

Solicitation

Construction Management-at-Risk (CMAR) Services for the SIPS – Greenland 30” WM, Davis 30” RWM & Burnt Mill 24” FM Projects

for



Jacksonville, FL

Solicitation Number

1410764646

Mandatory Pre-Proposal Meeting via WebEx or by Teleconference at 10:00 am on July 06, 2022

Meeting URL: <https://jeameeting.webex.com/>

Meeting Number (Access Code): 2317 360 3845

Meeting Password: Meeting

Dial In: 1-415-655-0001

Email Daniel Kruck (krucdr@jea.com) 24 hours before the Pre-Proposal Meeting so that your attendance can be confirmed.

Proposals are due on July 26, 2022 by 12:00 PM

Proposals shall be electronically submitted per instructions in this solicitation.

JEA will publicly open all Proposals received from qualified Proposers on the Proposal Due Date via WebEx. A meeting link will be provided within 48 hours of Proposal opening on jea.com

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Solicitation

1. REQUEST FOR PROPOSALS

1.1. INVITATION

1.1.1. SCOPE OF WORK

JEA requests Proposals from interested and qualified Proposers to provide Construction Manager at Risk (CMAR) services during design and construction of the Southside Integrated Piping System, (SIPS) - Greenland - Southside Blvd - Deerwood 3 to Greenland WTP 30" Water Main, Davis - Gate Pkwy to RG Skinner - 30" Reclaim Water Main and Burnt Mill Road 24" Force Main (collectively, the "Project" or the "Work").

For each area/project, the initial scope of work will consist of pre-construction phase services such as design and constructability reviews, construction phase sequencing, coordination, maintenance of traffic, and maintenance of utility operations pre-planning, alternatives evaluations, cost estimating and cost control (value engineering) services, project schedule development, and preparation and submission of an "open-book" Guaranteed Maximum Price (GMP) proposal for construction phase services.

For each area/project, the contract shall be amended to include construction phase services following negotiation of a mutually acceptable GMP. The contract may be amended to include construction phase services in multiple phases. During the construction phase, the CMAR shall serve as the single point of responsibility for construction of the work in strict accordance with the contract documents.

The SIPS – Greenland – Southside Blvd – Deerwood 3 to Greenland WTP 30" Water Main scope of work is expected to generally include the following:

- Approximately 41,200 LF of 30-inch raw water transmission piping and fittings.
- New 1.1 Mgal prestressed concrete storage tank and associated piping at the Greenland Water treatment plant.
- Water Quality Monitoring Station
- Greenland WTP SIPS Intertie Station
- Supervisory Control and Data Acquisition (SCADA) System
- Multiple trenchless crossings involving horizontal directional drill and/or auger jack and bore crossings of wetlands and major intersections.

The Davis - Gate Pkwy To RG Skinner – Reclaim Water Main scope of work is expected to generally include the following:

- Approximately 16,300 LF of 30-inch reclaim water transmission piping and fittings.
- Multiple trenchless crossings involving horizontal directional drill crossings of wetlands

The Burnt Mill 24" Force Main scope of work is expected to generally include the following:

- Approximately 1,150 LF of 24-inch PVC sewer force main transmission piping and fittings.

Additional information can be found in Appendix A - Scope of Services and Appendix C - Project Definitions and Greenland WTP Schematic Design.

1.1.2. INVITATION - REQUEST FOR PROPOSAL

Interested and qualified firms are invited to submit a Proposal in response to the Request for Proposals noted below:

Request for Proposals (RFP) Title: Construction Management-at-Risk (CMAR) Services for the SIPS – Greenland 30" WM, Davis 30" RWM & Burnt Mill 24" FM

JEA RFP Number: 1410764646

To obtain more information about this RFP:

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

1410764646 CMAR Services for the SIPS – Greenland 30" WM, Davis 30" RWM & Burnt Mill 24" FM Projects

Proposal Due Date: July 26, 2022
Proposal Due Time: 12:00 PM

To obtain more information about this Solicitation:

Download a copy of the Solicitation, drawings (if applicable) and any required forms at jea.com, search key word “Zycus” to connect to the online sourcing platform. Or click the following link:

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

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

All Response documentation must reference the RFP Title and Number noted above. All Responses must be made on the appropriate forms as specified within the RFP and uploaded to a JEA’s sourcing platform. Instructions for using JEA’s sourcing platform can be found in Appendix C – Zycus Supplier Instructions.

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

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

1.1.3. OPENING OF PROPOSALS

All Proposals received shall be publicly announced and recorded at 2:00 PM on the Proposal Due Date, via WebEx. The details for the WebEx will be on jea.com at the following website:

https://www.jea.com/Events/Public_Meetings/Bid_Opening no later than 48 hours before the Proposal opening. At the opening of Proposals, a JEA representative will publicly open each Proposal that was received prior to the due date and time, except for those Proposals that have been properly withdrawn. JEA has the right to waive any irregularities or informalities in the Proposals.

1.1.4. QUESTIONS

Proposers may submit questions regarding this solicitation, provided that all questions must be submitted in writing to JEA Buyer listed below at least seven (7) business days prior to the opening date. Questions received within seven (7) business days prior to the opening date will not be answered.

Questions:

Buyer: Dan Kruck

E-mail: krucdr@jea.com

1.1.5. MANDATORY PRE-PROPOSAL MEETING IN PERSON OR TELECONFERENCE

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

Those planning to attend the WebEx or teleconference should email their name and contact information to: krucdr@jea.com, at least 24 hours prior to the Pre-Proposal meeting to facilitate roll call. A Proposer shall only sign in representing one company, unless otherwise specified by JEA. Companies not attending the Pre-Proposal meeting may have their Proposals rejected and returned unopened.

Proposers must be on time to the meeting and must be present at the starting time of the meeting. Proposers not arriving on time for the meeting may have their Proposals rejected and returned unopened.

Meeting Date: July 06, 2022

Meeting Time: 10:00 AM

Meeting URL: <https://jeameeting.webex.com/>

Meeting number (access code): 2317 360 3845

Meeting password: Meeting

1.2. TYPE OF CONTRACT/CONTRACT

The services for this Project will be contracted under a single entity known as a Construction Management-at-Risk (CMAR). The General Terms and Conditions will be finalized through negotiations as set forth herein. The initial scope of work for each project under the Contract shall consist of providing the specified pre-construction phase services on a fixed-price lump sum basis. The Contract shall be amended to include construction phase services generally requiring the CMAR to deliver the completed project following negotiation of a mutually acceptable Guaranteed Maximum Price (GMP) and completion deadlines for the construction phase work.

The GMP will be negotiated between the parties at a later date. The CMAR's Fee shall be a percentage of the cost of the Work. The Fee will include the profit, overhead and expenses as described in the CMAR Contract. The CMAR main office personnel and expenses shall be included in the fee. The percentage of the CMAR fees may be capped by JEA.

The CMAR shall comply with the Jacksonville Small and Emerging Business (JSEB) subcontractor participation goals, as applicable. Subcontractor and vendor bid packages shall be designed to maximize project work opportunities for qualified JSEBs, if applicable. The contract for construction management services shall consist of two phases. The first phase of the contract will be the Design/Pre-Construction Services, wherein the CMAR shall be paid a fee as an integral part of the project team. Design/Pre-Construction Services expected from the CMAR are described in the Contract.

As construction drawings progress and the Design/Pre-Construction Services near completion, the CMAR will be expected to provide a guaranteed maximum price (GMP) and Performance and Payment Bonds in the amount for the construction phase(s), as described herein. If the GMP is accepted by JEA, the CMAR shall become the single point of responsibility for the performance of construction of the Work.

If JEA and the CMAR are unable to negotiate a mutually acceptable GMP in good faith, JEA shall not be obligated to amend the Contract to include construction phase services for that project and may elect to complete the design and advertise the project for competitive bids.

1.3. MINIMUM QUALIFICATIONS

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

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

- Must have already provided and successfully completed two (2) collaborative delivery (design build, CMAR, progressive design build) projects of similar size, use and complexity within the past ten (10) years as of the Proposal Due Date
 - A similar sized project is defined as a pipeline project with a pipeline size of at least 24" pipe diameter and a total pipeline length of at least 10,000 feet by the open cut construction method.
- Proposer must have successfully completed one (1) Horizontal Directional Drilling (HDD) construction project of a similar sized project within the last ten (10) years as of the Proposal Due Date. An HDD performed by a subcontractor under the Proposer's contract scope of work qualifies as a successfully completed HDD project.
 - A similar sized project is defined as an HDD project with a minimum pipeline diameter size of 24-inch with a total pipeline length of at least 1,500 feet in a single pull.
- Most recent Experience Modification Rate (EMR) (provided on letterhead from current insurance provider) not greater than 1.0; Five-year average OSHA Total Recordable Incident Rates (TRIR) of less than 3.4; Five-year average OSHA Days Away, Restricted or Transferred (DART) Rate of

less than 2.1; and Five-year average OSHA Days Away from Work Case (DAWC) rate of less than 1.0.

- The Proposer, or in the case of a Joint Venture (JV), each JV member, will furnish annual audited financial reports for the three (3) most recent full financial years, prepared in accordance with Generally Accepted Accounting Principles (GAAP), and all relevant notes. Each page of the financial documents provided should be marked "Confidential". Quick Ratio (liquidity ratio that measures the level of the most liquid current assets available to cover current liabilities) with a minimum value of 1.0 is preferred. Complete balance sheets and income statements must be included. Data provided for parent or child entities related to the applicant firm in lieu of the applicant's data shall not be reviewed and shall be considered non-responsive.
- The Proposer shall provide evidence of bonding capacity, in the form of a letter or letters from a surety or insurance company stating that the Proposer is capable of obtaining separate performance and payment bonds to cover a minimum amount of \$20,000,000.00.
- Licensure: The Proposer shall be licensed as a General Contractor or Underground Utility Contractor in the State of Florida at the time of submittal of its RFP.

The Proposer may use the Minimum Qualifications in this section to meet the required "Relevant Project Experience" projects identified section 1.6.3.3.

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

1.4. SAFETY QUALIFICATION REQUIREMENT

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

JEA Safety Qualification information is available online at jea.com. Please note that it may take up to five (5) business days for a company to be approved as JEA Safety Qualified. It is the Proposer's responsibility to ensure it is JEA Safety Qualified. A list of JEA Safety Qualified vendors can be found on jea.com.

1.5. EVALUATION METHODOLOGY

1.5.1. COMPETITIVE SEALED PROPOSALS - CONSULTANTS' COMPETITIVE NEGOTIATION ACT (CCNA)

JEA shall evaluate the Proposer's qualifications and score/rank the qualifications from all Proposers. JEA shall then conduct discussions with (and may require public presentations by) no fewer than the three highest ranked firms regarding their qualifications, approach to the project, and ability to furnish the required services. Up to twenty-five (25) points will be added to the Proposers written Proposal evaluation score based on discussions and presentations (if any). JEA will then conduct sequential negotiations, starting with the highest ranked Proposer, in accordance with Section 287.055, Florida Statutes, known as the Consultants' Competitive Negotiation Act ("CCNA").

In evaluating the qualifications, JEA will not consider price, but may consider factors including, but not limited to, the Proposer's professional personnel, past performance, whether the Proposer is a Jacksonville Small and Emerging Business (JSEB); recent, current and projected workloads of the Proposer, and volume of work previously awarded to each Proposer by JEA.

If JEA and the highest ranked proposer are unable to negotiate a satisfactory Contract, JEA will formally terminate the negotiations with the Proposer and undertake negotiations with the next ranked Proposer. JEA will Award the Contract to the highest-ranking qualified Proposer that successfully completes Contract negotiations with JEA.

Any contrary indications notwithstanding, JEA reserves the right to reject all bids where doing so is in the best interest of JEA.

1.6. BASIS OF AWARD

1.6.1. EVALUATED PROPOSAL

JEA will use the "Selection Criteria" listed below to evaluate the Proposals. It is always in the best interest of the Proposer to provide informative, concise, well-organized technical and business information relative to the Work, in both the initial submittal of its Proposal and in any subsequent submittals. **Please note, JEA may reject Proposals that request material changes or take exceptions to contractual terms and conditions specified herein.**

Material changes to such contractual terms and conditions can only be made by JEA prior to public opening of the Proposals.

JEA intends to shortlist up to three (3) companies during Phase 1 of the solicitation process. Phase 1 will be worth a maximum of 100 points as shown in 1.6.3 below. Phase 2 will be worth a maximum of 25 points and will be added to the Phase 1 scores to determine the most qualified firm as described below. JEA reserves the right to determine the most qualified firm at the end of Phase 1 if there is a clear winner following the evaluation of the Phase 1 Proposals.

Proposals from qualified firms will be scored and ranked by a committee of 3 to 5 evaluators. Each evaluator will individually score the Proposals using the evaluation matrix attached to this Solicitation. Using these scores, each evaluator will rank the Proposals using "1" for the Proposal receiving the highest number of points from the matrix. Proposals with an equal number of points will receive the same numerical ranking. JEA will total the numerical rankings for each Proposal and consider the Proposal with the lowest total to be the most highly qualified Proposal. Any tie will be broken using the total of the matrix scores of all evaluators. If a tie persists, it will be broken following the procedures in the JEA Procurement Operational Procedures.

1.6.2. PHASE 1 SUBMISSION FORMAT

A Proposal must not exceed fifteen (15) total pages (most or all 8.5" x 11" pages), excluding resumes, JEA supplied forms and information required to meet minimum qualifications. A maximum of three (3) of the total pages may be 11" x 17" paper. Each side of a page having content will be counted toward the maximum page limit. Font size must be ten (10) point or greater throughout the Proposal.

1.6.3. PHASE 1 OVERVIEW OF SCORING FOR THE SELECTION CRITERIA

PHASE 1 SELECTION CRITERIA	
Category	Points
1. General Information	10
2. Key Staff Experience	30
3. Relevant Project Experience	25
4. Understanding of Scope of Work and Approach to Performing Required Services	35
TOTAL:	100

1.6.3.1. GENERAL INFORMATION (Business Organization, History, and Financial Condition)

Maximum score for this criterion is: 10 points

The Proposer will provide a narrative describing its business organization, and relevant history and financial information, per the requirements listed below. This section will include narrative descriptions and / or statements associated with the required items only. Supporting documents, including financial reports, litigation records, safety records, etc. will not be considered in the page limit.

Business Organization and History:

The Proposer will describe its business organization and history, including years in business and depth of resources to provide the required services. This section will include the Proposer's legal entity/structure, size of company including number of employees (total and local), and office locations (corporate and local).

History of successfully meeting JSEB goals on JEA projects or other similar programs for other Owners:

The Proposer, or in the case of a JV, each JV member, will furnish a list of projects within the past 15 years that had JSEB or other similar programs goals on them and the actual metrics achieved in relation to that goal.

History of Liquidated Damages:

The Proposer, or in the case of a JV, each JV member, will furnish a list of any ongoing or completed projects within the past 15 years where they have been assessed liquidated damages or had any claims, judgments, arbitration proceedings, termination for default or other similar litigation. If the Respondent has had liquidated damages or been involved in litigation, description of facts, circumstances, and outcomes of each should be included in an appendix and will not be considered in page limit.

1.6.3.2. KEY STAFF EXPERIENCE

Maximum score for this criterion is: 30 points

The Proposer will provide a proposed team organization chart, including identification of all Key Personnel as defined below, including their name and description of their proposed roles and responsibilities in both the Pre-Construction and Construction Phases. Subconsultants holding key roles in the team organization should be included and clearly identified as such. If the Proposer is a JV, each individual's firm affiliation should be indicated in the organization chart. The organization chart should be accompanied by a narrative summary indicating the functional responsibilities and designated authority of personnel and entities identified.

1. Key Personnel

The Proposer shall provide a maximum of ten (10) resumes of the key staff to be assigned to perform the Work. The resumes provided shall identify the Senior Project Manager, Preconstruction Manager, Construction Manager or General Superintendent, Preconstruction HDD Team Member, Scheduler/Project Controls Specialist and the backups for each (collectively, the "Team Members"). Primary positions (as shown in the attached Evaluation Matrix) shall only serve in one (1) role.

Note, the CMAR Senior Project Manager must be from the company or JV submitting the Proposal and not a Subcontractor. The Senior Project Manager shall be the person over all phases of the project. Persons whose resumes are submitted as a Team Member must actually perform the Work unless Proposer receives prior approval by JEA Project Manager to use a backup Team Member. Finally, if Proposer submits a resume of a Subcontractor that is employed by a JSEB firm, please note this on the resume.

At a minimum, each resume shall present the Team Member's name, title, years of service with company, applicable professional registrations, education, and work experience as related to this project. For each key personnel, a minimum of three (3) alternate delivery projects on which they held a key delivery role should be included. Resumes should clearly describe the role of the Key Personnel in each project listed. Resumes shall also identify any specialty or technical process expertise. **Resumes shall not be more than two (2) pages each on 8.5" x 11" sized paper. No more than ten (10) resumes will be evaluated.**

The Senior Project Manager's resume should include water/wastewater pipeline projects on which he or she served in a Project Management capacity. These projects should include at least two (2) projects either valued over \$10,000,000.00 delivered using the CMAR or Progressive Design Build delivery method, or a construction value of \$10,000,000.00 or greater. Each project referenced will include contact information for primary and secondary references.

The Review Team will select a minimum of two or up to the total number of projects and contacts listed on the Project Manager's resume for reference checks. The Proposer shall be responsible for verifying the contact numbers submitted on the resume, as the Selection Review Committee will make a reasonable effort to contact references based on the contact information provided. The information obtained from the reference checks will be incorporated into the scoring of this section.

- 2. Provide a summary of the experience the team being presented has working with one another on similar CMAR or Progressive Design-Build Delivery projects.**
- 3. Provide an organization chart for proposed key personnel and any other proposed staff, including subconsultants.**

Points will be awarded as described on the Evaluation Matrix attached to this RFP.

1.6.3.3. RELEVANT PROJECT EXPERIENCE

Maximum score for this criterion is: 25 points

Proposer's record of successful performance accomplishing similar services on past projects.

The Proposer will provide past project experience and performance information for, five (5) relevant projects that the Proposer's team has worked on in the past ten (10) years, or that will be at least 50% complete (construction) by the required RFP due date.

Relevant project experience refers to projects with comparable scope, type, size, delivery model and number of common team members. Emphasis on project selection should include projects in the United States, which provided similar site characteristics, potential types of temporary and permanent works structures, geotechnical conditions, climate, and surrounding wetlands. Please refer to Appendix A Scope of Work, section project Description for more details on the Project scope.

Proposer may use the same projects as used for meeting the minimum qualifications. For each project listed, include the following:

- a. Description of the project including scope and delivery model
- b. List of Key personnel proposed on this project that worked on the relevant project
- c. The type and percent of work self-performed
- d. Examples of specific services provided during the pre-construction phase, e.g., design review/coordination, cost estimating, scheduling, value engineering, etc.
- e. Project's pre-construction cost
- f. Project's original contracted construction cost and final construction cost along with the explanation of any differences
- g. Original construction dates and actual construction dates along with the explanation of any differences
- h. JSEB or similar program goals along with actual metrics achieved
- i. Any claims made or LD's assessed
- j. Project Owner and Engineer
- k. Reference information (Two or more current names with telephone numbers and emails per project.
Provide one (1) reference from the Owner and one (1) reference from the Designer
 - a) The JEA project manager, or designee, will call each reference and score according to the evaluation matrix. This score will be used on all evaluations.

1.6.3.4. UNDERSTANDING OF SCOPE OF WORK AND APPROACH TO PERFORMING REQUIRED SERVICES

Maximum score for this criterion is: 35 points.

Proposer's understanding of the scope of work requested for the project and its approach to successful completion.

1. Discuss the major challenges your Company has identified on this project, and how you intend to address those challenges.
2. Based on your understanding of the project and the major challenges, describe your Company's approach during Pre-Construction/Construction phase services to successfully deliver the project. This shall include approaches to the following:
 - a. Planning/ Construction Sequence and Phasing
 - b. Percentage of self-performed work vs. subcontracting
 - c. Critical Path Method (CPM) Scheduling
 - d. Constructability
 - e. Scope/Change Management and Value Engineering
 - f. Risk Management and contingency development process
 - g. Quality Control/Quality Assurance
 - h. Health and safety
 - i. Procurement and Open Book GMP development

- j. Meeting or exceeding JSEB program goals
 - k. Open Book Cost Estimating
 - l. Project Controls
 - m. Project and Construction Management
 - n. Collaboration with all project stakeholders
3. Explain how your firm will manage the critical path on any work that is not self-performed, and manage the quality of work not self-performed.
 4. Provide a detailed project schedule of the activities your firm is proposing on the project for the preconstruction and construction phases.
 5. Provide a proposed level of effort that reflects your approach to the services provided in the preconstruction phase listing team members, roles and number of estimated hours by activity.
 6. Provide any other innovative or specific project approaches that could be offered adding value to the project and benefit to JEA.

1.6.4. PHASE 2 SELECTION CRITERIA (IF REQUIRED)

1.6.4.1. PRESENTATIONS AND INTERVIEWS

Maximum score for this criterion is: 25 POINTS

The presentation shall be no longer than forty-five (45) minutes. Following the presentation, an interview consisting of questions & answers and discussion shall follow the presentation. The Proposer shall optimize the forty-five (45) minutes given for the presentation by clearly delineating the Proposer's program approach in the presentation format. The Proposer may also include topics that they believe would be of particular interest or that illustrate creativity and innovation in their project approach.

The presentation and interview attendees will consist of the Proposer's Key Staff assigned as Team Members, in addition to the JEA selection committee and supporting staff.

The presentations and interviews will be graded as shown below:

- Description of Scope of Work Approach (15 points)
- Cost and Schedule Management (5 points)
- Answers to interview questions (5 points)

1.7. REQUIRED FORMS TO SUBMIT WITH PROPOSAL

To submit a Proposal in response to this RFP, all of the following forms must be completed and submitted as part of the Proposal. The Proposer must obtain the required forms, other than the Minimum Qualification Form, by downloading them from JEA.com. If the Proposer fails to complete or fails to submit one or more of the following forms, the Proposal may at JEA's sole discretion be rejected.

The following forms are required to be submitted:

- Company's Proposal
- Minimum Qualifications Form - This form can be found in Appendix B of this Solicitation
- Financial stability letter from surety company
- Proposal Form - This form can be found in Appendix B of this Solicitation
- Safety Form – This form can be found in Appendix B of this Solicitation
- List of JSEB Certified Firms (if applicable)

If the above listed information is not submitted with the Proposal by the Proposal Due Time and Date, JEA may at its sole discretion reject the Proposal.

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

- Conflict of Interest Certificate Form - 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/Scope of Services

1.8. JACKSONVILLE SMALL AND EMERGING BUSINESS (JSEB) PROGRAM REQUIREMENTS

1.8.1. JACKSONVILLE SMALL AND EMERGING BUSINESS PROGRAM

It is at the Proposer's option as to whether it chooses to subcontract to a JSEB firm during the Pre-Construction Phase of this project. JEA encourages the use of JSEB qualified firms; however, the Proposer is not required to utilize JSEB firms to be awarded this Contract.

During the development of each GMP Proposer will meet with and provide project documentation to the JSEB Manager to facilitate meeting the JSEB goal for this project. Once the JSEB firms selected for Construction Services have been chosen, the Proposer will submit documentation to demonstrate compliance to the JSEB Manager.

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 Proposer make changes to the JSEB firms listed in its GMP, revise the JSEB Scope of Work or amount of Work as stated in its GMP without prior written notice to the JEA Contract Administrator, and without subsequent receipt of written approval for the JEA Contract Administrator.

Any subcontractors of Proposer shall procure and maintain the insurance required of Proposer hereunder during the life of the subcontracts. Subcontractors' insurance may either be by separate coverage or by endorsement under insurance provided by Proposer. Note: Any JSEB firms identified by Proposer for this Solicitation are considered "Subcontractors" under the direct supervision of the Prime or General Contractor (herein referred to as Proposer in this Solicitation). Proposer should show good faith efforts in providing assistance to JSEB firms in the securing of Subcontractors' insurance requirements stated in this section. Proposer 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
scotrl@jea.com

1.9. NUMBER OF CONTRACTS TO BE AWARDED

JEA intends to Award one (1) Contract for the Project. JEA reserves the right to Award more than one Contract based on certain groupings of the Work items, or JEA may exclude certain Work items, if JEA determines that it is in its best interest to do so.

1.10. LIQUIDATED DAMAGES IN CONTRACT

The Contract issued pursuant to this Solicitation contains liquidated damages tied to project completion deadlines. The Proposer should review the specific time frames and liquidated damage amounts prior to submitting its Proposal.

1.11. INSURANCE REQUIREMENTS

Prior to the successful Proposer ("CM" or "Company") beginning the Work or Services contemplated herein, the CM will be required to submit a certificate of insurance (COI) that is in compliance with amounts and requirements as indicated in the Section herein entitled "Insurance Requirements". Note that the COI shall specifically indicate JEA as an additional insured on all required insurance except Worker's Compensation and Professional Liability.

Furthermore, waiver of subrogation shall be provided for all required insurance in favor of JEA, including its board members, officers, employees, agents, successors, and assigns.

1.12. PAYMENT & PERFORMANCE BONDS

Prior to commencing any construction phase work, the CM will be required to provide Payment & Performance Bonds in accordance with Section 255.05, Florida Statutes and the applicable Contract requirements.

2. CONTRACT TERMS AND CONDITIONS

2.1. CONTRACT DOCUMENT TERMS AND CONDITIONS

Provided below are the Contract terms and conditions that will be incorporated by reference in the Contract Document executed by the Construction Manager and JEA. The Contract Documents will incorporate by reference the terms contained in the Solicitation portion of this document provided in Section 1, the Contract Terms provided in Section 2; and the Scope of Work provided in Section 3.

2.2. DEFINITIONS

2.2.1. DEFINITIONS

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

2.2.2. ACCEPTANCE

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

2.2.3. ADDENDUM/ADDENDA

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

2.2.4. CONTRACT

The executed contract between JEA and Construction Manager, also sometimes referred to as the "Contract".

2.2.5. ARCHITECT-ENGINEER

Means the entity who will assist the JEA's Representative in the management and administration of the Project and is the Engineer-of-Record for the project.

2.2.6. AWARD

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

2.2.7. CHANGE ORDER

A Change Order is a written order on an approved change order form under the authorization of JEA to the Construction Manager signed by JEA issued after the execution of this Contract, authorizing a Change in the Project, the Construction Manager's fee, or the Substantial Completion date. Each adjustment in the GMP resulting from a change order shall clearly separate the amount attributable to the Cost of the Project. Execution of a Change

Order by the Construction Manager serves as a waiver and an accord and satisfaction of all issues related to the Work identified in the Change Order. All Change Orders shall require a written amendment to this Contract to be executed by the Construction Manager and JEA in order for such Change Order to become effective.

2.2.8. CONSTRUCTION MANAGER (CMAR)

The legal person, firm, corporation or any other entity or business relationship (including corporate subsidiaries) with whom JEA has executed the Contract. Where the word "Construction Manager" is used it shall also include permitted assigns. The "Construction Manager" may also be referred to as the "CMAR".

2.2.9. CMAR CONTINGENCY

The amount set forth in the GMP Amendment which is available for Construction Manager's use for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order such as overtime, acceleration, and Subcontractor defaults.

2.2.10. CONTRACT

An agreement between JEA and the Construction Manager, 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 Construction Manager, or a JEA issued Change Order.

2.2.11. CONTRACT AMENDMENT

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

2.2.12. CONTRACT PRICE

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

2.2.13. CONTRACT TIME

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

2.2.14. DAY OR DAYS

Shall mean calendar days unless otherwise specifically noted in the Contract Documents.

2.2.15. DEFECT

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

2.2.16. FINAL COMPLETION

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

2.2.17. HAZARDOUS CONDITIONS

Any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

2.2.18. INVOICE

A document seeking payment to the Construction Manager 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 Construction Manager's name and address, a description of the product(s) or service(s) rendered, a valid JEA PO number, the amount payable, the Unit Price, the payee name and address, any associated JSEB forms and any other supporting documentation required by the Contract Documents.

2.2.19. JEA

JEA on its own behalf.

2.2.20. JEA REPRESENTATIVES

The person or persons designated by JEA as the representative acting in a capacity related to the Work.

2.2.21. LEGAL REQUIREMENTS

All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

2.2.22. NOTICE TO PROCEED

The written notice, duly authorized and delivered by JEA that authorizes the Construction Manager to begin the Work. The Notice to Proceed is normally issued in the form of a purchase order, unless otherwise specified in the Contract Documents. Site is the land or premises on which the Project is located.

2.2.23. OWNER ALLOWANCE

The amount set forth in the GMP Amendment which is available for changes in the scope of work requested by the Owner, or other unforeseen events that are the responsibility of the Owner.

2.2.24. PERFORMANCE - ACCEPTABLE PERFORMANCE/PERFORMER

The Construction Manager 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.

2.2.25. PERFORMANCE - TOP PERFORMANCE/PERFORMER

The Construction Manager 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.

2.2.26. PERFORMANCE - UNACCEPTABLE PERFORMANCE/PERFORMER

The Construction Manager 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.

2.2.27. PROJECT

The entirety of the work. Also referred to as the "Work" or the "Scope of Work".

2.2.28. PURCHASE ORDER (PO)

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

2.2.29. SUBCONTRACTOR

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

2.2.30. SUBSTANTIAL COMPLETION

The date on which the Work, or an agreed upon portion of the work, is sufficiently complete so that the Owner can occupy and use the Work, or a portion thereof, for its intended purposes and, in accordance with the Contract Documents. Additionally, all work other than incidental corrective and incidental punch list work items shall be completed. Substantial Completion shall not have been achieved if all systems and parts are not functional, if utilities are not connected and operating normally, if all required regulatory permits and approvals have not been issued, or if all vehicular and pedestrian traffic routes affected by the Work have not been restored. The date of Substantial Completion shall be established in writing by JEA. Recognition of the Work as Substantially Complete, as evidenced by issuance of a Certificate of Substantial Completion, does not represent JEA's Acceptance of the Work.

2.2.31. SOLICITATION

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

2.2.32. TASK ORDER

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

2.2.33. TERM

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

2.2.34. UNIT PRICES

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

2.2.35. WORK OR SCOPE OF SERVICES

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

2.2.36. SCOPE OF WORK

The Construction Manager accepts the relationship of trust and confidence established between itself and JEA by this Contract. The Construction Manager covenants with JEA to demonstrate high performance in the industry to its best skill and judgment and to cooperate and work collaboratively with JEA's architect-engineer of record:

Mott MacDonald ("Architect-Engineer") in furthering the interests of JEA. The Construction Manager agrees to use sound business administration and superintendence and use of high efforts industry wide to complete the project in a very sound expeditious and economical manner consistent with the interest of JEA.

The Construction Manager shall familiarize itself thoroughly with the evolving plans and specifications and shall follow the development of design from preliminaries through working drawings. The Construction Manager shall make recommendations in its capacity as Construction Manager with respect to constructability, the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer and JEA in

evaluating alternative comparisons versus long term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the Project. The Construction Manager shall furnish known pertinent information as to the availability of materials and labor that will be required. The Construction Manager shall submit to JEA and Architect-Engineer such comments in writing as may be appropriate concerning construction feasibility and practicality. The Construction Manager shall call to JEA and the Architect-Engineer's attention any defects in the design, drawings and specifications or other documents that it discovers. The Construction Manager shall prepare an estimate of the construction cost for each design phase utilizing the unit quantity survey method, with details according to the Master Format of the Construction Specifications Institute format, and instructions of the JEA Representative. Additional preconstruction phase responsibilities of the Construction Manager are set herein below. In addition to the foregoing, the Construction Manager shall perform all construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents, as more specifically set forth in Exhibit "A" attached hereto ("Scope of Work"). The Scope of Work shall include, but not be limited to preconstruction services, construction services and commissioning services, to make the Project a fully functioning facility.

The Construction Manager's preconstruction responsibilities include the following:

- See **Appendix A**, attached hereto and incorporated herein.

The Construction Manager's construction and commissioning services shall follow in a GMP Amendment(s) to this contract upon successful acceptance of their GMP proposal(s) as outlined in Article 2.6 below.

2.3. ORDER OF PRECEDENCE

The "Contract Documents" in order of priority are comprised of the following:

All written modifications, amendments in accordance with this Contract and Change Orders to this Contract issued. This Contract, including all exhibits (but excluding, if applicable, the GMP Exhibit) and attachments, as follows:

- Scope of Work – **Exhibit "A"**
- Contract Fee Summary Form – **Exhibit "B"** (*to be provided by CMAR*)
- Construction documents including specifications and drawings prepared by the Architect-Engineer in accordance with the terms and conditions of JEA Contract No. 200959.

2.4. CONTRACT TIME

2.4.1. DATE OF COMMENCEMENT

The Work shall commence within five (5) days of Construction Manager's receipt of JEA's Notice to Proceed ("Date of Commencement"), and the remaining Work for the Project shall commence within five (5) days of Construction Manager's receipt of a separate and additional second JEA's Notice to Proceed ("Second Date of Commencement"), unless the parties mutually agree otherwise in writing.

2.4.2. SUBSTANTIAL COMPLETION AND FINAL COMPLETION

Substantial Completion of the entire Work shall be achieved by the date set forth in the GMP Amendment (the "Scheduled Substantial Completion Date"). Construction Manager acknowledges that it is JEA's desire that the Scheduled Substantial Completion Date be attained on or before TBD. This acknowledgement of JEA's desired Scheduled Substantial Completion Date is not to be construed as a firm deadline but does represent Construction Manager's acknowledgement and commitment to perform the Work in good faith to achieve same.

Final Completion of the Work shall occur when all items on the Substantial Completion punch list have been resolved to JEA's satisfaction and accepted by JEA, but in no event more than sixty (60) days beyond the Scheduled Substantial Completion Date.

All of the dates set forth herein shall be subject to adjustment by Contract of the both parties and upon execution of an amendment to this contract.

2.4.3. TIME IS OF THE ESSENCE

JEA and Construction Manager mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

2.4.4. LIQUIDATED DAMAGES

If the Construction Manager fails to Substantially Complete the Work on or before the time periods required in the Contract Documents, the Construction Manager shall pay JEA the sum(s) set forth in the GMP Contract Amendment for each and every calendar day, including Sundays and Holidays, until the date the Work is completed and Accepted by JEA. Liquidated Damages are capped at a maximum of ten percent (10%) of the Contract Price.

The Construction Manager understands and agrees that said daily sum is to be paid not as a penalty, but as compensation to JEA as a fixed and reasonable liquidated damages for losses that JEA will suffer because of such default, whether through increased administrative and engineering costs, interference with JEA's normal operations, other tangible and intangible costs, or otherwise, which costs will be impossible or impractical to measure or ascertain with any reasonable specificity.

Liquidated damages may, at JEA's sole discretion, be deducted from any monies held by JEA that are otherwise payable to Construction Manager.

The Construction Manager's responsibility for liquidated damages shall in no way relieve the Construction Manager of any other obligations under the Contract.

2.5. CONTRACT PRICE

JEA shall pay Construction Manager, in accordance with the payment method stated herein, a contract price ("**Contract Price**") equal to Construction Manager's Fee (as defined herein) plus the Cost of the Work (as defined herein), plus the additional amounts payable to the Construction Manager for Preconstruction Services, subject to the GMP established in herein and any adjustments made in accordance with the General Conditions of Contract.

For the specific Work set forth below, JEA agrees to pay Construction Manager, as part of the Contract Price, on the following basis, as more specifically described on Exhibit "A" and Exhibit "B" attached hereto:

- For Preconstruction Services a lump sum amount of _____, to be paid incrementally in proportion to satisfactory progress towards the completion of the Scope of Work.

2.5.1. CONSTRUCTION MANAGER'S FEE

Construction Manager's Fee for the Project shall be:

_____ % of the Cost of the Work (as defined in Section 2.5.2)

2.5.2. COST OF THE WORK

The term Cost of the Work shall mean costs reasonably incurred by Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the following:

1. Wages of direct employees of Construction Manager performing the Work at the Site or, with JEA's Contract, at locations off the Site, provided, however, that the costs for those employees of Construction Manager performing services under this Contract shall be reasonable.
2. Wages or salaries of Construction Manager's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work, provide such wages and salaries are reasonable.
3. Wages or salaries of Construction Manager's personnel stationed at Construction Manager's principal or branch offices and performing the functions that are reasonable.

4. Costs incurred by Construction Manager for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining Contracts, or which are customarily paid by Construction Manager (the “**Combined Fringe Benefit & Administrative Overhead Rate**”), to the extent such costs are based on wages and salaries paid to employees of Construction Manager covered herein.
5. The reasonable and documented portion of the cost of travel, accommodations and meals for Construction Manager’s personnel necessarily and directly incurred in connection with the performance of the Work.
6. Payments properly made by Construction Manager to Subcontractors for performance of portions of the Work, including any required insurance and bond premiums incurred by Subcontractors.
7. Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.
8. Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Construction Manager, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
9. Costs of removal of debris and waste from the Site.
10. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and DSL internet services.
11. Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Construction Manager at the Site, whether rented from Construction Manager or others, and incurred in the performance of the Work. Rental charges for Construction Manager owned equipment shall not exceed third-party competitive market rates.
12. Premiums for insurance and bonds required by this Contract or the performance of the Work, including, but not limited to, errors and omissions insurance, including any sub-contractors bonds as the Construction Manager deems appropriate.
13. All fuel and utility costs incurred in the performance of the Work.
14. Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.
15. Costs for permits, royalties, licenses, tests and inspections incurred by Construction Manager as a requirement of the Contract Documents.
16. Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property to the extent not covered by Construction Manager’s insurance and the emergency was not caused by the Construction Manager.
17. Other documented costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by JEA.
18. If approved by JEA, Construction Manager, when qualified, may perform all or a portion of the Work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the Work.

19. Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the Project.
20. Costs for watchmen and security services for the Project.
21. Costs for such temporary facilities during construction, as approved by JEA, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
22. Costs for efficient logistical control of the Site, including horizontal and vertical transportation and materials and personnel. Also, costs for adequate storage.
23. Cost for any Site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Work.
24. Cost of utilizing a computer aided design and drafting application (CADD) for record drawings as described in **Exhibit "A"** (Scope of Work). Upon completion of the Work, the Construction Manager shall obtain two (2) sets of disk files from the Architect-Engineer and record to scale all as-built conditions. The disk shall be submitted to the JEA Representative when completed, together with two sets of blue line or black line prints at the time of final completion. In lieu of disks, Architect-Engineer may provide required files via other electric means, and the Construction Manager may provide files to JEA via appropriate electric means (electric file transfer, etc.).

2.5.3. NON-REIMBURSABLE COSTS

The following shall be excluded from the Cost of the Work:

1. Compensation for Construction Manager's personnel stationed at Construction Manager's principal or branch offices, except as herein.
2. Overhead and general expenses, except as provided for herein, or which may be recoverable for changes to the Work.
3. The cost of Construction Manager's capital used in the performance of the Work.
4. Once the parties have agreed on a GMP, costs that would cause the GMP, as may be adjusted in accordance with the Contract Documents, to be exceeded.
5. Cost of any project completion bonuses for Construction Manager salaried employees.
6. Costs associated with Construction Manager's negligence.

2.6. THE GUARANTEED MAXIMUM PRICE (GMP)

GMP ESTABLISHED AFTER EXECUTION OF THIS CONTRACT

2.6.1. GMP PROPOSAL

When requested by JEA, the Construction Manager shall submit a GMP Proposal to JEA which shall include the following, unless the parties mutually agree otherwise:

- A proposed GMP
- Construction Manager's Fee as defined herein;
- At the specified stage of design development, the CMAR shall be responsible for providing an open-book GMP proposal for construction of the work. The GMP shall conform to the contract requirements and represent the total cost of constructing, commissioning, and warranting the work as specified. The GMP shall consist of the CMAR's fee, project indirect costs ("General Conditions"), the direct cost of the work,

insurance, bonds, contingencies, allowances, and related costs. The CMAR's fee shall be expressed as a percentage of the cost of the Work. The fee shall include overhead, profit, and other allowable expenses as set forth in the CMAR Agreement; and

- If applicable, any additional prices established under this Contract
- A list of the drawings and specifications, including all addenda, used as the basis for the GMP Proposal;
- A list of the assumptions and clarifications made by Construction Manager in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;
- The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established herein, and a schedule upon which the Scheduled Substantial Completion Date is based;
- A list of allowances and a statement of their basis;
- A schedule of alternate prices;
- A schedule of unit prices;
- A statement of Additional Services; and
- Copies of all open book estimates, bids and subcontracts upon which the GMP is based.
- A Risk Register presented in the format specified by the Owner to serve as the basis for the proposed CMAR Contingency and Owner Allowance amounts.

2.6.2. REVIEW AND ADJUSTMENT TO GMP PROPOSAL

After submission of the GMP Proposal, Construction Manager and JEA shall meet to discuss and review the GMP Proposal. If JEA has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Construction Manager of such comments or findings. If appropriate, Construction Manager shall, upon receipt of JEA's notice, make appropriate adjustments to the GMP Proposal.

2.6.3. ACCEPTANCE OF GMP PROPOSAL

If JEA accepts the GMP Proposal, as may be amended by Construction Manager and JEA, the GMP and its basis shall be set forth in an amendment to this Contract (the "GMP Amendment").

2.6.4. FAILURE TO ACCEPT THE GMP PROPOSAL

If JEA rejects the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, JEA and Construction Manager shall meet and confer as to how the Project will proceed, with JEA having the following options:

- JEA may suggest modifications to the GMP Proposal, including, but not limited to, value engineering options, bid alternates, alternate materials, alternate finishes, scope revisions, performance requirements, etc., whereupon, if such modifications are accepted in writing by Construction Manager, the Construction Manager shall submit a revised GMP Proposal for JEA's consideration;
- JEA may authorize Construction Manager to continue to proceed with the Work on the basis of reimbursement as provided in Section 2.5.2 hereof without a GMP, in which case all references in this Contract to the GMP shall not be applicable; or
- JEA may terminate this Contract for convenience in accordance with this Contract.

2.6.5. SAVINGS

If the CMAR Contingency funds are not used, the amount not spent ("**Savings**") shall be shared as follows; provided, however, that any liquidated damages due to JEA shall be deducted from any Savings due to Construction Manager:

- Twenty-five percent (25%) to Construction Manager and seventy-five percent (75%) to JEA.
- Except as provided herein, savings shall be calculated and paid as part of Final Payment, with the understanding that to the extent Construction Manager incurs costs after Final Completion which would have been payable to Construction Manager as a Cost of the Work, Construction Manager shall be entitled to payment from JEA for that portion of such costs that were distributed to JEA as Savings.

2.7. CMAR CONTINGENCY USAGE

The Construction Manager will be required to receive JEA authorization, which shall not be unreasonably withheld without limitation, prior to using any of the CMAR Contingency funds. If JEA does not deny within three (3) business days of request, the Construction Manager may use the CMAR Contingency funds as if the request had been approved by JEA.

The CMAR Contingency may be used for any costs of the work, as defined herein, that are required to execute the work as defined in the GMP. No increase in the CMAR Contingency will be allowed once the GMP is established, unless such cost arises from a latent condition or differing site condition. Risk to any other unforeseen circumstance shall be at the risk of the Construction Manager, unless approved by JEA via change order and contract amendment. The Construction Manager shall document to JEA with a log and detailed backup including receipts, contracts, invoices or communications to itemize the use CMAR Contingency identified in the GMP. The CMAR Contingency for this Project will be negotiated at the time of GMP Proposal submission. Any remaining CMAR Contingency at the completion of the Project shall be disbursed in accordance with this Contract.

2.8. OWNER ALLOWANCE USAGE

The Owner Allowance shall only be used for any costs of the work, as defined herein, that are required to execute changes in the scope of work that was defined in the GMP. Before any Owner Allowance is used, the Construction Manager shall receive written approval from JEA. The Construction Manager shall document to JEA with a log and detailed backup including receipts, contracts, invoices or communications to itemize the use Owner Allowance. The Owner Allowance for this Project will be negotiated at the time of GMP Proposal submission. Any remaining Owner Allowance at the completion of the Project shall be remain with JEA.

2.9. PRICE AND PAYMENTS

2.9.1. PAYMENT METHOD – SCHEDULE OF VALUES

The Construction Manager shall submit to JEA a monthly invoice that details the Work completed during that month and a forecast of the final cost. The Construction Manager shall request payment in accordance with the amounts/percentages set forth on the Schedule of Values that the Construction Manager submitted prior to the start of the Work. The Schedule of Values is defined as an itemized list that establishes the value of each part of the Work for a stipulated price and for major lump sum items in a unit price contract. JEA will determine, either by measurement or approximation, the final quantities incorporated into the Work under items for which Unit Prices are established in the Contract Documents. JEA's determination as to the quantity of the Work successfully completed shall be final.

2.9.2. COST SAVING PLAN

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

2.9.3. INVOICING, PAYMENT TERMS & RETAINAGE

Within sixty (60) days of completion of the Work, the Construction Manager shall submit all Invoices or Applications for Payment in accordance with the payment method agreed upon in these Contract Documents. All Invoices shall be submitted to the following email address: acctpaycustsrv@jea.com.

JEA will pay the Construction Manager the amount requested less any holdbacks or retainage set forth in herein within thirty (30) calendar days after receipt of an Invoice from the Construction Manager subject to the provisions stated below.

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

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

As security for the proper performance of the Work, JEA may deduct five percent (5%) retainage, or such other amount allowable pursuant to Florida law, from the amount stipulated in the Invoice or Application for Payment..

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 Construction Manager. If the parties determine that the sum of all previous payments and credits exceeds the sum due the Construction Manager, the Construction Manager shall refund the excess amount to JEA within ten (10) days of determination or written notice.

2.9.4. JSEB - INVOICING AND PAYMENT

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

2.9.5. PROMPT PAYMENT TO SUBCONTRACTORS AND SUPPLIERS

When Construction Manager receives payment from JEA for labor, services, or materials furnished by subcontractors and suppliers hired by Construction Manager, Construction Manager shall remit payment due (less proper retainage) to those subcontractors and suppliers within 10 calendar days after Construction Manager's receipt of payment from JEA. Nothing herein shall prohibit Construction Manager from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subcontractors and suppliers. In the event of such a dispute, Construction Manager may withhold the disputed portion of any such payment only after Construction Manager has provided notice to JEA and to the subcontractor or supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to JEA and said subcontractor or supplier within 10 calendar days after Construction Manager's receipt of payment from JEA. Construction Manager shall pay all undisputed amounts due within the time limits imposed by this section.

2.9.6. PAYMENT TO JSEBs

Notwithstanding Chapter 126, Part 6 of the Jacksonville Ordinance Code (the "Code"), Construction Manager shall pay all contracts awarded with certified JSEBs as defined therein their pro-rata share of their earned portion of the progress payments made by JEA under the applicable contract within seven (7) business days after Construction Manager's receipt of payment from JEA (less proper retainage). The pro-rata share shall be based on all Work completed, materials, and equipment furnished or services performed by the certified JSEB at the time of payment. As a condition precedent to progress and final payments to Construction Manager, Construction Manager shall provide to JEA, with its requisition for payment, documentation that sufficiently demonstrates that Construction Manager has made proper payments to its certified JSEBs from all prior payments that Construction Manager has received from JEA. Construction Manager shall not unreasonably withhold payments to certified JSEBs if such payments have been made to the Construction Manager. If Construction Manager withholds payment to its certified JSEBs, which payment has been made by JEA to Construction Manager, Construction Manager shall return said payment to JEA. Construction Manager shall provide notice to JEA and to the certified JSEB whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to JEA and said subcontractor or supplier within five (5) calendar days after Construction Manager's receipt of payment from JEA. Construction Manager shall pay all undisputed amounts due within the time limits imposed by this section. The failure to pay undisputed amounts to the JSEB within 7 business days shall be a breach of contract, compensable by 1% of the outstanding invoice being withheld by JEA as liquidated damages. Continued failure to adhere to this clause may be cause for termination.

2.9.7. DISCOUNT PRICING

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

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

Construction Manager 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.

2.9.8. RECORD KEEPING AND FINANCE CONTROLS

Construction Manager acknowledges that this Contract is to be administered on an "open book" arrangement relative to Costs of the Work. Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after receipt of Final Payment, JEA and JEA's accountants shall be afforded access from time to time, upon reasonable notice, to Construction Manager's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Construction Manager shall preserve for a period of three (3) years after receipt of Final Payment.

2.9.9. OFFSETS

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

2.9.10. 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.

2.10. CONSTRUCTION PHASE SERVICES

Unless otherwise provided in the Contract Documents to be the responsibility of JEA or a separate contractor, Construction Manager shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Construction Manager to complete construction of the Project consistent with the Contract Documents. Architect-Engineer may provide additional inspection and testing services outside the cost of the Work.

Construction Manager shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Construction Manager shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

Construction Manager's employees and Subcontractors shall be fluent in the English language, and shall be legally able to perform work in the United States. Additionally the Construction Manager shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. JEA may reasonably object to Construction Manager's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that JEA's decision impacts Construction Manager's cost and/or time of performance.

Construction Manager assumes responsibility to JEA for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between JEA and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

Construction Manager shall coordinate the activities of all Subcontractors. If JEA performs other Work on the Project or at the Site with separate contractors under JEA's control, Construction Manager agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

Construction Manager shall keep the Site reasonably free from debris, trash and construction wastes to permit Construction Manager to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Construction Manager shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit JEA to occupy the Project or a portion of the Project for its intended use.

2.11. WARRANTIES AND REPRESENTATIONS

2.11.1. WARRANTY

The Construction Manager shall warrant that all materials and equipment included in the Work will be new, except where indicated otherwise in the Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Plans and Specifications. The Construction Manager further agrees to correct all Work found by JEA to be defective in material and workmanship or not in conformance with the drawings and specifications for a period of two (2) years from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the Plans and Specifications. The Construction Manager shall collect and deliver to JEA any specific written warranties given by others as required by the Contract Documents. Also, the Construction Manager shall conduct, jointly with JEA, Engineer and the Design-Engineer, a warranty inspection twenty-one (21) months after the date of Substantial Completion.

2.11.2. CORRECTION OF DEFECTIVE WORK

Construction Manager agrees to correct any Work that is found to not be in conformance with the Contract Documents, within a period of two (2) years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents, at no additional cost to JEA.

Construction Manager shall, within fourteen (14) days of receipt of written notice from JEA that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Construction Manager fails to commence the necessary steps within such fourteen (14) day period, JEA, in addition to any other remedies provided under the Contract Documents, may provide Construction Manager with written notice that JEA will commence correction of such nonconforming Work with its own forces. If JEA does perform such corrective Work, Construction Manager shall be responsible for all reasonable costs incurred by JEA in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the fourteen (14) day periods identified herein shall be deemed inapplicable.

The two year warranty period stated above applies only to Construction Manager's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies JEA may have regarding Construction Manager's other obligations under the Contract Documents.

2.12. CHANGES IN THE PROJECT

2.12.1. REQUEST FOR A CHANGE ORDER

The work schedule and/or contract time may be changed by a Change Order, Purchase Order or SWA. The Construction Manager's request or claim for a work schedule and/or contract time adjustment shall be in writing delivered to the JEA Representative within ten (10) working days following the discovery of the event that prompted the claim or the date when the event should have been discovered. Where accepted by JEA, changes to the work

schedule will only adjust for critical path impacts. Failure to include the necessary critical path analysis with the request shall be grounds for rejecting the claim. The critical path as used in this Section means the series of interdependent Work events that must be sequentially performed and that require a longer total time to perform than any other such series. Upon receipt of the Construction Manager's request for a change in the Work schedule, the Contract Administrator will provide any additional directions in writing detailing the procedures that will be used to resolve the request, including provision of time impact or manpower and equipment loading schedules. Where JEA and the Construction Manager are unable to reach a mutually acceptable resolution of request, JEA will make a commercially reasonable determination, made in accordance with JEA's Procurement Code, which shall be final.

2.12.2. ACCEPTABLE WAYS OF DETERMINING INCREASES OR DECREASES IN THE GMP ON CHANGE ORDERS

An increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project or other factor entitling Construction Manager to an equitable adjustment of the GMP shall be determined in one or more of the following ways:

- by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by JEA;
- by unit prices stated in the Contract or subsequently agreed upon, if less; or
- as otherwise mutually agreed to by JEA and the Construction Manager

2.12.3. ITEMIZED ACCOUNTING ON CHANGE ORDERS

If the parties are unable to agree to the pricing of a change order in accordance with this Contract, the Construction Manager, provided he receives a written order signed by JEA, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, JEA will establish an estimated cost of the Work and the Construction Manager shall not perform any Work which cost exceeds that estimate without prior written approval by JEA. In such case, the Construction Manager shall keep and present, in such form as JEA may prescribe, an itemized accounting together with appropriate supporting data organized and maintained consistent with reasonable generally accepted accounting principles and practices of the increase in the Cost of the Project as outlined herein of the Contract. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to JEA for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

2.12.4. EMERGENCIES

In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency Work shall be determined as provided in this Article 9, as long as the emergency was not caused by the Construction Manager.

2.13. CONTRACT ADJUSTMENTS AND DISPUTES

2.13.1. PROCEDURE FOR REQUESTING CHANGES ORDERS

To request or claim any change in the Work including, but not limited to change in scope, quantities, pricing, or schedules, the Construction Manager shall submit a letter to the JEA Representative stating such request or claim. JEA shall have the right to approve or disapprove any request or claim for change as it deems necessary and in its best interests consistent with the other Contract requirements. Whether requested by the Construction Manager, claimed by the Construction Manager, or contemplated by JEA, no change shall be authorized unless made on a Change Order signed by the JEA Representative or through a formal written amendment to this Contract.

2.14. STOP WORK, TERM AND TERMINATION

2.14.1. JEA'S RIGHT TO STOP WORK

JEA may, without cause and for its convenience, order Construction Manager in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project. Construction Manager is entitled to seek an adjustment of the Contract Price and/or

Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by JEA.

2.14.2. TERM OF CONTRACT – THROUGH CONTRACT COMPLETION

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

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

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

Upon receipt of such notice of termination, the Construction Manager 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 Construction Manager 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.

2.14.4. JEA'S RIGHT TO PERFORM AND TERMINATE FOR DEFAULT

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

- The Construction Manager assigns or subcontracts the Work without prior written permission;
- Any petition is filed or any proceeding is commenced by or against the Construction Manager for relief under any bankruptcy or insolvency laws;
- A receiver is appointed for the Construction Manager's properties or the Construction Manager commits any act of insolvency (however evidenced);
- The Construction Manager makes an assignment for the benefit of creditors;
- The Construction Manager suspends the operation of a substantial portion of its business;
- The Construction Manager suspends the whole or any part of the Work to the extent that it impacts the Construction Manager's ability to meet the Work schedule, or the Construction Manager abandons the whole or any part of the Work;
- The Construction Manager, at any time, violates any of the conditions or provisions of the Contract Documents, or the Construction Manager fails to perform as specified in the Contract Documents, or the Construction Manager is not complying with the Contract Documents;
- The Construction Manager attempts to willfully impose upon JEA items or workmanship that are, in JEA's sole opinion, defective or of unacceptable quality;
- The Construction Manager breaches any of the representations or warranties;
- The Construction Manager is determined, in JEA's sole opinion, to have misrepresented the utilization of funds or misappropriate property belonging to JEA; or
- There is an adverse material change in the financial or business condition of the Construction Manager.

If within thirty (30) days after service of such notice to discontinue or notice to cure upon the Construction Manager an arrangement satisfactory to JEA has not been made by the Construction Manager for continuance of the Work or the material breach has not been remedied, JEA may declare the Construction Manager to be in default and terminate the Contract.

Once Construction Manager is declared in default and the Contract has been terminated, JEA will notify the Surety in writing of the termination. The Surety shall, at JEA's sole option take one (1) of the following actions:

- (a) Within a reasonable time, but in no event later than thirty (30) days, from JEA's written notice of termination for default, arrange for Construction Manager with JEA's consent, which shall not be unreasonably withheld, to complete the Contract and the Surety shall pay JEA all losses, delay and disruption damages and all other damages, expenses, costs and statutory attorney's fees, including appellate proceedings, that JEA sustains because of a default by the Construction Manager under the Contract ;
- (b) Within a reasonable time, but in no event longer than sixty (60) days after JEA's written notice of termination for default, award a contract to a completion contractor and issue notice to proceed or alternatively, JEA may elect, to have the Surety determine jointly with JEA the lowest responsible qualified bidder, to have the Surety arrange for a contract between such bidder and JEA, and for the Surety to make available as Work progresses sufficient funds to pay the cost of completion less the balance of the Contract price; or
- (c) Within a reasonable time, but in no event later than thirty (30) days from JEA's notice of termination for default, JEA may waive its right to complete or arrange for completion of the Contract and, within twenty-one (21) days thereafter, determine the amount for which the Surety may be liable to JEA and tender payment to JEA of any amount necessary in order for JEA to complete performance of the Contract in accordance with its terms and conditions less the balance of the Contract price.

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

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

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

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

Immediately upon termination or expiration of this Contract, Construction Manager must return to JEA all materials, documents and things used by Construction Manager and belonging to JEA, including proposals, computer files, borrower files, building keys, and any other property or information regarding continued business compliance or goodwill, whether in electronic or hard-copy form. Furthermore, upon JEA's request, Construction Manager shall certify in writing that all of the foregoing documents or materials, including archival or backup copies, whether in electronic or hard-copy form, have been returned to JEA, deleted from any computer system, or otherwise destroyed. If JEA improperly terminates the Contract for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Contract.

2.15. SELF HELP

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

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

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

2.16. JSEB

2.16.1. JACKSONVILLE SMALL EMERGING BUSINESS (JSEB) PARTICIPATION.

The Construction Manager shall achieve the JSEB participation goal set during GMP development, except as allowed under the good faith efforts exception as defined in the City of Jacksonville Ordinance. In no case shall the Construction Manager make changes to the JSEB firms listed in its proposal, revise the JSEB scope of Work or amount of Work as stated in its proposal without prior written notice to the JEA Representative, and without subsequent receipt of written approval from the JEA Representative.

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

Use of brokering, as defined in the City of Jacksonville Ordinance, or other techniques that do not provide a commercially useful function are strictly prohibited as means of achieving the JSEB requirements of the Contract. Only the amount of fees or commissions charged by a JSEB for providing a bona fide service such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract shall be counted towards a JSEB participation requirement, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

Payment terms for participating JSEB firms shall be the same or better than the payment terms the Construction Manager receives from JEA, except that in all cases JSEB firms shall be allowed to submit invoices to the Construction Manager at least bimonthly, and the Construction Manager shall pay proper invoices no later than 3 days after its receipt of JEA payment. The Construction Manager shall obtain written approval from the JEA Representative prior to withholding any payment from JSEB firm.

If the Construction Manager uses a JSEB qualified firm for the performance of any part of this Work, the Construction Manager shall submit to JEA, with its Invoice, a listing of JSEB qualified firms that have participated in the Work. Such listing shall be made using the form "Monthly Report for COJ/JEA JSEB Participation" available at www.jea.com.

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

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

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

2.17. JEA'S SERVICES AND RESPONSIBILITIES

2.17.1. DUTY TO COOPERATE

JEA shall, throughout the performance of the Work, take reasonable and appropriate measures to the best of its ability to cooperate with Construction Manager and perform in a timely manner its responsibilities, obligations and services in accordance with the Contract Documents.

2.17.2. VERIFICATION OF EXISTING CONDITIONS & JEA'S FURNISHING OF SERVICES AND INFORMATION

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

Unless expressly stated to the contrary in the Contract Documents, JEA shall provide, at its own cost and expense, within ten (10) days after issuance of the Notice to Proceed, for Construction Manager's information and use the following, however, JEA does not warrant the accuracy of such information:

Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

- Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable Construction Manager to perform the Work;
- A legal description of the Site;
- To the extent available, as-built and record drawings of any existing structures at the Site; and
- To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

2.17.3. MULTI-YEAR FUNDING

This Contract, after the initial year, shall be contingent upon the existence of lawfully appropriated funds for each subsequent year of the Contract. If funds are not available for any subsequent year of the Contract, JEA may terminate this Contract for convenience in accordance with the terms of this Contract.

2.17.4. JEA'S REPRESENTATIVE

JEA's Representative shall be responsible for providing JEA-supplied information and approvals in a timely manner to permit Construction Manager to fulfill its obligations under the Contract Documents. JEA's Representative shall also provide Construction Manager with prompt notice if it observes any failure on the part of Construction Manager to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Provided, however, that nothing in this Section, including but not limited to any failure by JEA's Representative to observe or provide notice of any failure on the part of Construction Manager, shall be construed to alter or limit any obligation of Construction Manager or in any way alter or limit any terms or conditions of the Contract Documents.

2.17.5. GOVERNMENT APPROVALS AND PERMITS

Construction Manager shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees necessary to perform and construct the Work. If requested by Construction Manager, JEA shall provide reasonable assistance to Construction Manager in obtaining those permits, approvals and licenses that are Construction Manager's responsibility; provided however, nothing in this Section herein shall relieve Construction Manager of the ultimate responsibility of obtaining all necessary permits, approvals and licenses in accordance hereof. The Architect-Engineer shall obtain the following environmental permits, with the Construction Manager obtaining all other required permits for the execution of the Project:

- FDEP water main construction permit
- FDEP ERP permit for wetland impacts
- COJ 10-set Major Utility Construction approval
- COJ 10-Set Major Utility Construction and building approval
- FDOT Utility Occupancy permit
- FDEP Minor revision to wastewater facility

2.17.6. JEA'S SEPARATE CONTRACTORS

JEA is responsible for all Work performed on the project or at the Site by separate contractors under JEA's control. JEA shall require its separate contractors to reasonably cooperate with, and coordinate their activities so as not to unreasonably interfere with, Construction Manager in order to enable Construction Manager to timely complete the Work consistent with the Contract Documents.

2.18. HAZARDOUS CONDITIONS AND DIFFERING SITE CONDITIONS

2.18.1. HAZARDOUS CONDITIONS

Unless otherwise expressly provided herein or in the Contract Documents to be part of the Work, Construction Manager is not responsible for any Hazardous Conditions encountered at the Site that are not introduced to the Site by Construction Manager, Subcontractors or anyone for whose acts they may be liable. Upon encountering any such Hazardous Conditions, Construction Manager will stop Work immediately in the affected area and duly notify JEA and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

Upon receiving notice of the presence of suspected Hazardous Conditions, JEA shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include JEA retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that JEA must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

Construction Manager shall be obligated to resume Work at the affected area of the Project only after JEA's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

Construction Manager will be entitled to an adjustment in the GMP and/or Contract Time(s) to the extent Construction Manager's cost and/or time of performance have been materially adversely impacted by the presence of Hazardous Conditions and provided the Construction manager has complied with this section.

To the fullest extent permitted by law, JEA shall indemnify, defend and hold harmless Construction Manager, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site notified in accordance with this Section Notwithstanding, JEA's indemnification obligations shall be limited by Florida Statute 768.28, which is partial waiver of sovereign immunity for tort claims only.

Notwithstanding the preceding provisions of this Section, JEA is not responsible for Hazardous Conditions introduced to the Site by Construction Manager, Subcontractors or anyone for whose acts they may be liable. Construction Manager and its Subcontractors shall comply with all Legal Requirements for the handling of such Hazardous Conditions and shall bear full responsibility for such Hazardous Conditions, including, but not limited to, payment and liability for the transportation, use and disposal of any hazardous materials under Construction Manager's control during the performance of the Work. Construction Manager shall provide JEA with appropriate documentation showing proper disposal of its hazardous materials.

Construction Manager shall indemnify, defend and hold harmless JEA and JEA's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Construction Manager, Subcontractors or anyone for whose acts they may be liable or for violating any Legal Requirements for the handling of such Hazardous Conditions.

2.18.2. UNFORESEEN CONDITIONS

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

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

2.18.3. AUTHORITY

Construction Manager is a validly existing corporation under the laws of the State of Florida. The individual executing this Contract has full and lawful authority to bind and obligate Construction Manager to perform its obligations as herein provided and upon execution hereof, this Contract shall be the binding and legal obligation of Construction Manager and is enforceable against Construction Manager under the laws of the State of Florida.

2.18.4. PENDING LITIGATION AND JUDGMENTS

There are no legal actions, suits, or other legal or administrative proceedings against Construction Manager, and Construction Manager is not aware of any facts which might result in any such action, suit or other proceedings, and there are no outstanding judgments owed by Construction Manager which may impair or frustrate the Construction Manager's ability to perform its obligations under this Contract.

2.18.5. INSOLVENCY

There has not been filed by or against Construction Manager a petition in bankruptcy or any other insolvency proceeding, or for the reorganization or appointment of a receiver or trustee, nor has Construction Manager made an assignment for the benefit of creditors, nor filed a petition for arrangement, nor entered into an arrangement with creditors, nor admitted in writing its inability to pay debts as they become due. In executing this Contract, JEA and Construction Manager each individually represents that it has the necessary financial resources to fulfill its obligations under this Contract, and each has the necessary corporate approvals to execute this Contract, and perform the services described herein.

2.19. INSURANCE, INDEMNITY AND RISK OF LOSS

2.19.1. INSURANCE REQUIREMENTS

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

Workers' Compensation

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

Commercial General Liability

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

Automobile Liability

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

Excess or Umbrella Liability

(This is additional coverage and limits above the following primary insurance: Employer's Liability, Commercial General Liability, and Automobile Liability); Insurance Limits: \$4,000,000 each occurrence and annual aggregate.

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

Construction Manager shall specify JEA as an additional insured for all coverage except Workers' Compensation and Employer's Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by JEA. Construction Manager 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 Construction Manager 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. Construction Manager's and its subcontractors' Certificates of Insurance shall be mailed to JEA (Attn: Procurement Services), Customer Care Center, 6th Floor, 21 West Church Street, Jacksonville, FL 32202-3139.

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

Any subcontractors of Construction Manager shall procure and maintain the insurance required of Construction Manager hereunder during the life of the subcontracts. Subcontractors' insurance may be either by separate coverage or by endorsement under insurance provided by Construction Manager. 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 "Construction Manager"). Companies should show good faith efforts in providing assistance to JSEB firms in the securing of the Subcontractors' insurance requirements stated herein. Construction Manager shall submit subcontractors' certificates of insurance to JEA prior to allowing Subcontractors to perform Work on JEA's job sites.

2.19.2. INDEMNIFICATION (JEA STANDARD)

For ten dollars (\$10.00) acknowledged to be included and paid for in the contract price and other good and valuable considerations, the Construction Manager shall hold harmless and indemnify JEA against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, reasonable attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, arising out of or incidental to the negligence, recklessness or intentional wrongful misconduct of the Construction Manager and any person or entity used by Construction Manager 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.

2.19.3. CONSEQUENTIAL DAMAGES

Notwithstanding anything herein to the contrary, neither Construction Manager nor JEA shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

The consequential damages limitation set forth herein is not intended to affect the payment of liquidated damages, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

2.19.4. RISKS AND PROPERTY

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

2.19.5. BONDS AND OTHER PERFORMANCE SECURITY

After receipt of the Contract, the Construction Manager awarded the Work shall furnish a Payment and Performance Bond in the amount indicated on the Response Form, made out to JEA in forms and formats approved and provided by JEA, as security for the faithful performance of the Work of Contract. JEA will send the approved bond forms to the Construction Manager for execution along with the Contract, however, in no case shall the date on the bond forms be prior to that of the executed Contract. The surety must be authorized and licensed to transact business in Florida. A fully executed Payment Bond and Performance Bond must be recorded with the Clerk of Duval County Court and delivered to JEA before JEA will issue a Purchase Order to begin the Work. No Purchase Order shall be issued until the Payment and Performance Bonds are recorded and delivered to JEA's Procurement Department. If the Construction Manager fails or refuses to furnish or record the required bonds, JEA will retain the Construction Manager's Bid Bond as liquidated damages.

The Payment and Performance Bond requirements shall be for 100% of the Construction Phase amount. The Construction Manager should be aware that their bond premiums may be adjusted by their bonding Construction Manager, if actual Work exceeds the amount of the bond, however, any increase in total premiums required will not be approved by JEA for any change in Contract price as either a change order or as an adjustment through the use of a Supplemental Work Authorization. Unless otherwise specified on the Bid Form, the Construction Manager shall be solely responsible for obtaining and maintaining the required Payment and Performance Bonds throughout the term of the Contract. To be acceptable to JEA as Surety for Performance and Payment Bonds, a Surety Construction Manager shall comply with the following provisions:

The Surety Construction Manager shall have a current and valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.

The Surety Construction Manager shall have a current and valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Codes.

The Surety Construction Manager shall be in full compliance with the provisions of the Florida Insurance Code.

The Surety Construction Manager shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this Contract.

If the Contract Award Amount exceeds \$500,000, the Surety Construction Manager shall also comply with the following provisions:

The Surety Construction Manager shall have at least the following minimum ratings in the latest issue of AM Best's Key Rating Guide.

POLICY HOLDER'S CONTRACT AMOUNT AND REQUIRED FINANCIAL RATING

- \$500,000 TO 1,000,000: A-CLASS IV
- \$1,000,000 TO 2,500,000: A-CLASS V
- \$2,500,000 TO 5,000,000: A-CLASS VI
- \$5,000,000 TO 10,000,000: A-CLASS VII
- \$10,000,000 TO 25,000,000: A-CLASS VIII
- \$25,000,000 TO 50,000,000: A-CLASS IX
- \$50,000,000 TO 75,000,000: A-CLASS X

The Surety Construction Manager shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance, to conduct business in this state has been met.

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

2.19.6. BUILDER'S RISK

During construction of the Project, Company shall procure and maintain All Risk Builder's Risk insurance equal to or exceeding the GMP amount at its sole expense (insurance premiums and insurance deductibles) for itself, Company and its Subcontractor of all tiers while performing Work at JEA's Project site. The planned period of coverage for this Builder's Risk insurance is estimated to begin at construction start and continue to remain in place until the project's final completion. Company shall specify JEA as additional insured and obtain a Waiver of Subrogation on this Builder's Risk insurance in favor of JEA, their Board members officers, employees, agents, successors and assigns.

Certificates of Insurance shall be issued to JEA on request to JEA's Director Risk Management Services at (904) 665-6019. Company's Builder's Risk insurance shall provide coverage for either: (a) Company's or its Subcontractors' tools, equipment, personal property, protective fencing, scaffolding, temporary structures, framework, forms and equipment owned, leased, rented or borrowed by Company and its Subcontractors or (b) materials, supplies and equipment in transit to JEA's Project site or located on JEA's Project site which does not become a permanent part of the Project. Company's Builder's Risk insurance shall be primary over any other property insurance or self-insurance maintained by subcontractors, vendors and suppliers who have agreed to be responsible for risk of loss for JEA's equipment, materials and supplies (F.O.B. destination: JEA's Project site).

2.20. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTATION

2.20.1. PROPRIETARY INFORMATION

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

2.20.2. PUBLICITY AND ADVERTISING

The Construction Manager 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.

2.20.3. PATENTS AND COPYRIGHTS

In consideration of ten dollars (\$10.00), receipt and sufficiency is hereby acknowledged, Construction Manager shall hold harmless and indemnify JEA from and against liability or loss, including but not limited to any claims, judgments, court costs and attorneys' fees incurred in any claims, or any pretrial, trial or appellate proceedings on account of infringements of patents, copyrighted or un-copyrighted works, secret processes, trade secrets, patented or unpatented inventions, articles or appliances, or allegations thereof, pertaining to the Services, or any part thereof, combinations thereof, processes therein or the use of any tools or implements used by Construction Manager.

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

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

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

2.21. LABOR

2.21.1. NONDISCRIMINATION

For the Term of the Contract, the Construction Manager represents that it has adopted and will maintain a policy of nondiscrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age, handicap, disability, creed, political affiliation, gender, pregnancy condition, citizenship, marital status, genetic information, sexual orientation, gender identity, or any other protected characteristics established by law. The Construction Manager agrees that on written request, it will allow JEA reasonable access to the Construction Manager'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 Construction Manager shall not be required to produce, for inspection, records covering periods of time more than one (1) year before the Effective Date or expiration date of this Contract.

Additionally, the Construction Manager 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 Construction Manager 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.

2.21.2. LEGAL WORKFORCE

JEA shall consider the Construction Manager'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.

2.21.3. 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 Construction Manager 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 Construction Manager'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.

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

2.21.5. CONSTRUCTION MANAGER'S LABOR RELATIONS

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

2.22. CONSTRUCTION MANAGER'S RESPONSIBILITIES AND PERFORMANCE OF THE CONTRACT

2.22.1. JEA ACCESS BADGES

If the scope of work described in this Contract requires a Construction Manager to access JEA facilities over a period of time, each Construction Manager employee shall apply for a JEA access badge through JEA's Security

Department. JEA will run a seven (7) year background check on all Construction Manager employee's that apply for a JEA access badge.

An appointment to obtain a JEA access badge can be made by contacting JEA Security at securitybadge@jea.com.

JEA does not allow Construction Manager employees to share JEA access badges. A Construction Manager 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 6 hours of a lost or stolen JEA security badge or when an employee leaves the Construction Manager. Report badge termination notifications to JEA Security at (904) 665-8200.

2.22.2. TRANSITION SERVICES

At any time prior to the date the Contract expires or terminates for any reason (the "Termination Date"), JEA may request Construction Manager to provide reasonable transition assistance services ("Transition Assistance"). Construction Manager will provide such Transition Assistance until such time as JEA notifies the Construction Manager that JEA no longer requires such Transition Assistance, but in no event for more than 180 days following the Termination Date.

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

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

2.22.3. JEA CRITICAL INFRASTRUCTURE PROTECTION (CIP)

Pursuant to federal regulations, JEA is required to implement Critical Infrastructure Protection (CIP) and comply with NERC/FERC reliability standards for identified assets (collectively the "Assets"). Assets can be defined as either physical or cyber that are essential for JEA to maintain the integrity of the bulk electric system. Therefore, a Construction Manager that requires access to the Assets shall require that each of its employees, who require unescorted access apply for a JEA access badge through JEA's Security Department. Depending on which Assets a Construction Manager must access will determine the specific training and/or personal background screenings that will be required before a JEA badge can be issued. JEA will pay for reasonable costs associated with initial background screenings and training for required Construction Manager employees. However, if an initial screening is failed, the Construction Manager will be responsible for the cost of that screening and for additional screening costs related to Construction Manager employee turnover. An appointment to obtain a JEA access badge can be made by contacting JEA Security at securitybadge@jea.com.

Finally, all badges are for assigned individual use only and JEA does not allow Construction Manager employees to share JEA access badges. A Construction Manager, whose employees are found to be sharing JEA access badges, may result in the Contract being terminated for default. Additionally, JEA shall be notified within 6 hours of a lost or stolen JEA security badge or when an employee leaves the Construction Manager and Construction Manager should bear the cost of replacement security badge. Report badge termination notifications to JEA Security at (904) 665-8200.

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

JEA reserves the right to modify these terms if the applicable regulations change or additional regulations become applicable. JEA will provide sufficient notice in advance for Construction Manager to adapt the updated regulations.

2.22.4. CONSTRUCTION MANAGER REPRESENTATIVES

The Construction Manager shall provide JEA with the name and responsibilities of the Construction Manager Representative, in writing after Award of the Contract and before starting the Work under the Contract. Should the Construction Manager need to change the Construction Manager Representative, the Construction Manager shall promptly request a change in writing to JEA. The Construction Manager shall provide resume(s) of replacement staff for JEA's review and if appropriate, approval.

2.22.5. CONSTRUCTION MANAGER REVIEW OF PROJECT REQUIREMENTS

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

2.22.6. LICENSES

The Construction Manager shall comply with all licensing, registration and/or certification requirements pursuant to applicable laws, rules and regulations. The Construction Manager shall secure all licenses, registrations and certifications as required for the performance of the Work and shall pay all fees associated with securing them. The Construction Manager shall produce written evidence of licenses and other certifications immediately upon request from JEA.

2.22.7. SAFETY AND PROTECTION PRECAUTIONS

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

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

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

2.23. VENDOR PERFORMANCE EVALUATION

2.23.1. VENDOR PERFORMANCE EVALUATION

Use of Vendor Performance Evaluation Scorecards

JEA may evaluate the Construction Manager's performance using the evaluation criteria shown on the vendor scorecard available which are available upon request.

Scores for all metrics shown on the evaluation range from a low of 1, meaning significantly deficient performance, to a high of 5, meaning exceptionally good performance. The Construction Manager'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 Construction Manager's performance, JEA will consider the performance of the Construction Manager's Subcontractors and suppliers, as part of the Construction Manager's performance.

Frequency of Evaluations

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

Unacceptable Performance

- If at any time, JEA determines, using the criteria described on the scorecard, that the performance of the Construction Manager is Unacceptable, the JEA Representative and Chief Procurement Officer or his designated alternate will notify the Construction Manager of such in a letter. The Construction Manager shall have 10 days to respond to the JEA Representative. Such response shall include, and preferably be delivered in-person by an officer of the Construction Manager, the specific actions that the Construction Manager will take to bring the Construction Manager's performance up to at least Acceptable Performance.
- Within 30 days from date of the first Unacceptable Performance letter, the JEA Representative and Chief Purchasing Officer or his designated alternate will notify the Construction Manager by letter as to whether its performance, as determined solely by JEA, is meeting expectations, or is continuing to be Unacceptable. If the Construction Manager's performance is described in the letter as meeting expectations, no further remedial action is required by the Construction Manager, as long as Construction Manager's performance continues to be Acceptable.
- If the Construction Manager's performance as described in the letter continues to be Unacceptable, or is inconsistently Acceptable, then the Construction Manager 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 Construction Manager's performance from the start of Work, or date of most recent scorecard, whichever is latest, and giving due consideration to improvements the Construction Manager has made in its performance, or has failed to make. If the scorecard shows Construction Manager's performance is Acceptable, then no further remedial action is required by Construction Manager as long as Construction Manager's performance remains Acceptable. If the scorecard shows the Construction Manager'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 Construction Manager 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 Construction Manager of its obligations under the Contract, nor does it preclude an earlier termination.
- In the event that the Contract Term or the remaining Term of the Contract does not allow for the completion of the deficient performance notification cycles described above for those in danger of receiving an Unacceptable Performance scorecard, JEA may choose to accelerate these cycles at its sole discretion.
- If the Construction Manager receives five or more letters of deficiency within any 12 month period, then JEA will prepare a scorecard describing the deficiencies and the Construction Manager's performance will be scored as Unacceptable.

Acceptable Performance

JEA expects the Construction Manager's performance to be at a minimum Acceptable.

Disputes

In the event that the Construction Manager wants to dispute the results of its scorecard performance evaluation, the Construction Manager 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 Construction Manager's receipt of the scorecard. If the Chief Procurement Officer decides to change the scorecard, the Construction Manager will be notified and a revised scorecard will be prepared, with a copy issued to the Construction Manager. If the Chief Procurement Officer decides that no change is warranted, the decision of the Chief Procurement Officer is final. If the Construction Manager is to be suspended from consideration for future Award of any contracts, the Construction Manager 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.

2.24. JEA RESPONSIBILITIES

2.24.1. SUSPENSION OF SERVICES

JEA may suspend the performance of the Services by providing Construction Manager with a five (5) day written notice of such suspension. Schedules for performance of the Services shall be amended by mutual Contract to reflect such suspension. In the event of a suspension of Services, the Construction Manager shall resume the full performance of the Services when directed in writing to do so by JEA.

Suspension of Services due to the Construction Manager's negligence or failure to perform, may affect the Construction Manager's compensation as outlined in the Contract and/or result in termination of the Contract.

2.24.2. COORDINATION OF SERVICES PROVIDED BY JEA

The JEA Representative for the Work will, on behalf of JEA, coordinate with the Construction Manager and administer this Contract. It shall be the responsibility of the Construction Manager 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 Construction Manager 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 Construction Manager to perform work under this Contract.

2.25. MISCELLANEOUS PROVISIONS

2.25.1. 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.

2.25.2. AMENDMENTS

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

2.25.3. 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.

2.25.4. 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.

2.25.5. 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.

2.25.6. DISPUTES

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

2.25.7. DUTY TO CONTINUE PERFORMANCE

Unless provided to the contrary in the Contract Documents, Construction Manager shall continue to perform the Work and JEA shall continue to satisfy its payment obligations for undisputed invoices or claims to Construction Manager, pending the final resolution of any dispute or disagreement between Construction Manager and JEA.

2.25.8. ENTIRE CONTRACT

This Contract constitutes the entire Contract between the parties. No statement, representation, writing, understanding, or Contract 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.

2.25.9. 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 Contract is deemed to include a reference to that other Contract, 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.

2.25.1. 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 Construction Manager 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.

2.25.2. HEADINGS

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

2.25.3. INDEPENDENT CONTRACTOR

Construction Manager 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 Construction Manager. Neither Construction Manager nor JEA will be or become liable or bound by any representation, act, or omission of the other.

2.25.4. LANGUAGE AND MEASUREMENTS

All communication between the Construction Manager 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.

2.25.5. MEETINGS AND PUBLIC HEARINGS

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

2.25.6. 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.

2.25.7. 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.

2.25.8. 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.

2.25.9. RIGHT TO AUDIT

Accounting System

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

Audited Financial Statements

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

Content and Retention of Records

Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Construction Manager shall, at all times during the term of this Contract and for a period of

five years after the completion of this Contract, maintain such records, together with such supporting or underlying documents and materials.

Inspection/Audit of Records

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

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

Cost of Audits

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by JEA unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Construction Manager to JEA in excess of one-half of one percent (0.5%) of the total contract billings, the Construction Manager shall reimburse JEA for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, JEA may recoup the costs of the audit work from the Construction Manager.

Billing Adjustments and Recoveries

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

Failure to Comply

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

2.25.10. 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 Contract 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.

2.25.11. SUBCONTRACTING OR ASSIGNING OF CONTRACT

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

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

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

2.25.12. SURVIVAL

The obligations of JEA and the Construction Manager 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.

2.25.13. 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.

2.25.14. TIME OF ESSENCE

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

2.25.15. 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 Construction Manager'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.

2.25.16. GOVERNING LAW AND VENUE

The rights, obligations and remedies of the parties as specified under the Contract and all Contract Documents shall be interpreted and governed in all aspects by the laws of the State of Florida. Venue for litigation of this Contract shall be in courts of competent jurisdiction located in Jacksonville, Duval County, Florida.

2.25.17. SEVERABILITY

If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

2.25.18. NO WAIVER

The failure of either Construction Manager or JEA to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

2.25.19. HEADINGS

The headings used in this Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

2.25.20. NOTICE

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Contract or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

2.25.21. AMENDMENTS

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

2.25.22. NON-DISCRIMINATION PROVISIONS

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

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

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

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

2.25.23. COMPLIANCE WITH STATE AND OTHER LAWS/LICENSES AND CERTIFICATIONS

In the provision of the Services, the Construction Manager must comply with any and all applicable Federal, State and local laws, rules, regulations and ordinances, as the same exist and may be amended from time to time. Such laws, rules, regulations and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). Such laws, rules, regulations and ordinances must also include, but are not limited to, obtaining and maintaining all licenses and certifications that are required to perform the Services contemplated in this Contract. If any of the obligations of this Contract are to be performed by a Subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract. Construction Manager shall comply with any and all applicable Federal, State and

local laws, rules, and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes, (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Contract are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

2.25.24. ACCURACY OF WORK

Construction Manager shall be responsible for the accuracy of its Work, including Work by any subcontractors, and shall promptly make necessary revisions or corrections resulting from errors and omissions on the part of Construction Manager or subcontractors without additional compensation. Acceptance of the Work by JEA shall not relieve Construction Manager of the responsibility for subsequent corrections of any such errors and the clarification of any ambiguities. At any time during the construction of the Project provided for by the Contract Documents or during any phase of Work performed by others based on data furnished by Construction Manager under this Contract, Construction Manager shall confer with JEA for the purpose of interpreting the information furnished and/or to correct any errors and/or omissions made by Construction Manager. Construction Manager shall prepare all drawings or data to correct its errors and/or omissions without added compensation, even though final payment may have already been received therefore. Construction Manager shall be and shall remain liable, in accordance with applicable law, for all damages to JEA caused by Construction Manager's breach of contract or its negligent performance of any of the services furnished under this Contract. Construction Manager shall not be responsible for any time delays in the Project caused by circumstances beyond Construction Manager's control.

2.25.25. PUBLIC UTILITIES AND PERMITTING AUTHORITIES

Where privately, publicly or cooperatively owned utility companies will require re-arrangements in connection with the proposed construction, and when certain permits will be required for construction, Construction Manager shall make the necessary contacts and confer with JEA of such utilities regarding the requisite revisions in their facilities, apprising JEA of the results of all such contacts. Construction Manager shall make no commitments with utilities or permitting authorities which are binding upon JEA. JEA shall conduct all negotiations with public utilities and authorities. However, Construction Manager shall participate in such negotiations at the request of JEA.

2.25.26. PROHIBITION AGAINST CONTINGENT FEES

Construction Manager warrants that it has not employed or retained any Construction Manager or person, other than a bona fide employee Working solely for Construction Manager, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, Construction Manager, corporation, individual or firm, other than a bona fide employee Working solely for Construction Manager, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For the breach or violation of these provisions, JEA shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

2.25.27. TRUTH-IN-NEGOTIATION CERTIFICATE

Construction Manager understands and agrees that execution of this Contract by Construction Manager shall be deemed to be simultaneous execution of a truth-in-negotiation certificate under this provision to the same extent as if such certificate had been executed apart from this Contract, such certificate being required by Section 126.305, *Ordinance Code*, for professional service contracts over fifty thousand dollars. Pursuant to such certificate, Construction Manager hereby states that the wage rates and other factual unit costs supporting the compensation hereunder are accurate, complete and current at the time of contracting. Further Construction Manager agrees that the compensation hereunder shall be adjusted to exclude any significant sums where JEA determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of this Contract.

2.25.28. INDEPENDENT CONTRACTOR

In the performance of this Contract, Construction Manager shall be acting in the capacity of an independent contractor, and not as an agent, employee, partner, joint venture or associate of JEA. Construction Manager shall be solely responsible for the means, methods, techniques, sequences and procedures utilized in the full performance of this Contract.

2.25.29. CONSTRUCTION

Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Contract. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Contract

2.25.30. ENTIRE CONTRACT

This Contract constitutes the entire Contract between the parties hereto for the Services to be performed and furnished by the Construction Manager hereunder. No statement, representation, writing, understanding, Contract, course of action or course of conduct, made by either party, or any representative of either party, which is 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.

2.25.31. COUNTERPARTS

This Contract may be executed in several counterparts, each of which shall be deemed to be an original; and all of such counterparts together shall constitute one and the same instrument.

2.25.32. HARMONY

Construction Manager hereby agrees that he will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for Work on the Project shall Work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the Site. Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to Work as guaranteed by Article 1, Section 6 of the Florida Constitution.

2.25.33. CONSTRUCTION MANAGER'S PROJECT RECORDS

Construction Manager's Project Records shall be maintained as prescribed hereinabove for the minimum period required by local ordinance or federal law, and shall be made available to JEA or his authorized representative at mutually convenient times. Any records relating to claims, directly or indirectly, shall be provided within fifteen (15) days of written request to JEA or its agent.

2.25.34. E-VERIFY AND UNAUTHORIZED ALIENS

Construction Manager shall utilize the E-Verify system to verify the employment eligibility of: (i) all persons employed during the Contract term by the Construction Manager to perform employment duties within Florida; and (ii) all persons (including subcontractors) assigned by the Construction Manager to perform Work pursuant to the Contract with JEA. Upon request Construction Manager shall provide JEA with documentation evidencing the E-Verification of the persons described above in accordance with applicable laws.

JEA shall consider the employment by Construction Manager and/or its subcontractors of unauthorized aliens a violation of section 274A (e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this contract, at JEA's sole discretion, in accordance with the termination for cause provision above.

No person, including Construction Manager, its subcontractors, employees, representatives, and agents, shall be assigned a badge authorizing such person to enter the Site until such person has been E-Verified pursuant to Section 12.26.1 and has completed and returned to JEA a Personal Information Sheet (PIS), which PIS must be reviewed

and approved by JEA prior to such person being issued a badge for the Site. JEA approval may take up to five (5) business days.

2.25.35. SALES TAX EXEMPTION

JEA is exempt for Florida Sales Tax and will provide documentation upon request.

2.25.36. THIRD PARTY LIABILITY

The prompt payment requirements hereunder shall in no way create any contractual relationship or obligation between JEA and any subcontractor, supplier, JSEB, or any third-party, nor create any JEA liability for Construction Manager's failure to make timely payments hereunder. However, Construction Manager's failure to comply with the Prompt Payment requirements shall constitute a material breach of its contractual obligations to JEA. As a result of said breach, JEA, without waiving any other available remedy it may have against Construction Manager, may: (i) issue joint checks; and (ii) charge Construction Manager a 0.2% daily interest penalty or penalties specified in Chapter 126 of the Code for JSEBs and Chapter 218, Florida Statutes, for non-JSEBs, whichever is greater.

2.25.37. CONFLICT OF INTEREST

A public official who has a financial interest in a bid or contract shall make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract, including, but not limited to, the public official's name, public office or position held, bid or proposal number, and the position or relationship of the public official with the bidder or offeror.

2.25.38. STATE OF FLORIDA CONVICTED VENDOR

A person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public Work, may not submit bids on leases of real property to a public entity, may not be awarded or perform Work as a contractor, supplier, subcontractor, or firm under a contract with any public entity, and may not transact business with any public entity for a period of 36 months from the date of being placed on the convicted vendor list.

2.25.39. CONFORMITY TO APPLICABLE LAWS

Construction Manager must comply with all applicable federal, state and local laws, rules and regulations as the same exist and as may be amended from time to time, including, but not limited to, the "Public Records Law", Chapter 119, Florida Statutes (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Contract are to be performed by a Subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

2.25.40. RETENTION OF RECORDS/AUDIT

The Construction Manager and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred in the performance of the Services and shall make such materials available at all reasonable times, during the period of this Contract and for three (3) years from the date of final payment under this Contract, for inspection and/or audit by JEA. All such documents relating to the services performed or money expended under this Contract shall be open to JEA's inspection and audit during the Construction Manager's regular business hours.

3. TECHNICAL SPECIFICATIONS/DETAILED SCOPE OF SERVICES (APPENDIX A)

The following items can be found in Appendix A.

- 1410764646 Appendix A - CPM Scheduling Requirements
- 1410764646 Appendix A - Scope of Services

4. FORMS (APPENDIX B)

The following forms can be found in Appendix B.

- 1410764646 Appendix B - Minimum Qualifications Form
- 1410764646 Appendix B - Proposal Form

- 1410764646 Appendix B - Safety Information Form

5. SUPPLEMENTAL MATERIALS (APPENDIX C)

Supplemental materials can be found in the files listed below.

- 1410764646 Appendix C – Project Definitions and Greenland WTP Schematic Design

6. EVALUATION MATRIX

The file below is the matrix that will be used to evaluate all proposals submitted in response to this RFP.

- 1410764646 Evaluation Matrix