years, or until the Contract's Maximum Indebtedness is reached, whichever occurs first.

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

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

2.6.2. 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 Respondent for all disbursements and expenses that the Respondent has incurred, or has become obligated prior to receiving JEA's notice of termination.

Upon receipt of such notice of termination, the Respondent 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 Respondent 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.

2.6.3. 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.

2.7. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTATION

2.7.1. 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 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". Company should only redact those portions of records that Company claims are specifically exempt from disclosure under Florida's Public Records Laws. If the Company fails to submit a redacted copy of documents, data, or other records it claims is confidential, JEA is authorized to produce all documents, data, and other records submitted to JEA in answer to a public records request for these records.

Request for Redacted Information

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

Indemnification for Redacted Information

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

Public Records Clause for Service Contracts

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

- Keep and maintain public records that ordinarily and necessarily would be required by JEA in order to perform service;

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

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

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

2.7.2. 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.

2.7.3. 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.

2.8. LABOR

2.8.1. 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.

2.8.2. 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.

2.8.3. PROHIBITED FUTURE EMPLOYMENT

It shall be unlawful and a class C offense for any person, who was an officer or employee of JEA, after his or her employment has ceased, to be employed by or enter into any contract for personal services, with a person or company who contracted with, or had a contractual relationship with JEA, while the contract is active or being completed, or within two years of the cessation, completion, or termination of the person's or company's contractual relationship with JEA, where (1) the contract with JEA had a value that exceeded \$250,000, and (2) the officer or employee had a substantial and decision-making role in securing or negotiating the contract or contractual relationship, or in the approval of financial submissions or draws in accordance with the terms of the contract; except that this prohibition shall not apply to an employee whose role is merely as a review signatory, or to contracts entered into prior to January 1, 2008, or to contracts that have been competitively procured. With respect to this subsection a contract is competitively procured if it has been obtained through a sealed low 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.

2.8.4. HIRING OF OTHER PARTY'S EMPLOYEES

Each party recognizes that the other party has incurred or will incur significant expenses in training its own employees and agrees that it will not pursue or hire, without the other party's consent, the other party's employees or the employees of its subsidiaries for a period of two (2) years from the termination date of this Contract.

2.9. COMPANY'S RESPONSIBILITIES AND PERFORMANCE OF THE CONTRACT

2.9.1. JEA ACCESS BADGES

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

2.9.2. 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.

2.10. VENDOR PERFORMANCE EVALUATION

2.10.1. 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.

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

as described below, prior to issuance. When evaluating the Company's performance, JEA will consider the performance of the Company's Subcontractors and suppliers, as part of the Company's performance.

Frequency of Evaluations

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

Unacceptable Performance

- o If at any time, JEA determines, using the criteria described on the scorecard, that the performance of the Company is Unacceptable, the Contract Administrator and Chief Procurement Officer or his designated alternate will notify the Company of such in a letter. The Company shall have 10 days to respond to the Contract Administrator. Such response shall include, and preferably be delivered in-person by an officer of the Company, the specific actions that the Company will take to bring the Company's performance up to at least Acceptable Performance.
- o Within 30 days from date of the first Unacceptable Performance letter, the Contract Administrator and Chief Purchasing Officer or his designated alternate will notify the Company by letter as to whether its performance, as determined solely by JEA, is meeting expectations, or is continuing to be Unacceptable. If the Company's performance is described in the letter as meeting expectations, no further remedial action is required by the Company, as long as Company's performance continues to be Acceptable.
- o If the Company's performance as described in the letter continues to be Unacceptable, or is inconsistently Acceptable, then the Company shall have 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.
- o In the event that the Contract Term or the remaining Term of the Contract does not allow for the completion of the deficient performance notification cycles described above for those in danger of receiving an Unacceptable Performance scorecard, JEA may choose to accelerate these cycles at its sole discretion.
- o If the Company receives five 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.

2.11. CHANGES IN THE WORK OR TIMEFRAMES

2.11.1. CHANGES IN SCOPE OF SERVICES

From time to time, JEA may materially reduce or increase the scope of the services, as contained in the Contract Documents, to be performed under this Agreement as may be necessary to carry out the purpose of this Agreement. The Company is willing and agreeable to accommodate such changes, provided it is compensated for additional services in accordance with its professional fees and expenses under the terms of this Agreement. If the scope of services decreases, the parties agree to negotiate a reduction in the monthly retainer. Such changes shall be in the form of a written amendment to this Agreement reflecting, as appropriate, an amendment to the services rendered and adjustment to Company's professional fees, including an extension to the duration of this Agreement, as well as the maximum indebtedness of JEA. Maximum indebtedness is the maximum total cost that may be paid to the Company hereunder, including travel related costs, during the initial term of the Agreement for the services rendered under the terms of this Agreement.

2.11.2. SUSPENSION OF SERVICES

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

2.11.3. 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.

2.11.4. COORDINATION OF SERVICES PROVIDED BY JEA

The JEA Representative for the Work will, on behalf of JEA, coordinate with the Company and administer this Contract. It shall be the responsibility of the Company to coordinate all assignment related activities with the designated JEA Representative. The JEA Representative will be assigned to perform day-to-day administration and liaison functions, and to make available to the Company appropriate personnel, to the extent practical, and to furnish records and available data necessary to conduct the Work. The JEA Representative will also authorize the Company to perform work under this Contract.

2.12. MISCELLANEOUS PROVISIONS

2.12.1. 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.

2.12.2. 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.

2.12.3. 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.

2.12.4. 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.

2.12.5. DELAYS

Neither party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such obligation is prevented or delayed by any cause beyond the reasonable control of the affected party, and the time for performance of either party hereunder shall be extended for a period of equal to any time lost due to such prevention or delay.

2.12.6. 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.

2.12.7. 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.

2.12.8. HEADINGS

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

2.12.9. 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.

2.12.10. 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.

2.12.11. 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.

2.12.12. 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.

2.12.13. 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.

2.12.14. REFERENCES

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

2.12.15. 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.

2.12.16. 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.

2.12.17. 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.

2.12.18. 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.

2.12.19. TIME OF ESSENCE

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

2.12.20. 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.

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

2.14. FORMS (APPENDIX B)

2.15. ATTACHMENTS (APPENDIX C)

- **Appendix C – Non-Disclosure Agreement (NDA)**